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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
RHI Entertainment, Inc., <u>et al.</u> , ¹)	Case No. 10-_____
)	
Debtors.)	Joint Administration Requested
)	
)	
)	

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE PERFORMING UNDER FILM FINANCING AGREEMENTS, (II) PROVIDE CREDIT SUPPORT IN CONNECTION WITH FILM FINANCING AGREEMENTS AND (III) ENTER INTO FILM FINANCING AGREEMENTS IN THE ORDINARY COURSE OF BUSINESS

The above-captioned debtors and debtors-in-possession (the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an order (the “**Order**”), in substantially the form attached hereto as Exhibit A, authorizing the Debtors to (i) continue performing under their film financing agreements (the “**Film Financing Agreements**”), (ii) provide credit support in connection with

¹ The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, are: RHI Entertainment, Inc. (4616); RHIE Holdings Inc. (5429); RHI Entertainment Holdings II, LLC (0004); RHI Entertainment, LLC (7887); RHI Entertainment Productions, LLC (6014); RHI Entertainment Distribution, LLC (6017); RHI International Distribution Inc. (7653); NGP Holding, Inc. (6138); HEGOA INC. (4608); Independent Projects, Inc. (2430); Don Quixote, Inc. (1238); HE Pro Tunes, Inc. (2268); HEP Music, Inc. (2267); Metropolitan Productions, Inc. (9375); Library Storage, Inc. (8155); HEP SS Music Inc. (7969); and SLB Productions, Inc. (8171).

Film Financing Agreements and (iii) enter into additional Film Financing Agreements in the ordinary course of business. The facts and circumstances supporting this Motion are set forth in the Declaration of Robert A. Del Genio, Strategic Planning Officer of RHI Entertainment, Inc., in Support of Chapter 11 Petitions and First Day Pleadings (the “**First Day Declaration**”), filed concurrently herewith. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory basis for the relief requested herein is Section 105(a) of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532, (as amended, the “**Bankruptcy Code**”).

BACKGROUND

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”).

4. The Debtors are operating their business and managing their properties as debtors-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No trustee or examiner has been requested and no statutory committee has yet been appointed in these Chapter 11 Cases.

5. For a detailed description of the Debtors and their operations, the Debtors respectfully refer the Court and parties-in-interest to the First Day Declaration.

THE FILM FINANCING AGREEMENTS

6. In the ordinary course of business, the Debtors commission certain production companies (the “**Production Companies**”) to produce new films (the “**New Content**”) pursuant to the Film Financing Agreements,² under which the Debtors agree to pay a fee (the “**Producer Fee**”) to the Production Companies in return for exclusive distribution licenses (the “**Distribution Licenses**”) in respect of the New Content. A Production Company typically establishes a special purpose entity (the “**SPE**”) for the production of each item of New Content, which typically retains all of the rights with respect to the literary, musical, dramatic and other written materials created for the New Content and often receives from the Debtors a security interest in certain Distribution Payments (as defined below) or in the Distribution License (collectively, the “**Producer Fee Collateral**”) to secure full payment of the Producer Fee.

7. Before production begins on an item of New Content, the Debtors sell sublicenses (the “**Sublicenses**”) for certain territorial, media or temporal distribution rights in respect of the New Content to third parties (the “**Sublicensees**”) and receive promises of certain payments (the “**Distribution Payments**”) in return for granting the Sublicenses. A portion of many of these Distribution Payments (the “**Up-Front Distribution Payments**”) are received before production begins as advances against Distribution Payments (refundable if New Content is not delivered) and are turned over to the Production Companies applicable against the Producer Fee to help defray the cost of producing the item of New Content. The balance of the Distribution Payments (the “**Subsequent Distribution Payments**”) are typically received by the

² Nothing in this Motion, nor in the related Order, shall be deemed or considered an assumption or rejection, within the meaning of those terms pursuant to Section 365 of the Bankruptcy Code, of any Film Financing Agreement or other potentially executory contract. Additionally, nothing in this Motion, nor in the related Order, shall be deemed to be an admission that any such contract is or is not an executory contract. The Debtors reserve all rights with respect to such issues.

Debtors only after the item of New Content has actually been produced and actually been received by the Sublicensees, although Subsequent Payments are occasionally required to be paid in installments at one or more points during the production process. Once received, these Subsequent Distribution Payments are generally turned over by the Debtors to the Production Companies until the full Producer Fee has been paid. In addition, the Debtors are sometimes required, in the ordinary course of business, to grant in favor of their Sublicensees of New Content a lien or security interest in the distribution rights that are being licensed to them under the relevant Sublicense in order to secure the Sublicensee's continued enjoyment of such licensed distribution rights (any such lien, a "**Sub-Distributor's Lien**").

