

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

In re:

SFX ENTERTAINMENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10238 ()

(Joint Administration Requested)

**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS PURSUANT TO SECTIONS 105(a) AND 366 OF THE BANKRUPTCY
CODE (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING OR
DISCONTINUING SERVICE, (B) DEEMING UTILITIES ADEQUATELY
ASSURED OF FUTURE PERFORMANCE, AND (C) ESTABLISHING
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

The above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) hereby move the Court (the “**Motion**”), pursuant to sections 105(a), 366, 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 entry of interim and final orders: (a) prohibiting the Utility Providers (as defined below) from altering, refusing or discontinuing service; (b) deeming Utility Providers adequately assured of future performance and (c) establishing procedures for determining adequate

¹ 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, 15th Floor, New York, NY 10010.



assurance of payment. In addition, the Debtors request that the Court set a final hearing (the “**Final Hearing**”) on the Debtors’ proposed adequate assurance procedures. 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 predicate for the relief sought herein are sections 105(a), 366, 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. Utility Providers

12. In connection with the operation of their business and management of their estates, the Debtors obtain electricity, gas, waste management, internet, cable, telephone, security and other similar services (collectively, the "**Utility Services**") from a number of utility companies (collectively, the "**Utility Providers**"), including those listed on **Exhibit A** attached hereto (the "**Utility Provider List**").²

13. In the ordinary course of business, the Debtors regularly incur utility expenses for Utility Services provided by various Utility Providers. The Debtors have a long and established payment history with most or all of the Utility Providers. The Debtors' aggregate average monthly cost for utility services is approximately \$126,000.

14. The Utility Services are essential to the preservation of the Debtors' estates and assets, and therefore, to the success of these Chapter 11 Cases. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' ability to preserve and maximize the value of their respective estates could be severely and irreparably harmed. For

² The inclusion of any entity on, as well as any omission of any entity from, **Exhibit A** is not an admission by the Debtors that such entity is, or is not, a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights with respect thereto.

example, a lack of electricity, telephone or internet services would render the Debtors' websites inoperable, effectively shutting down a large portion of the Debtors' business operations; (e.g., one of the Debtors, Beatport, LLC, operates a music streaming service that is dependent upon electricity and internet service to connect with performers and disc jockeys). Indeed, any interruption of the Utility Services would disrupt the Debtors' ability to operate and maintain their business and would thereby negatively affect the Debtors' customer relationships, revenues and profits. Such a result could seriously jeopardize the Debtors' reorganization efforts and, ultimately, their value and constituent recoveries. It is therefore critical that the Utility Services continue uninterrupted.

15. The Debtors seek the relief requested herein with respect to all the Utility Providers providing Utility Services to the Debtors, including, but not limited to, those listed on the Utility Provider List. The Debtors reserve the right to supplement the Utility Provider List by filing a notice or notices (each, a "**Supplemental Notice**") with this Court.

Relief Requested

16. By this Motion, pursuant to sections 105(a) and 366 of the Bankruptcy Code, the Debtors seek entry of interim and final orders:

- (A) determining that their Utility Providers have been provided with adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code;
- (B) approving the Debtors' proposed offer of adequate assurance and procedures governing Utility Providers' requests for additional or different adequate assurance;
- (C) prohibiting the Utility Providers from altering, refusing or discontinuing the Utility Services on account of prepetition amounts outstanding or on account of any perceived inadequacy of the Debtors' proposed adequate assurance;
- (D) establishing procedures for the Utility Providers to seek to opt out of the Debtors' proposed adequate assurance procedures; and

- (E) determining that the Debtors are not required to provide any additional adequate assurance beyond what is proposed by this Motion.

A. Adequate Assurance

17. Generally, section 366(a) of the Bankruptcy Code prohibits utilities from altering, refusing, or discontinuing service to a debtor for the first twenty (20) days of a bankruptcy case. *See* 11 U.S.C. § 366(a). However, pursuant to section 366(c)(2) of the Bankruptcy Code, in a chapter 11 context, a utility provider may refuse or discontinue service to a debtor only after the first thirty (30) days if the debtor has not furnished the utility provider with adequate assurance of future payment. *See id.* § 366(c)(2). Furthermore, upon expiration of such period, a utility provider cannot terminate its services if a debtor has furnished adequate “assurance of payment” within the meaning of section 366(c)(1)(A) of the Bankruptcy Code. *See id.* § 366(c)(1)(A).

