UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY **Caption in Compliance with D.N.J. LBR 9004-1**	
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In re: SAM ASH MUSIC CORPORATION, *et al.* Debtors.[1]	Chapter 11 Case No. 24-14727 (SLM) (Jointly Administered)

LIQUIDATING TRUSTEE'S OBJECTION TO MOTION FOR APPLICATION OF FED. R. BANKR. P. 7023 TO THIS PROCEEDING AND TO CERTIFY A CLASS PURSUANT TO FRCP RULE 23

Emerald Capital Advisors, in its capacity as liquidating trustee (the "Liquidating Trustee") of the Liquidating Trust of Sam Ash Music Corporation and its Subsidiary Debtors (the "Liquidating Trust"), established by the *Combined Disclosure Statement and Second Amended Joint Chapter 11 Plan of Reorganization of Sam Ash Music Corporation and its Subsidiary Debtors* [Docket No. 438] (the "Plan"), in the above-captioned chapter 11 bankruptcy proceedings of the above-captioned post-effective date debtors and debtors-in-possession (the "Debtors"), by

[1] The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Sam Ash Music Corporation (3915); Samson Technologies Corp. (4062); Sam Ash Megastores, LLC (9955); Sam Ash California Megastores, LLC (3598); Sam Ash Florida Megastores, LLC (7276); Sam Ash Illinois Megastores, LLC (8966); Sam Ash Nevada Megastores, LLC (6399); Sam Ash New York Megastores, LLC (7753); Sam Ash New Jersey Megastores, LLC (8788); Sam Ash CT, LLC (5932); Sam Ash Music Marketing, LLC (2024); and Sam Ash Quikship Corp. (7410). Upon information and belief, the location of debtor Sam Ash Music Corporation's principal place of business is 278 Duffy Avenue, P.O. Box 9047, Hicksville, NY 11802.

and through its undersigned counsel, as and for its objection (this "Objection") to the *Motion for Application of Fed. R. Bankr. P. 7023 to this Proceeding and to Certify A Class Pursuant to FRCP Rule 23* [Docket No. 503] (the "Certification Motion")[2] filed by Susan Esparza ("Claimant") on behalf of herself and the Putative Class (defined herein), respectively represents as follows:

PRELIMINARY STATEMENT

1. The Certification Motion should be denied because the relief sought in the motion is to certify a purported class, but it is not limited to certifying the class for purposes of seeking approval of a proposed pre-petition settlement agreement reached between the parties. Rule 23 of the Federal Rules of Civil Procedure (the "Federal Rules"), applicable herein pursuant to Rule 7023 of the of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), outlines the procedures that apply when there is a proposed settlement of a putative class action. Given that the Certification Motion seeks blanket certification of a purported class that could adversely impact the administration of this estate, the Liquidating Trustee respectfully requests that the Certification Motion be denied.

RELEVANT FACTUAL & PROCEDURAL BACKGROUND

2. On May 8, 2024 (the "Petition Date"), the Debtors petitioned this court for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq*. (the "Bankruptcy Code") commencing these cases (the "Chapter 11 Cases") in the United States Bankruptcy Court for the District of New Jersey (the "Bankruptcy Court").

3. On August 8, 2024, the Second Amended Joint Plan of Liquidation of Sam Ash Music Corporation and Its Subsidiary Debtors Pursuant to Chapter 11 of the Bankruptcy Code [Docket No. 438] (as further modified, supplemented, and amended, the "Plan").

[2] Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Certification Motion.

4. On August 30, 2024, the Bankruptcy Court entered an order (Meisel, B.J.) [Docket No. 460] (the "Confirmation Order") confirming the Plan, which became effective that day.

5. On July 24, 2024, the Debtors filed the *Notice of Filing of Plan Supplement* [Docket No. 392], to which the Liquidating Trust Agreement was attached as Exhibit A.

6. Prior to the Petition Date, on or around March 10, 2023, Claimant filed a class action complaint against Debtor Sam Ash California Megastores, LLC *et al.* (the "State Court Defendants"), commencing an action in the Superior Court of the State of California, County of Orange (the "State Court"), styled, *Susan Esparza, an individual, on behalf of herself and all others similarly situated v. Sam Ash Megastores, LLC, and Does 1-20* (Case No. 30-2023-01311910-CU-OE-CXC) (the "State Court Class Action").

7. On February 9, 2024, following a mediation which occurred on January 4, 2024, the Class Claimant and the State Court Defendants entered into a memorandum of understanding (the "Memorandum of Understanding")[3] as to the settlement of the State Court Class Action.

