

# UNITED STATES BANKRUPTCY COURT

District of MASSACHUSETTS

In re MIDWAY GAMES, INC.,  
Debtor

## SUBPOENA IN A CASE UNDER THE BANKRUPTCY CODE

Case No. \* 09-10465 (KG)

DISTRICT OF DELAWARE

To:  
SUMNER M. REDSTONE  
c/o NATIONAL AMUSEMENTS, INC.  
200 ELM ST., DEDHAM, MA 02026

Chapter 11

YOU ARE COMMANDED to appear in the United States Bankruptcy Court at the place, date, and time specified below to testify in the above case.

PLACE OF TESTIMONY	COURTROOM
	DATE AND TIME

YOU ARE COMMANDED to appear at the place, date, and time specified below to testify at the taking of a deposition in the above case.

PLACE OF DEPOSITION MILBANK, TWEED, HADLEY & MCCLOY LLP 1 CHASE MANHATTAN PLAZA NEW YORK, NY 10005	DATE AND TIME 03/23/09 AT 10:00 A.M. EST
---	---

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below (list documents or objects):  
SEE ATTACHED SCHEDULE.

PLACE MILBANK, TWEED, HADLEY & MCCLOY LLP 601 SOUTH FIGUEROA STREET, 30 <sup>TH</sup> FLOOR LOS ANGELES, CA 90017	DATE AND TIME 03/16/09 AT 9:00 A.M. PST
--	--

YOU ARE COMMANDED to permit inspection of the following premises at the date and time specified below.

PREMISES	DATE AND TIME
----------	---------------

Any organization not a party to this proceeding that is subpoenaed for the taking of a deposition shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf, and may set forth, for each person designated, the matters on which the person will testify. Rule 30(b)(6), Federal Rules of Civil Procedure, made applicable in bankruptcy cases and proceedings by Rules 1018, 7030, and 9014, Federal Rules of Bankruptcy Procedure.

ISSUING OFFICER SIGNATURE AND TITLE <i>Alisa Schlesinger (Attorney, Milbank, Tweed, Hadley &amp; McCloy)</i>	DATE 03/04/2009
ISSUING OFFICER'S NAME, ADDRESS, AND PHONE NUMBER Alisa Schlesinger, MILBANK, TWEED, HADLEY & MCCLOY (Proposed Attorneys for the Official Committee of Unsecured Creditors) 601 S. FIGUEROA ST., 30 <sup>TH</sup> FL., LOS ANGELES, CA 90017 (213) 892-4000	

\* If the bankruptcy case is pending in a district other than the district in which the subpoena is issued, state the district under the case number.

## PROOF OF SERVICE

<b>SERVED</b>	DATE	PLACE
SERVED ON (PRINT NAME)	MANNER OF SERVICE	
SERVED BY (PRINT NAME)	TITLE	

## DECLARATION OF SERVER

I declare under penalty of perjury under the laws of the United States of America that the foregoing information contained in the Proof of Service is true and correct.

Executed on \_\_\_\_\_

DATE

SIGNATURE OF SERVER \_\_\_\_\_

ADDRESS OF SERVER \_\_\_\_\_

Rule 45, Federal Rules of Civil Procedure, Subdivisions (c), (d), and (e), as amended on December 1, 2007, made applicable in cases under the Bankruptcy Code by Rule 9016, Federal Rules of Bankruptcy Procedure:

## (c) Protecting a Person Subject to a Subpoena.

(1) **Avoiding Undue Burden or Expense; Sanctions.** A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The issuing court must enforce this duty and impose an appropriate sanction — which may include lost earnings and reasonable attorney's fees — on a party or attorney who fails to comply.

## (2) Command to Produce Materials or Permit Inspection.

(A) **Appearance Not Required.** A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) **Objections.** A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing or sampling any or all of the materials or to inspecting the premises — or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

(i) At any time, on notice to the commanded person, the serving party may move the issuing court for an order compelling production or inspection.

(ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

## (3) Quashing or Modifying a Subpoena.

(A) **When Required.** On timely motion, the issuing court must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person who is neither a party nor a party's officer to travel more than 100 miles from where that person resides, is employed, or regularly transacts business in person — except that, subject to Rule 45(c)(3)(B)(iii), the person may be commanded to attend a trial by traveling from any such place within the state where the trial is held;
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) **When Permitted.** To protect a person subject to or affected by a subpoena, the issuing court may, on motion, quash or modify the subpoena if it requires:

- (i) disclosing a trade secret or other confidential research, development, or commercial information;
- (ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party; or
- (iii) a person who is neither a party nor a party's officer to incur substantial expense to travel more than 100 miles to attend trial.

