

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SFX ENTERTAINMENT, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10238 ( )

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (A) AUTHORIZING  
DEBTORS TO PAY (I) ALL PREPETITION EMPLOYEE OBLIGATIONS,  
AND (II) PREPETITION WITHHOLDING OBLIGATIONS, AND  
(B) DIRECTING BANKS TO HONOR RELATED TRANSFERS**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby move the Court (the “**Motion**”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Rules 6003 and 6004(h) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), for the entry of an order: (a) authorizing, but not directing, the Debtors to continue to honor and pay (i) all prepetition employee obligations as described more fully herein and (ii) all prepetition federal, state and applicable foreign withholding obligations and (b) directing all banks to honor the Debtors’ prepetition transfers for

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax identification number, if applicable, are: 430R Acquisition LLC (7350); Beatport, LLC (1024); Core Productions LLC (3613); EZ Festivals, LLC (2693); Flavorus, Inc. (7119); ID&T/SFX Mysteryland LLC (6459); ID&T/SFX North America LLC (5154); ID&T/SFX Q-Dance LLC (6298); ID&T/SFX Sensation LLC (6460); ID&T/SFX TomorrowWorld LLC (7238); LETMA Acquisition LLC (0452); Made Event, LLC (1127); Michigan JJ Holdings LLC (n/a); SFX Acquisition, LLC (1063); SFX Brazil LLC (0047); SFX Canada Inc. (7070); SFX Development LLC (2102); SFX EDM Holdings Corporation (2460); SFX Entertainment, Inc. (0047); SFX Entertainment International, Inc. (2987); SFX Entertainment International II, Inc. (1998); SFX Intermediate Holdco II LLC (5954); SFX Managing Member Inc. (2428); SFX Marketing LLC (7734); SFX Platform & Sponsorship LLC (9234); SFX Technology Services, Inc. (0402); SFX/AB Live Event Canada, Inc. (6422); SFX/AB Live Event Intermediate Holdco LLC (8004); SFX/AB Live Event LLC (9703); SFX-94 LLC (5884); SFX-Disco Intermediate Holdco LLC (5441); SFX-Disco Operating LLC (5441); SFXE IP LLC (0047); SFX-EMC, Inc. (7765); SFX-Hudson LLC (0047); SFX-IDT N.A. Holding II LLC (4860); SFX-LIC Operating LLC (0950); SFX-IDT N.A. Holding LLC (2428); SFX-Nightlife Operating LLC (4673); SFX-Perryscope LLC (4724); SFX-React Operating LLC (0584); Spring Awakening, LLC (6390); SFXE Netherlands Holdings Coöperatief U.A. (6812); SFXE Netherlands Holdings B.V. (6898). The Debtors’ business address is 902 Broadway, 15<sup>th</sup> Floor, New York, NY 10010.



payment of any of the foregoing and prohibiting banks from placing holds on, or attempting to reverse, any automatic transfers on account of the foregoing. In support of this Motion, the Debtors respectfully state as follows:

**Status of the Case**

1. On the date hereof (the “**Petition Date**”), the Debtors commenced these cases (the “**Chapter 11 Cases**”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

2. The Debtors have continued in possession of their properties and are operating and managing their businesses as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. No request has been made for the appointment of a trustee or examiner and a creditors’ committee has not yet been appointed in these Chapter 11 Cases.

**Jurisdiction, Venue and Statutory Predicates**

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

5. The statutory predicates for the relief requested herein are sections 105(a), 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004(h).

**Background**

6. The Debtors along with their non-Debtor affiliates (collectively, “**SFX**”) are a leading producer of live events and digital entertainment content focused exclusively on electronic music culture. The Debtors commenced material operations in 2012 with the intent of acquiring and operating companies within the electronic dance music (“**EDM**”) industry,

specifically those engaged in the promotion and production of live music events, festivals and digital offerings attractive to EDM fans in the United States and abroad. Over the next three years, the Debtors acquired a number of leading EDM brands, such as TomorrowWorld, Beatport, Mysteryland, Sensation and Electric Zoo, and expanded operations worldwide.

7. Today, the Debtors are actively engaged in the production and promotion of EDM festivals and events both domestically and abroad. In addition, Debtors manage large, event-driven nightclubs that serve as venues for performances by key electronic music talent. The Debtors also offer an online platform for EDM DJs, artists and fans to purchase, share and stream music components and to connect with each other.

8. The Debtors and their 120 non-Debtor subsidiaries operate a business that spans the globe, with operations in over 34 countries. The Debtors constitute substantially all of the domestic companies comprising SFX's business as well as select foreign subsidiaries. The Debtors have more than 325 employees and, together with the non-Debtor entities, have more than 625 employees.