8. Pursuant to the Memorandum of Understanding, the State Court Defendants agreed to resolve the claims asserted in the State Court Class Action by paying a non-reversionary settlement payment in the amount of $725,000 (the "Settlement Amount") inclusive of all attorneys' fees and claims administration and litigation costs; a class representative enhancement award in the amount of $9,000; and $25,000 as PAGA penalties, of which 75% will be paid to the California Labor Workforce Development Agency. *See id.*

9. On July 6, 2024, Claimant filed a proof of claim [Claim No. 10214] (the "Class Claim") against Debtor Sam Ash California Megastores, LLC in the amount of $725,000 on behalf of herself and a putative class of all current and former, non-exempt hourly employees who worked

[3] A copy of the Memorandum of Understanding is attached as Exhibit B to the Declaration of Sam Kim [Docket No. 503-2] (the "Kim Dec.").

for Debtor Sam Ash California Megastores, LLC, a California corporation, in the State of California at any time between March 10, 2019 to March 4, 2024 (the "Putative Class").

10. On September 3, 2024, rather than filing a motion seeking to certify the Putative Class **for purposes of** settlement, Claimant filed the Certification Motion seeking to certify the Putative Class as a class action pursuant to Federal Rule 23(a) & (b)(3), applicable herein under Bankruptcy Rule 7023. For the reasons forth below, the Certification Motion should be denied.

OBJECTION

A. The Certification Motion Should Be Denied Without Prejudice Unless It Is Limited To Seeking To Certify The Proposed Class For Purposes Of Settlement

11. As conceded in the Certification Motion, the Memorandum of Settlement sets forth a purported settlement agreement on behalf of the Putative Class. However, instead of seeking to certify the Putative Class **for purposes of settlement** as envisioned in Rule 7023(e), the Certification Motion seeks blanket certification of the Purported Class that could result in substantial harm to the estate in the event approval of the settlement is not sought or ultimately approved.

12. Indeed, absent approval of the settlement pursuant to Rule 7023(e), under the circumstances presented here class treatment is not the most fair and efficient method of adjudicating this controversy and the claims allowance process is preferred. *See In re Motors Liquidation*, 447 B.R. at 163 ("[T]he inherent simplicity of the bankruptcy process tends to make class action treatment not superior . . . because an individual claimant would need only to fill out and return a proof of claim form." (emphasis in original); *In re Ephedra Prods. Liab. Litig.*, 329 B.R. 1, 9 (S.D.N.Y. 2005) ("[The] superiority of the class action vanishes when the other available

method is bankruptcy, which consolidates all claims in one forum and allows claimants to file proofs of claim without counsel and at virtually no cost.").

13. More specifically, under Rule 7023(e), class actions "may be settled, voluntarily dismissed, or compromised only with the courts approval." *See* Fed. R. Civ. P. 23(e)(1). The procedural safeguards of Rule 23(e) extends to a "class proposed to be certified for purposes of settlement." *See id.*

14. The 2018 Advisory Committee Note to Rule 23(e)(2) also makes clear that, "in addition to evaluating the proposal itself, the court must determine whether it can certify the class under the standards of Rule 23(a) and (b) for purposes of judgment based on the proposal." *See* Fed. R. Civ. P. 23(e)(2) advisory committee's note to 2018 amendment; *see also* Fed. R. Civ. P. 23(e)(1) advisory committee note to 2018 amendment ("Although the standards for certification differ for settlement and litigation purposes, the court cannot make the decision regarding the prospects for certification without a suitable basis in the record. The ultimate decision to certify the class for purposes of settlement cannot be made until the hearing on final approval of the proposed settlement."); Fed. R. Civ. P. 23(e), advisory committee note to 2018 amendment ("The introductory paragraph of Rule 23(e) is amended to make explicit that its procedural requirements apply in instances in which the court has not certified a class at the time that a proposed settlement is presented to the court."). *Accord Smith v. One Nev. Credit Union,* Case No.: 2:16-cv-02156-GMN-NJK (D. Nev. Dec. 30, 2020) ("When the parties to a putative class action reach a settlement agreement prior to class certification, courts must peruse the proposed compromise to ratify both the propriety of the certification and the fairness of the settlement.") (internal citations omitted).

15. Here, there is a purported settlement agreement for the Purported Class. However, the Certification Motion does not seek to certify the Purported Class for purposes of seeking

approval of the settlement contemplated in the Memorandum of Understanding. Rather, the Certification Motion seeks to certify the Purported Class, and there is no limitation of the certification being solely for purposes of seeking approval of the settlement. Absent such limitation, the Certification Motion should be denied as any purported class member could seek to participate in this case through the filing of individual claims.

