IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

MARK PHILLIPS, Plaintiff, v. MOD SYSTEMS INCORPORATED, Defendant.	NO. COMPLAINT FOR BREACH OF CONTRACT, BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING AND BREACH OF FIDUCIARY DUTIES; DEMAND FOR RESCISSION AND DAMAGES

COMES NOW the plaintiff, MARK PHILLIPS, by and through his attorneys, the Law Offices Of JOHNSON | FLORA, PLLC, by Mark Johnson, Donovan Flora, and Sims Weymuller, and for his cause of action against the defendant alleges as follows:

I.

IDENTIFICATION OF PLAINTIFF

1.1 Mark Phillips (Phillips) is a single man and a resident of King County, Washington. Phillips is a co- founder of defendant MOD Systems, Inc. and its majority shareholder.

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II.

IDENTIFICATION DEFENDANT

2.1 MOD Systems Inc., (hereafter MOD) is a Washington corporation doing business in King County, Washington.

III.

FACTS

3.1 In 2005, Plaintiff Phillips co-founded MOD Systems Inc. (then known as Pop Media) with Anthony Bay.

3.2 Phillips is MOD's largest shareholder and majority owner.

3.3 In September 2008, Phillips licensed to MOD certain intellectual property (Phillips IP) owned by him to MOD as part of a transaction in which Toshiba Corporation (Toshiba) and NCR Corporation (NCR) would invest $35,000,000.00 in MOD in a transaction referred to as the Toshiba-NCR Series A Financing.

3.4 The intellectual property owned by Phillips and licensed to MOD was the basis for, and the reason that, Toshiba and NCR Corporation invested in MOD and Toshiba and NCR would not have invested in MOD and MOD would not have the legal right to conduct the business that it currently is pursuing, to wit; retail sales of digital media entertainment content were it not for the IP that Phillips licensed to MOD.

3.5 Prior to licensing the Phillips' IP, the MOD Board of Directors, consisting of Kyleen Cane (Cane) and Anthony Bay (Bay), evaluated, considered and were aware of

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every aspect of the transaction, including the lineage and value of the IP to MOD, Phillips compensation from MOD (ultimately stock shares and royalties), the effect of the licensing of the IP from Phillips and the additional shares granted to him on the interests of other shareholders, including the dilution of each shareholder's interests. The MOD Board was also advised by independent IP counsel with respect to the transaction and the IP was independently valued at $393 million if pending and $494 million if issued.

3.6 On September 24, 2008, MOD, through its Board (Phillips did not vote on the transaction) approved the Phillips IP licensing, which, in exchange for the IP license to MOD, required MOD to pay Phillips 11,401,196 shares in MOD and $5 million in royalty payments paid as follows: $500,000.00 on September 30, 2009; $1,000,000.00 on September 30, 2010; $1,500,000.00 on September 30, 2011 and $2,000,000.00 on September 30, 2012.

3.7 On September 24, 2008 and as part of the Phillips IP licensing agreement and the Toshiba NCR Series A Financing MOD and Phillips entered into an "Executive Employment Agreement" which requires MOD, inter alia, to pay Phillips $500,000.00 per year in salary, bonuses, participation in the stock option plan, D and O insurance, indemnification against lawsuits (including derivative claims) and a $30,000,000.00 life insurance policy with MOD as beneficiary. The $30,000,000.00 in insurance on Phillips' life (referred to as "Key Man Insurance") was also a required as part of the Shareholders Agreement executed pursuant to the Toshiba-NCR Series A Financing and to which MOD, Toshiba, NCR, Bay, Phillips and Deluxe Entertainment Services Group Inc. were signators.

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3.8 Prior to consummation of the Toshiba-NCR Series A Financing, lawyers for Toshiba and NCR, MOD, the MOD Board and the accounting firm of Price Waterhouse Cooper for Toshiba performed due diligence with respect to the transaction and MOD prepared and submitted to Toshiba and NCR unaudited statements of income and cash flow and a balance sheet.