8. If, as is typically the case, the amount of Up-Front Distribution Payments is not sufficient to cover the full cost of producing an item of New Content, the applicable Production Company or SPE may obtain a loan (a "**Production Loan**") from a financial institution of its choosing. Pursuant to the agreements typically governing Production Loans, the Production Company (a) grants the financial institution a first priority security interest in all of the assets of the SPE, which includes the rights with respect to the intellectual property associated with the New Content and (b) assigns to the financial institution the SPE's security interest in, and rights to, the Producer Fee Collateral.

9. Because the Production Loan is secured only by the assets of the SPE and the only real source of repayment is the Distribution Payments to be turned over by the Debtors, the financial institutions often require additional credit support before making a Production Loan. Specifically, in certain circumstances, this additional support takes the form of one of the Debtors assigning some or all of the Distribution Payments to the financial institutions and/or providing a limited guarantee of the Distribution Payments (the "**Guarantee**"). This Guarantee

neither backstops the performance of the Production Company or the SPE with respect to the actual production of the New Content, nor guarantees the performance of the Production Company under the Production Loan. Rather, the Guarantee only backstops the performance of the Sublicensees in making the Distribution Payments that are often due only once delivery of the New Content has occurred. In connection therewith, the Debtors may also grant to the Production Company or the SPE a lien on the Distribution Payments and or the Distribution Licenses or consent to the assignment of the SPE's security interest in the Producer Fee Collateral to the financial institution to secure the Production Loan in the event that the Debtors do not turn over the Distribution Payments that they actually receive from the Sublicensees. In this way, the financial institution providing the Production Loan to the Production Company or SPE has additional assurance both that the Production Company or SPE will have sufficient funds available to repay the Production Loan and that the financial institution will be able to capture any Distribution Payments necessary to repay the Production Loan.

10. Under this arrangement, the Debtors do not receive any proceeds of the Production Loan - those go directly to the Production Company. Moreover, the Debtors do not pledge any of their assets to either the Production Company or the financial institution other than the Distribution Payments actually received by the Debtors and/or the Distribution Licenses. In addition, the Debtors' obligations under a Guarantee usually arise only if the Production Company actually delivers the applicable item of New Content to the Debtors – if the item of New Content is not delivered, such that there will be no delivery or post-delivery Subsequent Distribution Payments, the Debtors have no obligation to cover any such Subsequent Distribution Payments that would have been due had the item of New Content been delivered. Similarly, if a Sublicensee does not make the Upfront Distribution Payments or Subsequent

Distribution Payments for which it is obligated (which failure would implicate the Debtors' Guarantee), its rights under the Sublicense revert back to the Debtors (unless the Film Financing Agreement papers were to provide that such rights under the Sublicense would revert or be assignable to the Production Company or its financier), who are then able to re-sell the Sublicense in the given territory previously licensed to the delinquent Sublicensee.

RELIEF REQUESTED

11. The Debtors respectfully request entry of the Order authorizing the Debtors to continue performing under their Film Financing Agreements in the ordinary course of business and without further order of this Court.

12. In connection therewith, the Debtors further request authority, subject to the terms and conditions of their debtor-in-possession credit facility (the "**DIP Facility**"), including the prior approval of the administrative agent thereunder, to provide additional credit support to the SPEs or the Production Companies without further order of this Court, including (a) providing the limited Guarantees set forth above, (b) granting of a lien in favor of the Production Company or the SPE (and, solely in the context of the New Content entitled *Treasure Island*, on the basis of a pre-approval from the administrative agent under the DIP Facility, a lien in favor of the producer's financier, Coutts & Co.) on the Debtors' interest in the Distribution Payments and/or New Content or consenting to the assignment of the SPE's security interest in the Producer Fee Collateral to the financial institution and (c) remittance of any Distribution Payments to the SPEs or the Production Companies (or their lenders), as the case may be, in accordance with the terms of the Film Financing Agreements. In addition, the Debtors request the authority, subject to the terms and conditions of the DIP Facility, to grant Sub-Distributor's Liens in the ordinary course of business.

13. Finally, the Debtors request authority, subject to the terms and conditions of the DIP Facility, to enter into additional Film Financing Agreements without further order of this Court to the extent necessary to operate their business in the ordinary course.

BASIS FOR RELIEF

14. Section 105(a) of the Bankruptcy Code states, in part, “the court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). As described in more detail below, the Debtors believe that the relief requested herein is necessary in the context of these Chapter 11 Cases so that the Debtors can continue to operate their business in the ordinary course while they complete their restructuring. Moreover, because the Debtors neither receive any of the proceeds of the Production Loan nor guarantee its repayment, the Debtors do not believe that they are seeking to obtain credit or incur debt as contemplated by Section 364 of the Bankruptcy Code. However, if this Court believes that Section 364 of the Bankruptcy Code is applicable, the Debtors nonetheless believe the Motion is appropriate and should be approved.