(C) **Specifying Conditions as an Alternative.** In the circumstances described in Rule 45(c)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

## (d) Duties in Responding to a Subpoena.

(1) **Producing Documents or Electronically Stored Information.** These procedures apply to producing documents or electronically stored information:

(A) **Documents.** A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) **Form for Producing Electronically Stored Information Not Specified.** If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) **Electronically Stored Information Produced in Only One Form.** The person responding need not produce the same electronically stored information in more than one form.

(D) **Inaccessible Electronically Stored Information.** The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

## (2) Claiming Privilege or Protection.

(A) **Information Withheld.** A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) **Information Produced.** If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information to the court under seal for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

## (e) Contempt.

The issuing court may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena. A nonparty's failure to obey must be excused if the subpoena purports to require the nonparty to attend or produce at a place outside the limits of Rule 45(c)(3)(A)(ii).

# SCHEDULE A

## **SCHEDULE A - DOCUMENTS TO BE PRODUCED BY SUMNER M. REDSTONE**

Pursuant to Federal Rules of Bankruptcy Procedure 7030, 9014, and 9016, and Federal Rules of Civil Procedure 30(b) and 45, Sumner M. Redstone is commanded to produce all documents, things and items requested herein, within his possession, custody or control for inspection and copying by proposed counsel for the Official Committee of Unsecured Creditors of Midway Games Inc., et al. on or before March 16, 2009 at 9:00 a.m. Pacific Standard Time. Documents and things are to be produced at the offices of Milbank, Tweed, Hadley & McCloy LLP, 601 S. Figueroa Street, 30<sup>th</sup> Floor, Los Angeles, California 90017. Documents and things are to be produced in accordance with the Definitions and Instructions below and in the manner prescribed by the Federal Rules of Civil Procedure.

### **DEFINITIONS**

The terms used herein shall have the meanings ascribed to them in the definitions set forth below.

1. “DOCUMENT(S)” is used in the broadest sense permitted under the Federal Rules of Civil Procedure and includes, but is not limited to, all originals, non-identical copies and copies with marginal notations or interlineations of any writing, sworn statement, deposition transcript, affidavit, recording, photograph, computer data, electronic mail or other item containing information of any kind or nature, however produced or reproduced, whatever its origin or location, and regardless of the form maintained. The term “DOCUMENT(S)” also includes all ELECTRONICALLY STORED INFORMATION. The term “DOCUMENT(S)” further means any DOCUMENT in the possession, custody, or control of the entities and individuals to whom this DOCUMENT request is directed (together with any employees, agents and attorneys). Without limitation to the term “control” as used in the preceding sentence, an

entity or individual is deemed to be in control of a DOCUMENT if that entity or individual has the right to secure the DOCUMENT or a copy thereof from another entity or individual having actual possession thereof.

2. “ELECTRONICALLY STORED INFORMATION” is defined broadly to give the full scope of that term as contemplated by Rule 34 of the Federal Rules of Civil Procedure, and refers to all computer or electronically stored or generated data and information, and shall include all attachments to and enclosures with any requested item, and all drafts thereof. ELECTRONICALLY STORED INFORMATION includes information stored in any format and on any storage media, including: hard disks; floppy disks; optical disks; flash memory devices; and magnetic tape, whether fixed, portable, or removable. ELECTRONICALLY STORED INFORMATION includes: word-processing DOCUMENTS; electronic spreadsheets; electronic presentation DOCUMENTS; e-mail messages; image files; sound files; and material or information stored in a database, or accessible from a database. ELECTRONICALLY STORED INFORMATION also includes all associated metadata that is maintained or saved, which includes: DOCUMENT title or name; file name; date and time of creation; date and time of last edit; identity of author; identity of owner; identities of editors; identities of recipients; changes; history of changes; e-mail header information; history of who viewed an e-mail and when; and e-mail routing information. ELECTRONICALLY STORED INFORMATION further includes: correspondence, telegrams, memoranda, COMMUNICATIONS, minutes or records of meetings and conferences, lists of persons attending meetings or conferences, summaries, records of conversations, drafts, notes, notebooks, logs, invention records and disclosures, translations, drawings, graphs, charts, photographs, sound recordings, images, data compilations, computer records or printouts, specifications, reports, opinions, summaries, agreements, forecasts, plan

drawings, mask works, engineering drawings, expressions or statements of policy, consultations, brochures, pamphlets, advertisements, publications, circulars, trade letters, press releases, and drafts of any of the foregoing. Unless the parties agree otherwise, all ELECTRONICALLY STORED INFORMATION shall be produced in the form in which it is kept in its usual course. If ELECTRONICALLY STORED INFORMATION is produced in the form in which it is kept in its usual course but it is not reasonably useable in that form, then all software, instructions, or tools necessary to make the information reasonably useable must also be provided or identified. To the extent that identical information is available as both a DOCUMENT and as ELECTRONICALLY STORED INFORMATION or in multiple forms of ELECTRONICALLY STORED INFORMATION, Plaintiff needs only produce the ELECTRONICALLY STORED INFORMATION in one reasonably useable form.

