

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
SFX ENTERTAINMENT, INC., et. al. <sup>1</sup>	)	Case No. 16-10238 (MFW)
Debtors.	)	(Jointly Administered)
	)	<b>Hrg. Date: November 9, 2016 @ 10:00am (ET)</b>
	)	<b>Obj. Deadline: November 2, 2016 @ 4:00pm (ET)</b>

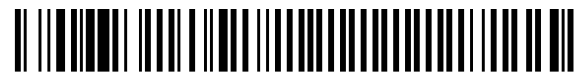
**LIMITED OBJECTION TO CURE AMOUNT AND RESERVATION OF RIGHTS OF SALESFORCE RELATED TO THE PROPOSED ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO §§7.01 TO § 7.03 OF THE PENDING JOINT PLAN OF REORGANIZATION OF SFX ENTERTAINMENT, ET. AL., AS AMENDED**

Salesforce.com, Inc. ("SFDC") and ExactTarget, Inc. ("ET" and, together with SFDC, "Salesforce"), by and through the undersigned counsel, hereby file their limited objection and reservation of rights (the "Limited Objection") to the assumption and assignment of the Salesforce Contract<sup>2</sup> by the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") pursuant to the *Fifth Amended Joint Plan of Reorganization of SFX Entertainment, Inc., et. al.*, (the "Plan") and their *Cure Notice*<sup>3</sup> unless the Court conditions

<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, 15th Floor, New York, NY 10010.

<sup>2</sup> See §§3 - 8 of this Limited Objection.

<sup>3</sup> See *Notice Of Filing Plan Supplement*, including *Exhibit I - Schedule of Assumption of Executory Contracts And Unexpired Leases To Be Assumed With Respective Cure Amounts And Form Notice* [ECF 1174].



such assumption and assignment of the Salesforce Contract by entry of an order protecting the rights and interests of Salesforce.<sup>4</sup>

**RELIEF REQUESTED**

Salesforce does not object to confirmation of the Plan *per se* provided the Court protects its interests by entering an order that: (1) includes a finding of fact that the executory contracts identified in the *Cure Notice* and the Salesforce Contract (as identified in this Limited Objection) constitute the same executory contract that the Debtors propose to assume and assign as an “Assumed Contract” pursuant to the Plan and the *Cure Notice*; (2) requires (as a condition of assumption of the Salesforce Contract) the Debtors to pay to Salesforce the sum of not less than US\$ 382,183.48 (the “**Salesforce Cure Amount**”) to cure the monetary default that has accrued to date and remains due and owing, but unpaid, as of November 1, 2016, plus such further amounts as may accrue and are due and owing as of the effective date of the assumption of the Salesforce Contract; (3) includes a finding of fact that, prior to the effectiveness of any assignment of the Salesforce Contract by the Debtors to any entity (including, without limitation, any of the Debtors) (the “**Salesforce Contract Assignee**”) pursuant to the Plan or any other order of the Court, the Debtors have submitted competent evidence (a) providing adequate assurance of the Debtors’ ability to perform all terms and conditions of the Salesforce Contracts, (b) identifying the Salesforce Contract Assignee and (c) providing adequate assurance of future performance by the Assignee of all terms and conditions of the Salesforce Contract including, without limitation, the ability to pay all monies incurred after the assignment of such contract; (4) approves the Reservation of Rights pertaining to the Excluded Contracts;<sup>5</sup> and (5) grants such other relief as may be requested hereinafter.

The Limited Objection is based on the matters set forth herein, the *Declaration Of Jack Rolovich In Support Of The Cure Objection And Reservation Of Rights Of Salesforce Related*

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<sup>4</sup> Capitalized terms used in this Limited Objection, but which are not defined herein, shall have the meanings ascribed to them in the Rolovich Declaration filed concurrently herewith unless otherwise specifically stated herein.

<sup>5</sup> For a description of the Reservation Of Rights, see ¶19 of this Limited Objection.