18. In light of the severe consequences to the Debtors of any interruption in Utility Services by the Utility Providers, but recognizing the right of the Utility Providers to evaluate the Proposed Adequate Assurance (as defined below) on a case-by-case basis, the Debtors propose that an interim order approve and adopt, on an interim basis, subject to entry of a final order, the Adequate Assurance Procedures (as defined below).

19. The Debtors intend to pay all postpetition obligations and expect that revenues generated from their business operations and/or funds from their DIP financing facility/cash collateral will be sufficient to pay all undisputed postpetition obligations owed to the Utility Providers in a timely manner. However, to provide adequate assurance of payment for future services to the Utility Providers as set forth in section 366(c) of the Bankruptcy Code, the Debtors propose to deposit an initial sum equal to the Debtors’ estimated average cost for two (2) weeks of Utility Services (the “**Adequate Assurance Deposit**”), into a segregated account (the “**Adequate Assurance Account**”) within fourteen (14) days of the date hereof, subject to interim

approval of the Debtors' postpetition financing and use of cash collateral. Because the Debtors' approximate monthly spending on Utility Services is \$126,000, the Debtors propose that the Adequate Assurance Deposit should be approximately \$63,000.

20. The Debtors further propose to maintain the Adequate Assurance Account with a minimum balance equal to the Debtors' estimated average two-week cost of Utility Services through the Final Hearing on the Motion. Thereafter, the Debtors propose to adjust the amount in the Adequate Assurance Account to reflect the following factors: (i) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below) and (ii) agreements with the Utility Providers. These adjustments will permit the Debtors to maintain the Adequate Assurance Account with an amount that consistently provides the Utility Providers that do not otherwise hold deposits or security for their Utility Services with a two-week deposit on account of such services.

21. The Debtors submit that the Adequate Assurance Deposit, taken together with the facts and circumstances of the Chapter 11 Cases (together, the "**Proposed Adequate Assurance**"), constitutes sufficient adequate assurance to the Utility Providers. Moreover, the Debtors are seeking approval of postpetition financing and use of cash collateral that the Debtors believe will provide more than adequate liquidity to meet their cash needs during these Chapter 11 Cases.

22. As a result, the Debtors are objectively likely to continue paying, and be able to continue paying, their obligations to the Utility Providers postpetition.

23. These protections ensure that all Utility Providers will have adequate assurance of payment throughout the pendency of these Chapter 11 Cases, and the Debtors believe that no other or further assurance is necessary. However, if any Utility Provider believes adequate

assurance is required beyond the protections described herein, the Debtors propose that such Utility Provider request such assurance pursuant to the procedures described below (collectively, the “**Adequate Assurance Procedures**”):

- A. As adequate assurance of future payment to the Utility Providers, the Debtors propose to deposit an initial sum equal to the Debtors’ estimated average cost for two (2) weeks of Utility Services into the Adequate Assurance Account within fourteen (14) days of the entry of an interim order, only after approval of the Debtors’ postpetition financing and use of cash collateral. The Debtors estimate the aggregate amount of all Adequate Assurance Deposits will be approximately \$63,000;
- B. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors and seeks additional assurance of payment, the Utility Provider must serve a written request (the “**Additional Assurance Request**”) upon the Debtors setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), the outstanding balance for each account, a summary of the Debtors’ payment history on each account and an explanation of why the Adequate Assurance Deposit is inadequate assurance of payment;
- C. The Additional Assurance Request must actually be filed with the Court and received by (i) the Debtors, 902 Broadway, 15th Floor, New York, NY 10010 (Attn: Edwin Eshmoili) and (ii) the Debtors’ counsel, Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, DE 19801 (Attn: Dennis A. Meloro, Esq.) and Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, NY 10166 (Attn: Sara A. Hoffman, Esq.) (collectively, the “**Notice Parties**”) within thirty (30) days of entry of an interim order;
- D. In the event that the Debtors receive any Additional Assurance Request in compliance with the procedures in the Motion, the Debtors shall have five (5) days (collectively, the “**Resolution Period**”) to negotiate with the Utility Provider to endeavor to resolve that Utility Provider’s request for additional assurance of payment; and that during this period, Utility Providers may not terminate any of the Utility Services they provide to the Debtors on account of the bankruptcy filing or any unpaid charges for prepetition services;
- E. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits,

