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

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In re	:	
INVERNESS DISTRIBUTION LIMITED	:	Chapter 15
F/K/A MORGAN CREEK INTERNATIONAL	:	Case No. 11-12106 (SCC)
LIMITED,	:	
-----X	:	
In re	:	
INVERNESS DISTRIBUTION LIMITED	:	Chapter 11
F/K/A MORGAN CREEK INTERNATIONAL	:	Case No. 11-15939 (SCC)
LIMITED,	:	
	:	
Debtor.	X	
-----X	:	
	:	
Morgan Creek Productions, Inc.	:	
	:	
<i>Plaintiff</i>	:	Adv. Case No. 13-_____
vs.	:	
Kevin Costner and TIG Films, Inc.,	:	
	:	
<i>Defendants.</i>	:	
	:	
-----X	:	

## **COMPLAINT**

Morgan Creek Productions, Inc. (the "Plaintiff") as plaintiff herein, by and through its undersigned attorneys, as and for its complaint (the "Complaint") against defendants Kevin Costner ("Costner") and Tig Films, Inc. ("TFI," and with Costner, the "Defendants"), upon information and belief, alleges as follows:

### **JURISDICTION AND VENUE**

1. This adversary proceeding is brought pursuant to and under Rule 7001, *et seq.*, of the Federal Rules of Bankruptcy Procedure.

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This Court has subject matter jurisdiction over this proceeding because it is "related to" Inverness Distribution Limited's (the "Debtor") chapter 11 case within the meaning of 28 U.S.C. §§ 1334(b) and 157(a). Venue is proper before this Court pursuant to 28 U.S.C. § 1409.

3. The statutory predicates for the relief requested herein are Sections 362(a) and 105(a) of title 11 of the United States Code (the "Bankruptcy Code").

### **PARTIES**

4. Morgan Creek Productions, Inc. is a Delaware corporation maintaining and transacting business in the County of Los Angeles, State of California.

5. Upon information and belief, Defendant Kevin Costner is an individual residing and conducting business in the County of Los Angeles, State of California.

6. Upon information and belief, Defendant Tig Films, Inc. is a California corporation transacting business in the County of Los Angeles, State of California.

## **FACTUAL BACKGROUND**

### **A. Background of Costner and Inverness Agreements**

7. In or around July 1990, Morgan Creek Productions, Inc. and one of its affiliated entities Prince of Thieves Production Limited (the “Morgan Creek Counterparties”) entered into a series of agreements (the “Costner Agreements,” attached hereto as **Exhibit A**) with the Defendants in connection with the production of the movie film *Robin Hood: Prince of Thieves* (the “Picture”). Pursuant to the Costner Agreements, Costner was contracted to, *inter alia*, star in the Picture. For such services, Costner was to be paid a significant base compensation as well as certain contingent compensation (the “Contingent Compensation”). Costner has been paid his base compensation and some additional Contingent Compensation. Costner alleges that he is still owed substantial sums of additional Contingent Compensation under the Costner Agreements based on revenues generated from the exploitation of the Picture. As set forth more fully below, the Debtor is ultimately liable for certain of the Contingent Compensation owing to Costner under the Costner Agreements.

8. The Costner Agreements granted the Morgan Creek Counterparties the ability to assign their rights and obligations in and to the Picture so long as the third party assignee/purchaser of such rights and obligations also assumed the Morgan Creek Counterparties’ related obligations under the Costner Agreements. Accordingly, in or around 2006, pursuant to and in accordance with the terms of a certain assignment agreement (the “Inverness Agreement,” attached hereto as **Exhibit B**), the Morgan Creek Counterparties assigned all of their foreign distribution rights related to the Picture except for those contracts designated as “Excluded Assets” to the Debtor. Under the Inverness Agreement, the Debtor expressly assumed all of the Morgan Creek Counterparties’ obligations, including certain reporting, accounting and payment obligations, related to the Picture for any non-Excluded

Assets. Additionally, the Debtor is obligated to indemnify the Morgan Creek Counterparties for any and all liabilities and obligations arising out of any disputes related to the non-Excluded Assets.

