

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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**In re** : **Chapter 11**
  
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**ALPHA ENTERTAINMENT LLC,** : **Case No. 20-10940 (LSS)**
  
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**Debtor.**<sup>1</sup> : **Hearing Date: November 17, 2020 at 2:00 p.m. (ET)**
  
: **Objection Deadline: November 10, 2020 at 4:00 p.m. (ET)**
  
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**DEBTOR’S MOTION FOR ENTRY OF AN ORDER, PURSUANT TO SECTION 105(a) OF THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9019, APPROVING SETTLEMENT AND STIPULATION BY AND BETWEEN THE DEBTOR, THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF ALPHA ENTERTAINMENT LLC AND VINCENT K. MCMAHON**

The above-captioned debtor and debtor in possession (hereinafter, the “*Debtor*”) hereby submits this motion (this “*Motion*”) for entry of an order, substantially in the form attached hereto as Exhibit A (the “*Proposed Order*”), approving the settlement and stipulation (the “*Stipulation*”),<sup>2</sup> by and between the Debtor, the Official Committee of Unsecured Creditors of Alpha Entertainment LLC (the “*Committee*”) and Vincent K. McMahon (“*McMahon*,” and collectively with the Debtor and the Committee, the “*Parties*”). In support of this Motion, the Debtor respectfully represent as follows:

**JURISDICTION**

1. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b), and the Debtor consents, pursuant to Rule 9013-1(f) of the Local Rules of

<sup>1</sup> The last four digits of the Debtor’s federal tax identification number are 7778. The Debtor’s mailing address is 600 Steamboat Road, Suite 105, Greenwich, CT 06830.

<sup>2</sup> A copy of the Stipulation is attached as Exhibit 1 to the Proposed Order.

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “*Local Rules*”), to the Court’s entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the Parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory and legal predicates for the relief sought herein are section 105(a) of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”).

### **BACKGROUND**

#### **A. General Background**

3. On April 13, 2020 (the “*Petition Date*”), the Debtor commenced this bankruptcy case (the “*Chapter 11 Case*”) by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is authorized to continue to operate its business and manage its property as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

4. On April 23, 2020, the Office of the United States Trustee for the District of Delaware (the “*U.S. Trustee*”) appointed the Committee in the Chapter 11 Case. *See* Docket No. 65. No requests have been made for the appointment of a trustee or examiner in the Chapter 11 Case.

5. On September 30, 2020, the Debtor filed the *Chapter 11 Plan of Alpha Entertainment LLC* [Docket No. 434] (the “*Plan*”) and the related *Disclosure Statement for the Chapter 11 Plan of Alpha Entertainment LLC* [Docket No. 435] (the “*Disclosure Statement*”). The hearing to consider approval of the Disclosure Statement is currently scheduled for November 4, 2020.

6. Additional factual background relating to the Debtor’s business, capital structure, and the commencement of the Chapter 11 Case is set forth in the *Declaration of Jeffrey N. Pollack in Support of Chapter 11 Petition and First-Day Pleadings* [Docket No. 8] (the “**First Day Declaration**”).

**B. Relevant Background**

7. On April 16, 2020, Oliver Luck (“**Luck**”) commenced an action (the “**Action**”) against McMahon in the United States District Court for the District of Connecticut, Case No. 3:20-cv-00516 (VAB), in which Luck asserts claims under an alleged guarantee against McMahon related to Luck’s now-terminated employment agreement with the Debtor.

8. Following the filing of a motion for relief from the automatic stay by Luck [Docket No. 295] and an agreement between the Debtor and Luck, on August 7, 2020, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered that certain *Agreed Order Granting Oliver Luck’s Motion for Relief from Stay to Join Alpha Entertainment LLC in Connecticut Proceeding* [Docket No. 355] (the “**Stay Order**”), permitting the automatic stay to be lifted to allow Luck to join the Debtor as a defendant in the Action. Pursuant to the Stay Order, on October 20, 2020, the automatic stay was modified to allow Luck to join the Debtor as a nominal defendant in the Action.

