Docket #1241 Date Filed: 11/07/2016

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)

DECLARATION OF MICHAEL KATZENSTEIN IN SUPPORT OF CONFIRMATION OF THE DEBTORS' FIFTH AMENDED JOINT PLAN OF REORGANIZATION UNDER CHAPTER 11 OF THE BANKRUPTCY CODE

I, Michael Katzenstein, hereby declare, pursuant to 28 U.S.C. § 1746, under penalty of perjury:

1. I am a Senior Managing Director of FTI Consulting, Inc. ("**FTI**"), an international financial advisory firm that has offices at Three Times Square, 9th Floor, New York, New York 10036. On January 3, 2016, I was appointed the Chief Restructuring Officer of SFX Entertainment, Inc. ("**SFXE**") and its subsidiaries (collectively with SFXE, "**SFX**"), including the above-captioned debtors and debtors-in-possession (collectively, the "**Debtors**"). I was also appointed as the interim Chief Executive Officer ("**CEO**") of SFXE, effective as of April 1, 2016.

[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 524 Broadway, 11th Floor, New York, NY 10012.

2. FTI is a leading business advisory firm that has significant experience advising companies in the context of bankruptcy and restructurings. FTI has rendered services in many large and complex chapter 11 cases on behalf of debtors and creditors throughout the United States.

3. At FTI, I am a member of the Corporate Finance and Restructuring group and a member of the Technology, Media and Telecom practice within that group. I also lead FTI's Interim Management practice, which provides long and short-term interim managers for companies in distress or transition. I have served as interim chief executive officer, chief restructuring officer and interim chief operating officer as well as a board member of many companies. I have counseled corporations and creditors and other parties of interest in dozens of in- and out-of-court restructurings over the course of my career. I have served as a Senior Managing Director at FTI since FTI's purchase in December 2008 of CXO LLC, the boutique restructuring and turnaround management firm that I co-founded. I served as Managing Principal of CXO from its inception in 2001 until the sale to FTI. Prior to that, I served as a senior executive, and later as the CEO, of a telecom and media company, and as a partner in a New York law firm.

4. I submit this Declaration in support of the *Fifth Amended Joint Plan of Reorganization of SFX Entertainment, Inc. et al. Under Chapter 11 of the Bankruptcy Code (as Modified)* (as the same may be further amended, supplemented or modified from time to time, the "**Plan**")[2] and in response to certain objections thereto. A detailed discussion of the Debtors' businesses and the events leading up to these Chapter 11 Cases is set forth in the declaration I submitted in support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief [Docket No.13] (the "**First Day Declaration**").

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

5. Unless otherwise stated, the following facts are based upon my personal knowledge, information supplied to me by the Debtors' professionals and consultants and people who report to me on the Debtors' operations, my review of relevant documents, or my opinion based on my experience and knowledge with respect to the Debtors' operations, financial condition, and related business issues. If I were called to testify, I could and would testify competently to the facts set forth herein. I am authorized to execute this Declaration on behalf of the Debtors.

I. FTI's Retention by the Debtors

A. FTI's Prepetition Role

6. On or around January 3, 2016, the Debtors engaged FTI to provide crisis and turnaround management services. At that time, the Debtors were in an extreme liquidity crisis and the Debtors were suffering significant losses.

7. FTI's initial focus was to stabilize the Debtors' business and to find a short term solution to the Debtors' liquidity crisis. FTI worked closely with the Special Committee of the Debtors' board, the Debtors' management and other professionals in managing and tracking the Debtors' performance, and monitoring and forecasting cash flow and liquidity. It became clear that the Debtors did not have sufficient capital to fund their operations past January 2016.

