

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)

Objection Deadline: November 2, 2016, at 4:00 p.m.
Hearing Date: November 9, 2016, at 10:00 a.m.

**OBJECTION PURSUANT TO 11 U.S.C. §502(E)(1) OF THE OFFICIAL COMMITTEE
OF UNSECURED CREDITORS TO ROBERT F.X. SILLERMAN’S PROOFS OF
CLAIM NUMBERS 358, 360, 361, 365, 367, IN THEIR ENTIRETY, AND PROOF OF
CLAIM NUMBER 426, IN PART**

The Official Committee of Unsecured Creditors of SFX Entertainment, Inc. and
the other Debtors in the above-captioned cases (the “Committee”) hereby objects (the
“Objection”) to Proofs of Claim numbers 358, 360, 361, 365, 367, in their entirety, and Proof of
Claim number 426, to the extent it seeks indemnity based on the same guaranties (the “Sillerman
Guaranty Claims”), filed by Robert F.X. Sillerman (“Sillerman”), copies of which are attached

¹ The Debtors in these chapter 11 cases, along with the last four 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.



hereto as **Exhibits A through F**, and seeks entry of an order, substantially in the form attached hereto as **Exhibit G** (the "Order"), and respectfully states as follows:

I.

PRELIMINARY STATEMENT

1. Proofs of Claim numbers 358, 360, 361, 365 and 367 are contingent claims for reimbursement and subrogation arising out of guaranties executed by Sillerman for which certain of the Debtors are primarily liable and thus co-liaible with Sillerman. Proof of Claim number 426 also seeks indemnity from SFX Entertainment, Inc. based on the same guaranties pursuant to indemnity agreements. Section 502(e)(1)(B) of the Bankruptcy Code requires disallowance of a contingent claim for reimbursement by an entity that is liable with the debtor on the underlying claim or cause of action. *See* 11 U.S.C. § 502(e)(1)(B). Section 502(e)(1)(C) of the Bankruptcy Code requires disallowance to the extent the claims assert a right of subrogation against the Debtors. *Id.* § 502(e)(1)(C). Therefore subsections 502(e)(1)(B) and 502(e)(1)(C) of the Bankruptcy Code require disallowance of each of the Sillerman Guaranty Claims.

II.

JURISDICTION

2. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Committee confirms its consent pursuant to Local Rule 9013-1(f) to the

entry of a final order by the Court in connection with this objection to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 502(e)(1)(B) and (C) of the Bankruptcy Code and Rule 3007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

III.

BACKGROUND

A. Sillerman

5. Sillerman is the founder of SFX Entertainment, Inc. and, at all relevant times, its chief executive officer, chairman of the board of directors and largest shareholder. Sillerman (and entities he controlled) owned approximately 40% of the company’s outstanding shares of common stock.

B. The Sillerman Guaranty Claims

6. On May 16 and 17, 2016, Sillerman filed the Sillerman Guaranty Claims. The following summarizes the alleged factual bases for the claims, the relief sought, and the identity of the Debtors against whom the claims are asserted:

- **Proof of Claim Number 358 against SFX Entertainment, Inc.:** The claim asserts rights of subrogation and indemnification in the amount of “not less than \$531,912.67” arising out of Sillerman’s guaranty of the fees and costs incurred by the law firm of Paul Hastings LLC (the “Paul Hastings Guaranty”) in its defense of certain litigation in which both Sillerman and SFX Entertainment, Inc. were defendants. The claim fails to allege

that Sillerman has paid any amounts under the Paul Hastings Guaranty; therefore the claim is unliquidated and contingent.

