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6 Attorneys for JS Communications Co., Ltd.

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8
9 **UNITED STATES BANKRUPTCY COURT FOR**
10 **THE CENTRAL DISTRICT OF CALIFORNIA**
11 **LOS ANGELES DIVISION**

12 In re

13 RHYTHM AND HUES, INC.,

14 Debtor and Debtor in
15 Possession.

Case No. 2:13-bk-13775-NB

Chapter 11

**STIPULATION SETTLING DISPUTE
REGARDING REQUEST OF JS
COMMUNICATIONS, CO. LTD. FOR
PAYMENT OF A BREAK-UP FEE IN
CONNECTION WITH THE SALE OF
SUBSTANTIALLY ALL OF THE
DEBTOR'S ASSETS**

Date: June 4, 2013

Time: 2:00 p.m.

Place: Courtroom 1545

225 E. Temple Street

Los Angeles, California 90012

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23 JS Communications Co., Ltd. ("JS"), on the one hand, and the Official
24 Committee of Unsecured Creditors (the "Committee") and Rhythm And Hues, Inc., the
25 above-captioned debtor and debtor in possession (the "Debtor"), on the other hand, by
26 their respective undersigned counsel, hereby stipulate and agree (the "Stipulation") as
27 follows:
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RECITALS

WHEREAS, on March 7, 2013, the Debtor entered into a non-binding letter of intent with JS (the “LOI”), pursuant to which JS proposed to purchase substantially all of the Debtor’s assets as a “stalking horse bidder.”

WHEREAS, on March 13, 2013, the Bankruptcy Court entered its *Order Establishing Bid Procedures, Approving Break-Up Fee, Setting Date and Time of Sale Hearing, and Setting Related Deadlines* [Docket No. 126] (the “Bid Procedures Order”), which incorporated and approved bid procedures for the sale of substantially all of the Debtor’s assets. The Bid Procedures Order approved the Debtor’s selection of JS Communications as the “stalking horse bidder” in accordance with the terms of the LOI. The Bid Procedures Order also provided that JS would be entitled to a break-up fee of \$425,000 upon the consummation of a sale of substantially all of the Debtor’s assets to a buyer (other than JS) who paid at least \$525,000 in cash above the purchase price contemplated in the LOI.

WHEREAS, on March 28, 2013, JS filed its *Limited Opposition to Debtor's Motion for Orders: (1) Approving Sale of Debtor's Assets Under Asset Purchase Agreement Free and Clear of Liens, Claims and Interests, (2) Approving Assumption and Assignment of Unexpired Leases and Executory Contracts, [and Other Relief]* [Docket No. 171] pursuant to which it requested, among other relief, payment of a break-up fee in the amount of \$425,0000 in connection with the anticipated approval of a sale of substantially all of the Debtor’s assets.

1 WHEREAS, on March 29, 2013, 34x118 Holdings, LLC was confirmed as
2 the winning bidder for substantially all of the Debtor's assets pursuant to the terms of the
3 asset purchase agreement substantially in the form attached to the *Notice of Auction*
4 *Results and Filing of Sale-Related Documents* [Docket No. 179]. The sale to 34x118
5 Holdings, LLC subsequently closed.

7 WHEREAS, on April 22, 2013, the Committee filed its *Objection of the*
8 *Official Committee of Unsecured Creditors to Request by JS Communications, Co. Ltd.*
9 *For Payment of a Break-Up Fee In Connection With the Sale of Substantially all of the*
10 *Debtor's Assets* [Docket No. 215] (the "Committee Objection"). On May 2, 2013, the
11 Debtor filed its joinder in the Committee Objection [Docket No. 229] (the "Joinder" and,
12 together with the Committee Objection, the "Objections").
13
14

15 WHEREAS, in the Objections, the Committee and Debtor assert that a
16 break-up fee is triggered and becomes due to JS only by an increase in the cash
17 component of the winning bid and that the cash increment under the winning bid of
18 34x118 Holdings, LLC was not adequate to do so. JS contests these assertions.
19

20 WHEREAS, JS asserts that the covenant of the winning bidder to pay cure
21 fees that JS would not pay under the LOI and to leave cash assets with the estate that JS
22 asserts it would have acquired under the LOI constitute cash increments triggering the
23 break-up fee under the terms of the Bid Procedures Order, and that in any event the
24 Bankruptcy Court might under the circumstances consider non-cash increases in value of
25 the winning bid as entitling JS to the payment of a break-up fee. The Committee and
26 Debtor contest these assertions.
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1 WHEREAS, the Objections by the Debtor and Committee are based on the
2 technical question of whether the winning bid met the requirements to trigger the payment
3 of a break-up fee to JS.
4

5 WHEREAS, the Objections are not based on any failure by JS to perform
6 under its LOI in good faith, and the objectors have not asserted that JS failed to perform
7 the terms of its LOI in good faith.
8

9 WHEREAS, the parties recognize that litigation of these disputes will be
10 costly and the results uncertain and, therefore, after good faith, arms' length negotiations,
11 the parties have reached an agreement with respect to the dispute, as set forth herein.

