

Hearing Date: To Be Determined
Objection Deadline: To Be Determined

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RELATIVITY FASHION, LLC, *et. al.*

Debtors.

Chapter 11
Case No. 15-11989 (MEW)

(Jointly Administered)

MOTION FOR LEAVE TO CONDUCT DISCOVERY PURSUANT TO 11 U.S.C. § 105(a)
AND RULE 2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE

TO: THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE¹

RKA Film Financing, LLC (“**RKA**”), in its capacity as a secured creditor of certain of the Debtors in the above-captioned chapter 11 cases (the “**Debtors**” or the “**Company**”), through its counsel, Latham & Watkins LLP, files this Motion (the “**Motion**”) for Leave to Conduct

¹ Pursuant to this Court’s Chambers’ Rules, this Motion has been submitted *ex parte*. Should the Court prefer or require notice and a hearing, a Notice of Hearing will be promptly filed.

Discovery Pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure (“**Rule 2004**”), and respectfully states as follows:

PRELIMINARY STATEMENT

1. As discussed more fully in the objection filed by RKA to the Debtors’ proposed bidding procedures filed concurrently herewith,² RKA made dedicated pre-release print and advertising loans (the “**P&A Loans**” and the related loan facility, the “**P&A Facility**”) to certain special purpose entities that own or license a single film (such special purpose entities, the “**P&A Borrowers**”),³ which are wholly-owned subsidiaries of Relativity Media, LLC (“**Relativity Media**”). These P&A Borrowers borrowed the P&A Loans and granted liens and security interests to secure RKA’s P&A Loans under the P&A Facility (the “**RKA Liens**”) in certain specified collateral of the P&A Borrowers and Other P&A Credit Parties⁴ (the “**RKA Collateral**”), which collateral generally consists of, among other things, the domestic distribution agreements for the films financed under the P&A Facility, and the intellectual property, picture rights, and receipts related to such films. *See Declaration of Dr. Brian G. Kushner Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of Chapter 11 Bankruptcy Petitions and First Day Pleadings* [Docket No. 14] (the “**First Day Declaration**”), ¶¶ 63-63. The P&A Borrowers and the Other P&A Credit

² See *Objection of RKA Film Financing to Debtors’ Motion for Order Establishing Bidding Procedures for the Sale of Substantially all of the Debtors’ Assets and Approving Stalking Horse APA and Bidding Protections*, dated August 12, 2015 [Docket No. 164] (the “**Bidding Procedures Objection**”). In particular, the factual background between RKA and the Debtors is described in paragraphs 9 – 15 of the Bidding Procedures Objection, which is incorporated herein by reference.

³ The First Day Declaration identified the original P&A Borrowers, but neglected to list certain of the additional P&A Borrowers that joined the P&A loan agreement and security documents subsequent to the original closing date; the additional P&A Borrowers include the following: (i) RML Lazarus Films, LLC; (ii) Armored Car Productions, LLC; (iii) RML Somnia Films, LLC; (iv) DR Productions, LLC; and (v) RML Kidnap Films, LLC. Of these additional P&A Borrowers, only RML Somnia Films, LLC was identified in the First Day Declaration.

⁴ The “**Other P&A Credit Parties**” consist of (i) RML Distribution Domestic, LLC, a wholly-owned subsidiary of Relativity Media, LLC and (ii) RMLDD Financing, LLC, a wholly-owned subsidiary of RML Distribution Domestic, LLC.

Parties are debtors-in-possession in these chapter 11 cases and, as of August 3, 2015, approximately \$85,005,933, plus accrued interest, was outstanding under RKA's P&A Loans.

2. Pursuant to the Second Amended and Restated Funding Agreement (as amended, the "**P&A Funding Agreement**"), RKA contracted to provide the P&A Loans to each P&A Borrower *only* to fund print and advertising ("**P&A**") for that P&A Borrower's film.⁵

3. In contravention of the requirements of the P&A Funding Agreement, the vast majority of the P&A Loans (at least with respect to the unreleased films subject to P&A Loans) were not used to fund P&A for the applicable films; instead, Ryan Kavanaugh and Relativity Media (i) converted the P&A Loans intended for the P&A Borrowers and used them to pay unauthorized general corporate expenses, and (ii) lied (or at a minimum, made negligent misrepresentations) to RKA to further their scheme and artificially prop up Debtors' balance sheets to obtain additional investments for the dying company.