9. The Debtors' capital structure is highly levered. In 2015, the Debtors began to face significant liquidity issues. While the Debtors attempted to enhance liquidity through a September 2015 financing and potential sales of non-strategic assets, the Debtors concluded that they needed to restructure their liabilities through a bankruptcy process.

10. Prior to the filing of these Chapter 11 Cases, the Debtors entered into a restructuring support agreement with holders of over 70% of their outstanding secured debt. The restructuring support agreement provides for a comprehensive restructuring of the Debtors' balance sheet. As part of that transaction, certain of the holders of the secured debt also agreed to provide the Debtors with \$115 million of debtor-in-possession financing to allow for the

Debtors to prosecute these Chapter 11 Cases. The Debtors intend to use these Chapter 11 Cases to effect their balance sheet restructuring and implement operational improvements.

11. A detailed factual background of the Debtors' business and operations, as well as the events precipitating the commencement of these Chapter 11 Cases, is more fully set forth in the *Declaration of Michael Katzenstein in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.

**A. Employees**

12. The Debtors operate in several different locations throughout the United States, including, but not limited to: California, Colorado, Florida, Illinois, New York and Pennsylvania.

13. As of the Petition Date, the Debtors have a total of approximately 326 employees (the "**Employees**"). Of the Employees, approximately 21 are part-time workers and 305 are full-time workers. In addition, approximately 266 of the Employees are salaried employees and 60 are hourly employees. None of the Employees are unionized. The Employees are all co-employed by TriNet Group, Inc. ("**TriNet**").

**B. TriNet**

14. The Debtors engaged TriNet, a professional employer organization, to administer human resources functions for the Debtors. TriNet provides a broad range of human resources and benefits administration services through a co-employment model whereby the Debtors and TriNet share employer responsibilities. In the co-employment arrangement, the Debtors maintain day-to-day control over, dictate the roles and responsibilities of and manage the Employees while TriNet handles human resources management and benefits administration

responsibilities. For example, TriNet provides the Debtors with payroll, tax and employee benefits administration and helps ensure that the Debtors are compliant with employment-related regulatory and legal requirements.

15. For costs associated with the services provided by TriNet (as further discussed below), including payroll, Payroll Taxes (as defined below) and insurance premiums required to maintain the various benefit plans offered to the Employees, the Debtors advance funds to TriNet approximately 2-3 days prior to the Debtors' regularly scheduled payroll, and TriNet, on behalf of the Debtors, makes payments to (i) the Employees in connection with Wages and Commissions, as applicable, (each as defined below), (ii) the Taxing Authorities (as defined below) in connection with the Payroll Taxes (as defined below) and (iii) the providers of the Employee Benefit Plans (as defined below).

16. In connection with the co-employment arrangement, the Debtors pay TriNet approximately \$35,000 per month (the "**TriNet Service Fee**"). Payment of the TriNet Service Fee is essential to the Debtors' seamless entry into chapter 11 as it will ensure that there is no disruption in payment of the Wages or Payroll Taxes or the administration of the Employee Benefit Plans. By this Motion, the Debtors request the authority to continue paying the TriNet Service Fee in the ordinary course of business, including with respect to any prepetition amounts owed.

**C. Wages, Commissions and Payroll Obligations**

*I. Wages*

17. All Employees are paid wages or salary (collectively, the "**Wages**") semi-monthly in arrears (i) on or about the 15<sup>th</sup> day of the month for the period from the 1<sup>st</sup> day of the month

through the 15<sup>th</sup> day of the month and (ii) on the last business day of each month for the period from the 16<sup>th</sup> day of the month through the last day of the month.

18. Payroll averages approximately \$3.1 million per month in the aggregate, including the Debtors' portion of the Payroll Taxes (as defined below). Nearly all of the Employees are paid through electronic fund transfers, i.e. direct deposit.

19. The Debtors' last regular payroll date was January 29, 2016 for the semi-monthly period ending January 31, 2016; the next payroll is scheduled for February 12, 2016. The Debtors estimate that, as of the Petition Date, there are no accrued and unpaid Wages owed to the Employees in excess of the statutory priority amount. By this Motion, the Debtors request the authority to continue to pay Wages, up to the statutory priority amount of \$12,475, to their Employees in the ordinary course of business.

## *II. Commissions*

20. In addition to the Wages, certain of the Employees and Independent Service Providers (as defined below) are eligible to receive commissions (the "**Commissions**"). The amount of Commissions payable to each eligible Employee varies depending on either the respective Employee's sales performance and/or the financial performance of the respective event or function for which the Employee is responsible. Commissions constitute a significant portion of such Employee's total earnings. The Debtors estimate that, as of the Petition Date, approximately \$520,000 in Commissions have accrued and are owed to certain of the Employees and to at least one Independent Service Provider.