12 WHEREAS, JS has agreed that any payment due to it can be paid to
13 O'Melveny & Myers LLP.
14

15 **STIPULATION OF SETTLEMENT**

16 NOW, THEREFORE, in consideration of the foregoing recitals, which are
17 incorporated herein by this reference, and for other good and valuable consideration, the
18 receipt and sufficiency of which is hereby acknowledged, it is hereby stipulated and
19 agreed by and between the undersigned as follows:
20

21 1. Upon approval of this Stipulation by the Bankruptcy Court, JS shall be
22 entitled to an allowed break-up fee in the amount of \$300,000 (the "Allowed Break-Up
23 Fee").

24 2. Other than the Allowed Break-Up Fee, JS waives any other claims it may
25 have in the Debtor's bankruptcy case related to the LOI or to this dispute, whether
26 secured, unsecured, priority, administrative or otherwise. The Debtor waives any claims
27 it may have against JS related to the LOI or to this dispute.
28

1 3. Within 5 calendar days of the entry of an order approving this Stipulation by
2 the Bankruptcy Court, the Debtor shall make payment of the Allowed Break-Up Fee to
3 O'Melveny & Myers LLP on behalf of JS.

4 4. This Stipulation shall be binding upon the parties and their successors in
5 interest and assigns.

6 5. Neither the consideration set forth herein nor anything contained in this
7 Stipulation shall be construed as an admission by any party to this Stipulation of any
8 liability of any kind on behalf of such party or any other party.

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10 *[Remainder of this page is intentionally left blank.]*
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Dated: 5.16.13

EVAN M. JONES
ANA ACEVEDO
O'MELVENY & MYERS LLP

By Evan M. Jones by a.a.
Evan M. Jones
Attorneys for JS Communications Co.,
Ltd.

Dated: _____

GARY E. KLAUSNER
ERIC D. GOLDBERG
**STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION**

By _____
Gary E. Klausner
Attorneys for Official Committee of
Unsecured Creditors

Dated: _____

BRIAN L. DAVIDOFF
C. JOHN M. MELISSINOS
COURTNEY E. POZMANTIER
**GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP**

By _____
C. John M. Melissinos
Attorneys for Rhythm And Hues, Inc.,
debtor and debtor in possession

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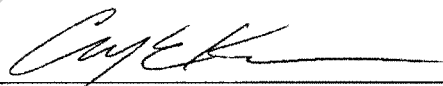
Dated: _____

EVAN M. JONES
ANA ACEVEDO
O'MELVENY & MYERS LLP

By _____
Evan M. Jones
Attorneys for JS Communications Co.,
Ltd.

Dated: 5.16.13

GARY E. KLAUSNER
ERIC D. GOLDBERG
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION

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By _____
Evan M. Jones
Attorneys for JS Communications Co.,
Ltd.

Dated: _____

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ERIC D. GOLDBERG
STUTMAN, TREISTER & GLATT
PROFESSIONAL CORPORATION

By _____
Gary E. Klausner
Attorneys for Official Committee of
Unsecured Creditors

Dated: 5.16.13

BRIAN L. DAVIDOFF
C. JOHN M. MELISSINOS
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GREENBERG GLUSKER FIELDS
CLAMAN & MACHTINGER LLP

By *C. John M. Melissinos*
C. John M. Melissinos
Attorneys for Rhythm And Hues, Inc.,
debtor and debtor in possession

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
O'Melveny & Myers LLP, 400 S Hope St, Los Angeles CA 90071-2899

A true and correct copy of the foregoing document entitled (*specify*): STIPULATION SETTLING DISPUTE REGARDING
REQUEST OF JS COMMUNICATIONS, CO. LTD. FOR PAYMENT OF A BREAK-UP FEE IN CONNECTION
WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS

will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) May 20, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) May 20, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

(Via Personal Delivery)
Honorable Neil W. Bason
United States Bankruptcy Court
Central District of California
Edward R. Roybal Federal Building
and Courthouse
255 E. Temple Street, Suite 1552
Los Angeles, CA 90012

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

May 20, 2013
Date

Ana Acevedo
Printed Name

/s/ Ana Acevedo
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):

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Lisa Hill Fenning on behalf of Creditor Rockwood Capital, LLC
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Lisa Hill Fenning on behalf of Creditor Side Effects Software, Inc. and S.E. Software, Inc.
Lisa.Fenning@aporter.com, Jean.Kellett@aporter.com

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Scott F Gautier on behalf of Interested Party Courtesy NEF

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.

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Lori Sinanyan on behalf of Creditor Universal City Studios LLC
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Alan D Smith on behalf of Creditor Wells Fargo Bank, N.A. as Trustee for the registered holders of J.P. Morgan Chase Commercial Mortgage Securities Trust 2011-C3, Commercial Mortgage Pass-Through Certificates, Series 2011-C3
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ustpreion16.la.ecf@usdoj.gov

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rlwynne@jonesday.com, sjperry@jonesday.com