3.9 In the Series A Preferred Stock Purchase Agreement, a contract entered into as a part of the Toshiba-NCR Series A Financing, MOD made multiple representations to Toshiba and NCR that it had a valid license to the IP acquired from Phillips and that, to MOD's knowledge, there were "no facts or circumstances that could impair the validity or enforceability of any Company Intellectual Property that it owns or purports to own or that is licensed by Phillips to the Company under the IP License Agreements…and, to the best of the Company's knowledge, the Owned Company Intellectual Property is valid, enforceable, subsisting and in full force and effect…"

3.10 Appended to the Series A Stock Purchase Agreement as Exhibits (referred to as Transaction Agreements) were the Subscription and Contribution Agreement between Phillips and MOD, the License Agreement between Phillips and MOD and the Employment Agreement between Phillips and MOD and a Shareholders Agreement executed by Toshiba, NCR, MOD, Bay, Phillips and Deluxe Entertainment. The Shareholder Agreement entered into as part of the Toshiba-NCR Series A Financing Agreement requires that MOD receive written approval from Toshiba and NCR for certain actions taken by MOD, including instituting litigation and dismissing the chief technology officer or the chief executive officer and requires MOD to indemnify any holder of a MOD security which is party to the

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agreement for any losses, damages, claims or liabilities arising out of untrue statements or omissions with respect to MOD securities.

3.11 The IP license from Phillips to MOD is a material component of the Series A Preferred Stock Purchase Agreement (Paragraph 1.4 IP Contribution and IP License) and without the licensing of Phillips' IP to MOD the Series A Financing would not have been consummated.

3.12 On October 17, 2008, the Toshiba-NCR financing was consummated and MOD received $35 million.

3.13 In December, 2009, Robert Arnold (hereafter Arnold), a shareholder in MOD, notified MOD of a potential lawsuit, including a derivative suit, against MOD and Bay, Phillips and Kenn Gordon arising out of alleged misconduct by Bay, Phillips and Gordon.

3.14 In response to Arnold's lawsuit, in January, 2009, MOD created the DRC with Cane and Bay as its members to investigate the allegations in the lawsuit.

3.15 Both Cane and Bay had conflicts of interest that required them to decline participation in the DRC; Bay was defendant in the Arnold case, had been the chairman of the Board of MOD at the time of the alleged financial improprieties and voted on the Phillips IP licensing transaction; Cane had a longstanding business, including attorney-client, relationship with Jan Wallace, who was a material witness in the case and who took material from Phillips' computer which was provided to Arnold and/or MOD. Cane also voted on the Phillips' IP transaction.

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3.16 Arnold filed his lawsuit against MOD (including a derivative claim) and Phillips, Bay and Banana Corporation in February 2009.

3.17 On March 27, 2009, Phillips and MOD entered into a "Transition Agreement" in which Phillips' 18,901,196 shares of MOD stock were put into as trust with Cane as trustee on behalf of MOD. Phillips was removed from his positions as CEO and board member of MOD and his Employment Agreement was amended ("Addendum To Executive Employment Agreement").

3.18 The Transition agreement required Phillips to place his 18,901,196 shares of stock in MOD into a voting trust , resign as CEO and from the MOD board but continue to be MOD's Chief Technology Officer and to be paid at a reduced level.

3.19 The Voting Trust wrested control of the ownership of the company from Phillips and created fiduciary duties from MOD to Phillips.

3.20 Approximately one week after singing the Transition Agreement Phillips was advised that he was not to return to the MOD offices, thereby breaching the Addendum to the Executive Employment Agreement and the covenant of Good faith and fair dealing implied in the Transition Agreement and the Voting Trust Agreement.

3.21 Phillips was informed by letter dated September 4, 2009 that he was being removed as MOD's Chief Technology Officer and he received a letter from MOD placing him on unpaid administrative leave from his CTO position, ending all Phillips benefits and compensation and locking him out of the company.