21. By this Motion, the Debtors request the authority to pay eligible Employees and Independent Service Providers up to \$520,000 on account of the Commissions earned prior to the Petition Date. Because certain of these amounts may exceed the statutory priority amount for

prepetition wage claims, the Debtors do not seek approval of the payment of the Commissions as a part of the first-day relief requested by the balance of this Motion. Rather, the Debtors seek entry of a separate order approving payment of the Commissions on the next hearing date following the first-day hearings.

### *III. Payroll Obligations*

22. The Debtors, as employers, are required by law to withhold federal, state and local taxes from Wages for remittance to appropriate tax authorities (the “**Employee Taxes**”). In addition to the Employee Taxes, the Debtors are required to pay, from their own funds, social security and Medicare taxes and pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts for state and federal unemployment insurance (together with the Employee Taxes, the “**Payroll Taxes**”) and remit the same to the appropriate authorities (collectively, the “**Taxing Authorities**”).

23. TriNet pays the Payroll Taxes to the various Taxing Authorities, on behalf of the Debtors, in accordance with the Internal Revenue Code and applicable state law. The Debtors’ average semi-monthly obligation for Payroll Taxes is approximately \$135,000. As of the Petition Date, the Debtors have funded the Payroll Taxes to TriNet through January 31, 2016. The Debtors seek authority to honor and process the prepetition obligations with respect to the Payroll Taxes, including authority for TriNet to remit funded Payroll Taxes.

### **D. Vacation Time and Sick/Personal Days**

24. The Debtors provide eligible Employees with 20 days of paid time off (“**PTO**”) each year to use for any reason, such as for vacation, personal time, or observance of religious holidays, personal illness, personal injury or the illness or injury of dependents or family members.

25. Employees accrue PTO at the rate of 1.5 days per month. PTO accrued but unused within the year may not be carried over to the following year, except where required by applicable law. With respect to employee departures, and subject to certain state laws, the Debtors do not pay for accrued but unused PTO.

26. By this Motion, the Debtors request authority to continue to honor their PTO policies in the ordinary course of business and to honor all prepetition obligations related thereto in a manner consistent with their prepetition practices, including paying where required by law.

**E. Employee Benefit Plans**

27. TriNet, through their co-employment relationship with the Debtors, has established certain benefit plans and policies for eligible Employees that provide, among other benefits, medical, dental and vision plans, workers' compensation insurance, life insurance, disability insurance, a 401(k) plan and other benefits which are described in more detail below (collectively, the "**Employee Benefit Plans**").<sup>2</sup> A brief description of the Employee Benefit Plans is provided below:

*I. Medical/Dental/Vision Plans*

28. The Employees are offered a variety of health benefit plans with various insurance providers, depending on which region an Employee is located and what plan the Employee chooses (collectively, the "**Employee Health Plans**").<sup>3</sup> The Employee Health Plans are partly funded by the Debtors and partly funded by the Employees. The premiums for the Employee Health Plans are paid each month for the upcoming month.

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<sup>2</sup> TriNet administers the Employee Benefit Plans on behalf of the Debtors, and therefore, pays the respective monthly premiums and/or annual fees with funds provided by the Debtors.

<sup>3</sup> Over 200 Employee Health Plans are offered to the Employees.

29. The Employees are also offered dental plans with Aetna, Delta, MetLife and Guardian (collectively, the “**Dental Plans**”). The Dental Plans are partly funded by participating Employees and partly funded by the Debtors. Participating Employees pay a monthly premium, which the Debtors deduct from the participating Employees’ paychecks. Nearly all of the Employees participate in the Dental Plans.

30. In addition, the Employees are offered vision plans with Aetna and VSP (collectively, the “**Vision Plans**”). The Vision Plans are partly funded by participating Employees and partly funded by the Debtors. Participating Employees pay a monthly premium, which the Debtors deduct from the participating Employees’ paychecks. Nearly all Employees participate in the Vision Plans.

31. On account of the Employee Health Plans, Dental Plans and Vision Plans, the Debtors incur an average monthly cost of \$125,000, \$20,000 and \$2,500, respectively. As of the Petition Date, the Debtors believe that there are no accrued and unpaid monthly premiums in connection with the Employee Health Plans, Dental Plans and Vision Plans. By this Motion, the Debtors seek authority to (a) continue to provide the Employee Health Plans, the Dental Plans and the Vision Plans for their Employees in the ordinary course of business, (b) continue to honor obligations under such benefit programs, including any premiums and administrative fees and (c) pay all such amounts owed under the Employee Health Plans, the Dental Plans and the Vision Plans to the extent that they remain unpaid on the Petition Date.