8. Accordingly, FTI began to prepare the Debtors for chapter 11 while continuing to explore other strategic alternatives. I took an active role in negotiating with both the Debtors' senior secured lenders and second priority noteholders over the terms of the required debtor-in-possession financing and the terms of a comprehensive restructuring. As discussed in more detail below and in the First Day Declaration, the Debtors ultimately agreed to enter into a Restructuring Support Agreement (the "**RSA**") with an *ad hoc* group of Prepetition Second

Priority Noteholders (the "**Ad Hoc Group**"), which provided the Debtors with over $80 million in DIP financing.

9. The Debtors filed for bankruptcy on February 1, 2016 (the "**Petition Date**"). On March 3, 2016, the Court approved the retention of FTI in the Chapter 11 Cases to provide the Debtors with an interim Chief Executive Officer, Chief Restructuring Officer, Associate Chief Restructuring Officer and additional personnel, as necessary [Docket No. 177].

10. Subsequently, the Court approved the Debtors' two additional requests to expand the scope of FTI's retention to provide additional support for SFX's operations in Australia and Brazil and to authorize the appointment of Mr. Christopher Nicholls, an FTI Senior Managing Director, as the Chief Executive Officer of Debtor Beatport, LLC [Docket Nos. 353, 787].

11. Pursuant to the orders approving FTI's retention, FTI and I report to the Special Committee of SFXE's Board comprised of independent members to whom the Board delegated the power and authority to manage and oversee the restructuring of the Debtors. Since FTI's retention, I have regularly reported to the Special Committee on developments in the bankruptcy cases, including the sales of the Debtors' non-core assets, the Debtors' funding needs and exit strategy, negotiations over the Plan, and the development and implementation of the Business Plan (as defined below). I have also regularly sought direction from the Special Committee on those and other matters related to the financial and operational restructuring of the Debtors.

B. FTI Extensively Worked with the Debtors to Stabilize Operations and Develop and Implement a Business Plan

12. Since FTI's engagement at the beginning of 2016, members of my team and I have been on site substantially full time at the Debtors' headquarters helping SFX prepare for and execute an operational and financial restructuring aimed at allowing SFX to recapitalize its balance sheet and achieve a sustainable level of operational profitability. Operationally, our

work has included stewarding the enterprise during the restructuring, stabilizing operations of the Debtors and their non-Debtor subsidiaries, maintaining key relationships with critical vendors and artists and reviewing and analyzing all aspects of the Debtors' businesses.

13. Under the DIP Agreement, the Debtors were required to obtain approval for any festivals that would be produced during the bankruptcy period. My team and I met with key management throughout the United States and in Europe to review and analyze dozens of festivals that are promoted and staged by SFX. The analyses that we put together included detailed festival profitability, short term cash flows, working capital dynamics, and commentary about historical results. The analyses further supported FTI's and management's recommendation as to which festivals should be produced and appropriate budgets related thereto. Additionally we reviewed many of the non-core and platform businesses of the Debtors to determine which to keep, which to sell and/or which to shutter.

14. Additionally, the Debtors were required to deliver to the DIP Lenders a detailed business plan (the "**Business Plan**") for the Debtors' and non-Debtors' businesses. FTI worked with the Debtors' management and employees throughout the world to prepare and deliver the Business Plan. In preparing the Business Plan, FTI spent significant time analyzing the various lines of SFX businesses to understand each segment's profitability. We worked intensively with management in North America and Europe to determine cost reduction initiatives and operational and other improvements. This Business Plan, in all substantial respects, was approved by the DIP Lenders and cost reduction measures identified therein were taken by the Debtors at the direction of FTI during the subsequent months.

15. As contemplated by the Business Plan, the Debtors made a number of operational changes that have had a positive impact on the Debtors' operations, including selling non-core

assets and streamlining their workforce by reducing duplicative or otherwise unnecessary positions.

16. In addition to implementing an operational restructuring, I spent significant time stabilizing and maintaining the Debtors' relationships with their European non-Debtor subsidiaries. I made multiple trips to Europe to visit with management and third party relationship counterparts to address their concerns over SFX's bankruptcy and go forward business strategy. Additionally, I worked with European management to implement an employee retention program to minimize the bankruptcy's impact on European operations.

