IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SFX ENTERTAINMENT, INC., et al.,[1]	Case No. 16-10238 (MFW)
Debtors.	(Jointly Administered)
	Re Docket Nos. 1078 and 1174
	Hearing Date: November 9, 2016 at 10:00 a.m. (ET) **Objection Deadline: November 2, 2016 at 4:00 p.m. (ET)**

ART & MUSIC RECORDING, S.R.L.'S (I) OBJECTION TO DEBTORS' FIFTH AMENDED JOINT PLAN OF REORGANIZATION; AND (II) OBJECTION TO PROPOSED CURE AMOUNT OF EXECUTORY CONTRACT, AND REQUEST FOR CONTINUANCE OF HEARING THEREON

Art & Music Recording, S.r.l. ("AMR"), by and through its attorneys, McElroy, Deutsch, Mulvaney & Carpenter, LLP, hereby objects (the "Objection") to (I) the Fifth Amended Joint Plan of Reorganization of SFX Entertainment, Inc. et al. Under Chapter 11 of the Bankruptcy Code (the "Plan") [Docket No. 1078]; and (II) the proposed cure amount contained in Debtors' Notice of Assumption of Executory Contracts and Unexpired Leases Pursuant to Sections 7.01 to 7.03 of the Plan (the "Notice of Assumption") [Docket No. 1174-9], and requests a continuance of the hearing on the Notice of Assumption, and in support of its Objection, hereby states as follows:

[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); SFXPerryscope 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.

FACTUAL BACKGROUND

1. On February 1, 2016 (the "Petition Date"), the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") commenced these cases by filing forty-four separate voluntary petitions for relief under chapter 11 of the title 11 of the United States Code (the "Bankruptcy Code").

A. Contractual Relationship Between AMR and Beatport

2. AMR is a party-in-interest in this case, as it is a client of Beatport, LLC ("Beatport"), one of the Debtors.

3. Beatport is the owner of a premier global platform and marketplace for downloading electronic dance music and the sale of electronic dance music by and to third parties worldwide.

4. On or about October 29, 2010, Plaintiff AMR and Beatport entered into a "Label Content Contract" (the "AMR/Beatport Contract").

5. Beatport's website states that Beatport's music store "remains the world's leading on-line provider of music, tools and resources customized for the unique needs and demands of DJs, producers and other music creators, with a catalog of high definition dance tracks from the world's top and emerging artists." The website further states that many of Beatport's tracks ". . . are exclusive only to Beatport." Beatport's sale charts track "what DJs choose to buy from week to week, as well as serving as the barometer for what fans are hearing at clubs and events worldwide."

6. Beatport's website states that Beatport "is the world-wide home of electronic music for DJs, producers and their fans," and "provide[s] unique music discovery tools created for and by DJs."

7. As one of the worldwide hubs for electronic dance music sales and culture, access to Beatport and Beatport's charts are financially important to DJs and those Labels with whom Beatport contracts. Favorable placement on Beatport's website and charts creates high visibility for the DJs and their Labels, which in turn creates demand for the DJs, thereby generating significant income to the DJs and their Labels.

B. Beatport's "Juicing" Allegations

8. Beginning in 2015, Beatport notified AMR that it had "evidence" that certain tracks owned by AMR and licensed to Beatport had been artificially "juiced."

9. By "juiced," Beatport has alleged that the performance of certain tracks licensed to Beatport by AMR have been artificially enhanced by non-legitimate means. While not stated in the AMR/Beatport Contract, Beatport advised AMR that it has a policy that restricts a Licensor – such as AMR – from buying its own music for the sake of increasing chart sales and performance, and has unilaterally removed tracks from its charts if it suspects such activity has occurred.

