

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

In re:

SFX ENTERTAINMENT, INC., *et al.*,¹

Debtor.

Chapter 11

Case No. 16-10238 (MFW)

(Jointly Administered)

Hearing Date: August 30, 2016 at 10:30 a.m. ET

Obj. Deadline: August 17, 2016 at 4:00 p.m. ET

MOTION OF VIAGOGO AG FOR ENTRY OF AN ORDER GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY TO ASSERT COUNTERCLAIMS IN THE ARBITRATION PROCEEDING AGAINST THE DEBTORS AND RELATED RELIEF

viagogo AG, a Swiss limited company (“viagogo”), by and through its undersigned counsel, files this motion (the “Motion”) seeking entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), (i) lifting the automatic stay pursuant to 362(d)(1) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 4001(a) and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-1 of the Local Rules of United States Bankruptcy Practice and Procedure of the Bankruptcy Court for the

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



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District of Delaware (the “Local Rules”) for the limited purpose of permitting viagogo to assert counterclaims in the Arbitration Proceeding² commenced by the Debtors; and (ii) granting related relief. In support of its Motion, viagogo respectfully states as follows:

PRELIMINARY STATEMENT

On or about July 15, 2016, the Debtors, through counsel, sent to the undersigned an Arbitration Demand giving notice of the Debtors’ commencement of an arbitration proceeding to determine various alleged disputes between the parties concerning the Sponsorship Agreement.³ Along therewith, the Debtors provided a copy of a letter from the American Arbitration Association’s International Centre for Dispute Resolution (the “ICDR Letter”). By the ICDR Letter, the Debtors’ demanded arbitration and, among other things, established deadlines by which viagogo must make certain submissions, including the assertion of any *counterclaims*.

viagogo does not contest arbitration of the parties’ disputes—whatever they may be—as is provided and required under the terms of the Sponsorship Agreement. However, both the Arbitration Demand and the ICDR Letter essentially invite viagogo to violate the automatic stay by asserting counterclaims against the Debtors. viagogo cannot and will not do so without first obtaining relief from this Court. Thus, viagogo seeks stay relief so that it may assert in arbitration any counterclaims it may holds against the Debtors. Absent stay relief, the arbitration would be required to proceed solely as to the claims the Debtors allege against viagogo, which would result not only in a disjointed and necessarily incomplete arbitration process, but also manifest injustice to viagogo. It would permit the Debtors to inappropriately use the automatic stay as a sword rather than a shield. For those reasons and as discussed below, the Court should grant viagogo stay relief

² All capitalized terms not otherwise defined shall be defined below.

³ By agreement of counsel, the date of service of the Arbitration Demand is deemed to be July 21, 2016.

as requested herein.⁴

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Determination of this Motion is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 362(d) and 105(a), Bankruptcy Rules 4001(a) and 9014, and Local Rule 4001-1.

4. viagogo hereby consents to the entry of a final order or judgment by the Court granting this Motion if it is determined that the Court, absent consent of the parties, cannot enter a final order or judgment consistent with Article III of the United States Constitution. *See* Local Rule 9013-1(f). viagogo in all other respects reserves its rights as to (and does not consent to) the jurisdiction of this Court to enter final judgments, including in respect of any dispute under the Sponsorship Agreement and any claims or counterclaims asserted by viagogo against the Debtors.

BACKGROUND

A. The Chapter 11 Cases.

5. On February 1, 2016 (the “Petition Date”), the Debtors commenced the above-captioned cases (the “Cases”) by filing voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. On February 12, 2016, an official committee of unsecured creditors (the “Committee”) was formed in these Cases.

⁴ The parties previously discussed the prospect of stipulating, subject to Court approval, stay relief to allow the relief requested herein by viagogo. Despite those efforts, the parties could not reach agreement.

7. On April 14, 2016, the Debtors filed a *Notice of Bar Dates for Filing Proofs of Claim* [Docket No. 430], setting the general bar date for filing proofs of claim against the Debtors as May 17, 2016 at 5:00 p.m. (the “Bar Date”). viagogo timely filed Claim No. 404 (the “Proof of Claim”) against the Debtors asserting both secured and general unsecured claims in an amount in excess of \$1.6 million.

