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VIA E-MAIL AND ECF
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Hon. Michael E. Wiles
United States Bankruptcy Court
One Bowling Green
New York, New York 10004-1408

Re: ***In re Relativity Fashion, LLC et al.*** **– Case No. 15-11989-MEW**

Dear Judge Wiles:

We represent Neal H. Moritz ("Moritz"), Neal H. Moritz, Inc. ("Moritz Inc."), George Wallace ("Wallace"), Donald Keith ("Keith"), and Arne L. Schmidt, Inc. ("Schmidt," and together with Moritz, Moritz, Inc., Wallace, and Keith, the "Hunter Killer Parties") in the above-referenced action. We write pursuant to Local Rule 7007-1(b), as incorporated in Your Honor's individual Chamber Practices, to request an informal conference regarding a discovery dispute between the Hunter Killer Parties, on the one hand, and the debtors and debtors-in-possession (collectively, the "Debtors" or "Relativity"), on the other, stemming from the Debtors' refusal to produce Relativity CEO Ryan C. Kavanaugh ("Kavanaugh") for deposition in accordance with their obligation to do so under applicable Federal Rules.

The Hunter Killer Parties urgently need to depose Kavanaugh to take discovery which will prove that Relativity is categorically incapable of reorganizing under Chapter 11 and emerging as a viable production house. Such discovery will enable the Hunter Killer Parties to demonstrate to the Court—beyond a shadow of a doubt—that they will be severely and irreparably harmed if the Court grants the Debtors' pending motion, closing the door on the Hunter Killer Parties once-in-a-lifetime opportunity to make the Hunter Killer film. While an extension of exclusivity may aid Kavanaugh and prolong the false hopes of lenders who have already lost tens of millions of dollars, it will do nothing for anyone else involved with Relativity's defunct film division, all of whom are being held hostage and would be better served by a liquidation.

Relevant Procedural History

On October 26, 2015, the Debtors filed a Motion for an Order Extending their Exclusive Periods to File a Chapter 11 Plan and Solicit Acceptances Thereof [Docket No. 916] (the "Debtors' Exclusivity Motion"). In response, on November 5, 2015, the Hunter Killer Parties filed an Objection to the Debtors' Motion for an Order Extending Exclusive Periods to File a

Chapter 11 Plan and Solicit Acceptances Thereof [Docket No. 940] (the "Hunter Killer Exclusivity Objection").

On November 6, 2015, the Hunter Killer Parties served a Notice of Deposition of Ryan C. Kavanaugh on the Debtors, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure, made applicable in bankruptcy cases by Rules 7026, 7030, and 9014 of the Federal Rules of Bankruptcy Procedure. *See* Exhibit A (Notice of Deposition of Ryan C. Kavanaugh) (the "Notice"). The Hunter Killer Parties served the Notice in aid of the Hunter Killer Exclusivity Objection, seeking to obtain critical discovery which will support its filing and establish that the Debtors are incapable of confirming a viable plan of reorganization. The Notice set Kavanaugh's deposition for November 11, 2015, one day prior to the hearing on the Debtor's Exclusivity Motion, now set for November 12, 2015.

On November 9, 2015, the Debtors' served their Response to Notice of Deposition of Ryan C. Kavanaugh. *See* Exhibit B (Debtors' Response to Notice of Deposition of Ryan C. Kavanaugh) (the "Response"). In sum and substance, the Response stated that the Debtors would not produce Kavanaugh for a deposition. The parties subsequently conferred—pursuant to Local Rule 7007-1(a)—in a good faith effort to resolve their dispute, but have yet been unable to do so.

Argument

It is imperative that the Debtors produce Kavanaugh for deposition in advance of the hearing now scheduled for November 12, 2015, and failing that, at the very latest, in advance of the Court's decision on the Debtors' Exclusivity Motion, with sufficient time for the Hunter Killer Parties to amend and/or supplement the Hunter Killer Exclusivity Objection. *See* Hunter Killer Exclusivity Objection, at 11. If the Debtors Motion for Exclusivity is allowed to proceed without the Hunter Killer Parties being afforded the opportunity to take Kavanaugh's deposition, the Hunter Killer Exclusivity Objection will suffer, and the Court will be deprived of important information that is unquestionably material to its imminent adjudication of the motion in question. Critically, if the Debtors Exclusivity Motion is granted—which it should not be—the Hunter Killer film project will effectively be terminated, and the Hunter Killer Parties will be severely and irreparably harmed. *See* Hunter Killer Exclusivity Objection, at 1-2.