9. The Debtor, McMahon and the Committee have conferred regarding the Action and the Debtor’s involvement and potential counter-claims against Luck that can be asserted by the Debtor in the Action. The Parties agree that there is an alignment of interests of the Debtor and McMahon in the Action and seek entry of the Proposed Order approving the Stipulation with respect to the Action.

10. The Parties engaged in arms'-length and good faith negotiations to achieve a resolution of their issues with respect to the Action and Estate Claims (defined below). In an effort to avoid the cost and uncertainties of litigation, the Parties have reached an agreement, pursuant to which the Debtor assigns any and all of its claims against Luck arising from or related to the Action (the "*Estate Claims*"), except for the Estate Claims involving recovery actions under sections 105(a), 502(d), 510, 542 through 551 and 553 of the Bankruptcy Code, to McMahon in exchange for McMahon's agreement to assert the Estate Claims as counter-claims against Luck in the Action and to undertake the defense of Luck's claims against the Debtor's estate at McMahon's sole cost and expense. The Debtor would also retain a two-third (2/3) interest in any recovery awarded in the Action with respect to the Estate Claims.

#### **THE SETTLEMENT AND STIPULATION**

11. The salient terms of the Parties' agreement are set forth in the Stipulation attached to the Proposed Order as Exhibit 1, and are summarized as follows:<sup>3</sup>

- a. The Stipulation shall become effective immediately upon entry of an order by the Court approving the Stipulation (the "*Effective Date*").
- b. The Debtor assigns any and all of the Estate Claims arising from or related to the Action to McMahon; *provided, however*, that Estate Claims shall not include recovery actions under sections 105(a), 502(d), 510, 542 through 551 and 553 of the Bankruptcy Code.
- c. McMahon agrees to assert the Estate Claims on behalf of, and in the name of, Alpha Entertainment LLC as counter-claims against Luck in the Action and to undertake the defense of the claims of Luck against the Debtor's estate in the Action at McMahon's sole cost and expense.
- d. To the extent McMahon recovers on the Estate Claims on behalf of Alpha Entertainment LLC, the Debtor (or its successor) will be entitled to 67% of such collected recovery. Any such recovery will not be reduced by

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<sup>3</sup> This summary is for informational purposes only and is not intended to modify in any way the terms and conditions of the Stipulation. To the extent that there is any inconsistency between the terms described herein and the terms of the Stipulation, the terms of the Stipulation shall control. Any capitalized terms used in this section not otherwise defined herein shall be given the meanings ascribed to them in the Stipulation.

McMahon's litigation costs associated therewith, or by McMahon's litigation costs associated with defending the Debtor against claims asserted by Luck against the Debtor's estate.

- e. McMahon shall have the sole authority to compromise the Estate Claims without further notice or order of the Court.

**RELIEF REQUESTED**

12. By this Motion, the Debtor requests entry of an order, substantially in the form of the Proposed Order attached hereto as Exhibit A, approving the Stipulation.

**BASIS FOR RELIEF**

13. Bankruptcy Rule 9019, which governs the approval of compromises and settlements by a debtor, provides that, “[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019. Further, section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

14. A starting point in analyzing any proposed settlement is the general policy of encouraging settlements and favoring compromises. *See Myers v. Martin (In re Martin)*, 91 F.3d 389, 394 (3d Cir. 1996). To approve a settlement, a bankruptcy court must determine that such settlement is in the best interest of a debtor's estate. *Law Debenture Trust Co. of New York v. Kaiser Aluminum Corp. (In re Kaiser Aluminum Corp.)*, 339 B.R. 91, 95–96 (D. Del. 2006). In addition, a court must:

assess and balance the value of the claim that is being compromised against the value to the estate of the acceptance of the compromise proposal” in light of four factors: (1) the probability of success in the litigation, (2) the likely difficulties in collection, (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it, and (4) the paramount interests of the creditors.

*Id.* at 96 (quoting *Martin*, 91 F.3d at 393). The United States District Court for the District of Delaware has explained that a court's ultimate inquiry is whether a settlement is fair, reasonable, and in the best interest of a debtor's estate. *In re Marvel Entm't Grp., Inc.*, 222 B.R. 243, 249 (D. Del. 1998) (quoting *In re Louise's, Inc.*, 211 B.R. 798, 801 (D. Del. 1997)).

