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Rdio, Inc.: The Bankruptcy of a Music Streaming Service that Listened to the Wrong Tune

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Rdio, Inc.:

The Bankruptcy of a Music Streaming Service that Listened to the Wrong Tune.

By: Jeremy Boyd and Philip Swan

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I. Cast of Characters

A. Niklas Zennstrom - Rdio Founder

Niklas Zennstrom is something of an icon in the tech startup space. He, along with Janus Friis, founded some of the largest software platforms of the new millennium, including the widely-used internet calling program Skype and the now somewhat obscure file sharing platform Kazaa.¹ Zennstrom was no stranger to the boom and bust cycle of creating tech startups and selling them off to the highest bidder. Zennstrom lead Skype to a successful acquisition in 2005 when it was sold to eBay to the tune of \$3.1 billion.² Skype was later re-acquired by an investment group of which Zennstrom was a part, and then sold yet again to Microsoft for \$8.5 billion.³ Prior to Rdio, it looked like Zennstrom had the Silicon Valley equivalent of the Midas touch. In 2006 he was named one of Time Magazine's 100 most influential people, and has received several other professional and entrepreneurial accolades and acknowledgements.⁴ He attended Uppsala University in Sweden and the University of Michigan, where he obtained degrees in Business and Computer Science.⁵ He is currently the President of the European Tech Alliance, which is a collaborative tech business association, and CEO of the venture capital firm Atomico.⁶

B. Janus Friis - Rdio Founder

Janus Friis was a co-founder, alongside Niklas Zennstrom, of Skype and Kazaa. Friis was also instrumental in the founding of several other tech startups.⁷ Like his counterpart Zennstrom, Friis was also listed in the list of Time Magazine's top 100 most influential people.⁸ He also received an award in his home country of

¹ Atomico, <https://perma.cc/P4GT-92ZH> (Last visited April 12, 2017).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ Britannica, <https://perma.cc/Y495-G87K>, (Last visited April 12, 2017).

⁸ *Id.*

Denmark called the “IT prize” awarded by the Danish tech industry.⁹ Friis dropped out of high school and holds no degrees.¹⁰ Zennstrom and Friis began working their first project, Kazaa, together shortly after the two met in the early 2000s.¹¹

C. Anthony Bay - Rdio CEO

Before coming on as the CEO of Rdio, Bay was an executive at Amazon in their digital video sector.¹² Bay had also previously worked for Apple and Microsoft. Bay holds a B.A. from UCLA and an M.B.A. from San Jose State University. Rdio had other CEOs prior to Bay, but it was Bay who was at the helm when the ship ultimately sank into Chapter 11.

D. Elliott Peters - Rdio General Counsel

Elliot Peters began his career as an associate with a firm called Shearman & Sterling LLP.¹³ He then worked as the head of digital legal affairs at Warner Music Group for ten years, did a two year stint with Apple, then came on with Rdio in August of 2013.¹⁴ After Rdio, Peters became the CEO of EDIH Group LLC, which appears to be a small or solo consulting firm.¹⁵ There is little information about this company online other than it has been an active business entity for the last five months as of this writing.¹⁶

E. Judge Dennis Montali - Judge, U.S. Bankruptcy Court of Northern California

Judge Dennis Montali presided over Rdio’s Chapter 11 case. He is a member of a number of professional organizations, and was first appointed as the Bankruptcy

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Techcrunch.com, Catherine Shu, <https://perma.cc/D9X8-AXPL>, (Last visited April 12, 2017).

¹³ LinkedIn, <https://www.linkedin.com/in/elliotpeters/>, (Last visited April 12, 2017).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Bizapedia, <https://perma.cc/YCE7-KUX5>, (Last visited April 12, 2017).

Judge of the Northern District of California, San Francisco Division, in 1993.¹⁷ He holds a B.A. from Notre Dame and a J.D. from UC Berkley.¹⁸

F. Tracy Hope Davis - U.S. Bankruptcy Trustee

Tracy Hope Davis was appointed as U.S. Trustee for Northern and Eastern California in November of 2013.¹⁹

G. Universal Media Group

The relevant portion of Universal in this proceeding is Universal Music Group, or UMG Recordings, Inc.²⁰ It was founded in 1934 and is headquartered in Santa Monica, CA. It is a subsidiary of Vivendi, a massive multinational media conglomerate based in Paris, France.²¹ Its CEO is Lucian Grainge. Universal, along with Warner and Sony, are considered to be the mainstays of the global music industry. It reported revenue of approximately \$5.6 billion in 2016.²² Universal would become one of Rdio's largest unsecured creditors and would ultimately receive a negotiated settlement rather than a pro rata distribution from the unsecured creditors fund.²³

H. Warner Music Group

Warner Music Group is the relevant portion of Warner in this case. Warner is another of the "big three" record labels, consisting of Universal, Warner, and Sony.²⁴ Warner was founded in 1958 as Warner Bros. Records and had annual

¹⁷ U.S. Courts, <https://perma.cc/T3DK-HX3Z>, (Last visited April 12, 2017).

¹⁸ *Id.*

¹⁹ U.S. Dept. of Justice, <https://perma.cc/7JH3-YY9J>, (Last visited April 12, 2017).

²⁰ Billboard.com, <https://perma.cc/RJL3-EQ6R>, (Last visited April 15, 2017).

²¹ *Id.*

²² *Id.*

²³ [Order Approving Universal Settlement Agreement](#), Doc. No. 419, at 2-3.