1. The Discovery is Plainly Relevant

Rule 26 of the Federal Rules of Civil Procedure, made applicable in bankruptcy cases by Rules 7026 and 9014 of the Federal Rules of Bankruptcy Procedure, provides that "[p]arties may obtain discovery regarding any nonprvileged matter that is relevant to any party's claim or defense . . . ." Fed. R. Civ. P. 26(b)(1). The discovery presently sought by the Hunter Killer Parties—namely, Kavanaugh's deposition testimony regarding Relativity's financial and organizational wherewithal to produce a feature film, and Kavanaugh's related and ongoing representations to potential investors—is plainly relevant to the present action. Kavanaugh's deposition testimony will confirm what the Hunter Killer Parties have already asserted: that Relativity no longer has (and for the past few years, has not had) the capital or financial backing

necessary to produce a feature film on the scale contemplated by the Hunter Killer film project. Kavanaugh's deposition testimony will also confirm that, in the wake of several key departures, Relativity no longer has the leadership or personnel necessary to execute a project on the scale contemplated by the Hunter Killer film project. Finally, Kavanaugh's deposition testimony will reveal the duplicitous and fraudulent gambit he has employed (and continues to employ) to trick investors and counter-parties to executory contracts (like the Hunter Killer Parties) alike to buy into his sham operation.

2. The Notice is Proper and Reasonable

Rule 30 of the Federal Rules of Civil Procedure, made applicable in bankruptcy cases by Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, provides that "[a] party may, by oral questions, depose any person, including a party, without leave of court . . . . Fed R. Civ. P. 30(a)(1); *see also Farmer v. Hyde Your Eyes Optical, Inc.*, No. 13-CV-6653, 2015 WL 2250592, *12 n. 9 (S.D.N.Y. May 13, 2015) ("[A] notice to take a deposition is all that is necessary to compel a party to attend a deposition."). The Hunter Killer Parties served just such a notice on November 6, 2015. *See generally,* Notice.

Rule 30 further provides that [a] party who wants to depose a person by oral questions must give *reasonable* written notice to every other party." Fed. R. Civ. P. 30(b)(1) (emphasis added). In their Response, the Debtors object to the Notice on the grounds that it was served in violation of the Amended Order Authorizing the Establishment of Certain Notice, Case Management and Administrative Procedures [Docket No. 265] (the "Amended CMO") and Rules 26 and 30 of the Federal Rules of Civil Procedure. *See* Request, at 1. The Debtors are mistaken. In fact, by its very terms, the Amended CMO *explicitly* provides that "[e]xpedited discovery in contested matters in the Chapter 11 Cases is authorized without further Court order." Amended CMO, at 12. Moreover, the Amended CMO instructs the parties to work "cooperatively to effect any necessary discovery, with due recognition of the time exigencies that are typical in bankruptcy litigation." Amended CMO, at 12. Thus, the Hunter Killer Parties are *expressly authorized* to seek expedited discovery under the Amended CMO, and the Debtors' Response is both uncooperative and flouts the important time exigencies driving the present request.[1]

In their Response, the Debtors also cursorily assert that the notice here provided was "not reasonable" under Rule 30(b)(1). Response, at 1. Again, the Debtors are mistaken. As an initial matter, "[n]either the Federal Rules of Civil Procedure nor the Rules of this Court require any specific minimum notice period." *Davidson v. Dean*, 204 F.R.D. 251, 256 (S.D.N.Y. 2001) (citing 2 Michael C. Silberberg, CIVIL PRACTICE IN THE SOUTHERN DISTRICT OF NEW YORK, § 17.08 at 17-24 (2d ed. 2001)) (8 days' notice found reasonable under the circumstances); *see*