15. Specifically, business arrangements like those memorialized in the Film Financing Agreements are vitally important to the Debtors’ ability to produce and distribute new films, a cornerstone of their business. Given the uncertainty with which third parties frequently view the chapter 11 process, however, Production Companies and the financial institutions that provide Production Loans may be hesitant to continue to perform under existing Film Financing Agreements or enter into new Film Financing Agreements with the Debtors during these Chapter 11 Cases without approval of this Court. Accordingly, entry of the Order requested herein will help to provide comfort to Film Financing Agreement counterparties and help ensure that the Debtors’ business relationships remain unharmed and that the Debtors are able to continue operating their business for the duration of the Chapter 11 Cases.

16. In addition, granting the relief requested herein will not prejudice any of the Debtors' creditors or any other party-in-interest in these Chapter 11 Cases. The Guarantee entered into by the Debtors and the liens granted to the financial institutions (or the assignment of the SPE's security interest in the Producer Fee Collateral) implicate only the item of New Content being produced by the Production Company or SPE pursuant to the Film Financing Agreement in question and the proceeds that derive from that item of New Content, and do not run to any other assets of the Debtors. Furthermore, the Guarantees provided by the Debtors typically cover only a small portion of the Production Loan (often less than one-third of the Production Loan but sometimes more) and guarantees the Upfront Distribution Payments and/or the Subsequent Distribution Payments of the Debtors' most credit-worthy customers (each of whom has a consistent payment history and has already signed a contract obligating it to make the Subsequent Distribution Payments), which guarantee typically only comes into effect if the Production Company actually delivers the item of New Content. Thus, the Debtors believe their risk of being forced to make a payment on the Guarantee is very low and, in any case, only follows the production of an item of New Content that will provide additional revenue opportunities for the Debtors in the future.

17. Given this low risk, the ordinary-course nature of the Film Financing Agreements and the importance of New Content to the Debtors' current and future business operations, the Debtors respectfully submit that it is necessary and appropriate for this Court to grant the relief requested in this Motion. To the extent applicable, the Debtors believe they have satisfied the business judgment rule applicable under Section 364 of the Bankruptcy Code. Provided that a debtor's business judgment does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code, courts generally grant a debtor considerable deference in

acting in accordance therewith. See, e.g., In re Ames Dep't Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under Section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”); Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co.), 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985).

18. Without the relief sought in the Order, the Debtors may lose their ability to add New Content to their library, as Production Companies may refuse to produce items of New Content for the Debtors and financial institutions may refuse to make Production Loans in respect of items of New Content without the Debtors’ credit support. This would threaten the Debtors’ prospects both for a successful resolution of these Chapter 11 Cases and for the sound future of their business. For these reasons, the Debtors respectfully submit that entry of the Order is in the best interests of their estates, creditors and other stakeholders.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b) AND 6004(h) ARE SATISFIED

19. Under Bankruptcy Rule 6003, the Court may immediately authorize the relief requested in this Motion because such relief is necessary to avoid irreparable harm for the reasons stated herein. If the relief requested herein is not granted, the Debtors will face greater difficulty running their business at a critical juncture in these Chapter 11 Cases, as Production Companies that produce New Content and financial institutions that provide Production Loans hesitate to transact business with the Debtors. Any disruption in these business arrangements threatens the Debtors’ chances of undertaking a successful reorganization.

20. In addition, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h), to the extent applicable. As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their business and preserve the value of their estates. The Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

MOTION PRACTICE

21. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

NOTICE

22. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee; (b) counsel to (i) the administrative agent for the lenders under the Debtors' proposed debtor-in-possession credit facility and (ii) the administrative agent for the lenders under the Debtors' first lien credit facility; (c) counsel to the administrative agent for the lenders under the Debtors' second lien credit facility; (d) counsel for the Debtors' primary entertainment guilds; (e) the creditors listed on the Debtors' consolidated list of 30 largest unsecured creditors; (f) the Internal Revenue Service; and (g) the U.S. Securities and Exchange Commission. In light of the nature of the relief requested, the Debtors submit that no further notice is required or needed under the circumstances.

NO PRIOR APPLICATION

23. No prior application for the relief requested herein has been made to this Court or any other court.

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Debtors to (i) continue performing under their Film Financing Agreements, (ii) provide credit support in connection with Film Financing Agreements and (iii) enter into additional Film Financing Agreements in the ordinary course of business and (b) granting such other and further relief as the Court deems appropriate.

Dated: December 10, 2010
New York, New York

Respectfully Submitted,

/s/ D. J. Baker

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