4. In response to RKA's pre-petition requests, the Company provided minimal information regarding how RKA's P&A Loans had (in fact) been spent. But that limited information raised a troubling fact: while Relativity Media and Kavanaugh had caused about \$73.6 million in P&A Loans (net of fees and accrued interest) to be drawn for P&A for four unreleased P&A Pictures (*Masterminds*, *Somnia*, *Disappointments Room*, and *Kidnap*)—thereby substantially depleting RKA's P&A Facility—Relativity Media and Kavanaugh had spent less than \$1.7 million on P&A for the applicable films, even though P&A for such films was the *only* permissible use for these P&A Loans under the P&A Funding Agreement. According to the

⁵ Specifically, Section 1.3 of the P&A Funding Agreement provides that other than fees, costs, expenses, and refinancing of pre-release loans, "the proceeds of each advance of a [P&A Loan] . . . shall be made available *solely* for . . . [t]he payment or reimbursement of P&A Expenses paid, committed or incurred (or to be paid, committed or incurred) by the [Distribution SPEs] for the P&A Picture for which such [P&A Loan] was borrowed . . ." (emphasis added). For the avoidance of any possible doubt, Section 1.3 further provides that the P&A Loans "shall *not* be made available *for any other purpose*." (emphasis added).

scant materials provided to RKA, at least \$69.4 million of these funds had never been spent on P&A and, therefore, have been improperly used and/or misappropriated by Relativity Media and Kavanaugh.

5. The fact that \$69.4 million (over 94%) of the P&A Loans—or about 99% of total P&A budgets for the P&A Pictures—had not been spent on P&A raised obvious questions as to what Relativity Media and Kavanaugh have done with these funds.⁶

6. Accordingly, RKA (a) is a creditor of the Debtors and party in interest in these chapter 11 cases; (b) believes that certain of the Debtors (and/or Kavanaugh) misused and/or misappropriated substantially all of the proceeds of RKA's P&A Loans earmarked for P&A on the P&A Pictures; (c) requires full and fair access to information related to Debtors' misuse and/or misappropriation of said P&A Loans in order to determine the full extent of RKA's claims; (d) believes, on information and belief, that Debtors may continue to be squandering the assets of the Debtors on Kavanaugh's personal legal expenses (*i.e.*, *RKA v. Kavanaugh I* and *RKA v. Kavanaugh II*) and other lawsuits; (e) has every confidence that the information obtained in connection with subparagraphs (c) – (d) will benefit the creditors of the Debtors; and (f) has a good faith belief that the officers and directors of the Debtors have acted improperly prior to and during this bankruptcy to the direct detriment of RKA (and potentially other creditors of certain of the Debtors), for which the Debtors' Director and Officer, Surety Bond, Error and Omission,

⁶ After forbearing from taking action in an effort to enable Relativity Media to recover, on July 15, 2015—over three months after RKA first alerted Kavanaugh and Relativity Media of its concerns of misuse of the P&A Loans—RKA sued Kavanaugh individually. RKA alleged that Kavanaugh, who holds a non-voting membership interest in RKA, breached a contract that required him to tender such equity interest to RKA. See *RKA Film Financing, LLC v. Ryan Kavanaugh and River Birch Funds LLC*, Index No. 652481/2015 (N.Y. Sup. Ct. July 15, 2015) (hereinafter "*RKA v. Kavanaugh I*"). Thereafter, RKA filed a Complaint against Kavanaugh and twelve other John Does (various officers and directors of Relativity Holdings LLC, and various P&A Borrowers) alleging, among other claims, fraud, conspiracy to commit fraud, negligent misrepresentation, conversion, and breach of the covenants of good faith and fair dealing in connection with the P&A Loans, which directly harmed RKA. See *RKA Film Financing, LLC v. Ryan Kavanaugh et al*, Index No. 652592/2015 (N.Y. Sup. Ct. July 27, 2015) (hereinafter "*RKA v. Kavanaugh II*").

or other insurance policies relating to Relativity and/or any of its affiliates (the “**D&O Policies**”) may provide coverage—which again will benefit the creditors of the Debtors.