*To The Proposed Assumption Of Certain Executory Contracts Pursuant To §7.01 To 7.03 Of The Pending Joint Plan Of Reorganization Of SFX Entertainment, Et. Al., As Amended* (the “**Rolovich Declaration**”) filed in support hereof, the files and the records in this case, and such other and further evidence as may be submitted at or before the trial on this matter.

Salesforce requests that the Court take judicial notice of the pleadings filed in this case and the facts set forth in the Court’s orders, findings of fact and conclusions of law pursuant to Rule 201 of the Federal Rules of Evidence (as incorporated by Rule 9017 of the Federal Rules of Bankruptcy Procedure).

### **BACKGROUND**

1. SFDC is a Delaware corporation and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the “**SFDC Services**”) to SFDC’s business customers. (individually, a “**SFDC Customer**” and, collectively, “**SFDC Customers**”).<sup>6</sup> See Rolovich Declaration at §2.

2. ET is a Delaware corporation and, among other activities, it provides application and professional services in support of its web-based email marketing services (the “**ET Services**”) to its business customers (individually, an “**ET Customer**” and, collectively, “**ET Customers**”). See Rolovich Declaration at §3.

### **IDENTIFICATION OF SALESFORCE CONTRACT**

3. On February 28, 2014, SFDC and the SFX Entertainment, Inc. entered into that certain *Order Form, Quote Number: Q-1728892* (the “**Order Q-1728892**”) whereby (a) SFX Entertainment, Inc. ordered three (3) years of Services from SFDC and became obligated to pay the aggregate full contract amount for the Services, and (b) SFDC became obligated to provide the Services. See Rolovich Declaration at §8.

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<sup>6</sup> Capitalized terms used in this Limited Objection, but which are not defined herein, shall have the meanings ascribed to them in the Rolovich Declaration filed concurrently herewith.

4. On March 31, 2015, SFDC and SFX Marketing LLC entered into that certain *Order Form, Quote Number: Q-00026645* (the “**Order Q-00026645**”) whereby (a) SFX Marketing LLC ordered one (1) year of Services from SFDC and became obligated to pay the aggregate full contract amount for the Services, and (b) SFDC became obligated to provide the Services. *See* Rolovich Declaration at §9.

5. The terms and conditions applicable to the Services that are subject to Order Q-00026645 and Order Q-00026645 (collectively, the “**SFDC Orders**”) are set forth in the *Master Subscription Agreement*, dated September 3, 2014 (the “**SFDC MSA**”, and together with the SFDC Orders, constitute the “**SFDC Contract**”). *See* Rolovich Declaration at §10.

6. On January 21, 2015, ET and SFX Entertainment, Inc. entered into that certain *Order Form, Quote Number: Q-0211940* (the “**Order Q-0122940**”) whereby (a) SFX Entertainment, Inc. ordered less than one (1) year of Services from ET and became obligated to pay the aggregate full contract amount for the Services, and (b) ET became obligated to provide the Services. *See* Rolovich Declaration at §11.

7. On January 1, 2016, ET and SFX Marketing LLC entered into that certain *Order Form, Quote Number: Q-0263316* (the “**Order Q-0263316**,” and together with Order Q-0122940, the “**ET Orders**”) whereby (a) SFX Marketing ordered one (1) year of Services from ET and became obligated to pay the aggregate full contract amount for the Services, and (b) ET became obligated to provide the Services. *See* Rolovich Declaration at §12.

8. The terms and conditions applicable to the Services that are subject to the ET Orders are set forth in the *Master Subscription Agreement*<sup>7</sup> by and between Debtor and ET (the “**ET MSA**”, and together with the ET Orders, constitutes the “**ET Contract**”). (The ET Contract and the SFDC Contract, collectively, are referred to as the “**Salesforce Contract**”). *See* the Rolovich Declaration at §§13 - 14.