## *II. Other Insurance Plans*

32. The Employees are offered disability insurance, including short-term disability insurance covering Employees at 60% of weekly earnings up to \$2,308 per week after a seven (7) calendar day waiting period, and long-term disability insurance covering 60% of monthly

earnings up to \$10,000 per month, after 26 weeks, inclusive of the 7-day waiting period (the “**Disability Insurance**”). In addition, the Employees are offered a basic life insurance benefit (the “**Basic Life Insurance**”) for eligible full-time Employees, which includes an Accidental Death and Dismemberment benefit. The Employees are also offered voluntary life insurance and dependent life insurance in addition to the Basic Life Insurance (the “**Voluntary Life Insurance**”) and together with the Disability Insurance and the Basic Life Insurance, the “**Life Insurance Plans**”), and Employees bear the premium costs. On average, the Debtors incur a monthly cost of approximately \$15,000 in connection with the Life Insurance Plans. As of the Petition Date, the Debtors believe that there are no accrued and unpaid monthly premiums in connection with the Life Insurance Plans. By this Motion, the Debtors seek authority to pay any and all prepetition amounts owed on account of the Life Insurance Plans and to continue their prepetition practices with respect to such benefits.

### *III. Workers Compensation Insurance*

33. Under the applicable law, the Debtors are required to maintain workers’ compensation insurance programs to provide their Employees with workers’ compensation insurance coverage for claims arising from or related to their employment with the Debtors and to satisfy the Debtors’ obligations arising under or related to these programs (collectively, the “**Workers’ Compensation Programs**”). The Workers’ Compensation Programs cover all Employees and coverage is provided through a workers’ compensation insurance policy with New York Marine & General. The Debtors pay an aggregate annual premium of approximately \$100,369.<sup>4</sup> Pursuant to the co-employment arrangement with the Debtors, TriNet maintains a separate workers’ compensation insurance policy covering the Employees.

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<sup>4</sup> The payment of amounts owed under this policy (if any) is addressed in the Debtors’ contemporaneously filed *Motion of the Debtors for Entry of an Order Authorizing the Debtors to (A) Maintain Existing Insurance Policies,*

34. It is critical that the Debtors be permitted to continue their workers' compensation insurance and pay their premiums for workers' compensation coverage, as not doing so would almost certainly be more costly. In addition, failure to maintain this insurance in the various states in which the Debtors do business could result in the institution of administrative or legal proceedings against the Debtors and their officers and directors and an inability of the Debtors to continue as a going concern. By this Motion, the Debtors request authority to maintain and continue their prepetition practices with respect to the Workers' Compensation Programs, including, among other things, allowing workers' compensation claimants, to the extent they hold valid claims, to proceed with their claims under the Workers' Compensation Programs.

#### *IV. Retirement Plan*

35. Employees are also eligible to enroll in a 401(k) plan with Fidelity Investments (the "**Retirement Plan**"). Employees may contribute to the Retirement Plan each year through salary deferrals up to the IRS limit. The Debtors do not match Employee contributions. The Debtors incur approximately \$3,000 per quarter in administrative costs on account of the Retirement Plan. Employees are always 100% vested in their contributions and cannot forfeit the contributions. Approximately 69 Employees currently participate and contribute to the Retirement Plan. By this Motion, the Debtors seek authority to continue to honor their obligations with respect to the Retirement Plan in the ordinary course of business.

#### *V. Flexible Spending*

36. The Debtors offer their Employees the ability to contribute a portion of their compensation, which amounts are generally deducted automatically from each paycheck of a participating Employee, into flexible spending accounts for health and dependent care and

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*Pay All Policy Premiums and Consultant Fees Arising Thereunder and Renew or Enter Into New Policies, and (B) Continue Insurance Premium Financing Programs, Pay Insurance Premium Financing Obligations Arising in Connection Therewith and Renew or Enter into New Premium Financing Arrangements.*

commuter reimbursement (the “**Flexible Spending Program**”). A fraction of the Employees participate in the Flexible Spending Program. As of the Petition Date, the Debtors believe that there are no accrued and unpaid costs associated with the Flexible Spending Program. By this Motion, the Debtors seek authority to continue their prepetition practices with respect to the Flexible Spending Program.

*VI. Health Savings Account*

37. The Debtors offer certain of their Employees with high deductible insurance plans the ability to contribute a portion of their compensation, which amounts are generally deducted automatically from each participating Employee’s paycheck, into a health savings account (the “**Health Savings Accounts**”). A fraction of the Employees maintain Health Savings Accounts. As of the Petition Date, the Debtors believe that there are no accrued and unpaid costs associated with the Health Savings Accounts. By this Motion, the Debtors seek authority to continue their prepetition practices with respect to the Health Savings Accounts.