- **Proofs of Claim Number 360 against SFX Entertainment, Inc. and Number 367 against SFX React Operating LLC:** The claims are identical and assert rights of subrogation and indemnification in the amount of up to \$7,826,353 arising out of Sillerman's guaranty (the "React Guaranty") of the promissory note by SFX and SFX-React Operating LLC in favor of React Presents, Inc., Clubtix, Inc., Lucas King, and Jeffrey Callahan (the "React Parties"). As of April 30, 2016, the alleged amount due on the note was approximately \$6 million, with interest claimed to be accruing at over \$1,600 per day. The claims fail to allege that Sillerman has paid any amounts under the React Guaranty; therefore, the claims are unliquidated and contingent.
- **Proofs of Claim Number 361 against SFX Entertainment, Inc. and Number 365 against Beatport, LLC:** The claims are identical and assert rights of subrogation and indemnification in the amount of up to \$7,500,000 arising out of Sillerman's "springing guaranty" (the "Spotify Guaranty") of amounts owed by the Debtors to Spotify AB ("Spotify"). The claims fail to allege that Sillerman has paid any amounts under the Spotify Guaranty; therefore, the claims are unliquidated and contingent.
- **Proof of Claim Number 426 against SFX Entertainment Inc.** The claim asserts, among other things, identical relief for indemnification under Paul Hastings Guaranty, the React Guaranty and the Spotify Guaranty, as sought in Proofs of Claim numbers 358, 360 and 361 based on Sillerman's purported rights to be indemnified by SFX Entertainment Inc. under his Employment Agreement and Indemnification Agreement (both as defined in Proof of Claim No. 426).

7. Sillerman's liability on the Paul Hastings Guaranty, the React Guaranty, and the Spotify Guaranty has not yet been determined, no judgments have been entered thereon, and Sillerman has not alleged that he has yet paid anything to Paul Hastings, the React Parties, or

Spotify under the guaranties. Certain of the Debtors are co-liable with Sillerman on the Sillerman Guaranty Claims.²

IV.

RELIEF REQUESTED

8. By this Objection, the Committee respectfully requests entry of the Order, pursuant to sections 502(e)(1)(B) and (C) of the Bankruptcy Code, disallowing and expunging the Sillerman Guaranty Claims as set forth more fully in the Order.

V.

OBJECTION

9. Section 502(e)(1)(B) provides that “the court shall disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on or has secured the claim of a creditor, to the extent that . . . such claim for reimbursement or contribution is contingent as of the time of allowance or disallowance of such claim for reimbursement or contribution” 11 U.S.C. § 502(e)(1)(B)); *see also In re Touch America Holdings, Inc.*, 409 B.R. 712, 716 n.6 (Bankr. D. Del. 2009); *In re RNI Wind Down Corp.*, 369 B.R. 174, 181

² With the exception of Paul Hastings (whose claim against SFX Entertainment, Inc. was scheduled at \$1,958,105.01), all of the beneficiaries of the Sillerman guaranties upon which the Sillerman Guaranty Claims are based have filed proofs of claim against the Debtors based on their direct claims against the Debtors: No. 227 by Spotify against SFX Entertainment, Inc. in the amount of \$7,500,000; No. 427 by Lucas King against SFX-React Operating LLC in the amount of \$9,533,382.52; No. 428 by React Presents, Inc. against SFX Entertainment, Inc. in the amount of \$9,533,382.52; No. 429 by Lucas King against SFX Entertainment, Inc. in the amount of \$9,533,382.52; No. 430 by React Presents, Inc. against SFX-React Operating LLC in the amount of \$9,533,382.52; No. 433 by Clubtix, Inc. against SFX-React Operating LLC in the amount of \$9,533,382.52; No. 435 by Clubtix, Inc. against SFX Entertainment, Inc. in the amount of \$9,533,382.52; No. 436 by Jeffery Callahan against SFX Entertainment, Inc. in the amount of \$9,533,382.52; and No. 437 by Jeffery Callahan against SFX-React Operating LLC in the amount of \$9,533,382.52.