prepayments, and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable;

- F. If the Debtors determine that an Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider, the Debtors will request a hearing before this Court, to be held at a date and time to be scheduled promptly by the Debtors upon notice to the applicable Utility Provider, to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code;
- G. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or the Debtors’ bankruptcy filing;
- H. A Utility Provider shall be deemed to have adequate assurance of payment unless and until the Utility Provider makes a timely Additional Assurance Request and (a) the Debtors, in their sole discretion, agree to an Additional Assurance Request or agree to an alternative assurance of payment with the Utility Provider during the Resolution Period or (b) this Court enters an order requiring that additional adequate assurance of payment be provided;
- I. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that fails to make an Additional Assurance Request; and
- J. At any time, the Debtors may terminate service from any of the Utility Providers, such termination being effective immediately upon the Debtors’ notice to the Utility Provider. At such time, the Debtors shall no longer be required to make any more payments to such Utility Provider for any services provided after such termination, and any excess shall be returned forthwith.

24. The Debtors also request authorization to adjust periodically the amount in the Adequate Assurance Account to reflect the following factors: (a) the termination of Utility Services by the Debtors; (b) the entry into any agreements between the Debtors and the applicable Utility Providers and (c) the removal of any amount spent on Utility Services from Utility Providers that hold postpetition deposits or other security from the Debtors for such services.

B. Subsequent Modifications of Utility Provider List

25. Although the Debtors have made an extensive and good-faith effort to identify all the Utility Providers, certain Utility Providers that currently provide Utility Services to the Debtors may not be listed on the Utility Provider List. To the extent that the Debtors subsequently identify additional Utility Providers, or determine that an entity was improperly included as a Utility Provider, the Debtors have the authority, in their sole discretion and without further order of this Court, to amend the Utility Provider List to add or delete any Utility Provider. If the Debtors add any Utility Providers to the Utility Provider List, the Debtors will serve a copy of this Motion, along with the applicable portion of the amended Utility Provider List and the interim order or final order (as applicable), on such Utility Provider within five (5) business days after the Debtors file the amended Utility Provider List (the “**Subsequent Notice**”). Such subsequently added Utility Provider will be subject to the Adequate Assurance Procedures set forth herein. For any entity that is removed from the Utility Provider List, the Debtors shall serve that entity with notice of removal and such entity shall have five (5) days from the date of service of such notice to object to that removal.

26. Nothing in an interim order or a final order will constitute a finding that any entity is or is not a Utility Provider under section 366 of the Bankruptcy Code, whether or not such entity is included in the Utility Provider List.

Basis for Relief Requested

27. Congress enacted section 366 of the Bankruptcy Code to protect debtors from utility service cutoffs upon a bankruptcy filing while, at the same time, to provide utility companies with adequate assurance that debtors will pay for postpetition services. *See* H.R. REP. No. 95-595, at 350 (1978), reprinted in 1978 U.S.C.C.A.N. 5963, 6306. Section 366(a) of the Bankruptcy Code prohibits utility companies from discontinuing, altering or refusing service

to a debtor. *See* 11 U.S.C. § 366(a). Pursuant to section 366(c)(2) of the Bankruptcy Code, however, in a chapter 11 context, a utility provider may refuse or discontinue service to a debtor after the first thirty (30) days if the debtor has not furnished the utility provider with adequate “assurance of payment” within the meaning of section 366(c)(1)(A) of the Bankruptcy Code. *See id.* §§ 366(c)(1)(A) and 366(c)(2). Upon expiration of such period, a utility provider cannot terminate its services if a debtor has furnished adequate “assurance of payment.” *See id.* § 366(c).³