**F. Business Expenses**

38. A substantial number of the Employees are issued corporate credit cards with American Express to incur various expenses in connection with their employment duties, such as travel, meal and other business expenses (collectively, the “**Business Expenses**”). Such expenses incurred in the course of employment and in furtherance of the Debtors’ business are generally charged to an Employee’s corporate credit card. Employees submit expense reports detailing the Business Expenses incurred, and the expense reports are channeled through a series of reviews for approval. The Debtors’ respective accounts payable departments make payments to American Express for approved Business Expenses approximately two times per week.

39. Although the Debtors encouraged the submission of expense reports for Business Expenses prior to the Petition Date, the Debtors anticipate that many Employees will have not yet submitted their expense reports for accrued and unpaid Business Expenses. Therefore, as of the Petition Date, the Debtors estimate that approximately \$100,000 in Business Expenses have been incurred but remain unpaid. The Employees are independently liable for the charges incurred on the corporate credit cards. Therefore, should the Debtors not be permitted to pay the Business Expenses, the individual Employees will be liable for the charges incurred; such a drastic change in operations may adversely affect the Employees' morale and jeopardize the Debtors' reorganization efforts. By this Motion, the Debtors seek authority to continue their prepetition practices with respect to the Business Expenses and to pay all prepetition amounts outstanding in connection therewith.

**G. Benefits Withholding Obligations**

40. As part of the relief requested herein, the Debtors seek authorization to pay the Payroll Taxes and all other withholdings such as contributions to savings, retirement or pension plans, insurance contributions and charitable contributions, if any (collectively, the "**Benefits Withholding Obligations**").

41. The Debtors routinely withhold from Employee paychecks the Benefits Withholding Obligations, and are required to transmit these amounts to third parties. The Debtors believe that such withheld funds, to the extent that they remain in the Debtors' possession, constitute moneys held in trust and therefore, are not property of the Debtors' estates. Thus, whether or not such funds are prepetition amounts, the Debtors believe that directing such funds to the appropriate parties does not require Court approval. Nevertheless, out of an abundance of caution, the Debtors seek authority to pay any outstanding amounts owed for

Benefits Withholding Obligations, in the ordinary course of business, including those incurred prior to the Petition Date.

#### **H. Independent Service Providers**

42. In addition to the Employees, independent contractors (the “**Independent Service Providers**”) provide the Debtors with services that are essential to the Debtors’ ongoing business operations. These services include general corporate and administrative functions such as finance and accounting support, marketing, public relations, and IT and technical support, such as website and app development. In addition, the Debtors rely on Independent Service Providers to support their live events and club operations on an ongoing basis, including local and regional promoters, event technicians, production managers, department managers, talent managers, and security, medical and crowd control service providers, among other personnel. The Debtors further engage Independent Service Providers in connection with certain digital and platform efforts, such as social media and digital marketing specialists, graphic designers, photographers and videographers, content producers and designers, and other creative services. These Independent Service Providers are critical to the Debtors’ operations, and they rely – in some instances exclusively – on the Debtors for their individual income.

43. None of the amounts the Debtors seek to pay to an Individual Service Provider exceed the priority wage amount. The Independent Service Providers are not eligible to receive any of the benefits administered through TriNet. Similarly, the Independent Service Providers are paid through the Debtors’ respective accounts payable and not through the Debtors’ payroll. Nonetheless, if the Debtors are unable to pay the Independent Service Providers, the Debtors will lose the services, continuity and institutional knowledge of the Independent Service Providers, and the Debtors’ business operations will be severely and irreparably compromised.

**Relief Requested**

44. In order to enable the Debtors to maintain morale during this critical time, retain their current Employees and Independent Service Providers and minimize the personal hardship such Employees and Independent Service Providers may suffer if prepetition employee-related obligations are not paid when due or honored as expected, the Debtors, by this Motion, seek authority, in their discretion, to pay and honor, as the case may be, (a) all prepetition claims of Employees, including, but not limited to, claims for Wages, PTO, as applicable, and certain costs and disbursements related to the foregoing, up to the statutory priority amount of \$12,475 per Employee, (b) any claims or payments pursuant to the Employee Benefit Plans, (c) all Benefits Withholding Obligations (collectively, the “**Employee Obligations**”) and (d) any prepetition claims for Independent Service Providers, up to the statutory cap.

**Direction to Banks**

45. The Debtors also seek an order authorizing and directing all banks to receive, process, honor and pay any and all checks or electronic transfers drawn on the Debtors’ payroll and general disbursement accounts related to ordinary course Employee Obligations, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

**Basis for Relief Requested**

46. Courts generally acknowledge that it is appropriate to authorize the payment (or other special treatment) of prepetition employee obligations in certain circumstances. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, debtors-in-possession are authorized to operate the business while maintaining “a fiduciary duty to act in the best interest of the estate as a whole, including its creditors, equity interest holders and other parties in interest.” *LaSalle*

*Nat'l Bank v. Perelman*, 82 F. Supp. 2d 279, 292 (D. Del. 2000). Implicit in the fiduciary duties of any debtor-in-possession is the obligation “to protect and preserve the estate, including an operating business’s going-concern value.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Some courts have noted that there are instances in which a debtor can fulfill this fiduciary duty “by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *Id.* In the instant case, the Debtors are operating as debtors-in-possession consistent with sections 1107(a) and 1108 of the Bankruptcy Code, and payment of the Employee Obligations is necessary to protect and preserve the Debtors’ business operations. Thus, the Court should authorize the relief requested in this Motion.