17. During the course of our work with SFX, there were some unpredictable events that took place and required my team and I to devote substantial resources to assess the issues and alternatives to address them and then recommend and implement solutions designed to maximize value of the enterprise and minimize the impact of such events. Paramount among these events were the actions taken by creditors of the Debtors' Dutch entities, which after substantial negotiations resulted in settlements with those creditors, and the issues with the operations of SFX-Totem Operating Pty Ltd in Australia ("**SFX-Totem**"), which necessitated the shuttering of those operations and the receivership of SFX-Totem. Likewise, the Debtors' operation in Brazil suffered significant liquidity constraints, requiring cash infusions and the direct input of FTI restructuring professionals in Brazil.

18. In addition to the intensive role FTI played in stabilizing and reviewing the operations of the Debtors and their subsidiaries, FTI and I played a lead role in the negotiations with the Debtors' creditor constituencies over the terms of a restructuring of the Debtors and ultimately the Plan.

C. Preparation of Projections

19. In connection with the Plan and the Disclosure Statement, FTI, with the Debtors' input and assistance, prepared pro-forma financial projections, which are, in summary, annexed to the Disclosure Statement as **Exhibit B** (the "**Projections**").[3] The Projections provide the forecasted revenue, direct operating expenses, and EBITDA for the Reorganized Debtors for the period from September 30, 2016 through December 31, 2021 (the "**Projection Period**").

20. *Development of Festival/Platform Revenue Projections*. The Projections were developed in detail at the festival and functional operational levels for each line of business. The operations of SFX's business that drive revenues in the Projections, other than the continued maintenance of the online Beatport music store, are principally and predominantly the production of SFX's live festivals and events.

21. The Projections were developed on a bottom-up basis, with extensive input from SFX's management and operating teams. Members of my team and I met with key management and operators of the festivals to analyze the profitability of and prospects for major events and festivals. We looked at past performance of these events, expected factors specifically affecting future events, as well as industry and competitive trends to forecast revenue. Assumptions for attendance growth for each event were determined and revenues directly related to attendance levels were forecasted; these assumptions include ticket price, net food and beverage, merchandise and other festival attendee spend amounts. Additionally, sponsorship sales amounts were determined on an event-by-event basis, and for the enterprise generally, through 2018 based on input from sponsors, expected attendance levels and market expectations.

[3] The discussion of the Projections in this Declaration is subject to the assumptions, limitations, and qualifications described in the Notes annexed to the Projections.

22. The Projections do not take into account SFX's rate of revenue growth in 2013 and 2014 as an indicator of the Reorganized Debtors' future growth. In 2013 and 2014, SFX purchased or invested in more than 20 businesses for aggregate cash and stock consideration of more than $500 million. SFX significant revenue growth during this period was directly attributable to these acquisitions. SFX no longer has access to the large amount of capital necessary for acquisitions, as it did in 2013 and 2014. Accordingly, there is no assumed M&A activity in the Projections and, as a result, I do not believe it reasonable to expect revenue growth in any way like what SFX experienced in 2013 and 2014.

23. The Projections are based on an annual revenue cycle. Therefore, precisely when within a projection year a specific festival occurs should not impact the annual revenue expectations in the Projections. Since the date the Projections were developed, certain of the Debtors' festivals and events have underperformed projections and others have exceeded projections. The net effect however does not in the Debtors' or FTI's view provide a basis to amend the forecast.

24. In addition to the festival and event level review, FTI reviewed Beatport's performance to forecast its expected revenue.[4] At the time FTI prepared the Projections, Beatport had already shut down its streaming service and Beatport had begun to refocus its resources to its flagship business: selling high-quality audio files. The Debtors, with FTI's assistance, developed a business plan for the renewed Beatport music store. The corresponding operational and cash flow forecasts were included in the Projections.