28. Section 366(c), which was enacted as part of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, significantly modified the existing statutory framework. It has two primary purposes: first, it permits a utility to alter, refuse or discontinue utility service if a debtor has not provided “satisfactory” adequate assurance within thirty (30) days of its bankruptcy filing, subject to the court’s ability to modify the amount of adequate assurance. It also restricts the factors that a court can consider when determining whether an adequate assurance payment is, in fact, adequate. Specifically, courts may no longer consider (a) the absence of a security deposit before the debtor’s petition date, (b) the debtor’s history of timely

³ Section 366 of the Bankruptcy Code applies to entities that are traditionally viewed as utilities, such as those that provide electricity, telephone service or water, and to any entity that supplies services that cannot be readily obtained or replaced elsewhere, or which constitutes a monopoly with respect to the services that it provides to the debtor. *See, e.g., One Stop Realtour Place, Inc. v. Allegiance Telecom of Pennsylvania, Inc. (In re One Stop Realtour Place, Inc.)*, 268 B.R. 430, 436-37 (Bankr. E.D. Pa. 2001) (provider of telephone service is a utility regardless of whether telephone service may be available from another provider); *In re Coastal Dry Dock & Repair Corp.*, 62 B.R. 879, 883 (Bankr. E.D.N.Y. 1986) (landlord of the Brooklyn Navy Yard “occupies ‘a special position with respect to the debtor’ in its role as [the debtor’s] utility supplier”); *In re Ziff Davis Media Inc.*, Case No. 08-10768 (BRL) (Bankr. S.D.N.Y. Mar. 11, 2008) [Docket No. 48] (approving internet server providers as utilities for purposes of Bankruptcy Code section 366); *see also In re Nortel Networks Inc.*, Case No. 09-10138 (KG) (Bankr. D. Del. Jan. 15, 2009) [Docket No. 46] (approving internet-related services as utilities for purposes of Bankruptcy Code section 366). Despite the wide latitude afforded in determining those entities that constitute utilities under section 366, some of the companies listed on the Utility Provider List may also provide goods or services to the Debtors in a capacity other than that of a utility. With respect to any such goods or services, such companies are not entitled to adequate assurance under section 366. Moreover, the Debtors are not foreclosed from taking the position that any of the entities listed on the Utility Provider List are not utilities within the meaning of section 366.

payments or (c) the availability of an administrative expense priority when determining the amount of a deposit. Notwithstanding these noteworthy changes, it does not appear that Congress intended to – or did – abrogate the bankruptcy court’s right to determine the amount of adequate assurance necessary or change the fundamental requirement that assurance of payment must simply be “adequate.”

29. First, while section 366(c) does limit the factors a court can consider when determining whether a debtor has provided adequate assurance of payment, it does not limit a court’s ability to determine the amount of payment necessary, if any, to provide such adequate assurance. Instead, section 366(c) gives courts the same discretion in determining the amount of payment necessary for adequate assurance as they previously had under section 366(b). *Compare* 11 U.S.C. § 366(b) (“On request of a party in interest and after notice and a hearing, the court may order reasonable modification of the amount of the deposit or other security necessary to provide adequate assurance of payment.”) *with id.* § 366(c)(3)(A) (“On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance payment under paragraph (2).”). Section 366(b) permits a court to find that no adequate assurance payment at all is necessary to provide a utility with adequate assurance of payment under certain circumstances. *See Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) (“Even assuming that ‘other security’ should be interpreted narrowly . . . a bankruptcy court’s authority to ‘modify’ the level of the ‘deposit or other security,’ provided for under § 366(b), includes the power to require no ‘deposit or other security’ where none is necessary to provide a utility supplier with ‘adequate assurance of payment.’”). This may be particularly true in cases where the debtor has made prepetition deposits or prepayments for services that utilities will ultimately render postpetition. *See* 11 U.S.C. § 366(c)(1)(A)(v)

(recognizing a prepayment for postpetition services as adequate assurance). Accordingly, courts continue to have discretion to determine the amount of adequate assurance payments and, where appropriate, to determine that no such payment is necessary.