10. Upon written notice to AMR, Beatport removed, at various times, certain tracks licensed to Beatport by AMR because Beatport claims it had and has "evidence" that those tracks were artificially "juiced." Those tracks include and the notice date as follows:

a. Dr. Shiver – Candi Staton ft Doc – M.C. "You Got the Love" (official remix), August, 29, 2014, November 3, 2015, December 8, 2015;

b. Dr. Shiver, Christina Skar, Marc Typ "Love for Life" (extended remix), May 23, 2016;

c. Marc Typ "Sahara", May 24, 2016;

d. David Allen "Quantum Time;" (original mix), May 24, 2016;

e. Tripod, July 13, 2016; and

f. SMF, August 29, 2014.

11. Beatport removed the tracks identified in paragraph 10 because it claimed to have "conclusive" and "persuasive and unequivacol" [*sic*.] evidence that those tracks were artificially "juiced." In fact, Beatport indicated that its Business Intelligence and Fraud Prevention teams had evidence that nearly 90% of sales were a result of "juicing" and that it was "apparent from other networks" that fans, followers, and plays for the aforementioned tracks were being "bought."

12. AMR has requested that Beatport identify the facts supporting its allegations that the tracks were "juiced." However, to date, Beatport has refused to supply AMR with its proof of the so-called "juicing" of the above-referenced tracks, instead indicating that it will not release any information or evidence of the alleged "juicing" unless legal proceedings are initiated.

13. Accordingly, AMR has commenced an action in the District Court in and for the City and County of Denver, Colorado, against as yet unidentified John Does 1 through 5 on August 25, 2016 (the "Colorado Action"). The amended complaint in the Colorado Action seeks damages due to the loss of visibility of AMR's tracks and the resulting loss of income, as well as the damage to AMR's reputation, due to the sudden unexplained disappearance of the tracks from Beartport's charts, which has caused AMR to lose artists and have artists refuse to sign or re-sign with AMR.

14. AMR and its artists have not and do not engage in the artificial "juicing" of its tracks and do not purchase or download its own tracks in order to artificially inflate those tracks performance on the Beatport charts. AMR does not contract with any third parties who artificially "juice" AMR's tracks licensed to Beatport.

15. Accordingly, to the extent that such "juicing" has, in fact, occurred, it must have been done by a third party seeking the removal of AMR's tracks from the Beatport Charts, such as a competitor of AMR, or Beatport itself. Alternatively, the "juicing" allegations may have been entirely fabricated by Beatport.

16. Additionally, AMR has recently come across information to support a suspicion that Beatport has engaged in the improper removal of AMR's tracks from its charts without any evidence of "juicing" and/or other possible misconduct. Specifically, both AMR and a competing label have each recently released different tracks by the same artist, in the same genre. Upon information and belief, in October 2016, despite the different tracks from the same artist receiving nearly identical downloads during the same time period and on the same days of the month, the track produced by the competing label has risen to number 16 on the relevant Beatport chart, while the track produced by AMR has not even been listed in the top 100 tracks.[2] These actions by Beatport, together with its unsubstantiated "juicing" allegations, raise suspicion with respect to its conduct.

17. To the extent that Beatport has, in fact, engaged in any improper conduct with respect to its "juicing" allegations against AMR and/or its disparate treatment of AMR, such conduct would amount to a default under the AMR/Beatport Contract, and would give rise to substantial pre- and post-petition claims by AMR against Beatport.[3]

C. AMR's Efforts to Obtain Discovery

18. In order to identify those responsible for the "juicing" of the aforementioned tracks or the fabrication of "juicing" allegations, AMR requires the readily accessible information that Beatport admittedly has, but has refused to provide to date regarding the "juicing" of AMR's tracks.

19. On August 26, 2016, AMR's counsel issued a letter to Beatport's counsel, pursuant to Local Bankruptcy Rule 2004-1(a), requesting certain documents as outlined in a schedule

[2] Moreover, on at least one (1) occasion during this time period, AMR's record label page, along with the pages of AMR's artists, disappeared entirely from Beatport's platform for several hours.