8. On May 27, 2016, the Debtors filed a motion to extend the exclusivity period to file and solicit a plan of reorganization/liquidation for an additional ninety (90) days [Docket No. 682]. On June 21, 2016, the Court granted the Debtors’ motion, extending the exclusive filing period to August 29, 2016 and the exclusive solicitation period to October 28, 2016 [Docket No. 783].

9. On or about July 15, 2016, the Debtors sent the undersigned an arbitration demand (the “Arbitration Demand”), which is attached hereto as **Exhibit B**. The Arbitration Demand attaches to it the Sponsorship Agreement as well as certain correspondence between the parties.

10. On or about July 15, 2016, viagogo received the ICDR Letter, which is attached hereto as **Exhibit C**. Therein, the ICDR notes the Debtors’ demand for arbitration (the “Arbitration Proceeding”) and, among other things, purports to establish deadlines by which viagogo must make submissions, including any *counterclaims*. The ICDR Letter stated that viagogo had fourteen (14) days, or until July 29, 2016 to file an answer and/or counterclaim with the ICDR. viagogo has since requested a seven-day extension of the time to respond to the Arbitration Demand, until August 5, 2016, which request was granted by the ICDR.

B. The Sponsorship Agreement.

11. As described in the Proof of Claim, viagogo operates a domestic and international online ticket marketplace for live events. viagogo and debtor SFX Entertainment, Inc., a Delaware corporation (“SFX”), entered into that certain International Marketing Sponsorship Agreement,

dated as of June 12, 2014 (the “Sponsorship Agreement”).⁵

12. Pursuant to the terms of the Sponsorship Agreement, viagogo became the official partner and sponsor of SFX with respect to certain concerts, festivals and live events produced, presented and/or owned by SFX and its affiliates (the “SFX Events”), as well as SFX’s exclusive ticketing partner with respect to the SFX Events.

13. The Sponsorship Agreement commenced on June 12, 2014, and during the five-year term of the contract, viagogo was entitled to receive certain exclusive marketing and ticketing rights for no less than 50 SFX Events. In particular, under the Sponsorship Agreement, SFX was obligated to deliver exclusive marketing and ticketing rights with respect to a number of designated “major” SFX Events (“Major Events”), which the parties deemed to be the SFX Events that provided the most financial opportunities for viagogo. Upon commencement of the Sponsorship Agreement, the parties had designated six Major Events. The marketing right and ticketing rights that SFX was obligated to provide under the Sponsorship Agreement were essential to viagogo’s agreement to provide sponsorship fee payments under the Sponsorship Agreement.

14. In consideration of the exclusive marketing and ticketing rights that viagogo received under the Sponsorship Agreement with respect to the Major Events and the other SFX Events, viagogo agreed to pay certain sponsorship fees not to exceed an agreed upon sum in a given contract year.⁶ The Sponsorship Agreement provides in express terms that such sponsorship fees were recoupable advances against fees generated by viagogo from the exploitation of its

⁵ SFX and viagogo also entered into a certain side letter agreement dated June 12, 2014 that explained the terms of the Sponsorship Agreement.

⁶ Consistent with the confidential nature of the Sponsorship Agreement and its terms, viagogo has purposely omitted from this Motion specific provisions (including the amount of sponsorship fees per contract year). However, viagogo can make the Sponsorship Agreement available to the Court under seal for its review, or to interested parties upon the provision of appropriate safeguards as may be determined by viagogo.

exclusive marketing and ticketing rights with respect to the Major Events and other SFX Events.

15. Shortly after the commencement of the Sponsorship Agreement, SFX committed numerous material breaches of contract by failing to provide all of the bargained-for marketing and ticketing rights that SFX was obligated to provide, and none of these breaches has been cured to date or is capable of being cured. These material breaches, including, without limitation, the following: (i) Marketing Rights—SFX failed to deliver to viagogo all of viagogo’s marketing rights (including the required links to viagogo’s websites) with respect to several SFX Events; and (ii) SFX failed to deliver to viagogo all of its ticketing rights with respect to several SFX Events.⁷

16. viagogo has asserted that SFX breached various material provisions of the agreement, some of which are not curable, including, among other things, the cancelling of certain Major Events. Likewise, SFX has alleged breaches of the agreement on the part of viagogo. During the parties’ correspondence over the past two years, both parties have disagreed with each other’s position while at the same time attempting to reach an amicable resolution.