30. Additionally, section 366(c), like section 366(b), simply requires that a utility's assurance of payment be "adequate." Courts have long recognized that adequate assurance of performance does not constitute an absolute guarantee of a debtor's ability to pay. *See In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("[Section 366(b)] does not require an 'absolute guarantee of payment.'"); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 80 (Bankr. S.D.N.Y. 2002) ("In determining adequate assurance, a bankruptcy court is not required to give a utility company the equivalent of a guaranty of payment"); *In re Steinebach*, 303 B.R. 634, 641 (Bankr. D. Ariz. 2004) ("Adequate assurance of payment is not, however, absolute assurance."); *In re Penn Jersey Corp.*, 72 B.R. 981, 982 (Bankr. E.D. Pa. 1987) ("[Section] 366 contemplates that a utility receive only such assurance of payment as is sufficient to protect its interests given the facts of the debtor's financial circumstances"). Courts have also recognized that in determining the amount of adequate assurance, bankruptcy courts should "focus upon the need of the utility for assurance, and to require that the debtor supply *no more than that*, since the debtor almost perforce has a conflicting need to conserve scarce financial resources." *Caldor*, 117 F.3d at 650 (emphasis in original); *see also In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103-04 (3d Cir. 1972) (affirming bankruptcy court's ruling that no utility deposits were necessary where such deposits would likely "jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected"). Accordingly, demands by a Utility Provider for a guarantee of payment when they already have adequate assurance of payment in light of the Debtors' specific circumstances should be refused.

31. Based upon the foregoing, the Debtors believe that the proposed Adequate Assurance Deposits are sufficient adequate assurance of payment within the meaning of section 366 of the Bankruptcy Code. The proposed Adequate Assurance Deposits are cash deposits, a listed form of assurance of payment in section 366(c)(1)(A) of the Bankruptcy Code. The Debtors are also requesting authority to use cash collateral and to obtain postpetition financing, which will enable them to pay their operating costs, including utility costs, as they come due. The Debtors anticipate that the postpetition financing and use of cash collateral will provide more than sufficient funds to pay operating costs, including the Utility Services, during the pendency of the Chapter 11 Cases. Moreover, the Debtors have a powerful incentive to stay current on their utility obligations because of their significant reliance on the Utility Services to maintain their business operations. These factors – which the Court should consider when considering the amount of any adequate assurance payments – justify a finding that the Proposed Adequate Assurance is more than sufficient to assure the Utility Providers of future payment.

32. If the Utility Providers disagree with the Debtors' analysis, however, the procedures proposed in this Motion will enable the parties to negotiate and, if necessary, seek Court intervention without jeopardizing the Debtors' Chapter 11 Cases, while still protecting the rights of the Utility Providers under section 366 of the Bankruptcy Code.

33. The Court has authority to approve the proposed Adequate Assurance Procedures under section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code provides that the Court “may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). The purpose of section 105(a) of the Bankruptcy Code is “to assure the bankruptcy courts [sic] power to take whatever action is

appropriate or necessary in aid of the exercise of their jurisdiction.” 2 *Collier on Bankruptcy* ¶ 105.01, at 105-5 to 105-6 (16th ed. rev. 2011).

34. The proposed Adequate Assurance Procedures set forth a fair process that will enable all parties to negotiate their respective positions and, where necessary, seek Court intervention without jeopardizing the Debtors’ Chapter 11 Cases, while preserving the Utility Providers’ rights under section 366 of the Bankruptcy Code. In fact, this Court has approved similar procedures in other chapter 11 cases filed after the 2005 amendments to the Bankruptcy Code became effective. *See, e.g., In re Allied Nevada Gold Corp.*, Case No. 15-10503 (MFW) (Bankr. D. Del. Apr. 15, 2015) (escrow account); *In re Altegrity, Inc.*, Case No. 15-10226 (LSS) (Bankr. D. Del. Mar. 16, 2015) (escrow account); *In re Trump Ent’t Resorts, Inc.*, Case No. 14-12103 (KG) (Bankr. D. Del. Oct. 6, 2014) (escrow account); *In re ATLS Acquisition, LLC*, Case No. 13-10262 (PJW) (Bankr. D. Del. Mar. 14, 2013) (escrow account); *In re Indianapolis Downs, LLC*, Case No. 11-11046 (BLS) (Bankr. D. Del. Apr. 26, 2011) (escrow account). Accordingly, the Debtors believe that the proposed procedures should be approved.