[3] As explained in AMR's Reply in further support of the R2004 Motion [Docket No. 1127] and the Affidavit of Bruno Oggioni filed therewith [Docket No. 1127-1], Beatport's "juicing" allegations have resulted in substantial damages for AMR, and AMR has also

attached to the letter and further requesting that Beatport agree to produce such documents within twenty (20) days. On August 29, 2016 a corrected letter was sent out.

20. In response to the August 26 and 29 letters, counsel for Beatport advised AMR that it would not voluntarily produce the requested documents.

21. Accordingly, on September 12, 2016, AMR filed a *Motion for an Order Pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure Directing the Production of Documents* [Docket No. 1003] (the "R2004 Motion").

22. On September 19, 2016, the Debtors filed an objection to the R2004 Motion.

23. On October 19, 2016, the Court conducted a hearing, during which it denied the R2004 Motion and indicated that the denial should not prevent AMR from seeking the requested discovery in the Colorado Action.

24. On October 31, 2016, the Court entered an Order denying the R2004 Motion (the "R2004 Order") [Docket No. 1185], which provides that "[n]either the automatic stay provided by section 362 of the Bankruptcy Code nor any discharge or injunction provided by sections 524 and/or 1141 of the Bankruptcy Code shall preclude AMR from seeking third-party discovery in the Colorado Action from the Debtors."

25. Based upon the entry of the R2004 Order, AMR now intends to begin the process of issuing third-party discovery in the Colorado Action.[4] However, to date, AMR has not obtained the documents requested from Beatport nor an agreement from Beatport to produce them.

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suffered damages to the extent that any of its tracks were improperly excluded or removed from the Beatport Charts, or were not listed in the top 100 of the appropriate Beatport Chart when they should have been.

[4] Nevertheless, the Debtors' filing of the Notice of Assumption and AMR's filing of this Objection creates a contested matter, and AMR reserves the right to conduct discovery in connection therewith.

D. Debtors' Plan and Notice of Assumption

26. On September 30, 2016, the Debtors filed their Plan. Section 12.02(c) of the Plan provides the following third-party release language:

> As of the Effective Date, (i) every Holder of a Claim against the Debtors, and (ii) every Holder of an Interest in the Debtors, and with respect to each of the foregoing Entities in clauses (i) and (ii), such Entity's predecessors, successors and assigns, affiliates, Subsidiaries, funds, portfolio companies, management companies, and each of their respective current and former shareholders, directors, officers, members, employees, partners, managers, independent contractors, agents, representatives, principals, consultants, financial advisors, attorneys, accountants, investment bankers, and other professional advisors (with respect to each of the foregoing entities in clauses (i) and (ii), each solely in their capacity as such) (collectively, the "Releasing Parties") shall be deemed to forever release, waive, and discharge each of the Creditor Released Parties from any and all claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever (the "Consensual Release"); provided, however, that the Releasing Parties shall not include Holders of Claims or Interests that are deemed to reject the Plan or that are entitled to vote on the Plan but (x) do not return a Ballot by the Voting Deadline or (y) affirmatively opt-out of the Consensual Release by returning a properly completed Ballot by the Voting Deadline and indicating on the Ballot that the Person or Entity opts out of the Consensual Release; provided, further, that the Consensual Release shall not release (A) the Indemnification Obligations as set forth and treated under Section 5.06 of the Plan, and (B) a Claim against the Estates solely for purposes of Distribution and treatment under the Plan.