7. Over the last few weeks, RKA has contacted the Company on numerous occasions to request information regarding (i) the payment of K&L Gates’ legal fees for defending Ryan Kavanaugh in connection with *RKA v. Kavanaugh I* and *RKA v. Kavanaugh II*; (ii) Relativity’s D&O Policies; and (iii) the Relativity Media Operating Account (as defined below) and other accounts (as set forth below). The Company refused to comply with RKA’s requests. See Exhibit “C”, *Declaration of Benjamin Naftalis in Support of RKA’s Motion for Leave to Conduct Discovery Pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure*. Therefore, pursuant to Rule 2004, RKA requests the information set forth below related to the Company to protect its interests as a creditor of the Debtors, to obtain information relevant to its claims against the Debtors and non-Debtor insiders of the Debtors, and to assist other creditors of the Debtors.

JURISDICTION AND VENUE

8. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408, 1409. The statutory predicates underlying the relief requested in this Motion are 11 U.S.C. § 105(a) and Rule 2004.

RELIEF REQUESTED

9. RKA requests the entry of an order, substantially in the form attached hereto as Exhibit “A”, authorizing RKA to take discovery from the Company, or applicable third-party financial institutions, and compelling the production of:

- i. documents regarding the payment of any and all legal expenses attributable to the representation of Ryan Kavanaugh in his individual

capacity or in connection to his investment vehicles, including, but not limited to, financial records reflecting the amounts or transfers of such payments;

- ii. any and all D&O Policies of the Company or its affiliates;
- iii. all financial statements and records dated after January 1, 2014 that are associated with (a) the bank account at [REDACTED] in Relativity Media's name, [REDACTED] (the "**Relativity Media Operating Account**"), (b) any and all bank accounts swept by OneWest on or about July 17, 2015, as described in the First Day Declaration, including, but not limited to, the bank account at OneWest that serves as the operating account for RMLDD Financing, LLC ("**RMLDD Financing**") and the bank account at OneWest in RMLDD Financing's name that is used to pay participants and residuals to the producers, performers, writers, and other individuals entitled to compensation for the exhibition of the content developed, produced, and/or distributed by the Debtors and the Non-Debtor Subsidiaries (as defined therein), and (c) any and all other accounts to which proceeds of the P&A Loans or RKA Collateral were transferred or directed; and
- iv. any of the financial statements or records referenced above, to the extent they are in the possession, custody or control of any banks or other financial institutions, upon RKA's request.⁷

(collectively, the "**Requested Discovery**").

BASIS FOR RELIEF

10. The Bankruptcy Code authorizes this Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." *See* 11 U.S.C. § 105(a). Bankruptcy Rule 2004 provides that "[o]n motion of any party in interest, the court may order the examination of any entity." Fed. R. Bankr. P. 2004(a). That examination may compel the attendance of an entity "for the production of documents," under the procedures established by Federal Rule of Civil Procedure 45. Fed. R. Bankr. P. 2004(c) (citing Fed. R. Bankr. P. 9016); *see also* Fed. R. Bankr. P. 9016 (stating that Rule 45 of the Federal Rules of Civil Procedure applies under the Bankruptcy Code).

⁷ RKA reserves the right to request further orders from the Court as necessary to effectuate the production of the Requested Discovery.

11. RKA is a creditor of the Company and a party in interest in the Debtors' chapter 11 cases. *See* 11 U.S.C. § 1109(b) (giving any party in interest, including any creditor, the right to raise and appear and be heard on any issue in a case under chapter 11); *see also In re Teligent, Inc.*, 640 F.3d 53, 60 (2d Cir. 2011) (noting that the "general theory" behind section 1109 of the Bankruptcy Code "is that anyone holding a direct financial stake in the outcome of the case should have an opportunity . . . to participate in the adjudication of any issue that may ultimately shape the disposition of his or her interest"). RKA has lent tens of millions of dollars at the Company's direction pursuant to the P&A Funding Agreement, and RKA has already filed two lawsuits against the founder and CEO of the Company. Accordingly, as a creditor of the Company with a financial stake in this bankruptcy case, RKA is a party in interest.

12. The Requested Discovery is within the scope of Rule 2004. Discovery under Rule 2004 may relate to the "acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate." Fed. R. Bankr. P. 2004(b). It is therefore "broader than discovery under the Federal Rules of Civil Procedure, and has fewer procedural safeguards. It can be legitimately compared to a fishing expedition." *See In re Drexel Burnham Lambert Grp., Inc.*, 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991). The Requested Discovery falls squarely within the scope of Rule 2004. It relates to the Company's acts, conduct, property, liabilities, and financial condition. As such, the Requested Discovery is appropriate under Rule 2004.