Bankruptcy Rule 6003 Is Satisfied and Request for Waiver of Stay

35. 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.

36. 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.

37. 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).

38. The Debtors further seek a waiver of any stay of the effectiveness of the 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 restructuring efforts.

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

Consent to Jurisdiction

40. 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.

Notice⁴

41. 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) each of the Utility Providers set forth in **Exhibit A**, attached hereto. 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.

No Prior Request

42. The Debtors have not previously sought the relief requested herein from this or any other court.

[Signature Page Follows]

⁴ Capitalized terms used in the Notice section but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

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

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

Exhibit A**List of Utility Providers**

Provider Name	Description	Address	Proposed Adequate Assurance Amount
ADT Security Services	Security	233 Gibraltar Rd. Horsham PA 19044 PO Box 650485 Dallas, TX 75265-0485	\$603
Amazon Web Services, Inc.	Internet	1200 12th Avenue South Suite 1200 Seattle, WA 98144-2734 PO Box 84023 Seattle, WA 98124-8423	\$28,700
AT & T Mobility	Telephone and Internet	PO Box 6463 Carol Stream, IL 60197-6463 PO Box 536216 Atlanta, GA 30353-6216	\$250
AT & T	Telephone and Internet	PO BOX 6463 Carol Stream, IL 60197-6463 PO Box 5019 Carol Stream, IL 60197 PO Box 536216 Atlanta, GA 30353-6216 2700 Watt Avenue Sacramento, CA 95821	\$500
BCM One	Telephone and Internet	PO Box 63204 Newark, NJ 07188-0001	\$207
Blue Wave Communications, LLC	Technology	2898 NW 79th Ave. Doral, FL 33122	\$1,819
Century Link	Internet	PO Box 29040 Phoenix, AZ 85038	\$765
Comcast Cable	Cable and Internet	PO Box 3001 Southeastern, PA 19398-3001	\$740

Provider Name	Description	Address	Proposed Adequate Assurance Amount
ComEd	Electricity	PO Box 6111 Carol Stream, IL 60197-6111	\$325
Consolidated Edison Co.	Electricity	Jaf Station PO Box 1702 New York, NY 10116	\$6,000
Convergent Outsourcing, Inc.	Telephone	PO Box 9004 Renton, WA 98057	\$427
Direct TV	Television	PO Box 60036 Los Angeles, CA 90060-0036	\$120
Florida Power & Light Company	Electricity	700 Universe Boulevard Juno Beach, FL 33408	\$1,000
Granite Telecommunications	Telephone	PO Box 983119 Boston, MA 02298-3119	\$128
LA DWP	Water	PO Box 30808 Los Angeles, CA 90030-0808	\$115
Lighttower Fiber Networks	Telephone, Cable and Internet	PO Box 27135 New York, NY 10087-7135	\$1,200
Peoples Gas	Gas	PO Box 19100 Green Bay, WI 54307-9100	\$135
Rainbow Broadband	Telephone	14 Penn Plaza, Suite 2100 New York, NY 10122	\$700
Roll Call Business Conferencing	Telephone	ILD Corp. 5000 Sawgrass Village Cir STE 2 Ponte Vedra, FL 32082-5042	\$20
ShoreTEL Inc.	Telephone, Cable and Internet	4921 Solutions Center Chicago, IL 60677-4009	\$1,600
Simple Toll Free	Telephone	PO Box 41609 Long Beach, CA 90853	\$20
Time Warner Cable	Telephone, Cable and Internet	PO Box 223085 Pittsburgh, PA 15251 PO Box 371378 Pittsburgh, PA 15250 PO Box 11820 Newark, NJ 07101-8120 PO Box 70872 Charlotte, NC 28272-0872	\$500