3. “CONCERNING” a given subject means, in whole or in part, constituting, containing, embodying, reflecting, identifying, stating, referring to, relating to, evidencing, or in any other way being relevant to that given subject matter.

4. “INCLUDING” means including, but not limited to.

5. “COMMUNICATION(S)” means every manner or means of disclosure, transfer, or exchange of information, whether oral or by DOCUMENT, and whether face-to-face, by telephone, mail, electronic mail, personal delivery, or otherwise.

6. “DEBTORS” means Midway Games Inc., Midway Home Entertainment Inc., Midway Amusement Games, LLC, Midway Games West Inc., Midway Interactive Inc., Midway Sales Company, LLC, Midway Home Studios Inc., Midway Studios – Los Angeles Inc., and/or Midway Studios – Austin Inc., and any predecessor entities thereof, any of their subsidiaries (and

any predecessor entities thereof), directors, officers, employees, affiliates, representatives, advisors, agents, attorneys, associates or any other person acting on their behalf.

7. “NAI” means National Amusements, Inc. (and any predecessor thereof), any of its subsidiaries (and any predecessors thereof), directors, officers, employees, affiliates, representatives, advisors, agents, attorneys, associates or any other person acting on their behalf.

8. “SUMCO” means Sumco, Inc. (and any predecessor thereof), any of its subsidiaries (and any predecessors thereof), directors, officers, employees, affiliates, representatives, advisors, agents, attorneys, associates or any other person acting on their behalf.

9. “AHS” means Acquisition Holdings Subsidiary I LLC (and any predecessor thereof), any of its subsidiaries (and any predecessors thereof), directors, officers, employees, affiliates, representatives, advisors, agents, attorneys, associates or any other person acting on their behalf.

10. “REDSTONE PARTIES” means NAI, SUMCO, and Sumner M. Redstone.

11. “THOMAS PARTIES” means Mark Thomas together with companies formed and/or owned by Mark Thomas, INCLUDING AHS.

12. “INSIDER SECURED FACILITY” means the \$30 million loan facility issued by NAI on February 29, 2008 (consisting of a term loan and a revolving credit facility), on which all of DEBTORS were obligors and which was secured by substantially all of DEBTORS’ assets.

13. “INSIDER UNSECURED FACILITY” means the \$40 million unsecured loan facility to DEBTORS issued by NAI on February 29, 2008.

14. “INSIDER SUBORDINATED FACILITY” means the \$20 million unsecured subordinated loan facility to DEBTORS issued by NAI on February 29, 2008.

15. “INSIDER LOANS” means the INSIDER SECURED FACILITY, the INSIDER UNSECURED FACILITY, and the INSIDER SUBORDINATED FACILITY, collectively.

16. “WELLS FARGO LOAN” means the June 29, 2007 secured loan agreement between the Debtors as borrowers (or guarantors) and Wells Fargo Foothill, Inc., as arranger and administrative agent.

17. “REDSTONE-THOMAS TRANSACTION” means the REDSTONE PARTIES’ November 28, 2008 sale of (i) all of the REDSTONE PARTIES’ approximate 87% equity stake in DEBTORS, (ii) a 100% participation interest in the INSIDER SECURED FACILITY, and (iii) a 100% participation interest in the INSIDER UNSECURED FACILITY to the THOMAS PARTIES (the transactions described in (i), (ii) and (iii) to the THOMAS PARTIES for an aggregate purchase price of \$100,000).

18. “NAI CREDIT FACILITY” means the February 29, 2008 credit facility provided to DEBTORS by NAI.

19. The words “YOU” or “YOUR” means Sumner M. Redstone and his representatives (INCLUDING counsel), in his individual capacity and in his capacity as a member of the Board of Directors and/or in management for NAI and SUMCO.

20. The terms “all” and “each” shall be construed as “all and each.”

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

#### INSTRUCTIONS

A. The DOCUMENTS covered by this request include all DOCUMENTS in YOUR possession, custody or control, INCLUDING DOCUMENTS in the possession, custody or

control of YOUR counsel. Unless otherwise specified, each request herein seeks all DOCUMENTS generated or received by YOU during the period from January 1, 2008 through and INCLUDING the date of production.

B. Each request for the production of DOCUMENTS shall be deemed to be continuing in nature. If at any time additional DOCUMENTS come into YOUR possession, custody or control or are brought to YOUR attention, prompt supplementation of YOUR response to these requests is required.