13. There is good cause to compel the Requested Discovery. A Rule 2004 examination is only appropriate if the bankruptcy court has made a finding of good cause. *In re Metiom, Inc.*, 318 B.R. 263, 268 (S.D.N.Y. 2004). "The purpose of a Rule 2004 examination is to assist a party in interest in determining the nature and extent of the bankruptcy estate,

revealing assets, examining transactions and assessing whether wrongdoing has occurred.” *In re Recoton Corp.*, 307 B.R. 751, 755 (Bankr. S.D.N.Y. 2004) (citing *In re Bennett Funding Grp., Inc.*, 203 B.R. 24, 28 (Bankr. N.D.N.Y. 1996)). The Requested Discovery seeks to reveal assets and determine the nature and extent of the Company’s estate through an inquiry into the Company’s potential payment of Ryan Kavanaugh’s legal fees, the D&O Policies of the Debtors that may provide coverage for the claims asserted by RKA and other creditors, and the account information for any and all accounts to which the proceeds of the P&A Loans were directed in contravention of the requirements of the applicable documents. RKA has narrowly tailored the Requested Discovery to avoid imposing undue burden and expense on the Company. Accordingly, there is good cause to order the Requested Discovery.

14. Additionally, the Company should have been forthcoming with the information sought by the Requested Discovery. “One of the most fundamental crucial duties of a debtor-in-possession upon the filing of a Chapter 11 petition is to keep the Court and creditors informed about the status and condition of the business undergoing reorganization.” *In re V. Savino Oil & Heating Co.*, 99 B.R. 518, 526 (Bankr. E.D.N.Y. 1989). “‘Full and fair’ disclosure is required during the reorganization process; it begins ‘on day one, with the filing of the Chapter 11 petition.’” *In re Momentum Mfg. Corp.*, 25 F.3d 1132, 1136 (2d Cir. 1994). The Company has failed to honor this duty, refusing to produce – or even meaningfully meet and confer – regarding the Requested Discovery. *See* Exhibit C. At the same time, however, the Company has consented to sharing information with other parties in this proceeding. *See, e.g., Stipulation and Agreed Order Regarding the Production and Exchange of Confidential Information Between the Debtors and Debtors in Possession, Manchester Securities Corporation and Manchester Library Company* [Docket No. 134].

NOTICE

15. Notice of this Motion has been served on counsel for Debtors, the Office of the United States Trustee, and all other parties who have requested notice in these cases pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST FOR RELIEF

16. No prior request for the relief sought in this Motion has been made to this Court or any other court. RKA reserves the right to request to conduct other discovery as appropriate.

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CONCLUSION

WHEREFORE, RKA respectfully requests that this Court (i) enter an order, substantially in the form attached hereto as Exhibit A, granting the relief requested herein, including authorizing RKA to conduct the Requested Discovery as set forth herein, and (ii) grant such other and further relief as this Court may deem just and proper.

Dated: August 12, 2015
New York, New York

Respectfully Submitted,

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EXHIBIT A

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RELATIVITY FASHION, LLC, *et. al.*

Debtors.

Chapter 11

Case No. 15-11989 (MEW)

(Jointly Administered)

**ORDER GRANTING LEAVE TO CONDUCT DISCOVERY PURSUANT
TO 11 U.S.C. § 105(a) AND RULE 2004 OF THE FEDERAL RULES OF
BANKRUPTCY PROCEDURE**

Upon consideration of the *Motion for Leave to Conduct Discovery Pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure* (the "**Motion**") of RKA Film Financing, LLC ("**RKA**") in its capacity as a creditor of Relativity Media LLC (along with its jointly administered affiliates, the "**Company**"), and this Court having considered, among other things, (i) the Motion and (ii) the *Declaration of Benjamin Naftalis in Support of RKA's Motion for Leave to Conduct Discovery Pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure*; and after due deliberation and sufficient cause appearing, the Court finds and concludes as follows:

1. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334.
2. Venue is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The discovery requested in the Motion concerns the Company's assets, affairs, rights, obligations or liabilities, and RKA is a party in interest in this case.
4. The relief requested in the Motion is necessary and appropriate and warranted pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure.