3.22 Although the September 4 letter characterizes MOD's action as an "unpaid administrative leave" it is in reality a termination and MOD used the phrase "unpaid

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administrative leave" in an attempt to avoid breaching the Toshiba-NCR Series A Financing Agreement

3.23 Phillips would not have signed the Transition Agreement had he known that he was going to be terminated.

3.24 Subsequently the DRC led by Cane and Bay found that Phillips and Gordon committed various acts of misfeasance, including alleged inappropriate expenses by Phillips and MOD assumed the derivative claim brought by Arnold as a direct claim against Phillips and Gordon even though every allegedly inappropriate expense by Phillips took place prior to the Toshiba-NCR Shareholder Agreement referenced above.

3.25 Apart from the conflicts by Cane and Bay, the work by the MOD DRC was substandard, for example; there was no written report by an accounting firm - the MOD DRC received an oral presentation by an unnamed Deloitte accountant who, according to the DRC report opined only that the allegedly inappropriate financial transactions "occurred".

3.26 In October 2009, MOD assumed Arnold's derivative claims against Phillips by filing an Amended Verified Complaint.

3.27 In November 2009, MOD moved to dismiss the claims.

3.28 Phillips, the majority owner of MOD has, constructively and actually, been terminated from all employment with MOD; he has been locked out of the company and is not receiving any salary or benefits; he has lost control of his shares and been deprived of his majority ownership in the company; MOD is using and profiting from his IP but is not paying royalties. MOD is the beneficiary of a $30,000,000.00 life insurance policy on

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Phillips' life and it has failed to indemnify him in the Arnold suit as it is contractually required to do.

IV.

CLAIMS: BREACH OF CONTRACT,BREACH OF THE COVENANT OF GOOD FAITH AND FAIR DEALING, BREACH OF FIDUCIARY DUTIES

4.1 Plaintiff hereby incorporates by reference Sections I, II and III herein above in their entirety.

4.2 MOD has committed material breaches of multiple contracts and has violated the covenants of good faith and fair dealing implied in those contracts, including; the IP Licensing Agreement, the Executive Employment Agreement and the Addendum to the Executive Employment Agreement, the Transition Agreement, the Voting Trust and the Shareholders Agreement.

4.3 The Voting Trust agreement created fiduciary duties to Phillips from MOD and MOD has breached those duties by breaching the terms of the transition agreement.

4.4 There has been a total failure of consideration attendant to the agreements entered into between Phillips and MOD, to include: the Executive Employment Agreement, the Transition Agreement and Exhibits and the IP Licensing Agreements.

4.5 MOD's actions subsequent to the execution of the Transition Agreement to include locking Phillips out of the company and terminating all benefits covenant of good faith and fair dealing and a breach of the fiduciary duties attendant to the Voting Trust.

4.6 MOD's failure to indemnify Phillips from the Arnold claims constitute a breach of his Employment Agreement and a breach of the Shareholders Agreement.

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V.

REMEDIES - RESCISSION AND DAMAGES

5.1 Plaintiff hereby incorporates by reference Sections I, II, III and IV herein above in their entirety.

5.2 MOD's material breaches of contracts, breaches of the covenants of good faith and fair dealing, breaches of fiduciary duties and the total failure of consideration resulting from locking up Phillips shares in the Voting Trust, locking him out of the company, terminating all benefits and failing to indemnify him for costs resulting from the Arnold lawsuit, while continuing to use the IP to operate the business entitles Phillips to rescission of the IP licensing agreements and return of his IP.

5.3 MOD's multiple material breaches of contract and breaches of the covenant of good faith and fair dealing and breaches of fiduciary duty entitle Phillips to rescission of the Transition Agreement, to include the Voting Trust.

5.4 Phillips has been damaged in the amount of $500,000.00 plus interest, because of MOD's failure to pay the September 30, 2009 royalty payment.

5.5 Phillips has been damaged by the failure to pay his salary and benefits agreed to in the transition agreement.

5.6 Phillips has been damaged by MOD's breach of its obligation to indemnify him for costs and, potentially, damages arising out of the MOD related allegations in the Arnold lawsuit.

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VI.

AD DAMNUM

6.1 WHEREFORE, Plaintiff prays for judgment against the defendant in an amount determined to be fair and reasonable by the trier of fact, for statutory costs, interest on liquidated damages and for such other and further relief as the court deems just and equitable.

DATED this 30th day of November 2009.

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