25. *Development of Operational Expenses*. To generate revenues, SFX has to incur direct operating expenses. The direct operating expenses for the production of the live events and festivals include, but are not limited to, the costs to retain artist talent, rent the event venue,

[4] Beatport is part of SFX's "Platform" business, which is reflected in the Projections.

market the event, construct the stage and the cost of overhead for security and operations personnel.

26. These direct expenses (like the associated revenues) were projected on an event-by-event basis through 2018 and are based on historical spend and management's view of planned event growth. Operating expense growth for each of the live event and platform business units was forecasted through 2018 as a percentage of respective revenues or year over year growth, with a 1.0% increase in gross margin projected each year from 2019-2021.

27. With respect to Beatport, the largest portion of operating expenses are payments to artists' labels and performing rights organizations, which are forecasted as a constant percentage of revenue through 2018.

28. Budgeted and forecasted revenues net of direct operating expenses result in the projected festival level operating income included in the Projections, as "Operating Income".[5] The Projections provide that income from festival operations is forecasted to grow by approximately 9% per year. It is noteworthy and important that this calculation only nets out *direct* expenses associated with live events and platform activities of SFX, which are the cash generating activities of the enterprise. The calculation for the festival/platform level operating income does not account for selling, general and administrative ("**SG&A**") costs.

29. *Calculation of EBITDA*. Projected EBITDA for the forecast period is derived by subtracting from the festival/platform level operating income the SG&A expenses for the enterprise. SG&A includes payroll, rent and office expenses, insurance, legal and other professional fees, auditing, and other corporate expenses. The SG&A projections are estimated based on historical data, the extensive and comprehensive cost reduction activities that occurred

[5] The line item "Operating Income" used in the Projections refers to this festival/platform level operating income rather than to a GAAP concept of operating income. As a result, the relationship between "Operating Income" and EBITDA as set forth in the Projections is not the same as might be reflected under GAAP.

during these Chapter 11 Cases, which FTI spearheaded, and management's view of continuous improvements achievable during the Projection Period with consideration of general increases resulting from expected forecasted revenue growth and inflation in many categories. In summary SG&A is assumed to grow at approximately 3.0% per year through 2018 and 2.0% per year from 2019-2021.

30. The Projections forecast that EBITDA will grow by approximately 45% per year over the forecast period.

31. Based on my experience as a restructuring professional and my work specifically with the Debtors, I believe the Projections are a reasonable estimate of the Debtors' future performance.

II. Plan Negotiations

A. Prepetition Negotiations with Secured Creditors And Proposed RSA

32. In addition to FTI's role with respect to the operations of the Debtors and their subsidiaries, I along with the other members of my team have taken a lead role on behalf of the Debtors in negotiations with their various creditor constituencies over the restructuring of the Debtors and the ultimate path to emergence from Chapter 11. Prior to the Petition Date, the Debtors and their retained professionals engaged in separate discussions with the Ad Hoc Group and Catalyst Fund Limited Partnership V ("**Catalyst**") for a potential restructuring transaction both before and after Catalyst purchased the Debtors' prepetition first lien debt. The Debtors engaged in substantial arms' length negotiations with each of these parties over a period of several months. Ultimately those negotiations resulted in separate preliminary restructuring proposals from each of the Ad Hoc Group and Catalyst. Each contemplated a restructuring through Chapter 11 and the provision of DIP financing during the proceeding.

33. After careful consideration of the two proposals, the Debtors determined that the proposal by the Ad Hoc Group was superior to the Catalyst proposal. On January 31, 2016, the Debtors, the Ad Hoc Group, and Mr. Robert F.X. Sillerman entered into the RSA. The terms of the RSA required Mr. Sillerman to resign as chief executive officer after a period of time and for me to take on the role of interim Chief Executive Officer in addition to Chief Restructuring Officer.