17. Accordingly, viagogo agrees that the Arbitration Proceeding commenced by SFX places the parties’ dispute in the appropriate forum for resolution of these issues. Pursuant to the provisions of the Sponsorship Agreement, “any dispute, claim, or controversy arising out of or relating to [the Sponsorship Agreement], or the breach thereof...shall be finally resolved by binding arbitration administered by the American Arbitration Association under its Commercial Arbitration Rules.” Sponsorship Agreement § 19.1.

18. To date, no amicable resolution has been reached. As importantly, the Debtors

⁷ This background is offered to give the Court a brief preview of the issues and disputes among the parties and is not intended to be a comprehensive depiction of all of SFX’s material breaches.

have yet to determine whether or not they plan to assume or reject the Sponsorship Agreement.⁸

RELIEF REQUESTED

19. By this Motion, viagogo seeks the entry of the Proposed Order, the lifting the automatic stay pursuant to Bankruptcy Code section 362(d)(1) and the Court's authorization to assert counterclaims against the Debtors in the Arbitration. viagogo also requests such other relief as the Court deems just and proper.

BASIS FOR RELIEF REQUESTED

viagogo Should Be Granted Limited Relief From the Automatic Stay to Assert Counterclaims in the Arbitration.

20. Bankruptcy Code section 362(a) stays “the commencement or continuation...of a judicial, administrative, or other action or proceedings against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title”, “any act to obtain possession of property of the estate”, and “any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case under this title[.]” 11 U.S.C. §§ 362(a)(1), (3), (6). “Because the automatic stay serves the interests of both debtors and creditors, it may not be waived and its scope may not be limited by a debtor.” *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1204 (3d Cir.1992).

21. Moreover, the automatic stay applies to arbitration proceedings instituted by a debtor as well as any counterclaims that may be asserted against a debtor in an arbitration proceeding. *See Acands, Inc. v. Travelers Cas. and Sur. Co.*, 435 F.3d 252, 260 (3d Cir. 2006) (holding that arbitration action was still subject to the automatic stay even though it was instituted

⁸ Though not the subject of this Motion, viagogo respectfully submits that the Debtors must make that decision before the Arbitration Proceeding can meaningfully proceed.

by the debtor). Indeed, the Third Circuit has voided an arbitration where no relief from the automatic stay was secured, and the non-debtor party asserted claims against the debtor that could diminish the debtor's estate. *See id.*

22. To avoid a violation of the automatic stay, creditors must seek relief from the stay before asserting a counterclaim against the debtor. *Id.* “On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay...for cause[.]” 11 U.S.C. § 362(d)(1).

23. Here, viagogo respectfully submits that cause exists for the limited relief sought herein. The Debtors commenced the Arbitration Proceeding after the Petition Date, at a time when the provisions of the automatic stay (and importantly, provisions staying any and all claims or counterclaims against the Debtors) applies. By the terms of the ICDR Letter, viagogo must file an answering statement, and if it wishes, counterclaims against the Debtors. Due to the nature of the parties' dispute, viagogo indeed wishes to file and assert counterclaims against the Debtors in the Arbitration Proceeding. Absent the ability to do so, the arbitration will be highly inefficient and a waste of resources. The parties would have to return to arbitration to resolve viagogo's claims, at a later time, and the Arbitrator's inability to consider counterclaims could yield inconsistent results—particularly if the Debtors fail to make a timely decision on assumption or rejection of the Sponsorship Agreement.

24. Of course, if viagogo was to move forward without this Court's permission, the assertion of the counterclaim would likely constitute a willful violation of the automatic stay—an act viagogo should not be required to undertake. *See* 11 U.S.C. §§ 362(d), (k). Therefore, cause exists to grant viagogo limited relief from the automatic stay, and such relief is necessary and

warranted under these facts, such that viagogo can adequately defend itself in the Arbitration Proceeding—an action commenced by the Debtors—including the assertion and prosecution of any counterclaims it may have against the Debtors.