9. The Defendants are aware of the Debtor's chapter 11 case and of the assignment of the distribution rights to the Debtor. However, to avoid the impact of the Debtor's bankruptcy on the Defendants' enforcement rights and without regard to the automatic stay, the Defendants filed a complaint in a California state court against the Morgan Creek Counterparties without joining the Debtor notwithstanding the potential adverse effect such filing would have on the Debtor's estate and attempts to reorganize.

**B. The Costner Action**

10. On November 8, 2012, the Defendants filed a first amended complaint (the "Costner Complaint," attached hereto as **Exhibit C**) against the Morgan Creek Counterparties in the Superior Court for the State Court of California (the "State Court Action"). In the State Court Action, the Defendants allege, among other things, that the Morgan Creek Counterparties have not properly reported, accounted, and paid out the amounts due and owing under the assigned Costner Agreements. The Defendants seek damages in an unspecified, but significant, amount.

11. The Debtor is a necessary party to the State Court Action because: (1) a portion of the alleged damages arise out of the purported breach of certain payment and performance obligations that were assigned to the Debtor; (2) the Debtor is required to indemnify the Morgan Creek Counterparties under the Inverness Agreement for that portion of such damages; (3) the Debtor is the only party that possesses the information necessary to account to the Defendants for non-Excluded Assets and with respect to some Excluded Assets; and (4) the Debtor collected and holds any money which may be owed to the Defendants by reason of the

non-Excluded Assets.

**C. Effect on the Debtor's Estates**

12. The Plaintiff requests that this Court extend the automatic stay in the Debtor's chapter 11 case to the State Court Action and enjoin the State Court Action because the Debtor, as assignee of the obligations under the Costner Agreements, is the real party defendant in the State Court Action with respect to non-Excluded Assets. Any judgment against the Morgan Creek Counterparties in the State Court Action which includes liability for non-Excluded Assets will effectively fix the liability of the Debtor because the Debtor is obligated to indemnify the Morgan Creek Counterparties for all losses suffered or incurred in connection with the distribution rights assigned to the Debtor under the Inverness Agreement. It is impossible to determine how much of the estate's money is at risk until after an audit of the Debtor's books and records, but if the State Court Action is permitted to proceed, the California state court will fix the Debtor's liability without this Court's oversight or the Debtor's participation.

13. The prosecution of the State Court Action will harm the Debtor's estate if the Defendants prevail in that action. Any judgment against the Morgan Creek Counterparties in the State Court Action, or at least some portion of such judgment, may result in a dollar-for-dollar indemnity claim against the Debtor. At a minimum, the Plaintiff may be entitled to file a general unsecured claim for indemnification and will have the ability to exercise any offset rights it may have.

14. Additionally, the Debtor will have to participate in the State Court Action because the Debtor, not the Morgan Creek Counterparties, possesses the books and records evidencing the liability, if any, owed to the Defendants with respect to the non-Excluded Assets. All related performance obligations (e.g., the duty to report, the duty to account, collection efforts) are obligations of the Debtor. Accordingly, the Debtor will have to provide the relevant

details and documents related to critical issues in the State Court Action, including, *inter alia*: (1) the process for collecting and segregating revenues derived from the exploitation of the Picture; (2) the methods used to calculate amounts owing to the Defendants; (3) the methods used to allocate revenues from foreign licenses and television and video sales; and (4) the process for accounting for collection costs. The Debtor will have to actively participate in the audit of its books and records that will be necessary to resolve the State Court Action, which will divert the Debtor's attention from the restructuring efforts.