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<sup>7</sup> The Master Subscription Agreement is located at <http://www.salesforce.com/company/msa.jsp>.

### **BANKRUPTCY CASE**

9. On February 1, 2016 (the "**Petition Date**"), the Debtors filed their voluntary petitions in the above-captioned Court seeking relief under Chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**").

10. On October 23, 2016, the Debtors filed the *Fifth Amended Joint Plan Of Reorganization Of SFX Entertainment, Inc. et. al. Under Chapter 11 of the Bankruptcy Code* [ECF 1073] (the "**5<sup>th</sup> Amended Joint Plan**").

11. On October 26, 2016, pursuant to the 5<sup>th</sup> Amended Joint Plan, the Debtors filed their *Notice Of Filing Plan Supplement*, including *Exhibit I - Schedule of Assumption of Executory Contracts And Unexpired Leases To Be Assumed With Respective Cure Amounts And Form Notice* (the "**Cure Notice**") that identifies the executory contracts they may assume and assign pursuant to the pending Plan and the related cure amounts they contend must be cured as a condition of such assumptions.

12. The Cure Notice identifies the following executory contracts (the "**Cure Notice Contracts**") that the Debtors assert Salesforce is the counterparty, and which it submits may be assumed and assigned pursuant to the Plan:

- a. Beatport, LLC contract with Exact Target Inc. described as "Exact Target Email Services Agreement" with \$0.00 cure amount listed; and
- b. SFX Marketing LLC contract with ExactTarget, Inc. described as "Purchase Order" with \$23,253.61 as the cure amount listed.

Accordingly, the Debtors submit that the aggregate monetary default that must be cured as a pre-condition to assumption of the above-described contracts is \$23,253.61.

### **CURE AMOUNT**

13. Based upon review of its books and records pertinent to the Debtors' account, Salesforce submits that (a) the Debtors have failed to pay all amounts due and owing pursuant to the Salesforce Contract, and (b) more specifically, as of November 1, 2016, the Debtors owes Salesforce the sum of **\$382,183.48** (the "**Salesforce Cure Amount**") pursuant to the

Salesforce Contract. A summary of the Salesforce Cure Amount is set forth below. Copies of the Invoices are not attached hereto due to the confidentiality provisions contained within the SFDC Contract and ET Contract. However, a copy may be made available to the Debtors and the Committee in the event any response is filed to this Cure Objection.

Invoice No.	Invoice Date	Service Period	Invoice Balance	Pre-petition	Post-petition
<b>Contract No. 0831041 with SFX Entertainment, Inc.</b>					
8016024	2-Feb-16	3/3/16 to 3/2/17	\$ 42,800.94	\$ -	\$ 42,800.94
Total for SFDC/SFX Entertainment			\$ 42,800.94	\$ -	\$ 42,800.94
<b>Contract No. 0831041 with SFX Marketing LLC</b>					
7434029	4-Sep-15	6/23/15 to 12/22/15	\$ 3,024.00	\$ 3,024.00	
7711950	23-Nov-15	12/23/15 to 3/22/16	\$ 20,412.00	\$ 9,072.00	\$ 11,340.00
Total for SFDC/SFX Marketing			\$ 23,436.00	\$ 12,096.00	\$ 11,340.00
<b><u>SALESFORCE</u></b>			<b><u>\$</u></b>	<b><u>\$</u></b>	<b><u>\$</u></b>
<b><u>TOTALS</u></b>			<b><u>66,236.94</u></b>	<b><u>12,096.00</u></b>	<b><u>54,140.94</u></b>