NOW, THEREFORE, IT IS HEREBY:

ORDERED that the Motion is granted; and it is further

ORDERED that RKA is entitled to serve on the Company document requests similar in form and substance to the document requests attached as Exhibit “B” to the Motion (the “**Document Requests**”) and to compel production in accordance with Fed. R. Bankr. P. 9016 and Fed. R. Civ. P. 45 of: (i) documents regarding the payment of any and all legal expenses attributable to the representation of Ryan Kavanaugh in his individual capacity or in connection to his investment vehicles, including, but not limited to, financial records reflecting the amounts or transfers of such payments; (ii) any and all Director and Officer, Surety Bond, Error and Omission, or other insurance policies relating to Company and/or any of its affiliates; (iii) all financial statements and records dated after January 1, 2014 that are associated with (a) the Relativity Media Operating Account, as specified in the Motion, (b) any and all bank accounts swept by OneWest on or about July 17, 2015, as described in the *Declaration of Dr. Brian G. Kushner Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of Chapter 11 Bankruptcy Petitions and First Day Pleadings* [Docket No. 14], including, but not limited to, the bank account at OneWest that serves as the operating account for RMLDD Financing, LLC (“**RMLDD Financing**”) and the bank account at OneWest in RMLDD Financing’s name that is used to pay participants and residuals to the producers, performers, writers, and other individuals entitled to compensation for the exhibition of the content developed, produced, and/or distributed by the Debtors and the Non-Debtor Subsidiaries (as defined therein), and (c) any and all other accounts to which proceeds of the P&A Loans or RKA Collateral were transferred or directed; and (iv) any of the financial statements or records

referenced above, to the extent they are in the possession, custody or control of any banks or other financial institutions, upon RKA's request; and it is further

ORDERED that the Company is required to produce all documents responsive to the Document Requests immediately following the entry of this Order to be completed no later than five days after the entry of this Order; and it is further

ORDERED that this Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, and requests for any additional relief in this chapter 11 case and all adversary proceedings in connection herewith properly commenced and within the jurisdiction of this Court; and it is further

ORDERED that this Order shall be served by e-mail and overnight mail as promptly as practicable on the day of entry of this Order, upon (a) the Company, (b) the U.S. Trustee, and (c) all parties that have requested notice; and it is further

ORDERED that service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes.

Dated: August __, 2015
New York, New York

Honorable Michael E. Wiles
United States Bankruptcy Judge

EXHIBIT B

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Counsel for RKA Film Financing, LLC

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RELATIVITY FASHION, LLC, *et. al.*

Debtors.

Chapter 11

Case No. 15-11989 (MEW)

(Jointly Administered)

**RKA FILM FINANCING, LLC'S FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS DIRECTED TO RELATIVITY FASHION, LLC**

Pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure, RKA Film Financing, LLC ("RKA"), in its capacity as potential claimant of the bankruptcy estates of Relativity Fashion, LLC and its affiliated debtors and debtors in possession (the "Debtors" or, along with its jointly administered affiliates, the "Company"), hereby request that the Company produce documents responsive to the following requests (the "Document Requests") on a continuing basis starting promptly and finishing no later than five (5) days after the entry of an Order authorizing this request at the offices of Latham & Watkins LLP, 885 Third Avenue, New York, New York 10022-4834.

INSTRUCTIONS

1. In responding to these requests, the Company is required to obtain and furnish all documents that are in its possession, custody, or control, or that are in the possession, custody, or control of any of its members, managers, officers, directors, employees, representatives, agents, advisors, or subsidiaries.

2. These requests incorporate by reference the instructions and definitions set forth in Local Civil Rule 26.3 and made applicable herein by Local Bankruptcy Rule 7026-1.

3. The masculine form of a noun or pronoun includes the feminine form and vice versa.

4. The term "including" shall be construed as "including, but not limited to."

5. These requests are deemed to be continuing in nature as required by Federal Rule of Civil Procedure 26(e) and made applicable herein by Bankruptcy Rule 7026. If the Company becomes aware of or acquires additional documents responsive to these requests after the initial production of documents, such documents shall be produced promptly.

6. The fact that a document may be produced by a party other than the Company does not relieve the Company from its obligation to produce its copy of the same document, *even if* the two documents are identical in all respects.