(Bankr. D. Del. 2007); *Sorenson v. Drexel Burnham Lambert Group (In re Drexel Burnham Lambert Group)*, 146 B.R. 92, 97 (S.D.N.Y. 1992); *In re Wedtech Corp.*, 87 B.R. 279, 287 (Bankr. S.D.N.Y. 1988). Thus, disallowance of a claim pursuant to section 502(e)(1)(B) requires three elements to be established: (i) the claim must be for reimbursement or contribution; (ii) the claim must be contingent; and (iii) the debtor and the claimant must be co-liable on the claim. *Id.*; see also *In re Pinnacle Brands*, 259 B.R. 46, 55 (Bankr. D. Del. 2001) (disallowing contingent contractual claim for indemnification against the debtor). Once these three elements are established, disallowance under section 502(e)(1)(B) is mandatory. See 11 U.S.C. § 502(e)(1)(B) (“[T]he court shall disallow any claim . . .”). As discussed further below, each of the Sillerman Guaranty Claims satisfies the foregoing requirements and must be disallowed pursuant to section 502(e)(1)(B).

A. The Sillerman Guaranty Claims Must Be Disallowed Under Section 502(e)(1)(B).

The Sillerman Guaranty Claims Seek Reimbursement

10. Claims by a guarantor against the primary obligor for amounts paid or to be paid to the beneficiary are treated as claims for reimbursement under section 502(e)(1)(B) irrespective of how the claims are characterized by the claimant. In fact, the statute was enacted “to prevent competition between a creditor and [its] guarantor for limited proceeds of the estate.” *Porter v. CNA Ins. Cos. (In re MEI Diversified, Inc.)*, 106 F.3d 829, 831 (8th Cir. 1997) (quoting H.R. Rep. No. 595, 95th Cong., 1st Sess. 354 (1977)). Although the statute is not limited to claims by guarantors and sureties, its focus is on claims by those who may become liable to a third party because the debtor fails to satisfy a primary liability to that third party. *Id.* at 831.

11. Each of the Sillerman Guaranty Claims seeks reimbursement for potential losses Sillerman might incur as a result of his guaranties of the primary obligations of certain of the Debtors. Sillerman's characterization of his reimbursement claims as indemnity claims does not affect the clear applicability of section 502(e)(1)(B). Even if Sillerman's reimbursement claims could properly be characterized as claims for indemnity, it is well established that claims for indemnity are treated as claims for reimbursement under section 502(e)(1)(B) and that contingent claims for indemnity are covered by section 502(e)(1)(B). *Pinnacle Brands*, 259 B.R. at 55; *RNI Wind Down Corp.*, 369 B.R. at 181 ("the concept of reimbursement includes indemnity.") (quoting *In re Vectrix Bus. Solutions.*, 2005 WL 3244199, at *3 (Bankr. N.D. Tex. Sept. 1, 2005)); *Drexel*, 146 B.R. 92. Thus, the first element of section 502(e)(1)(B) is satisfied.

The Sillerman Guaranty Claims Are Contingent

12. Courts consistently have interpreted this element to mean that the claimant has not yet paid the amount for which it is asserting a claim against the debtor. *In re Baldwin-United Corp.*, 55 B.R. 885, 895 (Bankr. S.D. Ohio 1985) ("[I]f a debtor has not paid the creditor and established his right to payment from the debtor as of the date of the ruling on the objection, his claim is contingent and must be disallowed under § 502(e)(1)(B).");³ *Drexel*, 148 B.R. at 986