47. Consistent with the Debtors’ fiduciary duties, this Court may also grant the relief requested herein pursuant to sections 105(a), 363(b) and 363(c) of the Bankruptcy Code and the “necessity of payment” doctrine (discussed below). 11 U.S.C. §§ 105(a), 363(b) and (c). Section 363(b)(1) of the Bankruptcy Code states in pertinent part that: “The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” 11 U.S.C. § 363(b)(1). If the debtor’s determination to use estate assets represents a reasonable business judgment, the bankruptcy court should approve such use.

48. Moreover, this Court routinely approves the payment of prepetition claims of employees for wages, salaries, expenses and benefits on the ground that the payment of such claims was necessary to effectuate a successful reorganization or liquidation. *See, e.g., In re RadioShack Corp.*, Case No. 15-10197 (KJC) (Bankr. D. Del. Mar. 9, 2015); *In re Golden Cty. Foods, Inc.*, Case No. 15-11062 (KG) (Bankr. D. Del. June 9, 2015); *In re Natrol, Inc.*, Case No.

14-11446 (BLS) (Bankr. D. Del. July 15, 2014); *In re Landauer Healthcare Holdings, Inc.*, Case No. 13-12098 (CSS) (Bankr. D. Del. Aug. 20, 2013); *In re AFA Inv. Inc.*, Case No. 12-11127 (MFW) (Bankr. D. Del. Apr. 3, 2012). Additionally, this Court has previously approved the payment of prepetition claims incidental to employee claims, such as costs and expenses associated with a co-employment arrangement. *See In re Endeavour Operating Corp.*, Case No. 14-12308 (KJC) (Bankr. D. Del. Oct. 15, 2014); *In re Chem RX Corp.*, Case No. 10-11567 (MFW) (Bankr. D. Del. May 13, 2010). Section 105(a) of the Bankruptcy Code further provides, in pertinent part, that a “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).

49. The “necessity of payment” doctrine authorizes the relief requested in this Motion because the Employees and Independent Service Providers are indispensable to both the Debtors’ operations and the successful resolution of these Chapter 11 Cases. In addition, the Debtors believe that the unpaid Wages and other benefits earned within 180 days of the Petition Date that the Debtors seek to pay are entitled to priority status under sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and individually do not exceed \$12,475 (i.e., the maximum priority amount under that statute).

50. As set forth in the First Day Declaration, the Employees and Independent Service Providers are essential to the continued operation of the Debtors’ business, and the Employees’ and Independent Service Providers’ morale directly affects their effectiveness and productivity. As a service business that relies heavily on its Employees and Independent Service Providers, a failure to continue to satisfy the Employee Obligations without disruption is essential. Consequently, it is critical that the Debtors continue, in the ordinary course, those personnel policies, programs and procedures that were in effect prior to the Petition Date. If the checks

issued and electronic fund transfers requested in payment of any of the compensation or other Employee Obligations are dishonored, or if such obligations are not timely paid postpetition, the Employees and Independent Service Providers may likely suffer extreme personal hardship and may be unable to pay their daily living expenses.

51. A loss of employee morale and goodwill at this juncture would undermine the Debtors' stability and would undoubtedly have an adverse effect on the Debtors, their customers, the value of their assets and business and their ability to achieve their objectives in chapter 11. As noted by the court in *In re Equalnet Communications Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000), "[t]he need to pay [pre-petition employee wage] claims in an ordinary course of business time frame is simple common sense. Employees are more likely to stay in place and to refrain from actions which could be detrimental to the case and/or the estate if their pay and benefits remain intact and uninterrupted." *Id.* at 370.

52. As part of the foregoing relief, the Debtors also seek authority to pay all Withholding Obligations. The failure to make such payments may also subject the Debtors and their officers to federal or state liability. *See City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92 (3d Cir. 1994) (state law requiring debtor to withhold city income tax from its employees' wages created trust relationship between debtor and city for payment of withheld taxes); *DuCharmes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194 (6th Cir. 1988) (noting the special liabilities for failure to pay trust fund taxes). Moreover, the monies payable for amounts held in trust, like the Withholding Obligations, generally are not property of a debtor's estate. *See Begier v. IRS*, 496 U.S. 53, 59 (1990) (because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not "property of the estate"). The failure to transfer these withheld funds could result in hardship to certain Employees or others.