Provider Name	Description	Address	Proposed Adequate Assurance Amount
T-Mobile	Telephone	PO Box 790047 St. Louis, MO 63179-0047 PO Box 742596 Cincinnati, OH 45274 T-Mobile Deutschland GmbH Postfach 300444 53184 Bonn Germany	\$5,000
Vattenfall	Electricity	Chausseestr. 23 10115 Berlin Germany	\$45
Verizon	Telephone, Cable and Internet	PO Box 15124 Albany, NY 12212	\$73
Waste Management Inc. of Florida	Trash/Recycling	PO Box 105453 Atlanta, GA 30348	\$110
Waste Management of Denver	Trash/Recycling	PO Box 78251 Phoenix, AZ 85062-8251	\$100
Zayo Group LLC	Telephone, Cable and Internet	PO Box 952136 Dallas, TX 75395-2136	\$9,558

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

In re:

SFX ENTERTAINMENT, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 16-10238 ()

(Joint Administration Requested)

Ref. Docket No. _____

**INTERIM ORDER PURSUANT TO SECTIONS 105(a) AND 366 OF THE
BANKRUPTCY CODE (A) PROHIBITING UTILITIES FROM ALTERING, REFUSING
OR DISCONTINUING SERVICE, (B) DEEMING UTILITIES ADEQUATELY
ASSURED OF FUTURE PERFORMANCE, AND (C) ESTABLISHING
PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT**

Upon the motion (the “**Motion**”)² filed by the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 366, 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 interim and final orders: (a) prohibiting their Utility Providers from altering, refusing or discontinuing service; (b) deeming Utility Providers adequately assured of future performance; (c) establishing procedures for determining adequate assurance of payment and (d) setting a final hearing on the Debtors’ proposed Adequate

¹ 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, 15th Floor, New York, NY 10010.

² Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Motion.

Assurance Procedures; 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 on an interim basis as set forth herein.
2. Until such time that a final order is entered by the Court, all Utility Providers are prohibited from discontinuing, altering or refusing service to the Debtors on account of any unpaid prepetition charges, or discriminating against the Debtors, or requiring payment of a deposit or receipt of any other security for continued service as a result of the Debtors' bankruptcy filing or any outstanding prepetition invoices other than as set forth in the Motion, provided the Debtors are in compliance with the terms of this Interim Order.
3. The following Adequate Assurance Procedures are hereby approved:
 - A. As adequate assurance of future payment to the Utility Providers, the Debtors propose to deposit an initial sum equal to the Debtors' estimated average cost for two (2) weeks of Utility Services into the Adequate Assurance Account within fourteen (14) days of the entry of an interim order, only after approval of the Debtors' postpetition financing and use of

cash collateral. The Debtors estimate the aggregate amount of all Adequate Assurance Deposits will be approximately \$63,000;

- B. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtors and seeks additional assurance of payment, the Utility Provider must serve a written request (the “**Additional Assurance Request**”) upon the Debtors setting forth the location(s) for which Utility Services are provided, the account number(s) for such location(s), the outstanding balance for each account, a summary of the Debtors’ payment history on each account and an explanation of why the Adequate Assurance Deposit is inadequate assurance of payment;
- C. The Additional Assurance Request must actually be filed with the Court and received by (i) the Debtors, 902 Broadway, 15th Floor, New York, NY 10010 (Attn: Edwin Eshmoili) and (ii) the Debtors’ counsel, Greenberg Traurig, LLP, The Nemours Building, 1007 North Orange Street, Suite 1200, Wilmington, DE 19801 (Attn: Dennis A. Meloro, Esq.) and Greenberg Traurig, LLP, MetLife Building, 200 Park Avenue, New York, NY 10166 (Attn: Sara A. Hoffman, Esq.) (collectively, the “**Notice Parties**”) within thirty (30) days of entry of an interim order;
- D. In the event that the Debtors receive any Additional Assurance Request in compliance with the procedures in the Motion, the Debtors shall have five (5) days (collectively, the “**Resolution Period**”) to negotiate with the Utility Provider to endeavor to resolve that Utility Provider’s request for additional assurance of payment; and that during this period, Utility Providers may not terminate any of the Utility Services they provide to the Debtors on account of the bankruptcy filing or any unpaid charges for prepetition services;
- E. The Debtors may, in their discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of this Court, and may, in connection with any such agreement, in their discretion, provide a Utility Provider with additional adequate assurance of future payment including, but not limited to, cash deposits, prepayments, and/or other forms of security, without further order of this Court, if the Debtors believe such additional assurance is reasonable;
- F. If the Debtors determine that an Additional Assurance Request is not reasonable and are not able to reach an alternative resolution with the Utility Provider, the Debtors will request a hearing before this Court, to be held at a date and time to be scheduled promptly by the Debtors upon notice to the applicable Utility Provider, to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code;