7. If any requested document is not produced on the basis of an assertion of the attorney-client privilege, the work product doctrine, or any other claim of privilege or immunity, the Company must furnish a written statement setting forth the information required by Federal Rule 26(b)(5), made applicable herein by Bankruptcy Rule 7026, including: (a) the type of document (*e.g.*, email message, memorandum, report, notes); (b) the general subject matter of the document; (c) the date of the document; (d) the author or sender of the document; (e) the

addressee or recipient of the document; (f) each person who received a copy of the document; and (g) the privilege, doctrine, or immunity asserted and the basis for that assertion.

8. If the Company objects to any particular portion of any request herein, it is required to produce documents in response to all other portions of such request as to which there is no objection.

9. If the Company maintains that any document required to be produced by any request herein has been lost or destroyed, it is required to describe the type of document, the contents of that document, the location of any copies of that document, the date of such destruction, and the identity of the person authorizing such destruction, if any.

10. All documents produced must be produced in their entirety, including all attachments, enclosures, cover letters, exhibits, and transmittal sheets. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook, or other cover or container, a copy of the label of such cover or other container must be attached to the document.

11. With respect to Electronically Stored Information (“ESI”):

- a. All electronic mail and spreadsheets responsive to these Document Requests that are maintained in the usual course of business in electronic format are to be produced in their native format along with the software necessary to interpret such files if such software is not readily available.
- b. All other documents responsive to these Document Requests that are maintained in the usual course of business in electronic format are to be produced in properly utilized, multi-page TIFF Group IV format complete with full text extracts and all associated metadata.
- c. All documents responsive to these Document Requests are to be produced with the metadata normally contained within such documents, and the necessary Concordance or Introspect load files. If such metadata are not available, each document is to be accompanied by a listing of all file properties relating to such document, including, but not limited to, all information relating to the date(s) the document was last accessed, created, modified or distributed, and the author(s) and recipient(s) of the document.

- d. Under no circumstances should ESI be converted from the form in which it is ordinarily maintained to a different form that makes it more difficult or burdensome to use. ESI should not be produced in a form that removes or significantly degrades the ability to search the ESI by electronic means where the ESI is ordinarily maintained in a way that makes it searchable by electronic means. Databases or underlying data should not be produced without first discussing production format issues with counsel for RKA. If you decline to search or produce ESI on the ground that ESI is not reasonably accessible because of purported undue burden or cost, identify such information by category or source and provide detailed information regarding the purported burden or cost you claim is associated with the search or production of such ESI.

12. If any requested document cannot be produced in full, it shall be produced to the extent possible, indicating what document or portion of a document is being withheld and the reasons why such document or portion of a document is being withheld.

13. Except as otherwise expressly stated, these document requests call for all responsive documents created or modified on or after January 1, 2014.

DEFINITIONS

As used in these requests, the following terms have the meanings described below:

1. "Relativity," "you," or "your" shall collectively mean Relativity Fashion, LLC and its jointly administered affiliates in this bankruptcy case, as well as their officers, directors, employees, partners, corporate parents, subsidiaries, or affiliates. As used herein, "you" and "your" shall be construed either disjunctively or conjunctively, as necessary by the context to bring within the scope of the definition, instruction, or request all responses that might otherwise be construed to be outside of its scope by any other construction.
2. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).
3. The term "concerning" means relating to, referring to, describing, evidencing, or constituting.

4. The term “document” is synonymous in meaning and equal in scope to the usage of the term “documents or electronically stored information” in Federal Rule of Civil Procedure 34(a)(1)(A). A draft or a non-identical copy is a separate document within the meaning of this term.

5. The phrase “related to” shall be construed in the broadest sense, meaning, amongst other things, concerning, alluding to, pertaining to, responding to, connected with, commenting on, with respect to, about, regarding, discussing, involving, showing, describing, supporting, mentioning, reflecting, analyzing, evidencing, constituting, comprising, and/or memorializing.

6. The words “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of a request all responses that might otherwise be construed to be outside of its scope.

7. The use of the singular form of any word includes the plural and vice versa.

8. The terms “all,” “any,” and “each” shall each be construed as encompassing any and all.

DOCUMENT REQUESTS

1. Please produce all documents, communications, and materials concerning the payment of any and all legal expenses attributable to the representation of Ryan Kavanaugh in his individual capacity or in connection to his investment vehicles, including, but not limited to, financial records reflecting the amounts or transfers of such payments.

2. Please produce any and all Director and Officer, Surety Bond, Error and Omission, or other insurance policies of the Company.