Furthermore, if the Debtors cannot remit these amounts, the Employees may face legal action due to the Debtors' failure to submit these payments.

53. Finally, payment of Withholding Obligations that constitute "trust fund" taxes will not prejudice general unsecured creditors of the Debtors' estates as the relevant Taxing Authorities would hold priority claims under section 507(a)(8) of the Bankruptcy Code in respect of such obligations. Moreover, the monies payable for trust fund taxes, as well as the other funds that are held in trust for the benefit of third parties, such as withheld funds with respect to the Retirement Plan, are not property of the Debtors' estates.

54. The relief requested in this Motion is necessary for the viability of the Debtors' business and maximization of the value of the Debtors' assets. Accordingly, the Debtors submit that the relief sought herein is consistent with sections 105(a), 507(a) and 541 of the Bankruptcy Code.

55. Nothing in this Motion, nor any payments made by the Debtors pursuant to the Motion, shall be deemed an assumption or rejection of any Employee Benefit Plan, employment agreement, other program or contract or otherwise affect the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract between the Debtors and any Employee.

**Bankruptcy Rule 6003 Is Satisfied and Request for Waiver of Stay**

56. The Debtors further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors for the reasons set forth herein and in the First Day Declaration, Bankruptcy Rule 6003 has been satisfied and the relief requested herein should be granted.

57. Specifically, Bankruptcy Rule 6003 provides:

Except to the extent that relief is necessary to avoid immediate and

irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting the following: . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition, but not a motion under Rule 4001 . . . .

Fed. R. Bankr. P. 6003.

58. The Third Circuit Court of Appeals has interpreted the “immediate and irreparable harm” language in the context of preliminary injunctions. In that context, irreparable harm has been interpreted as a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App’x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Further, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994).

59. The Debtors further seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As set forth above, the relief requested herein is essential to prevent irreparable damage to the Debtors’ operations, going concern value and their efforts to pursue a resolution to these Chapter 11 Cases.

60. Accordingly, the relief requested herein is appropriate under the circumstances and under Bankruptcy Rules 6003 and 6004(h).

**Consent to Jurisdiction**

61. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

**Notice**<sup>5</sup>

62. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the Office of the United States Trustee for the District of Delaware; (b) the DIP Lenders; (c) the Ad Hoc Group; (d) Catalyst, as the Administrative Agent and Lender to the Debtors’ prepetition Credit Agreement and Foreign Loan; (e) U.S. Bank National Association, as Indenture Trustee to the Indenture governing the 2019 Notes; (f) creditors holding the forty (40) largest unsecured claims as set forth in the consolidated list filed with the Debtors’ petitions; (g) those parties requesting notice pursuant to Bankruptcy Rule 2002; (h) the Office of the United States Attorney General for the District of Delaware; (i) the Internal Revenue Service; (j) the Securities and Exchange Commission; and (k) TriNet. As the Motion is seeking “first day” relief, within two business days of the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

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<sup>5</sup> Capitalized terms used in the Notice section but not otherwise defined in this Motion shall have the meanings ascribed to them in the relevant First Day Declaration.

**No Prior Request**

63. No prior request for the relief sought in this Motion has been made to this or any other court.

**Conclusion**

WHEREFORE, the Debtors respectfully request that this Court enter an order granting the relief requested herein and granting such other and further relief as is just and proper.

Dated: February 1, 2016

GREENBERG TRAURIG, LLP

/s/ Dennis A. Meloro

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*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SFX ENTERTAINMENT, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-10238 ( )

(Joint Administration Requested)

Ref. Docket No. \_\_\_\_\_

**ORDER (A) AUTHORIZING DEBTORS TO PAY (I) ALL PREPETITION EMPLOYEE OBLIGATIONS AND (II) PREPETITION WITHHOLDING OBLIGATIONS, AND (B) DIRECTING BANKS TO HONOR RELATED TRANSFERS**

Upon the motion (the “**Motion**”)<sup>2</sup> filed by the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), pursuant to sections 105, 363, 503, 507(a)(4), 507(a)(5), 541, 1107 and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “**Bankruptcy Code**”) and Bankruptcy Rules 6003 and 6004(h), seeking entry of an order: (a) authorizing, but not directing, the Debtors to continue to honor and pay (i) all prepetition employee obligations as described more fully in the Motion and (ii) all prepetition federal and state withholding obligations and (b) directing all banks to honor the Debtors’ prepetition transfers for payment of any of the foregoing and prohibiting banks from placing