B. Certification Of A Class Is Not Preferable To The Claims Administration Process

16. "Although the Bankruptcy Code and Rules give no express guidance for the court's exercise of [its] discretion" in applying Rule 7023, "a pervasive theme is avoiding undue delay in the administration of the case. It follows that a court sitting in bankruptcy may decline to apply Rule 23 if doing so would . . . 'gum up the works' of distributing the estate." *In re Ephedra Prods. Liab. Litig.*, 329 B.R. at 5 (*quoting Woodward & Lothrop Holdings Inc.*, 205 B.R. 365, 376 (Bankr. S.D.N.Y. 1997)).

17. "The exercise . . . is really a two-step process: First, the Court must exercise its discretion whether to apply Rule 23 to the proposed class claim. Second, the Court must determine whether the proposed class claim satisfies the requirements of Rule 23 for class certification." *In re MF Glob*., 512 B.R. 757 at 763 (Bankr. S.D.N.Y.2014) (*citing In re Motors Liquidation Co.*, 447 B.R. 150, 157 (Bankr. S.D.N.Y. 2011)); *see also In re In re Musicland Holding Corp*., 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007).

18. Courts follow a three-factor framework (the "Musicland Factors") to help guide their determination of whether Bankruptcy Rule 7023 should be extended to the claims administration process. Those factors are: (1) whether the class was certified pre-petition; (2) whether the members of the putative class received notice of the bar date; and (3) whether class

certification will adversely affect the administration of the estate. *See In re Chaparral Energy, Inc.*, 571 B.R. 642, 646 (Bankr. D. Del. 2017).

19. Courts have held that, "many of the perceived advantages of class treatment drop away" in a bankruptcy proceedings because individual creditors "can participate in the distribution [of the estate] for the price of a stamp," since "[t]hey need only fill out and return the proof of claim." *See In re Bally Total Fitness*, 411 B.R. 142, 145 (S.D.N.Y. 2009); *In re FIRSTPLUS Fin., Inc)*, 248 B.R. 60, 71-72 (Bankr. N.D. Tex. 2000) (Bankruptcy provides the same procedural advantages as a class action).

20. Accordingly, where class litigation significantly delays and/or dilutes distributions to creditors, it is in the best interests of a debtor's estate to refuse to apply Bankruptcy Rule 7023, even if Rule 23 could be met. *See, e.g. In re Am. Reserve Corp.*, 840 F.2d 487, 490 (7th Cir. 1988) ("As the [recovery percentage] goes down, so does the utility of the class device"); *In re Ephedra Prods. Liab. Litig.*, 329 B.R. 1, 4-5 (S.D.N.Y. 2005), 329 B.R. at 10 (declining to apply Bankruptcy Rule 7023 where putative class members' ultimate recovery would only be about $4.50 per claimant, noting that "[t]he only real beneficiaries of applying Rule 23 would be the lawyers representing the class.")

21. Here, none of the Musicland Factors favor class certification. The Putative Class was not certified pre-petition; the purported class consists of only 475 individuals, and certifying the Purported Class at this late stage would adversely affect the administration of the estate unless it is restricted to seeking approval of the settlement set forth in the Memorandum of Understanding. In a worst case scenario, the estate would be faced with litigating a class action case at what will undoubtedly be a great cost to the estate as opposed to the filing of individual claims. *See, e.g., Rodriguez v. Tarragon Corp. (In re Tarragon Corp.)*, 2010 Bankr. LEXIS 3410, at *12 (Bankr.

D.N.J. Sept. 24, 2010) (noting that delaying a Rule 9014 Motion until after confirmation prejudices debtors by "wholly disrupt[ing] and undercut[ting] the expeditious execution of the Plan."); *Ephedra*, 329 B.R. at 8 (denying class certification where timely Rule 9014 Motion was not made because of the "huge problems" granting class certification post-confirmation would create).

22. As such, unless certification is solely limited to seeking approval of the settlement set forth in the Memorandum of Understanding, the Court should refuse to apply Bankruptcy Rule 7023 to certify the Putative Class and the Certification Motion should be denied.

CONCLUSION

WHEREFORE, the Liquidating Trustee respectfully requests that Certification Motion be denied and for such other relief as the Court deems just and proper.

[*signature page follows*]

Dated: New York, New York
September 24, 2024

PORZIO, BROMBERG & NEWMAN, P.C.

/s/ Brett S. Moore

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