15. Finally, the State Court Action indirectly seeks the turnover of monies collected by the Debtor. Upon information and belief, approximately \$12.5 million collected in that manner were withdrawn from the Debtor's account by the Debtor's secured creditor without accounting for any royalties or other amounts owed Costner under the Costner Agreements. It is likely that a portion of that cash derived from the exploitation of the Picture prepetition on account of non-Excluded Assets. Pursuant to the Inverness Agreement, the Debtor collected receipts and other forms of revenue generated in connection with the distribution rights granted to the Debtor under the Inverness Agreement which were deposited in a blocked account with the Secured Creditor. Postpetition, on information and belief, the Secured Lender continues to receive receipts and other forms of revenue derived from the exploitation of the Picture and other movies. The Defendants allege that the Debtor has not paid any royalties to the Defendants postpetition and the Debtor has not reported any royalty payments in its operating reports. The Defendants' rights to any such monies may disturb the settled expectations of the parties in the bankruptcy case with respect to their claims to cash held by the Debtor.

#### **NATURE OF THE RELIEF REQUESTED**

16. By this Complaint, pursuant to U.S.C. §§ 105(a) and 362, the Plaintiff seeks a judgment extending the automatic stay provisions under the Bankruptcy Code to enjoin the

State Court Action pending the completion of the Debtor's bankruptcy case.

**COUNT I**

**Injunctive Relief Staying the State Court Action As to All Defendants  
(11 U.S.C. §§105(a) and 362)**

17. The Plaintiff repeats and realleges the allegations contained in paragraphs 1 through 16 of this Complaint as if fully set forth herein.

18. The Plaintiff seeks an order pursuant to Sections 105(a) and 362 of the Bankruptcy Code extending the automatic stay to enjoin the continued prosecution of the State Court Action pending the completion of the Debtor's chapter 11 case. Section 105(a) of the Bankruptcy Code authorizes the Court to 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)*. Section 105 authorizes the Court to enjoin an action by a third party against a non-debtor third party where the third party action will have an immediate adverse economic consequence for the Debtor's estate or when an adverse judgment in the third party action will collaterally estop the debtor in subsequent litigation.

19. A judgment against the Morgan Creek Counterparties for amounts owed by reason of non-Excluded Assets will effectively be a judgment against the Debtor. Allowing the State Court Action to continue will result in an "immediate adverse economic consequence" for the debtor's estate should the Defendants prevail. The Debtor is obligated to indemnify the Morgan Creek Counterparties for liability related to a portion of the subject matter of the State Court Action. Once liability against the Morgan Creek Counterparties is fixed in the State Court Action, the liability of the Debtor will also be fixed and the Debtor will likely be collaterally estopped from disputing such liability.

20. Any liability of the Morgan Creek Counterparties to the Defendants by reason of

non-Excluded Assets is dependent on any liability of the Debtor to the Defendants.

21. A portion of the Defendants' claims against the Morgan Creek Counterparties are based on, and inextricably tied to, identical facts as the Morgan Creek Counterparties' claims against the Debtor.

22. If the State Court Action proceeds against the Morgan Creek Counterparties, issues regarding the Debtor's liability, its defenses and any damages that may be awarded, will be determined in the Debtor's absence exposing the Debtor to the following:

- a. a significant risk of collateral estoppel;
- b. stare decisis;
- c. issue preclusion; and/or
- d. adverse evidentiary findings.

23. The Debtor will be obligated to indemnify the Morgan Creek Counterparties for any judgment against the Morgan Creek Counterparties arising out of non-Excluded Assets, thereby having an adverse impact upon the property of the Debtor's estate.

24. By reason of the foregoing, the State Court Action threatens to irreparably harm and expose the Debtor's estate to significant liability in an undetermined amount and thus requires entry of an order pursuant to Sections 105(a) and 362 enjoining the prosecution of such action.

**PRAYER FOR RELIEF**

**WHEREFORE**, the Plaintiff respectfully prays for judgment as follows:

- (a) the entry of an Order pursuant to Sections 105(a) and 362 of the Bankruptcy Code extending the automatic stay to enjoin and prohibit the continued prosecution of the State Court Action; and/or
- (b) awarding such other and further relief as the Court deems just and proper.

Dated: New York, New York  
March \_\_, 2013

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