³ See also *In re Hemingway Transp.*, 126 B.R. 656, 662 (D. Mass. 1991), *aff'd in part and remanded in part on other grounds*, 993 F.2d 915 (1st Cir. 1993); *In re Ramex Int'l, Inc.*, 1990 WL 145580 (D. Del. Sept. 26, 1990) ("Section 502(e)(1)(B) controls claims which are themselves contingent, that is, claims founded on a debt that may or may not materialize."); *In re Ecco D'Oro Food Corp.*, 249 B.R. 300, 302 (Bankr. N.D. Ill. 2000) ("Once the underlying creditor is paid by the party seeking contribution or reimbursement, the right to payment from the other co-debtor becomes fixed, § 502(e)(1)(B) becomes inapplicable, and the claim may be allowed, *but not until then.*") (emphasis added); *In re Eagle-Picher Indus., Inc.*, 144 B.R. 765, 769 (Bankr. S.D. Ohio 1992), *aff'd*, 164 B.R. 265 (S.D. Ohio 1994) (the test for determining whether a claim is contingent is whether the claimant, as of the date of allowance or disallowance, has made payment on its underlying claim, and "thereby fixes his own right to payment from the debtor.") (quoting *Hemingway Transp.*, 126 B.R. at 662); *In re Early & Daniel Indus., Inc.*, 104 B.R. 963 (Bankr. S.D. Ind. 1989) (same).

(“The determination of whether the claim is contingent is made at the time of the allowance or disallowance of the claim, which courts have established is the date of the ruling.”). “A claim is contingent where it “has not yet accrued” and . . . is dependent upon some future event that may never happen.” *Touch America*, 409 B.R. at 716 (quoting *RNI Wind Down*, 369 B.R. at 182).

13. The Sillerman Guaranty Claims arise under Sillerman’s guaranties and are contingent claims unless and until he pays the underlying debts to the beneficiaries of his guaranties. Because he has not even alleged he has paid any amounts to the beneficiaries of his guaranties, the Sillerman Guaranty Claims are contingent.

The Debtors Are Co-liable for the Sillerman Guaranty Claims

14. The Sillerman Guaranty claims satisfy the third element for application of section 502(e)(1)(B) because Sillerman and the specified Debtors (which are the primary obligors) are both liable on the guaranteed debt.

B. The Sillerman Guaranty Claims Must Be Disallowed Under Section 502(e)(1)(C).

15. Section 502(e)(1)(B) requires the Court to disallow any claim for reimbursement or contribution of an entity that is liable with the debtor on the claim of a creditor, to the extent that such entity asserts a right of subrogation to the rights of such creditor. The Sillerman Guaranty Claims all assert a right to be subrogated to the rights of the guaranteed creditors against the Debtors. Therefore, the Sillerman Guaranty Claims must be disallowed in their entirety under section 502(e)(1)(B).

VI.

SEPARATE CONTESTED MATTER

16. Each of the above objections to the Sillerman Guaranty Claims constitutes a separate contested matter as contemplated by Bankruptcy Rule 9014. The Committee requests that any order entered by the Court with respect to an objection asserted herein shall be deemed a separate order with respect to each claim identified in the Order.

VII.

RESERVATION OF RIGHTS

17. The Committee expressly reserves the right to amend, modify, or supplement this Objection and to file additional substantive or non-substantive objections to the Sillerman Guaranty Claims objected to herein, or any other claims, filed or not, that may be asserted against the Debtors. Should one or more of the grounds of objection stated in this Objection be overruled, the Committee reserves the right to object on any other applicable grounds. In addition, the Committee reserves the right to seek to reduce each of the Sillerman Guaranty Claims for any reason, including to the extent such claim has been paid. The Committee reserves the right to raise further objections, including objections under section 502(d) of the Bankruptcy Code. To the maximum extent allowable by the Court, nothing in this Objection or the relief requested herein shall limit the right of the Committee or any other party to bring future and/or additional objections to any of the Sillerman Guaranty Claims on any basis.

VIII.

NOTICE

18. The Committee will provide notice of this Objection to: (a) the U.S. Trustee; (b) counsel to the Debtors, (c) all parties that have requested or that are required to receive notice pursuant to Federal Rule of Bankruptcy Procedure 2002, and (d) Sillerman. The Committee submits that, under the circumstances, no other or further notice is required.

IX.

NO PRIOR REQUEST

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

WHEREFORE, the Committee respectfully requests that the Court enter the Order, substantially in the form attached hereto as **Exhibit G**, disallowing and expunging the Sillerman Guaranty Claims.

Dated: October 10, 2016

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Colin R. Robinson

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