27. Section 1.40 of the Plan defines "Creditor Released Parties" as "(i) the Debtor Released Parties, (ii) each Debtor and Reorganizaed Debtor, and (iii) the other SFX Entities." The term "Debtor Released Parties," in turn, is defined in Section 12.02(a) of the Plan as:

> (i) the DIP Agent; (ii) the DIP Lenders; (iii) the Foreign Loan Agent; (iv) each Foreign Loan Lender; (v) the Prepetition Second Priority Trustee; (vi) each of the holders of the Prepetition Second Priority Notes; (vii) the Notice and Claims Agent; (viii) each of the Specified Parties, but only on account of any action (or inaction) taken by any of the Specified Parties after December 1, 2015; (ix) each of the Designated Officers and Directors; (x) Greenberg Traurig LLP; (xi) FTI; (xii) Kaye Scholer LLP, and (xiii) with

> respect to each of (i) through (xii), all of their respective affiliates, related funds, partners, current and former directors, current and former members, current and former officers, current and former managers, agents, employees, representatives, advisors, counsel, accountants, financial advisors, successors and assigns, solely in their capacities as such and not in any other role; provided, that the term Debtor Released Parties shall not include any person who "opts out" of the Consensual Release and/or is otherwise entitled to vote to accept or reject the Plan, but does not vote to accept the Plan. For the avoidance of doubt, the term Debtor Released Parties shall not include: (A) Sillerman acting in any capacity, (B) Tytel acting in any capacity, and (C) Slater acting in any capacity.

28. Because the Debtors have not identified AMR as having any claim in this case, AMR was not provided with a ballot or otherwise afforded the opportunity to opt-out of the "Consensual Release."

29. Also under the Plan, the Debtors seek, *inter alia*, authority from the Bankruptcy Court to assume certain executory contracts and unexpired leases (collectively, the "Assumed Contracts").

30. On October 26, 2016, the Debtors filed a Notice of Plan Supplement [Docket No. 1174], which includes, among other things, the Notice of Assumption, and provides that "[t]he documents contained in this Plan Supplement are integral to and part of the Plan and, if the Plan is approved, shall be approved in the Confirmation Order.

31. Annexed as Exhibit 1 to the Notice of Assumption is a Schedule of Executory Contracts and Unexpired Leases to be Assumed, with Respective Cure Amounts, which contains a list entitled "Beatport Label Agreements to be Assumed."

32. The AMR/Beatport Contract is not specifically referenced on this list. However, the final line item of the list provides for "[a]ll other Beatport Label Agreements with $0 owed." Accordingly, pursuant to the Notice of Assumption, the Debtors intend to assume the AMR/Beatport Contract, with a cure amount of $0.

OBJECTION

A. The Plan Impermissibly Provides for Third-Party Releases of Non-Debtors

33. As set forth above, the Debtors' Plan contains very broad third-party release language, and fails to provide a mechanism by which AMR may opt-out of such a release.

34. "[N]on-consensual releases by a non-debtor of other non-debtor third parties are to be granted only in 'extraordinary cases.'" *In re Exide Technologies*, 303 B.R. 48, 72 (Bankr. D. Del. 2003) (*quoting In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 608 (Bankr. D. Del. 2001)). Where forced third party releases of non-debtors have been considered, it has only been where it is determined that the injunction is "both necessary to the reorganization and fair" under Section 105(a) of the Bankruptcy Code. *See In re W.R. Grace & Co.*, 475 B.R. 34, 107-08 (D. Del. 2012) (*quoting In re Global Indus. Techs., Inc.*, 645 F.3d 201, 206 (3d Cir. 2011); *see also In re Cont'l Airlines, Inc.*, 203 F.3d 203, 214 (3d Cir. 2000) ("The hallmarks of permissible non-consensual releases [are] fairness, necessity to the reorganization, and specific factual findings[.]"). The Debtors have not yet demonstrated that the third-party releases provided in the Plan meet these requirements.

35. The Debtors may argue that the Plan's "opt-out" provisions make the third-party releases consensual. However, this is certainly not the case with respect to AMR. While limited discovery may reveal that AMR has a substantial claim against Beatport, the Debtors' determination that AMR does not possess such a claim leaves it without the ability to opt-out of the third-party release provisions.