34. The restructuring contemplated under the RSA was intended to provide for an expeditious emergence from chapter 11 and a significant deleveraging of the Debtors' balance sheet, which would have allowed the reorganized Debtors to operate effectively and emerge as a profitable enterprise going forward. By entering into the RSA, the Debtors were able to avoid a free-fall bankruptcy, which I believe would have substantially disrupted the Debtors' operations and damaged their business. Under the terms of the RSA, the proposed plan provided no recoveries to general unsecured creditors or equity holders.

35. On February 11, 2016, the Debtors filed a motion with the Court seeking authority for the Debtors to assume the RSA [Docket No. 89] (the "**RSA Assumption Motion**"). The RSA was met with resistance from certain of the Debtors' constituents, including objections from the Creditors' Committee and the U.S. Trustee. Accordingly, the hearing to consider the RSA Assumption Motion was adjourned repeatedly.

36. The RSA was subsequently terminated by the Ad Hoc Group on June 1, 2016 due to the claimed occurrence of defaults on certain covenants and the Debtors' failure to meet performance milestones under the RSA.

37. As a result of the termination of the RSA, the Debtors began renewed negotiations with the DIP Lenders and the Creditors' Committee over the terms of a plan that would provide for enhanced recoveries to creditors.

B. The Proposed Plan Is a Product of Good Faith and Arm's-Length Negotiations Between and Among the Debtors, the Creditors' Committee, the DIP Lenders and the Ad Hoc Group

38. Throughout these Chapter 11 Cases, the Debtors engaged in extensive good faith, arm's-length negotiations with their creditor constituencies toward a resolution of these Chapter 11 Cases. Shortly after the formation of the Creditors' Committee, the Debtors met with the Creditors' Committee and its retained professionals to discuss the Debtors' financial issues and their goals to exit chapter 11. The Debtors continued to keep the Creditors' Committee informed of the developments and provided weekly reports and financial information.

39. Even after the Debtors filed a disclosure statement and plan with the Court in July, the Debtors and the Creditors' Committee continued to discuss the Creditors' Committee's concerns and issues with the plan. The Debtors, including my team and the Special Committee, the Creditors' Committee, the DIP Lenders and Ad Hoc Group engaged in negotiations over several months with the assistance of counsel and financial advisors to each constituency. At this point, Mr. Sillerman had already resigned from his Chief Executive Officer position. Mr. Sillerman had no involvement with the negotiations and drafting of the proposed Plan.

40. Ultimately the parties were able to agree to the terms of a consensual plan of reorganization. The Plan includes among other things, the creation of a litigation trust and preservation of estate causes of action against insiders, limited release and exculpation provisions, and the proposed distributions to unsecured creditors. The Plan also eliminates the Debtors' secured debt obligations under the DIP Loans, the Prepetition Second Priority Notes, and the Original Foreign Loan Claims.

41. I believe the Plan maximizes the value of the Debtors' assets for the benefit of the Debtors' creditors and all parties-in-interest.

III. Confirmation Standards under the Plan

42. Section 1129(a)(1). Contemporaneously herewith, the Debtors are filing a memorandum of law in support of Confirmation of the Plan, which sets forth the basis under which the Plan satisfies section 1129(a)(1) of the Bankruptcy Code, including each of the requirements set forth in section 1123(a) of the Bankruptcy Code, regarding the required contents of a chapter 11 plan, and a discussion of section 1123(b), which sets forth certain permissible provisions that may be incorporated into a chapter 11 plan.

43. Section 1129(a)(2). As set forth in the Disclosure Statement, the Voting Declaration, and the Solicitation Affidavits, the Debtors solicited acceptances of the Plan from Holders of Claims against or Interests in the Debtors in each Class of Impaired Claims or Interests entitled to vote to accept or reject the Plan. To the best of my knowledge, good, sufficient, and timely notice of the Confirmation Hearing and all other hearings in these Chapter 11 Cases has been provided to all Holders of Claims and Interests, and all other parties in interest to whom notice was required to have been provided.

44. Section 1129(a)(3). As discussed in greater detail above, I believe that the Debtors have proposed the Plan in good faith with the legitimate and honest purposes of reorganizing the Debtors' ongoing business and maximizing the value of each of the Debtors and their estates.

45. Section 1129(a)(4). I understand that payments made or to be made by the Debtors for services or for costs and expenses in, on in connection with, the Chapter 11 Cases, have been approved by, or are subject to the approval of the Bankruptcy Court.

46. Section 1129(a)(5). The Debtors have filed a Plan Supplement, which names the new Boards of Directors and responsible officers of the Debtors. The identity of any insiders that will be employed or retained by the Reorganized Debtors, and the nature of such insider's compensation have also been disclosed in the Plan Supplement. This procedure is consistent with the interests of the Debtors' creditors and with public policy.

47. Section 1129(a)(6). I have been informed that section 1129(a)(6) of the Bankruptcy Code permits confirmation only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the debtor's plan. The Plan does not provide for any changes in any rates subject to approval of any governmental regulatory commission and therefore I believe that section 1129(a)(6) of the Bankruptcy Code is inapplicable.

48. Section 1129(a)(7). The Debtors' management including my team and me together with Moelis & Company LLC (the Debtors' investment banker in these Chapter 11 Cases) prepared a hypothetical analysis (the "**Liquidation Analysis**") of the impact on estimated recoveries that Holders of Claims against and Interests in the Debtors would receive if the Debtors were liquidated under chapter 7 of the Bankruptcy Code. I understand that the Liquidation Analysis examines the effects that a conversion of the Debtors' Chapter 11 Cases to cases under chapter 7 could have on the proceeds that could otherwise be available for distribution to Holders of Claims and Interests in the Debtors.

49. Based on the Liquidation Analysis, a liquidation of these Debtors under chapter 7 of the Bankruptcy Code would not provide a greater recovery for any holders of Claims or Interests against the Debtors. Accordingly, I believe that confirmation of the Plan will provide

the Debtors' stakeholders with a recovery that is not less than they would receive pursuant to a hypothetical liquidation of the Debtors under chapter 7 of the Bankruptcy Code.

50. Section 1129(a)(8). Article III of the Plan designates the following Impaired Classes: Class 3 Claims, Class 4 Claims, Class 5 Claims (2019 Debtors), Class 6 Claims, Class 7 Claims (2019 Debtors), and Class 10 Interests. Of these, Holders of Class 3 Claims, Class 4 Claims, Class 5 Claims (2019 Debtors), and Class 6 Claims have voted to accept the Plan. Class 7 Claims (2019 Debtors) and Class 10 Interests are deemed to reject the Plan. Notwithstanding the fact that the Plan does not satisfy section 1129(a)(8) of the Bankruptcy Code with respect to these Deemed Rejecting Classes, I believe the Plan may be confirmed because it satisfies sections 1129(a)(10) and 1129(b)(1) of the Bankruptcy Code.

51. Section 1129(a)(9). Holders of Administrative Claims (including Professional Fee Claims) and Priority Tax Claims shall receive payment in full of their respective Claim, unless the holder of a particular claim agrees to a different treatment with respect to such claim.

52. Section 1129(a)(10). Holders of Class 3 Claims, Class 4 Claims, Class 5 Claims (2019 Debtors), and Class 6 Claims have affirmatively accepted the Plan without including the acceptance of the Plan by insiders in such Classes.

53. Section 1129(a)(11). I have analyzed the Debtors' ability to fulfill their obligations under the Plan. As part of this analysis, and as discussed in greater detail above, we together with Debtors' management team, prepared the Projections.

54. The Debtors have already taken significant steps to improve their operations during these Chapter 11 Cases. For instance, the Debtors have rejected burdensome executory contracts and leases. The Debtors have also settled various claims (as more fully set forth in the Plan). Moreover, the Debtors have revamped and re-tailored their business and marketing plans

in order to more effectively compete and grow, including implementation of the Business Plan. Furthermore, the Debtors have streamlined their operations by eliminating unnecessary and/or duplicative overhead costs.

55. Moreover and very significantly, under the Plan the Debtors are converting all debt to equity, which will result in the Debtors having no debt upon emergence from bankruptcy. As a result of these efforts, the Debtors' balance sheet has significantly improved since the outset of these Chapter 11 Cases. I believe the Debtors will have sufficient cash on exit to fund payments under the Plan and the Reorganized Debtors' immediate cash needs.

56. Therefore, I believe that the Debtors are now in a position to operate their businesses more efficiently and effectively.

57. Section 1129(a)(12). I understand that the Debtors have paid all chapter 11 statutory fees and operating fees required to be paid during these Chapter 11 Cases and filed all fee statements required to be filed. Further, the Plan provides that all fees payable under section 1930 of title 28 of the United States Code, as determined by the Bankruptcy Court at the Confirmation Hearing, shall be paid on and after the Effective Date, and thereafter as may be required, for each Debtor until entry of a final decree with respect to such Debtor.

58. Sections 1129(a)(13), (14), (15) and (16). As to sections 1129(a)(13), (14), (15), and (16), the Debtors do not have any retiree benefit plans, none of the Debtors is an individual, the Debtors are not subject to any domestic support obligations, and the Debtors are each moneyed, business and commercial corporations, and accordingly I do not believe these sections are applicable to the Debtors.

59. Section 1129(b). It is my understanding that section 1129(b) of the Bankruptcy Code provides that if all applicable requirements of section 1129(a) are met, notwithstanding a

failure to comply with section 1129(a)(8), a plan may be confirmed so long as it does not discriminate unfairly and is fair and equitable with respect to each class of Claims and Interests that is Impaired and has not accepted the plan.

60. Article III of the Plan designates Class 7 Claims (2019 Debtors) and Class 10 Interests as Classes that shall not receive any Distributions under the Plan and, therefore, are deemed to have rejected the Plan pursuant to section 1126(g) of the Bankruptcy Code. No Classes that are entitled to vote to accept or reject the Plan have voted to reject the Plan. I understand that the Plan may nonetheless be confirmed over the rejection of the Deemed Rejecting Classes pursuant to section 1129(b) of the Bankruptcy Code because the Plan does not discriminate unfairly and is fair and equitable with respect to all Classes.

61. With respect to Class 7 Claims (2019 Debtors), the Holder of any Claim or Interest junior to the Class 7 Claims (2019 Debtors) will not receive or retain any property under the Plan on account of such junior Claim or Interest and the Plan does not discriminate unfairly with respect to the Class 7 Claims (2019 Debtors). Further, no Holder of a Claim senior to Class 7 Claims (2019 Debtors) will receive more than the full Allowed amount of its Claim.

62. With respect to Class 10 Interests, no holder of any Interest that is junior to such Class will receive or retain any property under the Plan on account of such junior Interests, as there are no Classes junior to Class 10 Interests. Further, no Holder of a Claim senior to Class 10 Interests will receive more than the full Allowed amount of its Claim. .

63. Section 1129(c). The Plan is the only plan that has been filed in the Debtors' bankruptcy cases and is the only plan that satisfies the requirements of subsections (a) and (b) of section 1129 of the Bankruptcy Code.

64. Section 1129(d). Consistent with section 1129(d) of the Bankruptcy Code, the principal purpose of the Plan is not avoidance of taxes or avoidance of the requirements of Section 5 of the Securities Act of 1933, and there has been no filing by any governmental agency asserting the contrary.

65. Section 1129(e). I have been informed that none of these Chapter 11 Cases is a "small business case" as that term is defined in the Bankruptcy Code. Accordingly, I believe that this section is inapplicable to the Debtors.

IV. Treatment of Executory Contracts and Unexpired Leases

66. Article VII of the Plan provides for the treatment of Executory Contracts and Unexpired Leases. In determining which Executory Contracts and Unexpired Leases are to be assumed or rejected, the Debtors, with the assistance of FTI, conducted a thorough review of their contracts and leases. The Debtors, thereafter, discussed the proposed assumptions and/or rejections of the Executory Contracts and Unexpired Leases with the DIP Lenders, the DIP Lenders' professionals, and proposed new management of the Reorganized Debtors. Based on this review and oversight, I believe the Debtors exercised reasonable business judgment in determining whether to assume or reject their Executory Contracts and Unexpired Leases.

67. In addition, I believe the Debtors will have sufficient liquidity to make required Cure payments and to continue to make required payments going forward. Accordingly, I believe the Debtors have provided adequate assurance of future performance with respect to the Executory Contracts and Unexpired Leases that may be assumed pursuant to the Plan.

V. Releases and Exculpations Under the Plan

68. Article XII of the Plan provides certain release, exculpatory and injunctive provisions. It is my opinion that these provisions are an integral component of the settlement of

the various claims and controversies embodied in the Plan. The released and exculpated parties have been vital to the Debtors' reorganization, the Plan's development and its potential Confirmation. The parties receiving releases under the Plan have been integral to the business throughout these Chapter 11 Cases and will be instrumental in helping ensure the success of the business going forward.

69. The Debtors' officers, executive management team, and the Special Committee were instrumental in negotiating the Plan. The Specified Parties and the Designated Officers and Directors stayed with the Debtors despite the uncertainties attendant to any chapter 11 case and assisted the Debtors throughout the reorganization process. As a result, the Debtors have been able to stabilize their operations during the course of these Chapter 11 Cases, thereby preserving the value of the estates.

70. Further, the DIP Lenders and Ad Hoc Group were instrumental in the development of the Plan and with keeping the Debtors operating during these Chapter 11 Cases. Simply put, the Debtors' ability to continue to operate as a going concern is largely a result of the infusion of over $100 million in DIP financing and the elimination of over $400 million in secured debt, incurred prepetition and postpetition. This funding was critical to the stabilization of the Debtors' businesses, and the elimination of all material secured debt obligations provides the Reorganized Debtors with a much healthier balance sheet going forward.

71. The release and exculpation provisions were heavily negotiated, are narrowly tailored, and, based on my personal involvement in Plan negotiations, the Plan would not have been possible without these provisions.

72. I believe the releases are an integral part of the Plan negotiated at arm's length without which Confirmation would not have been possible. Absent this negotiated Plan and the

work of the released parties, no proceeds would be available for Distribution to Holders of Claims and Interests junior to Class 3 Claims or Class 4 Claims. This is in direct contrast to the Plan, which provides for a recovery to general unsecured creditors.

73. Notably, parties against whom allegations for actions during the prepetition period remain pending are not receiving releases under the Plan for such conduct. Causes of Action held by the Debtors for such prepetition conduct are being transferred to the Litigation Trust and recoveries on such claims will ensure to the benefit of the Debtors' creditors.

74. I also understand that the Plan's third-party releases are "consensual" because all Holders of Claims against and Interest in the Debtors that were entitled to vote to accept or reject the Plan were afforded the opportunity to opt out of the releases. Moreover, those voting parties that abstained from voting did not grant the Consensual Release under the Plan.

75. I believe that the exculpation provisions under the Plan are also appropriate. The exculpations are limited to apply to only estate fiduciaries. As with the releases, the exculpations were the product of arm's-length negotiations and are a critical component of the Plan.

76. Ultimately, because of the release and exculpation provisions' importance to the resolution embodied in the Plan, the provisions are appropriate under the circumstances.

I declare, under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct to the best of my knowledge. Executed on this 7th day of November, 2016, in New York, New York.

/s/ Michael Katzenstein
Michael Katzenstein
Chief Restructuring Officer and interim Chief Executive Officer