<sup>1</sup> The Debtors in these Chapter 11 Cases, along with the last four (4) digits of each Debtor’s federal tax identification number, if applicable, are: 430R Acquisition LLC (7350); Beatport, LLC (1024); Core Productions LLC (3613); EZ Festivals, LLC (2693); Flavour, Inc. (7119); ID&T/SFX Mysteryland LLC (6459); ID&T/SFX North America LLC (5154); ID&T/SFX Q-Dance LLC (6298); ID&T/SFX Sensation LLC (6460); ID&T/SFX TomorrowWorld LLC (7238); LETMA Acquisition LLC (0452); Made Event, LLC (1127); Michigan JJ Holdings LLC (n/a); SFX Acquisition, LLC (1063); SFX Brazil LLC (0047); SFX Canada Inc. (7070); SFX Development LLC (2102); SFX EDM Holdings Corporation (2460); SFX Entertainment, Inc. (0047); SFX Entertainment International, Inc. (2987); SFX Entertainment International II, Inc. (1998); SFX Intermediate Holdco II LLC (5954); SFX Managing Member Inc. (2428); SFX Marketing LLC (7734); SFX Platform & Sponsorship LLC (9234); SFX Technology Services, Inc. (0402); SFX/AB Live Event Canada, Inc. (6422); SFX/AB Live Event Intermediate Holdco LLC (8004); SFX/AB Live Event LLC (9703); SFX-94 LLC (5884); SFX-Disco Intermediate Holdco LLC (5441); SFX-Disco Operating LLC (5441); SFXE IP LLC (0047); SFX-EMC, Inc. (7765); SFX-Hudson LLC (0047); SFX-IDT N.A. Holding II LLC (4860); SFX-LIC Operating LLC (0950); SFX-IDT N.A. Holding LLC (2428); SFX-Nightlife Operating LLC (4673); SFX-Perryscope LLC (4724); SFX-React Operating LLC (0584); Spring Awakening, LLC (6390); SFXE Netherlands Holdings Coöperatief U.A. (6812); SFXE Netherlands Holdings B.V. (6898). The Debtors’ business address is 902 Broadway, 15<sup>th</sup> Floor, New York, NY 10010.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

holds on, or attempting to reverse, any automatic transfers on account of the foregoing; and upon the *Declaration of Michael Katzenstein in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief* (the "**First Day Declaration**"); and upon the statements of counsel in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that venue of these Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and after due deliberation thereon; and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. For the reasons set forth on the record, the Motion is GRANTED as set forth herein.
2. The Debtors, and their co-employer, TriNet, are authorized, but not directed, to continue to honor and pay all prepetition and postpetition Employee Obligations in accordance with the Debtors' stated policies and in the ordinary course of the Debtors' business; *provided, however,* that payments to or on behalf of the Employees on account of any prepetition Employee Obligations shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5); *provided further, however,* that this Order does not constitute authority for the Debtors to make any payments on account of Commissions. The Debtors' request to pay such Commissions shall be considered at the next scheduled hearing in these Chapter 11 Cases.

3. The Debtors are authorized, but not directed, to pay all prepetition amounts owing to the Independent Service Providers for their services, and to continue to pay such amounts in the ordinary course of business and consistent with the Debtors' business practices; *provided, however*, that payments to or on behalf of the Independent Service Providers on account of any prepetition amounts owing shall not exceed the amounts afforded priority status by any applicable provisions of section 507 of the Bankruptcy Code, including sections 507(a)(4) and 507(a)(5).

4. All of the Debtors' banks are authorized and directed to receive, process, honor and pay any and all checks or electronic transfers drawn on the Debtors' payroll and general disbursement accounts related to Employee Obligations and Independent Service Providers, including, but not limited to Wages, Employee Health Plans, PTO, Life Insurance and Withholding Obligations authorized by this Order, whether presented before or after the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments.

5. To the extent that any employment or related agreements may be deemed executory contracts within the meaning of section 365 of the Bankruptcy Code, the Debtors do not at this time seek authority to assume such contracts, and no relief is granted in respect thereof.

6. Nothing herein shall be deemed to (1) authorize the payment of any amounts in satisfaction of bonus or severance obligations, or which are subject to section 503(c) of the Bankruptcy Code; or (2) authorize the Debtors to cash out unpaid vacation or leave time upon termination of an employee, unless applicable state law requires such payment.

7. Notwithstanding anything to the contrary contained herein, any payment made or to be made, and authorization contained in this Order shall be subject to the requirements

imposed on the Debtors under any approved debtor-in-possession financing facility, any order regarding the Debtors' postpetition financing or use of cash collateral, and any budget in connection therewith.

8. Bankruptcy Rule 6003(b) has been satisfied because the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

9. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

10. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Order.

11. The Court shall retain jurisdiction with respect to all matters arising from or relating to the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2016

\_\_\_\_\_  
HONORABLE [ \_\_\_\_\_ ]  
UNITED STATES BANKRUPTCY JUDGE