[1] The Debtors' refusal to play ball on discovery is now, unfortunately, a pattern. In fact, this is the second time that the Hunter Killer Parties have noticed Kavanaugh's deposition—it was first noticed on September 29, 2015, in connection with the Hunter Killer Parties' Objection to the Debtors' Sale Motion and Assumption and Assignment of Executory Contracts—only to be stonewalled. *See* Exhibit C (Notice of Deposition of Ryan C. Kavanaugh, dated September 28, 2015; *see also* Exhibit D (Email from L. Sinanyan to M. Elkin regarding Relativity/Hunter Killer Discovery).

also, *F.A.A. v. Landy*, 705 F.2d 624, 634-35 (2d Cir. 1983) (4 days' notice found reasonable under the circumstances); *Jones v. U.S.*, 720 F. Supp. 355, 366 (S.D.N.Y. 1989) (8 days' notice found reasonable under the circumstances). Moreover—and frankly, more importantly—it is well settled that "the reasonableness of notice [under Rule 30(b)(1)] must be determined in light of the facts and circumstances of the individual case." *Davidson,* 204 F.R.D. at 256 (S.D.N.Y. 2001). Here, 5 days' notice is eminently reasonable given the exigencies posed by the impending hearing scheduled for November 12, 2015 (and the potential harms that would befall the Hunter Killer Parties if the Court were to grant the Debtors' Exclusivity Motion without the benefit of the discovery now sought from Kavanaugh).[2]

Finally, the Debtors offer *no substantive explanation* whatsoever as to why the notice provided by the Hunter Killer Parties is not reasonable. *See generally,* Response. This, too, weighs in favor of the Notice's reasonability. *See Davidson*, 204 F.R.D. at 256 (considering the fact that "plaintiff provide[d] no specific explanation why this interval did not allow sufficient time for preparation" in finding 8 days' notice reasonable).

3. The Court Needs the Discovery at Issue to Decide the Debtors' Motion

The Court must consider the harm to counter-parties to executory contracts (like the Hunter Killer Parties) in evaluating the Debtors' Exclusivity Motion. And the discovery now at issue is plainly relevant—not only to the action, broadly—but also to the Court's impending decision on the Debtors' Exclusivity Motion, and in particular, the Court's determination as to the harm likely to be suffered by the Hunter killer Parties should the Debtors' motion be granted.

The Hunter Killer Parties have already averred that Relativity is without the necessary financial and organizational wherewithal to produce feature films like the Hunter Killer film project, but Kavanaugh's deposition will provide confirmation in the form of heretofore unavailable facts and details on which the Court can rely in weighing its decision. Critically, if the Court grants the Debtors' Exclusivity Motion, the Hunter Killer Parties will be trapped in limbo between assumption and rejection until May 2016, at the earliest. The principal talent associated with the Hunter Killer film project—internationally known movie star Gerard Butler—has indicated that he cannot and will not wait that long to make the film. *See* Hunter Killer Exclusivity Objection, at 3. Without Butler, the financing necessary to make the film is all but certain to disappear. *See* Hunter Killer Exclusivity Objection, at 3. Thus, if the Court grants the Debtors' Exclusivity Motion, the Hunter Killer Parties will have lost their shot to make the film, suffering severe and irreparable harm as a result.

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The Hunter Killer Parties also respectfully request an extension of the Court's page limit from two (2) to five (5) pages (exclusive of exhibits). As a general matter, the Court requires the Hunter Killer Parties to communicate the reason for the requested conference, and in this

[2] The Debtors also object to the Notice on the grounds that it fails to identify the scope of the testimony sought. Of course, Rule 30 contains no such requirement; thus, this objection is entirely unfounded. *See* Fed. R. Civ. P. 30(b)(1).

particular case—given the immediacy of the impending hearing—it is imperative that the Court be provided an opportunity to understand the entire substantive thrust of the Hunter Killer Parties' arguments.

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For these reasons, the Hunter Killer Parties respectfully request that the Court schedule an informal conference at its earliest convenience to address the parties' dispute. Should the parties remain unable to resolve their dispute after such conference, the Hunter Killer Parties intend to seek all due relief under Rules 26, 30, and 37 of the Federal Rules of Civil Procedure, made applicable in bankruptcy cases by Rules 7026, 7030, 7037, and 9014 of the Federal Rules of Bankruptcy Procedure.

Respectfully submitted,

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