3. Please produce all financial statements and records dated after January 1, 2014 that are associated with bank accounts to which the proceeds of the P&A Loans were directed, including, but not limited to:

- a. the bank account at [REDACTED] in Relativity Media's name, [REDACTED]
[REDACTED],
- b. any and all bank accounts swept by OneWest on or about July 17, 2015, as described in the *Declaration of Dr. Brian G. Kushner Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of Chapter 11 Bankruptcy Petitions and First Day Pleadings* [Docket No. 14], including, but not limited to, the bank account at OneWest that serves as the operating account for RMLDD Financing, LLC ("**RMLDD Financing**") and the bank account at OneWest in RMLDD Financing's name that is used to pay participants and residuals to the producers, performers, writers, and other individuals entitled to compensation for the exhibition of the content developed, produced, and/or distributed by the Debtors and the Non-Debtor Subsidiaries (as defined therein), and
- c. any and all other accounts to which proceeds of the P&A Loans or RKA Collateral were transferred or directed.

Dated: August 12, 2015
New York, New York

Respectfully Submitted,

LATHAM & WATKINS LLP

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EXHIBIT C

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:

RELATIVITY FASHION, LLC, *et. al.*

Debtors.

Chapter 11

Case No. 15-11989 (MEW)

(Jointly Administered)

**DECLARATION OF BENJAMIN NAFTALIS IN SUPPORT OF RKA'S MOTION FOR
LEAVE TO CONDUCT DISCOVERY PURSUANT TO 11 U.S.C. § 105(a) AND RULE
2004 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE**

I, Benjamin A. Naftalis, hereby declare pursuant to 28 U.S.C. § 1746 that:

1. I am associated with the law firm of Latham & Watkins LLP, counsel for RKA Film Financing, LLC ("**RKA**"), and am a member in good standing of the bar of this Court. I submit this declaration in support of RKA's *Motion for Leave to Conduct Discovery pursuant to 11 U.S.C. § 105(a) and Rule 2004 of the Federal Rules of Bankruptcy Procedure* in the above-captioned chapter 11 cases.

2. On August 4, 2015, by email correspondence, counsel for RKA requested that the Debtors produce all of potentially applicable director and officer, surety bond, error and omission or other insurance policies relating to the Debtors.

3. On August 7, 2015, by email correspondence, counsel for RKA requested that the Debtors produce information regarding: (i) the payment of any and all legal expenses attributable to the representation of Ryan Kavanaugh in his individual capacity or in connection to his investment vehicles, including, but not limited to, financial records reflecting the amounts or transfers of such payments, (ii) the company's and/or its affiliates' Director and Officer, Surety Bond, Error and Omission, or other insurance policies, and (iii) all financial statements and records dated after January 1, 2014 that are associated with the bank account at [REDACTED] in the name of Relativity Media, LLC, [REDACTED].

4. On August 11, 2015, by email correspondence, counsel for RKA renewed its August 4th and August 7th requests, and further requested that the Debtors produce any and all financial statements and records dated after January 1, 2014 that are associated with bank accounts to which proceeds of those loans were directed, including, but not limited to: (i) the bank account at [REDACTED] in Relativity Media, LLC's name, [REDACTED], (ii) any and all bank accounts swept by OneWest on or about July 17, 2015, as described in the *Declaration of Dr. Brian G. Kushner Pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York in Support of Chapter 11 Bankruptcy Petitions and First Day Pleadings* [Docket No. 14], including, but not limited to, the bank account at OneWest that serves as the operating account for RMLDD Financing, LLC ("RMLDD Financing") and the bank account at OneWest in RMLDD Financing's name that is used to pay participants and residuals to the producers, performers, writers, and other individuals

entitled to compensation for the exhibition of the content developed, produced, and/or distributed by the Debtors and the Non-Debtor Subsidiaries (as defined therein), and (iii) any and all other accounts to which proceeds of the print and advertising loans made by RKA Film Financing, LLC were transferred or directed.

5. In addition, between July 31, 2015 and August 11, 2015, counsel for RKA has made verbal requests to counsel for the Company in line with those set forth above in paragraphs 2, 3, and 4.

6. The Company has not produced any documents in response to the aforementioned requests, and the Company has rejected RKA's good faith efforts to meet and confer.

Executed on the 12th day of August, 2015



Benjamin A. Naftalis