- G. Pending resolution of any such Determination Hearing, such particular Utility Provider shall be restrained from discontinuing, altering or refusing service to the Debtors on account of unpaid charges for prepetition services or the Debtors' bankruptcy filing;
- H. A Utility Provider shall be deemed to have adequate assurance of payment unless and until the Utility Provider makes a timely Additional Assurance Request and (a) the Debtors, in their sole discretion, agree to an Additional Assurance Request or agree to an alternative assurance of payment with the Utility Provider during the Resolution Period or (b) this Court enters an order requiring that additional adequate assurance of payment be provided;
- I. The Adequate Assurance Deposit shall be deemed adequate assurance of payment for any Utility Provider that fails to make an Additional Assurance Request; and
- J. At any time, the Debtors may terminate service from any of the Utility Providers, such termination being effective immediately upon the Debtors' notice to the Utility Provider. At such time, the Debtors shall no longer be required to make any more payments to such Utility Provider for any services provided after such termination, and any excess shall be returned forthwith.

4. The Debtors shall fund the Adequate Assurance Deposit into the Adequate Assurance Account within fourteen (14) days of the entry of this Interim Order.

5. The Motion and this Interim Order shall be served, via first-class mail, on each Utility Provider the Debtors believe could be affected by the Motion and all other parties required to receive service under the Local Rules within two (2) business days of entry of this Interim Order.

6. In the event the Debtors default postpetition in respect of any of their obligations under this Interim Order to any Utility Provider, such Utility Provider may seek additional adequate assurances in this Court upon motion and appropriate notice to the Debtors, their counsel and interested parties.

7. The deadline by which objections to the Motion and the final order must be filed is _____, 2016 at __:___ __.m. (Prevailing Eastern Time). A Final Hearing, if required, on the Motion will be held on _____, 2016 at __:___ __.m. (Prevailing Eastern Time). If no objections are filed to the Motion, the Court may enter the final order without further notice or hearing.

8. To the extent that the Debtors subsequently identify additional providers of Utility Services or determine that an entity was improperly included as a Utility Provider, the Debtors have the authority, in their sole discretion and without further order of the Court, to amend the Utility Provider List to add or delete any Utility Provider. If the Debtors add any Utility Providers to the Utility Provider List, the Debtors will serve a copy of the Motion, along with the applicable portion of the amended Utility Provider List and this Interim Order, on such Utility Provider within five (5) business days after the Debtors file the amended Utility Provider List (the “**Subsequent Notice**”). Such subsequently added Utility Provider will be subject to the Adequate Assurance Procedures set forth in the Motion. For any entity that is removed from the Utility Provider List, the Debtors shall serve that entity with notice of removal and such entity shall have five (5) days from the date of service of such notice to object to that removal.

9. Notwithstanding the relief granted herein or any actions taken pursuant thereto, nothing herein shall be deemed: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined hereunder; (e) a request or authorization to assume any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code or (f) a waiver of the Debtors’ rights under the Bankruptcy Code or any other applicable law.

10. 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.

11. 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.

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

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

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

Dated: _____, 2016

HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE