

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

OLIVER LUCK

Plaintiff

v.

VINCENT K. MCMAHON and
ALPHA ENTERTAINMENT LLC

Defendants.

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CIVIL NO. 3:20-cv-516 (VAB)

October 20, 2020

OLIVER LUCK’S MOTION TO AMEND THE COMPLAINT

Pursuant to Federal Rule of Civil Procedure 19, Local Rule 7(f), and this Court’s order of June 26, 2020 [ECF 79], Plaintiff Oliver Luck respectfully moves for permission to summon Alpha Entertainment LLC (“Alpha”) into this action, and to serve it with an Amended Complaint in the form attached as Exhibit 1. Defendant, Vincent K. McMahon, opposes this motion. A redlined version of the proposed Amended Complaint showing the changes proposed against the current Complaint is attached as Exhibit 2 to this motion. This Motion is being filed concurrently with Oliver Luck’s Motion to Lift the Stay.

BACKGROUND

On June 26, 2020, the Court entered its Ruling and Order on Motion for Prejudgment Remedy and Motion for Disclosure of Assets [ECF 79] (the “Stay Order”), attached as Exhibit 3. In the Stay Order, the Court “stay[ed] the case until Alpha can be joined as an indispensable party....” Ex. 3 at 17.

On August 7, 2020, the United States Bankruptcy Court for the District of Delaware, Case No. 20- 10940 (LSS) (the “Bankruptcy Court”), entered an Agreed Order Granting Oliver Luck’s Motion for Relief from Stay to Join Alpha Entertainment LLC in Connecticut Proceeding (the

Oral argument is requested.

“Agreed Order”), attached as Exhibit 4. In the Agreed Order, the Bankruptcy Court ordered the automatic bankruptcy stay to be lifted as of the earlier of October 31, 2020 or sixty days after the closing date of Alpha’s asset sale. Ex. 4 at 2. Pursuant to the Agreed Order, Alpha’s attorney, Matthew Lunn, provided written notice to Mr. Luck’s attorneys that Alpha’s asset sale closed on August 21, 2020. Ex. 5. Accordingly, the automatic bankruptcy stay is lifted as of today, October 20, 2020—sixty days after the closing date— allowing Mr. Luck to join Alpha in this case for the sole purpose of seeking a declaration of whether or not Alpha properly terminated Mr. Luck for cause under his Employment Contract. Ex. 4 at 1-2.

RELIEF REQUESTED

Mr. Luck has good cause for now amending the Complaint. On June 26, 2020, this Court ordered this action stayed “until Alpha can be joined.” Ex. 3 at 17. Prior to obtaining relief from the stay in the bankruptcy court, Alpha could not be joined as a party in this action. 11 U.S.C. § 362(a)(1). Mr. Luck has now been able to obtain relief from 11 U.S.C. § 362(a)(1)’s automatic bankruptcy stay. *See* Ex. 4. Therefore, good cause now exists for the Complaint to be amended to join Alpha.

WHEREFORE, Plaintiff Oliver Luck respectfully moves for permission to summon Alpha into this case and to amend his Complaint to join Alpha as a required party. Further, Mr. Luck requests the attached clean version of the Amended Complaint be deemed filed as of the date the Court grants this Motion.

Respectfully submitted,

PLAINTIFF OLIVER LUCK

/s/ Andrew M. Zeitlin
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Joette Katz (Fed. Bar No. ct30935)
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HIS ATTORNEYS

CERTIFICATE OF SERVICE

I hereby certify that on October 20, 2020, a copy of the foregoing was filed electronically and served on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system, or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

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EXHIBIT 1

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT**

OLIVER LUCK

Plaintiff

v.

VINCENT K. MCMAHON and
ALPHA ENTERTAINMENT LLC

Defendants.

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CIVIL NO. 3:20-cv-516 (VAB)

October 20, 2020

COMPLAINT

Plaintiff, Oliver Luck, by and through his undersigned attorneys, as and for his Complaint against Defendants, Vincent K. McMahon (“McMahon”) and Alpha Entertainment LLC (“Alpha”) (collectively, the “Defendants”), hereby alleges as follows, based on knowledge of his own actions, and on information and belief as to all other matters:

I. INTRODUCTION

1. This lawsuit concerns Defendants’ wrongful termination of Mr. Luck as Commissioner and CEO of the XFL, a professional football league, and McMahon’s breach of guaranty for payment of Mr. Luck’s salary and bonus as Commissioner and CEO. Despite fulfilling his obligations as Commissioner and CEO since May 30, 2018, Mr. Luck was wrongfully terminated by Alpha, an affiliate of McMahon, on April 9, 2020.¹ Thus, Alpha has repudiated Mr.

¹ Moreover, on April 13, 2020, Alpha filed its petition for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 20-10940 (LSS). At the same time, Alpha filed its Eleventh Omnibus Motion for Entry of an Order Authorizing the Debtor to Reject Certain Executive Contracts Effective at the Petition Date, by which Alpha seeks an order of the Bankruptcy Court authorizing it to reject, *inter alia*, the Employment Contract (as defined below) under 11 U.S.C. § 365(a), effective as of the date of the filing of the bankruptcy on April 13, 2020. (*In re Alpha Entertainment LLC*, Case No. 20-10940, ECF No. 22 (Bankr. D. Del.)). Under 11 U.S.C. § 365(g)(1), the rejection of an executory contract “constitutes a breach of such contract . . . immediately before the date of the filing of the petition.” In this lawsuit, Plaintiff joins Alpha for the sole purpose of seeking a declaration of whether or not Alpha properly terminated Mr. Luck for cause under his Employment Contract, defined *infra*.

Luck's employment agreement. Mr. Luck brings this action for (1) a declaratory judgment against Alpha for the wrongful termination of Mr. Luck under the Employment Contract (as defined *infra*) and (2) breach of contract and declaratory judgment against McMahon, who, as primary obligor, guaranteed Alpha's performance of its obligations under the Employment Contract and who, with knowledge of Alpha's alleged termination of Mr. Luck, has failed to perform the obligation of payment. In addition, under the Guaranty (as defined below), McMahon waived all defenses and discharges, legal or equitable, to his obligations under the Guaranty whether or not the Employment Contract is valid or enforceable.

II. THE PARTIES

2. Plaintiff, Oliver Luck, is a citizen of Indiana.
3. Defendant, Vincent K. McMahon, is a citizen of Connecticut.
4. Nominal Defendant, Alpha Entertainment LLC, is a citizen of Connecticut and Delaware as its members at the time this action commenced were Vincent K. McMahon, a citizen of Connecticut, and World Wrestling Entertainment, Inc., a citizen of Delaware and Connecticut.

III. JURISDICTION AND VENUE

5. This Court has diversity jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2) because there is complete diversity between the Plaintiff and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

6. Venue is proper in the District of Connecticut pursuant to 28 U.S.C. §1391(b) because the Defendants reside in this judicial district. Additionally, Mr. Luck performed a substantial part of his employment obligations, and Alpha and McMahon breached their obligations, in this judicial district. Thus, venue is also proper in the District of Connecticut

pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims asserted occurred in this judicial district.

IV. BACKGROUND FACTS

7. Mr. Luck agreed to be the Commissioner and CEO for the new professional football league known as the XFL. On May 30, 2018, Mr. Luck entered into the Contract for Employment as Commissioner and CEO (the “Employment Contract”). *See* Employment Contract, attached hereto as Exhibit 1.

8. McMahon was the controlling owner of Alpha during the entire period Mr. Luck was employed by Alpha and when Mr. Luck was wrongfully terminated by Alpha. McMahon, as a primary obligor, personally, unconditionally, and irrevocably guaranteed Alpha’s performance of its agreements and obligations under the Employment Contract, including, but not limited to, payment of Mr. Luck’s base salary and guaranteed annual bonus. *See* Ex. 1 at Exhibit A (the “Guaranty”).

9. The Employment Contract and the Guaranty provide that they are to be governed by Connecticut law. Ex. 1 at 4 “Governing Law”; Ex. 1 at Ex. A ¶ 3.

10. McMahon executed the Guaranty in favor of Mr. Luck for payment and performance of Alpha’s obligations under the Employment Contract. Ex. 1 at Ex. A. Under the Guaranty, McMahon’s obligations are unconditional, absolute, continuing, and irrevocable. Further, McMahon waived any legal or equitable defenses to Mr. Luck’s enforcement of the Guaranty. *Id.* ¶ 2.

11. On April 9, 2020, Alpha wrongfully terminated Mr. Luck’s employment allegedly for cause, effective immediately, and repudiated the Employment Contract. *See* Termination Letter, attached as Exhibit 2. Mr. Luck wholly disputes and rejects the allegations set forth in the

Termination Letter and contends they are pretextual and devoid of merit. *See* Response Letter dated April 16, 2020, attached as Exhibit 3.

12. As a primary obligor, McMahon has failed to perform his duties under the Guaranty despite his knowledge and approval of the facts that (a) Alpha terminated the Employment Contract, and did so without cause; and (b) under the Guaranty, he waived all defenses to its enforcement. Accordingly, all amounts of base salary, bonuses, and other forms of compensation are now due and owing to Mr. Luck by McMahon.

V. CLAIMS FOR RELIEF

COUNT ONE - DECLARATORY JUDGMENT

13. Plaintiff incorporates herein by reference all preceding paragraphs.

14. In accordance with 28 U.S.C. § 2201, an actual controversy exists between Mr. Luck and Alpha.

15. Mr. Luck seeks, and is entitled to, a declaration that Alpha wrongfully terminated and repudiated the Employment Contract without cause.

COUNT TWO - DECLARATORY JUDGMENT

16. Plaintiff incorporates herein by reference all preceding paragraphs.

17. In accordance with 28 U.S.C. § 2201, an actual controversy exists between Mr. Luck and Mr. McMahon.

18. Mr. Luck seeks, and is entitled to, a declaration that McMahon's obligations under the Guaranty are as primary obligor such that McMahon is primarily responsible to Mr. Luck for all amounts owed to him under the Employment Contract.

19. Further, Mr. Luck seeks and is entitled to, a declaration that McMahon has waived all defenses and discharges, legal or equitable, to Mr. Luck's enforcement of the Guaranty.

COUNT THREE - BREACH OF CONTRACT

20. Plaintiff incorporates herein by reference all preceding paragraphs.

21. Because Alpha wrongfully terminated and repudiated the Employment Contract without cause, all future salary, bonuses and other compensation are now immediately due and payable to Mr. Luck.

22. Mr. McMahon has breached his obligations under the Guaranty by failing to pay all amounts owed to Mr. Luck.

23. As a result, Mr. Luck has suffered damages in an amount exceeding the minimum jurisdictional amounts of this Court.

PRAYER FOR RELIEF

WHEREFORE, based on the Defendants' conduct complained of herein, Mr. Luck asks that this Court enter judgment in Mr. Luck's favor, and against McMahon, and award to Mr. Luck:

- a. Actual damages;
- b. Reasonable attorneys' fees, expenses, and costs of court;
- c. All pre- and post-judgment interest as allowed by law at the highest rate allowed by law, including interest pursuant to Conn. Gen. Stat. § 37-3a; and
- d. Declaratory Judgment as set forth above in Count Three.

Further based on Defendants' conduct complained of herein, Mr. Luck asks that this Court enter judgment in Mr. Luck's favor, and against Alpha, and award to Mr. Luck:

- a. Declaratory Judgment as set forth above in Count One.

Mr. Luck further prays for all other relief to which he may be entitled.

DEMAND FOR JURY TRIAL

Mr. Luck requests a trial by jury for all issues so triable pursuant to FED. R. CIV. P. 38(b) and 38(c).

PLAINTIFF OLIVER LUCK

/s/ Andrew M. Zeitlin

Andrew M. Zeitlin (Fed. Bar No. ct21386)

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AND

/s/ Paul J. Dobrowski

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HIS ATTORNEYS

EXHIBIT 2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF CONNECTICUT

OLIVER LUCK

Plaintiff

v.

CIVIL NO. 3:20-cv-516 (VAB)

VINCENT K. MCMAHON

§ and §

LLC §

§ APRIL 16 ALPHA ENTERTAINMENT

§ October 20, 2020

~~Defendant~~ Defendants.

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COMPLAINT

Plaintiff, Oliver Luck, by and through his undersigned attorneys, as and for his Complaint against ~~Defendant~~ Defendants, Vincent K. McMahon (“~~Defendant~~” or “McMahon”) and Alpha Entertainment LLC (“Alpha”) (collectively, the “Defendants”), hereby alleges as follows, based on knowledge of his own actions, and on information and belief as to all other matters:

I. INTRODUCTION

1. This lawsuit concerns ~~Defendant’s~~ Defendants’ wrongful termination of Mr. Luck as Commissioner and CEO of the XFL, a professional football league, and McMahon’s breach of guaranty for payment of Mr. Luck’s salary and bonus as Commissioner and CEO ~~of the XFL, a professional football league.~~ Despite fulfilling his obligations as Commissioner and CEO since May 30, 2018, Mr. Luck was wrongfully terminated by Alpha ~~Entertainment LLC (“Alpha”).~~ an affiliate of ~~Defendant~~ McMahon, on April 9, 2020.¹ Thus, Alpha has repudiated Mr. Luck’s

¹ Moreover, on April 13, 2020, Alpha filed its petition for Chapter 11 bankruptcy protection in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), Case No. 20-10940 (LSS). At the same time, Alpha filed its Eleventh Omnibus Motion for Entry of an Order Authorizing the Debtor to Reject Certain Executive Contracts Effective at the Petition Date, by which Alpha seeks an order of the Bankruptcy Court authorizing it to reject, *inter alia*, the Employment Contract (as defined below) under 11 U.S.C. § 365(a), effective as of the date of the filing of the bankruptcy on April 13, 2020. (*In re Alpha Entertainment LLC*, Case No. 20-10940, ECF No. 22 (Bankr. D. Del.)). Under 11 U.S.C. § 365(g)(1), the rejection of an executory contract “constitutes a breach of such

employment agreement. Mr. Luck brings this action for (1) a declaratory judgment against Alpha for the wrongful termination of Mr. Luck under the Employment Contract (as defined *infra*) and (2) breach of contract and declaratory judgment against McMahon, who, as primary obligor, guaranteed Alpha's performance of its obligations under ~~Mr. Luck's employment agreement~~the Employment Contract and who, with knowledge of Alpha's alleged termination of Mr. Luck, has failed to perform the obligation of payment. In addition, under the Guaranty (as defined below), ~~Defendant McMahon~~ waived all defenses and discharges, legal or equitable, to his obligations under the Guaranty whether or not the ~~employment agreement~~Employment Contract is valid or enforceable.

II. THE PARTIES

2. Plaintiff, Oliver Luck, is a citizen of Indiana.
3. Defendant, Vincent K. McMahon, is a citizen of Connecticut.

4. Nominal Defendant, Alpha Entertainment LLC, is a citizen of Connecticut and Delaware as its members at the time this action commenced were Vincent K. McMahon, a citizen of Connecticut, and World Wrestling Entertainment, Inc., a citizen of Delaware and Connecticut.

III. JURISDICTION AND VENUE

4-5. This Court has diversity jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1332(a)(2) because ~~the parties are citizens of different states~~there is complete diversity between the Plaintiff and Defendants and the amount in controversy exceeds \$75,000, exclusive of interest and costs.

contract . . . immediately before the date of the filing of the petition.” In this lawsuit, Plaintiff ~~does not seek any relief, recovery or judgment against~~joins Alpha for the sole purpose of seeking a declaration of whether or not Alpha properly terminated Mr. Luck for cause under his Employment Contract, defined *infra*.

~~5-6.~~ Venue is proper in the District of Connecticut pursuant to 28 U.S.C. §1391(b) because ~~McMahon, the only defendant, resides~~ the Defendants reside in this judicial district. Additionally, Mr. Luck performed a substantial part of his employment obligations, and Alpha and McMahon breached ~~his~~their obligations, in this judicial district. Thus, venue is also proper in the District of Connecticut pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events giving rise to the claims asserted occurred in this judicial district.

IV. BACKGROUND FACTS

~~6-7.~~ Mr. Luck agreed to be the Commissioner and CEO for the new professional football league known as the XFL. On May 30, 2018, Mr. Luck entered into the Contract for Employment as Commissioner and CEO (the “Employment Contract”). *See* Employment Contract, attached hereto as Exhibit 1.

~~7-8.~~ McMahon ~~is~~was the controlling owner of Alpha during the entire period Mr. Luck was employed by Alpha and when Mr. Luck was wrongfully terminated by Alpha. McMahon, as a primary obligor, personally, unconditionally, and irrevocably guaranteed Alpha’s performance of its agreements and obligations under the Employment Contract, including, but not limited to, payment of Mr. Luck’s base salary and guaranteed annual bonus. *See* Ex. 1 at Exhibit A (the “Guaranty”).

~~8-9.~~ ~~The Employment Contract is further governed by the Confidentiality, Non-Solicitation and Non-Competition Agreement dated May 30, 2018. *See* Ex. 1 at Exhibit B (the “CNNA”). Consequently, as a precaution, Mr. Luck files under seal all exhibits hereto with his contemporaneously filed Motion to Seal Portions of Complaint and Exhibits 1-3 to Complaint and Memorandum of Law in Support thereof. D. CONN. L. CIV. R. 5(e). The Employment Contract, the Guaranty, and the CNNA~~ The Employment Contract and the Guaranty provide that they are to

be governed by Connecticut law. Ex. 1 at 4 “Governing Law”; Ex. 1 at Ex. A ¶ 3; ~~Ex. 1 at Ex. B ¶ 16.~~

9-10. McMahon executed the Guaranty in favor of Mr. Luck for payment and performance of Alpha’s obligations under the Employment Contract. Ex. 1 at Ex. A. Under the Guaranty, McMahon’s obligations are unconditional, absolute, continuing, and irrevocable. Further, McMahon waived any legal or equitable defenses to Mr. Luck’s enforcement of the Guaranty. *Id.* ¶ 2.

~~10-11.~~ On April 9, 2020, Alpha wrongfully terminated Mr. Luck’s employment allegedly for cause, effective immediately, and repudiated the Employment Contract. *See* Termination Letter, attached as Exhibit 2. Mr. Luck wholly disputes and rejects the allegations set forth in the Termination Letter and contends they are pretextual and devoid of merit. *See* Response Letter dated April 16, 2020, attached as Exhibit 3.

~~11-12.~~ As a primary obligor, McMahon has failed to perform his duties under the Guaranty despite his knowledge and approval of the facts that (a) Alpha terminated the Employment Contract, and did so without cause; and (b) under the Guaranty, he waived all defenses to its enforcement. Accordingly, all amounts of base salary, bonuses, and other forms of compensation are now due and owing to Mr. Luck by McMahon.

V. CLAIMS FOR RELIEF

COUNT ONE - ~~BREACH OF CONTRACT~~

DECLARATORY JUDGMENT

~~12-13.~~ Plaintiff incorporates herein by reference all preceding paragraphs.

14. ~~Because~~In accordance with 28 U.S.C. § 2201, an actual controversy exists between Mr. Luck and Alpha.

~~13.15. Mr. Luck seeks, and is entitled to, a declaration that Alpha wrongfully terminated and repudiated the Employment Contract without cause, all future salary, bonuses and other compensation are now immediately due and payable to Mr. Luck.~~

~~14.1. McMahon has breached his obligations under the Guaranty by failing to pay all amounts owed to Mr. Luck.~~

~~1. As a result, Mr. Luck has suffered damages in an amount exceeding the minimum jurisdictional amounts of this Court.~~

COUNT TWO - DECLARATORY JUDGMENT

16. Plaintiff incorporates herein by reference all preceding paragraphs.

17. In accordance with 28 U.S.C. § 2201, an actual controversy exists between Mr. Luck and Mr. McMahon.

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PRAYER FOR RELIEF

WHEREFORE, based on ~~McMahon's~~the Defendants' conduct complained of herein, Mr. Luck asks that this Court enter judgment in Mr. Luck's favor, and against McMahon, and award to Mr. Luck:

- a. Actual damages;
- b. Reasonable attorneys' fees, expenses, and costs of court;
- c. All pre- and post-judgment interest as allowed by law at the highest rate allowed by law, including interest pursuant to Conn. Gen. Stat. § 37-3a; and
- d. Declaratory Judgment as set forth above in Count Three.

Further based on Defendants' conduct complained of herein, Mr. Luck asks that this Court enter judgment in Mr. Luck's favor, and against Alpha, and award to Mr. Luck:

- a. Declaratory Judgment as set forth above in Count One.

Mr. Luck further prays for all other relief to which he may be entitled.

DEMAND FOR JURY TRIAL

Mr. Luck requests a trial by jury for all issues so triable pursuant to FED. R. CIV. P. 38(b) and 38(c).

-PLAINTIFF OLIVER LUCK

/s/ Andrew M. Zeitlin
Andrew M. Zeitlin (Fed. Bar No. ct21386)
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~~AND (PRO HAC VICE APPLICATIONS PENDING)~~

AND

/s/ Paul J. Dobrowski

Paul J. Dobrowski ([phv10563](#))

Vanessa L. Pierce ([phv10561](#))

[Jared A. McHazlett \(phv10650\)](#)

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HIS ATTORNEYS

EXHIBIT 3

UNITED STATES DISTRICT COURT
DISTRICT OF CONNECTICUT

OLIVER LUCK,
Plaintiff,

v.

VINCENT K. MCMAHON,
Defendant.

No. 3:20-cv-516 (VAB)

**RULING AND ORDER ON MOTION FOR PREJUDGMENT REMEDY
AND MOTION FOR DISCLOSURE OF ASSETS**

On April 16, 2020, Oliver Luck (“Plaintiff”) sued Vincent K. McMahon (“Defendant”) to recover approximately \$23.8 million in salary and bonuses allegedly owed for Mr. Luck’s employment contract as Commissioner and CEO (the “Employment Contract”) with Alpha Entertainment LLC (“Alpha”), which Mr. McMahon allegedly personally guaranteed, and which Mr. Luck alleges was wrongfully terminated for cause.

Pending are Mr. Luck’s Motion for a Prejudgment Remedy-Redacted [ECF No. 21], Sealed Motion for Disclosure of Assets [ECF No. 25], Motion for Prejudgment Remedy-Unredacted [ECF No. 58], and Motion for Disclosure of Assets [ECF No. 61]. Mr. Luck’s first two motions, [ECF Nos. 21 and 25], are **MOOT**¹ because the latter two motions, [ECF Nos. 58 and 61] have superseded it.

For the following reasons, the case is **STAYED** and the pending motions are **DENIED** without prejudice to refiling following the conclusion of bankruptcy proceedings involving Alpha.

¹ The Court notes that in a telephonic hearing and conference held on May 13, 2020, it granted the parties’ numerous motions to seal the Complaint and filings “only with respect to the sealing of Mr. McMahon’s unnecessary personally identifying information,” and ordered the parties to “refile all sealed documents as unsealed documents.” Minute Entry, ECF No. 48 (May 13, 2020).

I. BACKGROUND

Mr. Luck is a citizen of Indiana, and Mr. McMahon is a citizen of Connecticut. Alpha is a limited liability company, based in Connecticut, and recently declared bankruptcy.

On May 30, 2018, Mr. Luck entered into an employment contract (the “Employment Contract”) with Alpha, agreeing to serve as the Commissioner and CEO of the XFL, a new United States professional football league.

Mr. McMahon, as the controlling owner of Alpha, provided to Mr. Luck a guaranty, Exhibit A to the Employment Contract (the “Guaranty”), wherein he “irrevocably and unconditionally guarantee[d] . . . the due and punctual payment and performance by the obligor of all of its agreements and obligations under the Transaction Documents,” which include the Guaranty, the Employment Contract, and other documents. Ex. 1 to Compl., Ex. A: Guaranty, ECF No. 57 at 13 (May 30, 2018) (“Guaranty”). The Guaranty was “a guaranty of payment and not of collection.” *Id.* The Guaranty further stated:

The obligations of the Guarantor hereunder shall be absolute, unconditional, continuing and irrevocable and shall remain in full force and effect until the full performance by the Obligor of all of its agreements and its obligations under the Transaction Documents, irrespective of the validity, regularity or enforceability of any Transaction Document, any amendment or other modification or change thereto, the absence of any action to enforce the same, any waiver or consent by the Executive or the Obligor with respect to any provision of any Transaction Document, the recovery of any judgment against the Obligor or any action to enforce the same, any dissolution, liquidation or termination of the Obligor, or any other circumstances that may otherwise constitute a legal or equitable discharge or defense of the Guarantor, all of which are hereby waived by the Guarantor. The Guarantor further waives any right of set-off or counterclaim it may have against the Executive arising from any other obligations that the Executive may have to the Obligor or the Guarantor. This Guaranty shall be binding upon the Guarantor and shall inure to the benefit of the Executive and, in each case, their respective estates, heirs, executors, legatees, devisees, personal representatives, successors and permitted assigns.

Id.

Under the Employment Contract, Mr. Luck had “full authority to hire, dismiss, replace or reassign any employee, consultant or contractor of the XFL . . . subject to Mr. McMahon’s preapproval for material business decisions.” Ex. 1 to Compl.: Contract for Employment as Commissioner and CEO at 1, ECF No. 57 (May 30, 2018) (“Employment Contract”). Mr. Luck had to “devote substantially all of his business time to the performance of his duties to the XFL[.]” *Id.* Mr. Luck was to serve as Commissioner and CEO of the XFL for an initial list of July 1, 2018 to June 30, 2023. His base salary was \$5,000,000, and he received a “guaranteed annual bonus” of \$2,000,000 “on the last day of each Contract Year, subject to his continued employment on the scheduled payment date.” *Id.* at 2.

The Employment Contract stated that Alpha could terminate Mr. Luck “at any time, with or without Cause,” and set forth six grounds for termination for cause, including “Mr. Luck’s willful and intentional material misconduct in performance of his duties or gross negligence of his duties . . . , including an intentional failure to follow any applicable XFL policies or directives,” and “Mr. Luck’s willful disregard of the lawful instructions of Mr. McMahon concerning Mr. Luck’s material duties hereunder.” *Id.* at 3. Alpha was not required to provide thirty days written notice to Mr. Luck if the act or omission was “not reasonably susceptible to cure.” *Id.* Upon termination for cause, Mr. Luck was only entitled to payment of “previously accrued salary and any vested employee benefits,” whereas upon termination without cause, Mr. Luck is entitled to a lump sum cash payment within sixty days of termination. *Id.* The lump sum amount would be equal to:

- (i) the aggregate amount of Base Salary and Guaranteed Annual Bonuses that would otherwise be payable to him during the remaining scheduled term of this Contract (i.e., through June 30,

2023 or, if applicable, any Renewal Periods) plus (ii) all Accrued Obligations plus (iii) the aggregate amount of premiums for coverage for Mr. Luck and his dependents under the health, accident, life and other insurance benefits that he was receiving immediately prior to such termination for a period of 24 months following such termination.

Id.

On April 9, 2020, Alpha terminated Mr. Luck's employment allegedly for cause, including for Mr. Luck's alleged gross negligence and willful disregard of Mr. McMahon's lawful instructions concerning Mr. Luck's material duties. In a termination letter, Alpha provided several non-exhaustive examples of Mr. Luck's alleged gross negligence and violation of XFL policies: (1) alleged violation of the policy of "not signing players with problematical backgrounds and history" when Mr. Luck entered into a contract with Antonio Callaway and offered him "a very substantial signing bonus of \$125,000;" (2) alleged failure to timely carry out Mr. McMahon's directive to terminate Mr. Callaway's services once Mr. McMahon learned what Mr. Luck did, which led to the XFL's liability for Mr. Callaway's injury at practice; and (3) alleged failure to devote substantially all business time to XFL duties after March 13, 2020, when Mr. Luck left Connecticut for Indiana following the XFL's cancellation of the rest of its season due to the COVID-19 pandemic, and failed to exhibit "any of the vigor and work ethic required of a CEO of a start-up enterprise in these trying times." Ex. 2 to Compl.: Termination Letter from Alpha to Mr. Luck, ECF No. 57 at 21–22 (Apr. 9, 2020).

On April 16, 2020, Mr. Luck sued Mr. McMahon for breach of the Guaranty, and sought \$23.8 million in salary and bonuses allegedly owed under the Employment Contract, as well as a declaratory judgment against Mr. McMahon. Redacted Compl., ECF No. 1 (Apr. 16, 2020); Compl., ECF No. 57 (May 13, 2020) (unredacted Complaint filed in accordance with the Court's orders related to various motions to seal filed by both parties).

On April 21, 2020, Mr. Luck filed sealed documents moving for a prejudgment remedy and disclosure of assets. Mot. for a Prejudgment Remedy-Redacted, ECF No. 21 (Apr. 21, 2020); Sealed Mot. for Disclosure of Assets, ECF No. 25 (Apr. 21, 2020).

On May 12, 2020, Mr. McMahon opposed Mr. Luck's motions. Sealed Def.'s Mem. of Law in Opp'n to Pl.'s Application for Prejudgment Remedy, ECF No. 44 (May 12, 2020); Def.'s Mem. of Law in Opp'n to Pl.'s Mot. for Disclosure of Assets, ECF No. 45 (May 12, 2020).

On May 13, 2020, the Court held a telephonic status conference, and granted in part and denied in part several motions to seal filed by the parties, ECF Nos. 2, 29, 34, 43. Minute Entry, ECF No. 48 (May 13, 2020). The motions to seal were granted only with respect to the sealing of Mr. McMahon's unnecessary personally identifying information. *Id.* The Court ordered the parties to "refile all sealed documents as unsealed documents," but to redact and refile any documents accordingly. *Id.*

On the same day, Mr. McMahon refiled his oppositions to Mr. McMahon's motions, Def.'s Opp'n to Pl.'s Application for Prejudgment Remedy, ECF No. 50 (May 13, 2020) ("Def.'s Opp'n"); Def.'s Opp'n to Pl.'s Mot. for Disclosure of Assets, ECF No. 51 (May 13, 2020) ("Def.'s Opp'n – Assets"); and Mr. Luck refiled his motions, Pl.'s Application for Prejudgment Remedy, ECF No. 58 (May 13, 2020) ("Pl.'s Mot."); Pl.'s Mot. for Disclosure of Assets, ECF No. 61 (May 13, 2020) ("Pl.'s Mot. – Assets"); Mem. of Law in Supp. of Pl.'s Mot., ECF No. 63 (May 13, 2020) ("Pl.'s Mem.").

On May 23, 2020, Mr. Luck filed a reply. Corrected Reply Mem., ECF No. 71 (May 23, 2020) ("Pl.'s Reply").

On May 29, Mr. McMahon filed a sur-reply. Def.'s Surreply Br. in Opp'n to Pl.'s Mot., ECF No. 72 (May 29, 2020) ("Def.'s Surreply").

On June 10, the Court held a hearing by videoconference on the pending motions. Minute Entry, ECF No. 73 (June 10, 2020). At the hearing, the Court granted leave for both parties to file additional briefs. *Id.*

On June 15, 2020, Mr. Luck filed an additional memorandum. Add'l Mem. of Law In Further Suppl. of Pl.'s Mot., ECF No. 74 (June 15, 2020) ("Pl.'s Add'l Mem.").

On June 17, 2020, in response, Mr. McMahon filed his supplemental memorandum. Def.'s Suppl. Mem. in Opp'n to Pl.'s Mot., ECF No. 76 (June 17, 2020) ("Def.'s Suppl. Mem.").

II. STANDARD OF REVIEW

A. Rule 19 and Necessary Joinder

Rule 19 of the Federal Rules of Civil Procedure "provides that a person or entity is a necessary party if:"

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

Wash. Nat'l Ins. Co. v. OBEX Grp. LLC, 958 F.3d 126, 134 (2d Cir. 2020) (quoting Fed. R. Civ. P. 19(a)). "A necessary party must be joined as a party to the action unless joinder would deprive the court of subject matter jurisdiction." *Id.* (citing Fed. R. Civ. P. 19(a)). In those circumstances where joinder is "not feasible," under Fed. R. Civ. P. 19(b), "the court must assess whether 'in equity and good conscience, the action should proceed among the existing parties or should be dismissed' by considering the factors provided in Rule 19(b)." *Id.* at 134–135 (quoting Fed. R. Civ. P. 19(b)).

B. A Pre-Judgment Remedy

Rule 64 of the Federal Rules of Civil Procedure provides that, in a federal court, “every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment.” Fed. R. Civ. P. 64. “[A] prejudgment remedy is intended to secure the satisfaction of a judgment should the plaintiff prevail.” *Roberts v. TriPlanet Partners, LLC*, 950 F. Supp. 2d 418, 420 (D. Conn. 2013). Connecticut law “provides for an expansive prejudgment remedy, and it is under Connecticut law that [a plaintiff’s prejudgment remedy] application must be reviewed.” *New England Health Care Emps. Welfare Fund v. iCare Mgmt., LLC*, 792 F. Supp. 2d 269, 274 (D. Conn. 2011); *see also Edelstein v. Lucas Brand Equity, LLC*, No. 3:16CV01353 (WWE), 2017 WL 2399583, at *4 (D. Conn. June 2, 2017) (Federal courts in Connecticut “utilize the state prejudgment remedies available to secure a judgment that might ultimately be rendered in an action.”).

Under Connecticut law, a prejudgment remedy shall be granted if a court “finds that the plaintiff has shown probable cause that such a judgment will be rendered in the matter in the plaintiff’s favor in the amount of the prejudgment remedy sought.” Conn. Gen. Stat. § 52-278d(a).

Proof of probable cause as a condition of obtaining a prejudgment remedy is not as demanding as proof by a fair preponderance of the evidence. The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it. Probable cause is a flexible common sense standard. It does not demand that a belief be correct or more likely true than false. Under this standard, the trial court’s function is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits.

TES Franchising, LLC v. Feldman, 286 Conn. 132, 137 (2008) (quotation marks and citations omitted). The probable cause standard is modest, and “not as demanding as proof by a fair preponderance of the evidence.” *Id.* “The legal idea of probable cause is a bona fide belief in the existence of the facts essential under the law for the action and such as would warrant a man of ordinary caution, prudence and judgment, under the circumstances, in entertaining it.” *Id.* (citation omitted). It is “a flexible common sense standard” that “does not demand that a belief be correct or more likely true than false.” *Id.* (citation omitted). “[T]he trial court’s function [under this standard] is to determine whether there is probable cause to believe that a judgment will be rendered in favor of the plaintiff in a trial on the merits.” *Id.* (citation omitted). The trial court has “broad discretion” to make this determination, and “a prejudgment remedy hearing is not contemplated to be a full scale trial on the merits.” *Id.* at 143.

In addition, the statute “requires that a trial court make a probable cause determination as to both the validity of the plaintiff’s claim and the amount of the remedy sought.” *Id.* at 145–46 (citation omitted). “[T]he party seeking the prejudgment remedy must present evidence that is sufficient to enable the court to determine the probable amount of the damages involved.” *Id.* at 146 (citation and internal quotation marks omitted). “Although the likely amount of damages need not be determined with mathematical precision ... the plaintiff bears the burden of presenting evidence that affords a reasonable basis for measuring her loss.” *Id.* (internal quotations and alterations omitted). Nonetheless, the “court may grant a prejudgment remedy order that authorizes an attachment for an amount less than that sought in the application for prejudgment remedy as long as there is probable cause that a judgment in that lesser amount, taking into account any defenses, counterclaims or setoffs, will be rendered in the plaintiff’s favor.” *Conn. Light & Power Co. v. Gilmore*, 89 Conn. App. 164, 176 (2005).

Finally, under Conn. Gen. Stat. § 52-278n, “the court may, on motion of a party, order an appearing defendant to disclose property in which he has an interest or debts owing to him sufficient to satisfy a prejudgment remedy.” Conn. Gen. Stat. § 52-278n(a). “Generally, under Connecticut law, a disclosure of assets is ordered if a prejudgment remedy is ordered.” *Wachovia Bank, N.A. v. Cummings*, No. 309CV957SRU, 2010 WL 466160, at *9 (D. Conn. Feb. 8, 2010); *see also* Conn. Gen. Stat. § 52–278n(c) (authorizing same).

III. DISCUSSION

Mr. Luck has sued Mr. McMahon for his alleged breach of the Guaranty and failure to pay Mr. Luck’s salary and bonus under the Employment Contract, “[b]ecause Alpha wrongfully terminated and repudiated the Employment Contract without cause.” Compl. ¶¶ 12–15.

Before reaching the merits of Mr. Luck’s motion for a prejudgment remedy, the Court must decide first whether Mr. Luck has failed to join an indispensable party, Alpha, because if so, the Court must stay the case until Alpha’s bankruptcy proceeding is resolved and it can be joined to this action.

A. The Issue of Necessary Joinder

“Because Rule 19 protects the rights of an absentee party, . . . courts may consider this issue sua sponte even if it is not raised by the parties to the action.” *Mastercard Int’l Inc. v. Visa Int’l Serv. Ass’n Inc.*, 471 F.3d 377, 382–83 (2d Cir. 2006) (collecting cases). “A party is necessary under Rule 19(a)(1) only if in that party’s absence ‘complete relief cannot be accorded among those already parties.’” *Id.* at 385 (emphasis in original) (quoting Fed. R. Civ. P. 19(a)(1) pre-2007 amendment, when “existing” replaced “already”). “[N]ecessary parties under Rule 19(a)(2)(i) are only those parties whose ability to protect their interests would be impaired because of that party’s absence from the litigation.” *Id.* at 387 (emphasis and citation omitted).

Where joinder is not feasible under Rule 19(a), under Rule 19(b), there are “four considerations that will ordinarily be among those relevant to the analysis of whether a party is ‘indispensable.’” *Marvel Characters, Inc. v. Kirby*, 726 F.3d 119, 133 (2d Cir. 2013). They are:

- (1) whether a judgment rendered in a person's absence might prejudice that person or parties to the action, (2) the extent to which any prejudice could be alleviated, (3) whether a judgment in the person's absence would be adequate, and (4) whether the plaintiff would have an adequate remedy if the court dismissed the suit.

Id. (quoting *CP Sols. Ltd. v. Gen. Elec. Co.*, 553 F.3d 156, 159 (2d Cir. 2009) (per curiam)).

In his opposition to Mr. Luck’s motion for a prejudgment remedy, Mr. McMahon argues that Mr. Luck’s application is not supported by probable cause because he has failed to join an indispensable party, Alpha. Def.’s Opp’n at 14. Mr. McMahon asserts that Alpha “is a necessary party . . . because it is a party to the contract that is the subject of Luck’s lawsuit,” and “Luck’s own allegations in the Complaint make clear that whether Alpha validly terminated Luck for cause is the central issue in this case.” *Id.* at 15 (citations omitted).

Although “Alpha cannot feasibly be joined in this lawsuit because it has filed for bankruptcy and is subject to the automatic stay,” Mr. McMahon argues that as an indispensable party, proceeding without Alpha would significantly prejudice both his interests and those of Alpha. *Id.* at 15–16. Mr. McMahon offers the following example to demonstrate prejudice to Alpha: “if the Court ruled in [his] favor and found that the [Employment] Contract was validly terminated, then Luck could attempt to pursue an action against Alpha and re-litigate the same issues to Alpha’s detriment.” *Id.* at 17. According to Mr. McMahon, the case should be dismissed, because the Court “cannot shape a judgment or relief in this case to lessen or mitigate the prejudice to Alpha if a judgment were rendered in its absence.” *Id.* at 18. Alternatively, Mr.

McMahon argues that Mr. Luck's action "should be stayed pending resolution of the bankruptcy case." *Id.* at 18 n.3 (collecting cases).

In reply, Mr. Luck argues that "Alpha's presence is unnecessary to accord complete relief as to Luck or McMahon," because his lawsuit "is based solely on McMahon's obligations under the Guaranty . . . which Luck could pursue without first pursuing Alpha." Pl.'s Reply at 9. Mr. Luck asserts that "neither Luck's contract with Alpha nor Alpha's obligations under the Employment Contract is the basis of Luck's lawsuit." *Id.* at 11. In his view, "[a] guaranty of payment is an absolute and unconditional promise to satisfy the underlying obligation." Pl.'s Add'l Mem. at 4 (citations omitted).[

Furthermore, Mr. Luck contends that Alpha and Mr. McMahon have "virtually identical interests," and Mr. McMahon "is not at risk of double, multiple or inconsistent obligations and any risk to him at all is not a result of Alpha's absence." Pl.'s Reply at 12–13. Mr. Luck emphasizes that "[b]ecause McMahon agreed that his obligations under the Guaranty are absolute irrespective of Luck's enforcement of the Employment Contract, McMahon anticipated Luck's lawsuit under the Guaranty without Alpha." *Id.* at 15–16. According to Mr. Luck, "the flexible analysis of the Rule 19(b) factors weigh[] heavily in favor of proceeding without Alpha[.]" *Id.* at 17. In his additional memorandum, Mr. Luck emphasizes that "[u]pon Alpha's nonpayment, McMahon's liability for payment became absolute under his Guaranty." Pl.'s Add'l Mem. at 4.

Mr. McMahon responds that Mr. Luck "must prove that Alpha is liable for unpaid obligations under the [Employment] Contract in order to establish McMahon's liability under the Guaranty," which "only applies to Alpha's payment of obligations that are actually owed to Luck under the [Employment] Contract." Def.'s Surreply at 1. Because Alpha terminated Mr. Luck for

cause and “does not owe any further obligations to Luck under the Contract,” Mr. McMahon contends that neither does he owe anything to Mr. Luck under the Guaranty. *Id.* at 2. Thus, Mr. McMahon argues that Alpha is indispensable as a party because “the Contract to which the Guaranty applies is the subject of this litigation,” and especially because “Luck’s claim in this case necessarily turns on whether Alpha had Cause to terminate the Contract.” *Id.* at 4.

Mr. McMahon emphasizes that “the Guaranty expressly conditions McMahon’s liability under the Guaranty on Alpha’s breach of the Employment Contract and its failure to pay amounts owed under the Employment Contract.” Def.’s Suppl. Mem. at 2. He asserts that Alpha’s “failure to make [] payments does not constitute a default unless Luck establishes they are actually owed by Alpha under the contract.” *Id.* at 4 (emphasis omitted). In response to Mr. Luck’s additional memorandum, Mr. McMahon contends that “Luck’s reliance on Connecticut cases enforcing waivers of defenses in guarantees are entirely inapposite because there was no question in those cases that the primary obligor had defaulted and a debt was owed to the plaintiff under the underlying contract.” *Id.* at 4–5.

In Mr. McMahon’s view, “Alpha plainly has an interest in this Court’s determination of whether it had Cause to terminate the Contract regardless of whether it is bound by a judgment.” Def.’s Surreply at 5. Furthermore, Mr. McMahon notes that “Alpha is a separate legal entity” with “unique defenses and counterclaims that [he] cannot assert.” *Id.* at 5–6. Thus, he submits that “[d]ismissal or stay of this action until the bankruptcy case has concluded would ensure that the interest of Alpha and McMahon are not prejudiced and that McMahon is not distracted by this litigation and able to focus on Alpha’s reorganization.” *Id.* at 7 (footnote omitted).

The Court agrees.

First, in analyzing this case under Rule 19(a), although Mr. Luck is suing based on “[Mr.] McMahon’s obligations under the Guaranty,” *see* Pl.’s Reply at 9, Mr. McMahon only guaranteed “the due and punctual payment a[n]d performance by [Alpha] of all its agreements and obligations,” which was “a guaranty of payment and not of collection[,]” Guaranty, ECF No. 57 at 13. In other words, because Alpha had terminated Mr. Luck for cause, even if allegedly wrongfully, the Guaranty also may have ended, because Mr. Luck was not entitled to any additional payment beyond “previously accrued salary and any vested employee benefits.” Employment Contract at 3.

To prevail against Mr. McMahon as a guarantor, Mr. Luck thus would have to establish that Alpha still had an obligation to him and breached that obligation under the Employment Contract. *See CCT Commc’ns, Inc. v. Zone Telecom, Inc.*, 327 Conn. 114, 135 n.14 (2017) (emphasizing the “general rule that termination of a contract discharges the remaining obligations of all parties thereto” (citing *Weiss v. Smulders*, 313 Conn. 227, 242 (2014)); *Murphy v. Schwaner*, 84 Conn. 420, 297 (1911) (“From the nature of the contract of a guarantor or surety, their liability is ordinarily measured by that of the principal.” (citations omitted)); *Cadle Co. of Conn. v. C.F.D. Dev. Corp.*, 44 Conn. App. 409, 413 (1997) (“[T]here would be no basis for a judgment against the guarantors on the note or the guarantee because the liability of the guarantor is based on the liability of the debtor.” (citations omitted)); *Cadlerock Joint Venture II, L.P. v. Milazzo*, 2011 WL 5925101 (Conn. Super. Ct. Sept. 27, 2011) (“Since the guaranty contract secures a principal or primary obligation, the liability of the guarantor depends on the construction and application of the primary contract.” (citations and internal alterations omitted)).

The Connecticut Appellate Court's decision in *One Country LLC v. Johnson*, 137

Conn.App. 810 (2012), is not to the contrary. Indeed, as the court recognized there,

[t]he express language in the defendants' backstop guarantee agreements is plain and broad, providing absolute and unconditional protection to the plaintiff in the event of a default by One Country, LLC, in the performance of its obligations to the bank in connection with the acquisition and constructions loans for 1 Country Road in Westport.

Id. at 818. In other words, the obligations under the guarantee only arose "in the event of a default" on the underlying obligations of the contract being guaranteed. *See Chem. Bank v. Geller*, 727 F.2d 61, 63–64 (2d Cir. 1984) ("Although the guarantees are 'unconditional' and without regard to [debtor's] defenses, they do not require the guarantors to pay [plaintiff] without regard to the amount of [debtor's] obligation."); *People's United Bank, N.A. v. Patterson*, No. FBTCV166055720S, 2016 WL 6237654, at *1 (Conn. Super. Ct. Sept. 28, 2016) ("In order to establish a prima facie claim for breach of a written guaranty plaintiff must prove: (1) plaintiff is owed a debt from a third party, (2) defendant guaranteed payment of the debt and (3) the debt has not been paid.").

As a result, this is "an action that could in the future impact a third party's rights under a separate contract." *Mastercard*, 471 F.3d at 387. And "[i]f the resolution of a plaintiff's claim would require the definition of a non-party's rights under a contract, it is likely that the non-party is necessary under Rule 19(a)." *Visión en Análisis y Estrategia, S.A. de C.V. v. Andersen*, 662 F. App'x 29, 32 (2d Cir. 2016) (summary order) (quoting *Jonesfilm v. Lion Gate Int'l*, 299 F.3d 134, 141 (2d Cir. 2002)).

Alpha thus is a necessary party because the issue of whether Alpha validly terminated Mr. Luck for cause under the Employment Contract, to which the Guaranty applies, must be resolved, and Alpha's absence in this action "impede[s] [its] ability to protect" its "interest

relating to the subject of the action.” See Fed. R. Civ. P. 19(a)(1)(B)(i); *Mastercard*, 471 F.3d at 386 (“[B]ecause the absent non-party was a party to the contract at issue, its ability to protect its interest in that contract would have been seriously impaired if it were not made a party to the action.” (citing *Crouse-Hinds Co. v. InterNorth, Inc.*, 634 F.2d 690 (2d Cir. 1980))).

Additionally, under Rule 19(b), Alpha is indispensable because “a party to a contract at issue ‘is the paradigm of an indispensable party.’” *Mazzio v. Kane*, No. 14-CV-616 (ARR) (MDG), 2014 WL 2866040, at *7 (E.D.N.Y. June 24, 2014) (quoting *Travelers Indem. Co. v. Household Int’l Inc.*, 775 F. Supp 518, 527 (D. Conn. 1991)); see also *Fluent v. Salamanca Indian Lease Auth.*, 928 F.2d 542, 547 (2d Cir. 1991) (“No procedural principle is more deeply imbedded in the common law than that, in an action to set aside a lease or a contract, all parties who may be affected by the determination of the action are indispensable.”). Alpha cannot properly protect its interests as a non-party namely because it is a separate legal entity with possibly differing defenses and counterclaims from Mr. McMahon as guarantor, and Alpha cannot now seek to protect its interest because it is currently in bankruptcy proceedings. See *In re Alpha Entm’t LLC*, No. 20-10940 (Bankr. D. Del. Apr. 13, 2020) (Alpha’s bankruptcy proceedings).

Because Alpha is in bankruptcy proceedings, under 11 U.S.C. § 362(a)(1), an automatic stay of judicial proceedings for bankruptcy petitions filed under 11 U.S.C. §§ 301, 302, or 303 is required. 11 U.S.C. § 301 covers voluntary bankruptcy petitions. The automatic stay “prevents the commencement or continuation, after a bankruptcy petition has been filed, of lawsuits and proceedings to recover a claim against the debtor that arose before the filing of the petition.” *Olick v. Parker & Parsley Petroleum Co.*, 145 F.3d 513, 516 (2d Cir. 1998) (citing 11 U.S.C. § 362(a)); see also *Koolik v. Markowitz*, 40 F.3d 567, 568 (2d Cir. 1994) (“[A]n answer that asserts

a counterclaim against a plaintiff who becomes a bankruptcy debtor is an ‘action or proceeding against the debtor’ within the meaning of § 362(a)(1), notwithstanding the fact that the plaintiff initiated the lawsuit.”. “In determining whether an action is ‘against the debtor,’ [the court] look[s] to the debtor’s status ‘at the time of the original proceeding,’ not to ‘which party is ahead at a particular stage in the litigation.’” *In re Haworth*, 356 F. App’x 529, 531 (2d Cir. 2009) (quoting *Teachers Ins. & Annuity Ass’n of Am. v. Butler*, 803 F.2d 61, 65 (2d Cir. 1986)).

In any event, “the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Louis Vuitton Malletier S.A. v. LY USA, Inc.*, 676 F.3d 83, 96 (2d Cir. 2012) (citations omitted) (quoting *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936)); accord *Clinton v. Jones*, 520 U.S. 681, 706 (1997) (“The District Court has broad discretion to stay proceedings as an incident to its power to control its own docket.” (citing *Landis*, 299 U.S. at 254)); see also *Dietz v. Bouldin*, 136 S. Ct. 1885, 1892 (2016) (“[D]istrict courts have the inherent authority to manage their dockets and courtrooms with a view toward the efficient and expedient resolution of cases.”) (citations omitted); *Hicks v. City of N.Y.*, 268 F. Supp. 2d 238, 241 (E.D.N.Y. 2003) (“It is well established that district courts have discretionary authority to stay a case when the interests of justice so require.” (citations omitted)).

Although Mr. Luck argues that the stay should not be applied to Mr. McMahon’s case because “[t]here is no adverse consequence to Alpha if Luck prevails,” Pl.’s Reply at 16 n.6, for the reasons discussed above, the Court disagrees. Moreover, as Mr. McMahon rightly points out, “if the Court ruled in McMahon’s favor and found that the [Employment] Contract was validly terminated, then Luck could attempt to pursue an action against Alpha and re-litigate the same issues to Alpha’s detriment.” Def.’s Opp’n at 17.

Because it would be efficient and in the interests of justice to apply the stay to this litigation brought against Mr. McMahon, the stay will apply to this case. *See Dietz*, 136 S. at 1892 (noting a court’s inherent authority to manage its docket with a “view toward the efficient and expedient resolution of cases”).

Accordingly, the Court will stay the case until Alpha can be joined as an indispensable party, pending the resolution of the bankruptcy proceedings

B. Prejudgment Remedy

Because the case is stayed, the Court will not address Mr. Luck’s motion for prejudgment remedy at this time, but will instead deny the motions for prejudgment remedy and disclosure of assets without prejudice to renewal.

IV. CONCLUSION

For the reasons explained above, the Court **STAYS** the case until Alpha can be joined as an indispensable party to the action and **DENIES without prejudice** Mr. Luck’s motions for prejudgment remedy and disclosure of assets.

SO ORDERED at Bridgeport, Connecticut, this 26th day of June, 2020.

/s/ Victor A. Bolden
Victor A. Bolden
United States District Judge

EXHIBIT 4

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
:
:
In re : Chapter 11
:
ALPHA ENTERTAINMENT LLC, : Case No. 20-10940 (LSS)
:
Debtor.¹ : **Ref. Docket No. 295**
:
:
-----X

AGREED ORDER GRANTING OLIVER LUCK’S MOTION FOR RELIEF FROM STAY TO JOIN ALPHA ENTERTAINMENT LLC IN CONNECTICUT PROCEEDING

Upon the Motion (the “*Motion*”) of Oliver Luck for an order pursuant to 11 U.S.C. § 362(d)(1) for relief from the automatic stay to allow Oliver Luck to join Alpha Entertainment LLC (“*Alpha*”) as a nominal defendant in the litigation between Oliver Luck and Vincent K. McMahon in the United States District Court for the District of Connecticut, Case Number 3:20-cv-00516-VAB (the “*Guaranty Action*”) [Docket No. 295], for the sole purpose of obtaining a monetary judgment against Vincent K. McMahon; notice having been given to the Debtor, counsel for the Debtor, counsel for the Official Committee of Unsecured Creditors (the “*Committee*”), and the Office of the United States Trustee, and all other parties requesting notice in this case; and the Debtor and Mr. Luck having reached an agreement concerning the relief sought in the Motion; and after due deliberation and sufficient cause appearing therefore, it is hereby:

ORDERED, that the Motion is granted solely as set forth herein; and

IT IS FURTHER ORDERED that, pursuant to section 362(d)(1) of the Bankruptcy Code, effective as of the Lift Stay Effective Date (defined below), the automatic stay is hereby lifted, for the sole purpose of allowing Oliver Luck to join Alpha as a defendant in the Guaranty Action for

¹ The last four digits of the Debtor’s federal tax identification number are 7778. The Debtor’s mailing address is 1266 East Main St., Stamford, CT 06902.

the sole purposes of (i) seeking a declaration of whether or not Alpha properly terminated Mr. Luck for cause under the Employment Contract² (the “**Declaratory Judgment Relief**”) and (ii) seeking a monetary judgment against Vincent K. McMahon under the Guaranty. For purposes of this Order, the “**Lift Stay Effective Date**” shall be the earlier of the following: (i) October 31, 2020; or (ii) sixty days after the closing date of the asset sale (the “**Sale**”) more particularly described in the Debtor’s *Motion for Entry of: (A) An Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtor’s Assets, (II) Scheduling an Auction for and Hearing to Approve the Sale, (III) Approving Notice of Respective Date, Time and Place for Auction and for Hearing on Approval of Sale, (IV) Approving Procedures for the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (V) Approving Form and Manner of Notice Thereof, and (VI) Granting Related Relief; and (B) an Order Authorizing and Approving (I) the Sale Free and Clear of Liens, Claims, Rights, Encumbrances, and other Interests, and (II) the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases and (III) Related Relief* [Docket No. 55]; and

IT IS FURTHER ORDERED that the Debtor shall provide written notice of the closing of the Sale to Mr. Luck’s counsel within one business day of its occurrence; and

IT IS FURTHER ORDERED that Mr. Luck shall not file a proof of claim against the Debtor or its estate and is hereby deemed to waive, and shall be forever barred from obtaining, any recovery against Debtor or its bankruptcy estate on account of any claim or claims (as defined in the Bankruptcy Code) against the Debtor or its bankruptcy estate in this bankruptcy case; provided, however, that Mr. Luck expressly reserves (i) the right to pursue the Declaratory Judgment Relief

² Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

and (ii) any and all defenses to any claims that may be asserted against him by the Debtor, or its successor in interest, including, but not limited to, the defenses of set-off and/or recoupment; and

IT IS FURTHER ORDERED that nothing in this Order modifies or compromises the rights of Vincent K. McMahon ("**McMahon**") with respect to Mr. Luck, the Debtor, or the Debtor's estate, including, without limitation, McMahon's rights to assert claims against the Debtor or the Debtor's estate for reimbursement, contribution, indemnification, subrogation, or otherwise under applicable law, which claims shall be asserted by McMahon only in the Bankruptcy Court; provided, however, that the Debtor, the Committee and other parties in interest reserve their right to contest or object to any such claims; and

IT IS FURTHER ORDERED that the stay of this Order pursuant to Fed. R. Bankr. P. 4001(a)(3) is hereby waived to allow Mr. Luck to immediately take any and all actions authorized by this Order upon the Lift Stay Effective Date.

Dated: August 7th, 2020
Wilmington, Delaware


LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 5

Jared McHazlett

From: Lunn, Matthew <mlunn@ycst.com>
Sent: Friday, August 21, 2020 10:50 AM
To: 'Goldstein, Eric'; Reil, Shane
Cc: Paul Dobrowski; Vanessa Lee Pierce; Jared McHazlett; Zeitlin, Andrew; 'Roth-Moore, Andrew'
Subject: RE: Alpha - Luck Motion to Lift Stay

All – in accordance with the Order [D.I. 355], the sale to Alpha Acquico LLC closed today, August 21, 2020.

Best,
Matt



Matthew B. Lunn, Partner
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From: Goldstein, Eric <EGoldstein@goodwin.com>
Sent: Friday, August 7, 2020 9:14 AM
To: Reil, Shane <SReil@ycst.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

Shane,

We are signed-off. Thanks for working cooperatively with us in resolving the motion. I will still plan to call in to the hearing in case the Judge has any questions.

Shipman & Goodwin
COUNSELORS AT LAW

Eric S. Goldstein
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Hartford, CT 06103-1919

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From: Reil, Shane <SReil@ycst.com>
Sent: Friday, August 7, 2020 8:10 AM
To: Goldstein, Eric <EGoldstein@goodwin.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>;

'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>

Subject: RE: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

Eric,

Further to below, no more comments from the Lender or the Committee and the Company is signed off. Attached is a compiled cert of counsel which, with your sign-off, we'd intend to file this morning in advance of the hearing.

Please let us know if any questions or if this is good to go.

Thanks,



Shane M. Reil, Associate

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From: Reil, Shane <SReil@ycst.com>

Sent: Thursday, August 6, 2020 9:19 PM

To: 'Goldstein, Eric' <EGoldstein@goodwin.com>

Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; 'Zeitlin, Andrew' <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>

Subject: RE: Alpha - Luck Motion to Lift Stay

Eric – we received one proposed revision from the Committee, which is reflected in the attached. I assume this is not an issue from your client's perspective, but please let us know.

--Shane



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From: Reil, Shane

Sent: Thursday, August 6, 2020 5:31 PM

To: 'Goldstein, Eric' <EGoldstein@goodwin.com>

Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

Thanks Eric. We're still waiting to hear back from the UCC, so while I am hopeful there won't be additional changes, I can't confirm at the moment. But we should be good from the Lender's and our perspective.

--Shane



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From: Goldstein, Eric <EGoldstein@goodwin.com>
Sent: Thursday, August 6, 2020 4:01 PM
To: Reil, Shane <SReil@ycst.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

Hi Shane,
Thanks for sending over. I am still waiting to hear back from my clients. I will let you know as soon as I have sign off. Are you expecting any further comments at this point?

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egoldstein@goodwin.com
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From: Reil, Shane <SReil@ycst.com>
Sent: Thursday, August 6, 2020 12:39 PM
To: Goldstein, Eric <EGoldstein@goodwin.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

Thanks Eric. So it's intended to reserve rights in the event of a dismissal or subsequent bankruptcy case. That's fine, and we appreciate the explanation.

Since we'd be submitting this under COC, we'll need sign off from the UCC and lender. We received comments from the lender, which are reflected in the attached redline (which still shows your comments in track as well). This is still subject to review by the Company and UCC, but please let us know if any issues with the added language.

--Shane



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From: Goldstein, Eric

Sent: Wednesday, August 5, 2020 6:10 PM

To: Reil, Shane

Cc: Lunn, Matthew ; 'Paul Dobrowski' ; 'Vanessa Lee Pierce' ; 'Jared McHazlett' ; Zeitlin, Andrew ; 'Roth-Moore, Andrew'

Subject: RE: Alpha - Luck Motion to Lift Stay

Shane,

Just got client sign-off on the revised draft that we sent over.

[Shipman & Goodwin](#)

COUNSELORS AT LAW

[Eric S. Goldstein](#)

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From: Goldstein, Eric

Sent: Wednesday, August 5, 2020 6:07 PM

To: 'Reil, Shane' <SReil@ycst.com>

Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>

Subject: RE: Alpha - Luck Motion to Lift Stay

Hi Shane,

It was intended to track my emails with Matt from last week where Mr. Luck agreed to not pursue a claim in the bk case (so as to not impact the rights of the other creditors).

Theoretically, if Alpha were to dismiss its bk case right after we did the stip, it would seem that Mr. Luck should not have to waive a claim against Alpha (as the concern re impacting the other creditors in the bk case

would not be an issue). An admittedly even much more theoretical scenario would be if Alpha emerges after a plan of liquidation, for which it does not receive a discharge, and went on to have assets at some point in time that were not administered as part of the case for the benefit of creditors, it would not make sense to have Mr. Luck waive rights to make claims at that point (to the extent not time barred).

That was the intention by the addition of that phrase. Happy to get on a call tomorrow am to discuss if you think that would be helpful.

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From: Reil, Shane <SReil@ycst.com>
Sent: Wednesday, August 5, 2020 5:47 PM
To: Goldstein, Eric <EGoldstein@goodwin.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

No worries. Understand the first addition, but not sure about the addition of "in this bankruptcy case." Could you let us know the intention behind that?



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From: Goldstein, Eric <EGoldstein@goodwin.com>
Sent: Wednesday, August 5, 2020 1:50 PM
To: Reil, Shane <SReil@ycst.com>
Cc: Lunn, Matthew <mlunn@ycst.com>; 'Paul Dobrowski' <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; 'Jared McHazlett' <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

Hi Shane,
My apologies. I jumped the gun. Just one other edit, which is in track. Sending this to our client now for sign-off.

Thanks,

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From: Goldstein, Eric

Sent: Wednesday, August 5, 2020 12:57 PM

To: 'sreil@ycst.com' <sreil@ycst.com>

Cc: 'Lunn, Matthew' <mlunn@ycst.com>; Paul Dobrowski <pjd@doblaw.com>; 'Vanessa Lee Pierce' <vpierce@doblaw.com>; Jared McHazlett <jmchazlett@doblaw.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>; 'Roth-Moore, Andrew' <ARoth-Moore@coleschotz.com>

Subject: FW: Alpha - Luck Motion to Lift Stay

Hi Shane,

Just one edit to your edits (see track changes). I have not yet gotten client sign off on this so must reserve comment. I will try to get that sign-off today. Let me know if Debtor is signed off. If so (and I defer to the DE practitioners on this), can we submit the agreed order tomorrow under a certification of counsel?

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From: Reil, Shane

Sent: Tuesday, August 4, 2020 3:38 PM

To: Goldstein, Eric ; 'pjd@doblaw.com' ; 'JAlberto@coleschotz.com' ; Zeitlin, Andrew ; 'Roth-Moore, Andrew'

Cc: Lunn, Matthew

Subject: RE: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

All – further to below, please see our comments to the proposed order attached in track changes. We’re awaiting sign off from the Company, but please let us know if these revisions work on your end.

--Shane



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From: Reil, Shane

Sent: Monday, August 3, 2020 9:11 PM

To: 'EGoldstein@goodwin.com' ; 'pjd@doblaw.com' ; 'JAlberto@coleschotz.com' ; 'AZeitlin@goodwin.com' ; Roth-Moore, Andrew

Cc: Lunn, Matthew

Subject: RE: Alpha - Luck Motion to Lift Stay

All – just a quick update. We reached out to the Committee and lender on this, but are awaiting their responses. We expect to hear back tomorrow and will be in touch once we do.

--Shane



Shane M. Reil, Associate

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From: "Goldstein, Eric" <EGoldstein@goodwin.com>

Date: July 30, 2020 at 6:52:19 PM EDT

To: "Lunn, Matthew" <mlunn@ycst.com>

Cc: Paul Dobrowski <pjd@doblaw.com>, "Alberto, Justin" <JAlberto@coleschotz.com>, "Zeitlin, Andrew" <AZeitlin@goodwin.com>, "Roth-Moore, Andrew" <ARoth-Moore@coleschotz.com>

Subject: RE: Alpha - Luck Motion to Lift Stay

Matt,

Sorry for delay - quite a time to be a bk lawyer.

Here is the draft order for your review and comment. I have not shared this with Mr. Luck yet, so I must reserve his comment.

Thanks,

[Shipman & Goodwin](#)

COUNSELORS AT LAW

[Eric S. Goldstein](#)

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From: Goldstein, Eric
Sent: Tuesday, July 28, 2020 6:13 PM
To: 'Lunn, Matthew' <mlunn@ycst.com>
Cc: Paul Dobrowski <pjd@doblaw.com>; Alberto, Justin <JAlberto@coleschotz.com>; Zeitlin, Andrew <AZeitlin@goodwin.com>
Subject: RE: Alpha - Luck Motion to Lift Stay

That is fine.

Be back to you tomorrow with draft.

<u>Shipman & Goodwin</u> <small>COUNSELORS AT LAW</small>	<u>Eric S. Goldstein</u> Shipman & Goodwin LLP Partner One Constitution Plaza Hartford, CT 06103-1919	Tel (860) 251-5059 Fax (860) 251-5218 egoldstein@goodwin.com www.shipmangoodwin.com
---	--	--

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From: Lunn, Matthew
Sent: Tuesday, July 28, 2020 5:24 PM
To: Goldstein, Eric
Cc: Paul Dobrowski ; Alberto, Justin ; Zeitlin, Andrew
Subject: Re: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

Thanks and no worries. In the meantime, can we agree to extension of the objection deadline to August 4th while we work through the stipulation.

On Jul 28, 2020, at 5:22 PM, Goldstein, Eric wrote:

Matt,
Sorry for the delay. I was on back-to-back calls. Mr. Luck will agree to an agreed order along the lines described in our email exchanges below. We will put together a draft for you review and comment. I hope to get you something tomorrow.

Best regards,

Shipman & Goodwin<<http://www.ShipmanGoodwin.com>>
COUNSELORS AT LAW<<http://www.ShipmanGoodwin.com>>

Eric S. Goldstein<<http://www.shipmangoodwin.com/showbio.aspx?show=9000>>

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From: Goldstein, Eric
Sent: Monday, July 27, 2020 4:58 PM
To: 'Lunn, Matthew'
Cc: Paul Dobrowski ; Alberto, Justin ; Zeitlin, Andrew
Subject: RE: Alpha - Luck Motion to Lift Stay

Matt,

I don't think we are saying anything different from each other. I just want to make clear that Mr. Luck will not waive the right to bring the declaratory judgment claim that is described in the lift stay motion, and he will not waive any defenses he may have against any claim brought against him by Alpha, such as set-off or recoupment. What Mr. Luck will agree to is to waive any affirmative recovery in the Alpha bankruptcy case, which is what I am sure the Committee is most interested in.

I will touch base with you tomorrow once I hear back from my client.

Best regards,

Shipman & Goodwin<<http://www.ShipmanGoodwin.com>>
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Eric S. Goldstein<<http://www.shipmangoodwin.com/showbio.aspx?show=9000>>

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From: Lunn, Matthew
Sent: Monday, July 27, 2020 3:26 PM
To: Goldstein, Eric
Cc: Paul Dobrowski ; Alberto, Justin ; Zeitlin, Andrew
Subject: Re: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

Eric,

By agreeing to not file a proof of claim and pursue claims against the estate in the bankruptcy is effectively releasing/waiving claims. By not filing a proof of claim, the bar date order makes clear that the claimant is barred from pursuing claims against the Debtor and the estate. The waiver of the claim is the primary piece of any agreed relief that the Committee will focus in on.

I am tied up until 6:00 but can call you later to discuss if you think it will be beneficial to discuss.

Best,
Matt

On Jul 27, 2020, at 3:17 PM, Goldstein, Eric wrote:

Matt,

Mr. Luck is reviewing this proposal now. We will get back to you by 5pm tomorrow with an agreement on a stipulated order, or if we need more time to iron out the details, an agreement on an extension of time to file any opposition.

One point of clarification. When you say below, "Luck agree to waive claims against Alpha," you mean pursuing a proof of claim in Alpha's bankruptcy case only, right? Just want to be clear on that point.

Thanks,

Shipman & Goodwin<<http://www.ShipmanGoodwin.com><<http://www.ShipmanGoodwin.com>>>
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LAW<<http://www.ShipmanGoodwin.com><<http://www.ShipmanGoodwin.com>>>

Eric S.

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From: Lunn, Matthew

Sent: Monday, July 27, 2020 2:48 PM

To: Goldstein, Eric

Cc: Paul Dobrowski ; Alberto, Justin ; Zeitlin, Andrew

Subject: Re: Alpha - Luck Motion to Lift Stay

EXTERNAL EMAIL

Eric,

Correct, the proposal is that the Debtor and Luck would enter into a stipulation that is approved by the Bankruptcy Court and pursuant to which the Debtor agrees to a modification of the automatic stay with respect to the Luck litigation pending in Connecticut such that the stay is lifted the earlier of 60 days after the sale closing or October 31, 2020 and, as stated in the motion, Luck agrees to waive claims against Alpha.

Given that you haven't vetted the proposal to Luck yet, can we agree that the objection deadline for all parties with respect to the stay relief motion is adjourned to August 4th?

Best,
Matt

On Jul 27, 2020, at 12:04 PM, Goldstein, Eric <EGoldstein@goodwin.com> wrote:

FOR SETTLEMENT PURPOSES ONLY

SUBJECT TO FED. R. EVID. 408

Hi Matt,

I am co-counsel with Paul Dobrowski to Mr. Luck in connection with his lift stay motion in the Alpha bk case. Paul let me know about your phone call last week. Although we have not yet vetted this with our client, I think the following may accomplish the Debtor's goal of having some breathing space until after the sale closes for the lift stay to enter and our client's goal of having some certainty on his ability to proceed in the guaranty action: we enter into an agreed order on the lift stay motion, which enters now, but delays the effective date of the lift of the stay until a mutually acceptable date in October. If the Debtor is amenable to this idea, we will run it by our client. Let us know and feel free to give me a call if you would like to discuss.

Best regards,

Shipman &

Goodwin<<http://www.ShipmanGoodwin.com><<http://www.ShipmanGoodwin.com>><<http://www.ShipmanGoodwin.com>>>>

COUNSELORS AT

LAW<<http://www.ShipmanGoodwin.com><<http://www.ShipmanGoodwin.com>><<http://www.ShipmanGoodwin.com>>>>

Eric S.

Goldstein<<http://www.shipmangoodwin.com/showbio.aspx?show=9000><<http://www.shipmangoodwin.com/showbio.aspx?show=9000>><<http://www.shipmangoodwin.com/showbio.aspx?show=9000>>>>

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