NO PRIOR REQUEST

25. No prior request for the relief sought herein has been made to this or any other court.

NOTICE

26. Notice of this Motion has been provided to the following parties and/or counsel (if known): (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors; (c) the Committee; and (d) those parties requesting notice pursuant to Bankruptcy Rule 2002. viagogo submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, viagogo respectfully requests the Court enter the Proposed Order, granting viagogo limited relief from the automatic stay and granting viagogo such other and further additional relief as the Court may deem just and proper.

Dated: August 3, 2016

ASHBY & GEDDES, P.A.

/s/ Aaron H. Stulman

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Attorneys for viagogo AG

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

In re:

SFX ENTERTAINMENT, INC., *et al.*,¹

Debtor.

Chapter 11

Case No. 16-10238 (MFW)

(Jointly Administered)

Hearing Date: August 30, 2016 at 10:30 a.m. ET

Obj. Deadline: August 17, 2016 at 4:00 p.m. ET

**NOTICE OF MOTION OF VIAGOGO AG FOR ENTRY OF AN ORDER GRANTING
LIMITED RELIEF FROM THE AUTOMATIC STAY TO ASSERT
COUNTERCLAIMS IN THE ARBITRATION PROCEEDING
AGAINST THE DEBTORS AND RELATED RELIEF**

PLEASE TAKE NOTICE that on August 3, 2016, viagogo AG, a Swiss limited company (“viagogo”), by and through its undersigned counsel, filed the *Motion of viagogo AG for Entry of an Order Granting Limited Relief from the Automatic Stay to Assert Counterclaims in the Arbitration Proceeding Against the Debtors and Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801 (the “Bankruptcy Court”).

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

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before The Honorable Mary F. Walrath at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom #4, Wilmington, Delaware 19801 on August 30, 2016 at 10:30 a.m. (ET).

PLEASE TAKE FURTHER NOTICE that responses and objections, if any, to the Motion shall be filed and served so as to be actually received by the undersigned counsel on or before August 17, 2016 at 4:00 p.m. (ET).

IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: August 3, 2016

ASHBY & GEDDES, P.A.

/s/ Aaron H. Stulman

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Exhibit A

(Proposed Order)

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

In re:

SFX ENTERTAINMENT, INC., *et al.*,¹

Debtor.

Chapter 11

Case No. 16-10238 (MFW)

(Jointly Administered)

Related to Docket No. __

**ORDER GRANTING MOTION OF VIAGOGO AG FOR ENTRY OF AN ORDER
GRANTING LIMITED RELIEF FROM THE AUTOMATIC STAY TO ASSERT
COUNTERCLAIMS IN THE ARBITRATION PROCEEDING AGAINST THE
DEBTORS AND RELATED RELIEF**

Upon the *Motion of viagogo AG For Entry of an Order Granting Limited Relief From the Automatic Stay to Assert Counterclaims in the Arbitration Proceeding Against the Debtors and Related Relief* (the "Motion")²; the Court having reviewed the Motion; and due and sufficient notice of the Motion having been given under the circumstances; and it appearing that no other or further notice needs to be provided; and upon the record therein; and the Court having determined

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 All capitalized terms not otherwise defined shall have the meaning ascribed to them in the Motion.

that sufficient cause exists to approve the Motion; and after due deliberation thereon and good and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is **GRANTED** as set forth herein; and it is further

ORDERED that the automatic stay imposed by 11 U.S.C. § 362(a) is hereby modified to permit viagogo to assert and prosecute any and all counterclaims against the Debtors in the Arbitration Proceeding; and it is further

ORDERED that the 14 day stay set forth in Bankruptcy Rule 4001(a)(3) is hereby waived; and it is further

ORDERED that the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: August __, 2016
Wilmington, DE

THE HONORABLE MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

CERTIFICATE OF SERVICE

I, Aaron H. Stulman, hereby certify that on August 3, 2016, I caused one copy of the foregoing document to be served upon the parties on the attached service list via first class mail.

/s/ Aaron H. Stulman
Aaron H. Stulman (DE #5807)

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