36. As this Court has previously held, "[f]ailing to return a ballot is not a sufficient manifestation of consent to a third party release." *In re Washington Mutual*, 442 B.R. 314, 355 (Bankr. D. Del. 2011). In the instant matter, AMR has not even received a ballot, but will be forced to accept the broad third party releases set forth in the Plan, if confirmed.

37. To the extent that Beatport is determined to have acted improperly with respect to the "juicing" allegations against AMR or the removal of AMR's tracks from the Beatport Charts, AMR may potentially have claims against any officer, director, employee or agent of Beatport who participated in this improper conduct. Accordingly, AMR must be afforded the opportunity to opt-out of such third-party releases or, in the alternative, must be determined not to be bound by such a compelled release.

B. The Cure Amount Fails to Recognize AMR's Potential Claims

38. Section 365 of the Bankruptcy Code provides, in pertinent part:

> (b)(1) if there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee –
>
> > (A) cures, or provides adequate assurance that the trustee will promptly cure, such default…;
> >
> > (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
> >
> > (C) provides adequate assurance of future performance under such contract or lease.

39. Section 365(b)(1) makes it clear that defaults must be cured as of the time of assumption. Such defaults include both prepetition and postpetition defaults. *See In re Stoltz*, 315 F.3d 80 (2d Cir. 2002); *In re Liljeberg Enters., Inc.*, 304 F.3d 410 (5th Cir. 2002); *In re Overland Park Fin. Corp.*, 236 F.3d 1246 (10th Cir. 2001); *In re Building Block Childcare Ctrs., Inc.*, 234 B.R. 762 (9th Cir. B.A.P. 1999).

40. AMR objects to the cure amount set forth in the Notice of Assumption. As noted herein, to the extent that Beatport has engaged in any improper conduct in connection with the AMR/Beatport Contract, including, but not limited to, the intentional "juicing" of AMR's

tracks, the fabrication of "juicing" allegations against AMR, and/or the improper removal of AMR's tracks from the Beatport Charts, such conduct would result in a substantial claim by AMR against Beatport, which amount would need to be cured in order for Beatport to assume the AMR/Beatport Contract.[5]

41. Moreover, the definition of "Cure" in the Plan does not appear to be limited to pre-petition amounts. At any given time, Beatport may owe AMR funds under the terms of the AMR/Beatport Contract for the use of its content. Accordingly, this amount must also be paid at the time of assumption, if not before in the ordinary course.

WHEREFORE, AMR hereby respectfully requests that this Court deny confirmation of the Plan absent an appropriate modification of the third-party release provision, continue the hearing on the Notice of Assumption pending a determination as to the amount necessary for Beatport to cure any default under the AMR/Beatport Contract, and establish a cure amount to be determined at a later hearing.

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Dated: November 2, 2016

/s/ *Gary D. Bressler*

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-and-

[5] In order to confirm that such a claim exists, and to determine the amount of such claim, AMR will require the discovery that has been sought previously from Beatport. Thus, AMR respectfully requests that the hearing on the Notice of Assumption be carried to permit such discovery to proceed.

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
SFX ENTERTAINMENT, INC., et al.,[1]	Case No. 16-10238 (MFW)
Debtors.	(Jointly Administered)

CERTIFICATE OF SERVICE

I, Gary D. Bressler, Esquire certify that on November 2, 2016, I caused to be served, true and correct copies of *ART & MUSIC RECORDING, S.R.L.'S (I) OBJECTION TO DEBTORS' FIFTH AMENDED JOINT PLAN OF REORGANIZATION; AND (II) OBJECTION TO PROPOSED CURE AMOUNT OF EXECUTORY CONTRACT, AND REQUEST FOR CONTINUANCE OF HEARING THEREON* upon the parties listed via Hand Delivery or First Class Mail:

McELROY, DEUTSCH, MULVANEY & CARPENTER, LLP

Dated: November 2, 2016

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Service List

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