15. The decision to approve a particular settlement lies within the sound discretion of the bankruptcy court. *In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006). A court need not decide the numerous issues of law and fact raised by the settlement and it need not be convinced that the proposed settlement is the best possible, rather "[t]he court need only conclude that the settlement falls within the reasonable range of litigation possibilities somewhere above the lowest point in the range of reasonableness." *In re Nutritional Sourcing Corp.*, 398 B.R. 816, 833 (Bankr. D. Del. 2008) (quoting *In re Coram Healthcare Corp.*, 315 B.R. 321, 330 (Bankr. D. Del. 2004)).

16. In the Debtor's business judgment, the agreement and resolution embodied in the Stipulation is reasonable and in the best interests of the Debtor, its estate, and its creditors. Specifically, the Debtor's agreement with the Committee and McMahon provides for a fair, efficient resolution of issues created as a result of the modification of the automatic stay to permit the Debtor to be named as a defendant in the Action.

17. The Debtor's active participation through, among other things, engagement of counsel in the Action would be a drain on the Debtor's limited resources, and divert the Debtor's attention away from pursuing confirmation of the Plan. The Stipulation was the product of good-faith negotiations between the Parties, culminating in an agreement that falls well within the range of reasonableness. Among other things, the Stipulation provides for the exchange of the Estate Claims for McMahon's agreement to defend the Debtor against the claims in the Action at

his sole cost and expense. Further, the Stipulation provides for the Debtor's entitlement to a two-third (2/3) share of any collected recovery in the Action with respect to the Estate Claims. In addition, there is a cost, in terms of both time and resources, associated with defending the Action and pursuing the counterclaims. Accordingly, the Debtor's entry into the Stipulation will benefit the Debtor, its estate and its creditors. In addition, as discussed below, the applicable *Martin* factors weigh in favor of approving the Stipulation.

**A. The Probability of Success in Litigation**

18. Had the Parties failed to reach a consensual resolution, allowing for the assignment of the Estate Claims, the Debtor faced potential costly litigation with Luck to defend against any claims against the Debtor and to pursue the counterclaims. By contrast, the terms of the Stipulation provide the Debtor with the benefits of avoiding litigation fees and expenses while maintaining the ability to realize an affirmative recovery. In light of the foregoing, the first *Martin* factor weighs significantly in favor of approving the Stipulation.

**B. The Complexity of the Litigation Involved, and the Expense, Inconvenience and Delay Necessarily Attending It**

19. Absent the Parties' entry into the Stipulation and the agreement embodied therein, the Debtor would have to actively participate in the Action causing a drain on the limited resources of the Debtor. More specifically, the participation in the Action, and the uncertainty associated with it, would require the expense of significant resources by the Debtor's estate. Through entry into, and approval of, the Stipulation, the Debtor, its estate and creditors, as well as the Committee, are afforded certainty with respect to the Action in an efficient manner, without the need to incur the costs necessarily associated with litigation, while maintaining a two-third (2/3) interest in any recovery on account of the Estate Claims. Accordingly, this *Martin* factor weighs in favor of approving the Stipulation.

**C. The Paramount Interest of Creditors**

20. Here, the paramount interest of creditors will be best served by approving the Stipulation. Such approval will allow the Debtor to avoid expending precious resources to actively participate in the Action, the outcome of which would be uncertain, while providing an immediate benefit to the Debtor's estate in the form of a favorable contingency fee agreement. The Stipulation and agreement will allow the Debtor to recover funds in the event of a favorable outcome in the Action, which would provide the means to improve recoveries to creditors in the Chapter 11 Case. Thus, the Court's approval of the Stipulation is in the best interests of the Debtor, its estate and its creditors, and, for the reasons set forth above, this *Martin* factor also weighs in favor of approving the Stipulation.

**NOTICE**

21. Notice of this Motion will be given to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to Vincent K. McMahon; and (iv) all parties requesting notice under Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtor submits that no other or further notice is necessary.

*[Remainder of page intentionally left blank]*



WHEREFORE, the Debtor respectfully requests entry of the Proposed Order granting the relief requested herein and such other and further relief as is just and proper.

Dated: October 27, 2020  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Matthew P. Milana*

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