<b>ExactTarget, Inc.</b>					
Invoice No.	Invoice Date	Service Period	Invoice Balance	Pre-petition	Post-petition
<b>with SFX Entertainment, Inc.</b>					
3255446	20-Jul-15	7/20/15 to 10/19/15	\$ 116.43	\$ 116.43	
326629	20-Oct-15	10/20/15 to 12/31/15	\$ 1,136.48	\$ 1,136.48	
Total for ET/SFX Entertainment			\$ 1,252.91	\$ 1,252.91	\$ -
<b>With SFX Marketing LLC</b>					
3268211	1-Jan-16	1/1/16 to 3/31/16	\$ 67,510.47	\$ 23,253.61	\$ 44,256.86
8245471	31-Mar-16	4/1/16 to 6/30/16	\$ 67,510.45		\$ 67,510.45
8617282	30-Jun-16	7/1/16 to 9/30/16	\$ 67,510.45		\$ 67,510.45
9002412	30-Sep-16	10/1/16 to 12/31/16	\$ 64,791.26		\$ 64,791.26
8885707	1-Sep-16	9/1/16 to 9/30/16	\$ 2,798.55		\$ 2,798.55
8913051	9-Sep-16	9/9/16 to 9/30/16	\$ 6,937.61		\$ 6,937.61
8930901	14-Sep-16	9/16/16 to 9/30/16	\$ 116.32		\$ 116.32
9002412	30-Sep-16	10/1/16 to 12/31/16	\$ 37,518.52		\$ 37,518.52
Total for ET/SFX Marketing			\$ 314,693.63	\$ 23,253.61	\$ 291,440.02
<b><u>EXACTTARGET</u></b>			<b><u>\$</u></b>	<b><u>\$</u></b>	<b><u>\$</u></b>
<b><u>TOTALS</u></b>			<b><u>315,946.54</u></b>	<b><u>24,506.52</u></b>	<b><u>291,440.02</u></b>
<b><u>SFDC AND ET</u></b>			<b><u>\$</u></b>	<b><u>\$</u></b>	<b><u>\$</u></b>
<b><u>GRAND TOTAL</u></b>			<b><u>382,183.48</u></b>	<b><u>36,602.52</u></b>	<b><u>345,580.96</u></b>

**GROUND FOR THE RELIEF REQUESTED**

14. The Plan provides, in pertinent part, that “[o]n the Effective Date, . . . each of the Debtors’ Executory Contracts not previously assumed or rejected per an order of the Bankruptcy Court shall be deemed rejected . . . *except for an Executory Contract . . . that: (i) is listed, either specifically or by category, on the schedule of assumed Executory Contracts . . . in the Plan Supplement . . .*” as an executory contract to be assumed. See 5<sup>th</sup> Amended Joint Plan at §7.01(a) (Emphasis added).

15. The Plan further provides that “[e]ntry of the Confirmation Order by the Bankruptcy Court shall constitute an order approving the assumptions . . . of such Executory Contracts . . . as set forth in the Plan, *all pursuant to sections 365(a) and 1123 of the Bankruptcy Code . . .*” See 5<sup>th</sup> Amended Joint Plan at §7.01(a) (emphasis added).

16. Pursuant to 11 U.S.C. §365(b)(1)(A), a debtor in possession (or trustee) is prohibited from assuming an executory contract or unexpired leases *unless it cures all monetary defaults in full – including all monetary defaults that arise both pre-petition and post-petition. Stoltz v. Brattleboro Housing Authority, 315 F.3d 80, 94 (2nd Cir. 2002)* (Emphasis added). “The other party to the contract or lease that the [debtor in possession or] trustee proposes to assume is entitled to insist that any defaults, whenever they may have occurred, be cured, that appropriate compensation be provided, and that, a past default having occurred, adequate assurance of future performance is available.” 3 COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008). These conditions “protect[t] the creditor’s pecuniary interests before requiring a creditor to continue a contractual relationship with a debtor.” *Stoltz, supra*.

17. The Bankruptcy Code requires any debtor-in-possession to provide adequate assurance of future performance of any executory contract as a pre-condition to its assumption by the debtor-in-possession or its assignment of such contract to a third party. 11 U.S.C. §365(b)(1)(C); *In re Metromedia Fiber Network, Inc.*, 335 B.R. 41, 65-66 (Bankr. S.D.N.Y.