C. YOU shall produce all DOCUMENTS in the manner in which they are maintained in the usual course of YOUR business and/or YOU shall organize and label the DOCUMENTS to correspond with the categories in this request. A request for a DOCUMENT shall be deemed to include a request for any and all file folders within which the DOCUMENT was contained, transmittal sheets, cover letters, exhibits, enclosures, or attachments to the DOCUMENT in addition to the DOCUMENT itself.

D. If and to the extent DOCUMENTS are maintained in a database or other electronic format, YOU shall produce along with the DOCUMENT(S) software that will enable access to the electronic DOCUMENT(S) or database as YOU would access such electronic DOCUMENT(S) or database in the ordinary course of YOUR business.

E. DOCUMENTS shall be produced in such fashion as to identify the department, branch or office in which they were located and, where applicable, the natural person in whose possession it was found and the business address of each DOCUMENT's custodian(s).

F. Any DOCUMENT withheld from production based on a claim of privilege or any similar claim shall be identified by (1) the type of DOCUMENT, (2) the general subject matter of the DOCUMENT, (3) the date of the DOCUMENT, and (4) such other information as is

sufficient to identify the DOCUMENT INCLUDING the author of the DOCUMENT, the addressee of the DOCUMENT, and, where not apparent, the relationship of the author and the addressee to each other. The nature of each claim of privilege shall be set forth.

G. DOCUMENTS attached to each other should not be separated.

H. DOCUMENTS not otherwise responsive to this discovery request shall be produced if such DOCUMENTS mention, discuss, refer to, or explain the DOCUMENTS which are called for by this discovery request.

I. The fact that a DOCUMENT is produced by another party does not relieve YOU of the obligation to produce YOUR copy of the same DOCUMENT, even if the two DOCUMENTS are identical.

J. In producing DOCUMENTS and other materials, YOU are requested to furnish all DOCUMENTS or things in YOUR possession, custody or control, regardless of whether such DOCUMENTS or materials are possessed directly by YOU or YOUR agents, employees, representatives, managing agents, affiliates, accountants, investigators, or by YOUR attorneys or their agents, employees, representatives or investigators.

K. If YOU object to any part of any request, YOU shall state fully in writing the nature of the objection. Notwithstanding any objections, YOU shall nonetheless comply fully with the other parts of the request to which YOU are not objecting.

L. Each request for production shall be construed independently and not with reference to any other request for production for the purpose of limitation.

M. The use of the singular form of any word includes the plural and vice versa. The past tense shall include the present tense and vice versa.

## REQUESTS FOR PRODUCTION

### Request No. 1

All minutes of NAI's and/or SUMCO's Board of Directors from October 2007 to February 12, 2009.

### Request No. 2

All board packets, board books, and/or materials provided to NAI's and/or SUMCO's Board of Directors in anticipation of meetings from October 2007 through February 12, 2009.

### Request No. 3

All notes YOU took while attending meetings of NAI's and/or SUMCO's Board of Directors.

### Request No. 4

All COMMUNICATIONS between YOU or YOUR representatives, on the one hand, and members of DEBTORS' Board of Directors and/or DEBTORS' management, on the other hand.

### Request No. 5

All COMMUNICATIONS YOU had with anyone CONCERNING the NAI CREDIT FACILITY.

### Request No. 6

All COMMUNICATIONS YOU had with anyone CONCERNING the INSIDER UNSECURED FACILITY.

### Request No. 7

All COMMUNICATIONS YOU had with anyone CONCERNING the INSIDER SUBORDINATED FACILITY.

Request No. 8

All COMMUNICATIONS YOU had with anyone CONCERNING the REDSTONE-THOMAS TRANSACTION.

Request No. 9

All COMMUNICATIONS between YOU or YOUR representatives and Mark Thomas and/or his representatives.

Request No. 10

All COMMUNICATIONS between YOU or YOUR representatives and the THOMAS PARTIES and/or their representatives.

Request No. 11

All DOCUMENTS and/or COMMUNICATIONS CONCERNING any due diligence and/or investigation that YOU or YOUR representatives performed on Mark Thomas and/or the THOMAS PARTIES.

Request No. 12

All of YOUR former and current curricula vitae.

Request No. 13

All analyses and/or reports prepared by or for NAI's and/or SUMCO's Board of Directors CONCERNING the REDSTONE-THOMAS TRANSACTION.

Request No. 14

All analyses and/or reports prepared by or for NAI's and/or SUMCO's Board of Directors CONCERNING the INSIDER LOANS.

Request No. 15

All analyses and/or reports prepared by or for NAI's and/or SUMCO's Board of Directors CONCERNING the NAI CREDIT FACILITY.

Request No. 16

All analyses of DEBTORS' solvency prepared for, shown to, or considered by NAI's and/or SUMCO's Board of Directors during 2008.