2005) (assumption denied where debtor failed to provide adequate assurance of future performance); 3 COLLIER ON BANKRUPTCY § 365.05[2] (Alan N. Resnick & Henry J. Sommer eds., 15th ed. rev. 2008).

18. Salesforce submits that, based on the evidence adduced, Salesforce has established that the monetary default that must be cured as a condition of assuming the Salesforce Contract is not less than \$382,183.48. *See* Rolovich Declaration at ¶18. In contrast, the Debtors' unsupported contention is that the proposed Cure Amount is \$23,253.61. Further, in light of the Debtors' prior monetary default in this matter, as well as the fact that the prospective assignee of the Salesforce Contract is unknown, Salesforce submits that the Court should condition any assumption and/or assignment of the Salesforce Contract upon the Debtors' submitting admissible and competent evidence (1) providing adequate assurance of their ability to perform the Salesforce Contract in the future and, with respect to any prospective assignment, (2) identifying any prospective assignee of the Salesforce Contract and (3) providing adequate assurance of the ability of to perform the Salesforce Contracts.

### **RESERVATION OF RIGHTS**

19. With respect to any and all executory contracts and/or unexpired leases other than the Salesforce Contract (as identified herein) to which it is a counterparty (individually, an "**Excluded Contract**" and, collectively, the "**Excluded Contracts**"), Salesforce hereby expressly reserves (the "**Reservation of Rights**") all rights, interests, claims, counterclaims, rights of setoff and recoupment and/or defenses pertaining to any or all Excluded Contracts including, without limitation, (a) the right to object to the assumption and/or assignment of any Excluded Contract, (b) the right to the cure of all monetary and non-monetary defaults that exist with respect to each Excluded Contract, and/or (c) the right to have the assignment of any Excluded Contract specifically conditioned on the Court finding, based on competent evidence, that the actual assignee of such contract is capable of performing all terms and conditions of such Excluded Contract including, without limitation, payment of all amounts that will come due and owing subsequent to any such assignment.

WHEREFORE, Salesforce submits that the Court should enter a Confirmation Order that protects Salesforce's interests by including:

(1) a finding of fact that the executory contracts identified in the *Cure Notice* and the Salesforce Contract constitute the same executory contract that may be assumed and assigned pursuant to the Plan and the *Cure Notice*;

(2) requiring (as a condition of assumption of the Salesforce Contract) the Debtors to pay to Salesforce the sum of not less than US\$ 382,183.48 (the "**Salesforce Cure Amount**") to cure the monetary default that has accrued to date and remains due and owing, but unpaid, as of November 1, 2016, plus such further amounts as may accrue and are due and owing as of the effective date of the assumption of the Salesforce Contract;

(3) a finding of fact that, prior to the effectiveness of any assignment of the Salesforce Contract by the Debtors to any entity (including, without limitation, any of the Debtors) pursuant to the Plan or any other order of the Court, the Debtors have submitted competent evidence (a) providing adequate assurance of the Debtors' ability to perform all terms and conditions of the Salesforce Contract, (b) identifying the Salesforce Contract Assignee and (c) providing adequate assurance of future performance by such assignee of all terms and conditions of the Salesforce Contract including, without limitation, the ability to pay all monies incurred after the assignment of such contract;

(4) approving the Reservation of Rights pertaining to the Excluded Contracts; and

(5) granting such other relief as may be requested hereinafter.

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Dated: November 2, 2016

**ASHBY & GEDDES, P.A.**

*/s/ Ricardo Palacio*

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**CERTIFICATE OF SERVICE**

I, Ricardo Palacio, hereby certify that on November 2, 2016, I caused one copy of the foregoing document to be served upon the parties on the attached service list list in the manner indicated.

/s/ Ricardo Palacio  
Ricardo Palacio (DE #3765)

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