²⁴ TheBalance.com, Heather McDonald, <https://perma.cc/G4QS-QP9R>, (Last visited April 15, 2017)

revenue of \$2.97 billion in 2015.²⁵ Their CEO is Stephen Cooper.²⁶ Warner Music Group is a subsidiary of Time Warner.²⁷ Warner was also one of Rdio's largest unsecured creditors and would, like Universal, ultimately receive a negotiated settlement outside of the pro rata distributions that other unsecured creditors received.²⁸

I. Sony

The relevant subsidiary of the Sony family of companies in this case is Sony Music Entertainment.²⁹ It was founded under the Sony name in 1991. Its CEO is Robert Stringer, and it reported annual revenue of \$4.89 billion in 2014.³⁰ Sony came to the table ready to fight. It was, by all party's appraisals, the largest of Rdio's unsecured creditors and extremely unhappy with Pulser and how it had structured its secured debt.³¹ It looked for a moment as though Sony, Rdio, and Pulser were going to litigate an entirely separate proceeding in New York over a series of claims.³² Sony, before it ultimately settled, claimed fraud against Pulser and Rdio. Likewise, Pulser and Rdio claimed anti-trust violations by Sony.³³ Luckily for all parties involved, a plan would ultimately be approved without resort to outside litigation, but only after serious posturing by Sony that could have potentially, if successfully executed, left Pulser with nothing.³⁴

²⁵ Billboard.com, <https://perma.cc/4PQ2-PWYR>, (Last visited April 15, 2017).

²⁶ *Id.*

²⁷ TheBalance.com, Heather McDonald, <https://perma.cc/L69U-WK8F>, (Last visited April 15, 2017).

²⁸ [Order Approving Warner Settlement Agreement](#), Doc. No. 418, at 2-3.

²⁹ [Appointment of the Official Committee of Unsecured Creditors](#), Doc. No. 33.

³⁰ Sony.net, https://www.sony.net/SonyInfo/IR/library/fr/13q4_sony.pdf, (Last visited April 24, 2017).

³¹ Variety.com, Janko Roettgers, <https://perma.cc/N3CX-M77B>, (Last visited April 24, 2017).

³² *Id.*

³³ Factmag.com, Scott Wilson, <https://perma.cc/T4NY-JPFR>, (Last visited April 24, 2017).

³⁴ [Compl., Sony Music Entertainment, v. Anthony Bay, Elliott Peters, and Jim Rondinelli, No1:16-cv-02505-RJS, \(S.D.N.Y. Apr. 4, 2016\)](#), Doc. No. 1.

J. Pulser Media

Pulser Media (“Pulser”) was the primary equity holder of Rdio. Cumulus Media, Inc., a traditional radio company, eventually bought a sizable portion of equity in Rdio, but Pulser maintained majority control of all outstanding shares and maintained its directors on the board of Rdio throughout the life of the company.³⁵ Pulser was also by far the largest secured creditor of Rdio, although the nature of this secured debt would ultimately come under fire from the unsecured creditors committee.³⁶ Rather than going to total war with the secured creditors and risking it all, Pulser ultimately agreed to accept pennies on the dollar for its secured claims, with the remainder becoming last priority unsecured debt, and collecting nothing on the latter.³⁷

K. Pandora Media

Pandora was formed in 2000 and continues to be a major player in the streaming music business.³⁸ It was the only interested buyer for Rdio, and made an offer of \$75 million for the key assets, but conditioned the offer on Rdio going through bankruptcy proceedings.³⁹

L. Iconical II

Iconical Investments II, Inc. (“Iconical”) is a venture capital firm and was the second of only two secured creditors of Rdio.⁴⁰ Unlike Pulser, Iconical collected substantially on its secured claim⁴¹, and did not suffer the same accusations of

³⁵ BizJournal, <https://perma.cc/K2XM-UA6S>, (Last Visited April 14, 2017)

³⁶ [Committee of Unsecured Creditors for Order Approving Employment of FTI Consulting, Inc. as its Financial Advisor Effective November 20, 2015](#), Doc. No. 162 at 3-5.

³⁷ [Order Confirming Debtor’s Plan of Reorganization dated August 18, 2016 and Establishing Administrative Claims Bar Date](#), Doc. No. 432.

³⁸ Vator.tv, Steven Loeb, <https://perma.cc/8PY4-CSC6>, (Last visited April 26, 2017).

³⁹ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . . .](#); Doc. No. 13 at 9:3-9

⁴⁰ [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders:\(I\) Authorizing Debtor to \(A\) Obtain Post-Petition Financing . . .](#), Doc. No. 3.

⁴¹ [Order Confirming Debtor’s Plan of Reorganization dated August 18, 2016 and Establishing Administrative Claims Bar Date](#), Doc. No. 432.

sham equity that ultimately caused Pulser to negotiate a settlement on its secured claims.

II. Background: The Origins and Pre-Petition History of Rdio

Rdio, Inc. (interchangeably “Rdio” and the “Debtor”) was a music streaming service much in the vein of current industry titans such as Pandora, Spotify, and Apple Music. The company was co-founded by Skype creators Niklas Zennstrom and Janus Friis in 2008, and began operations on August 3, 2010.⁴² The company hoped to set itself apart from other contemporary competitors in the music streaming industry by creating new, far more customizable listening options than those offered by its competitors. The concept was very ambitious (indeed, ultimately too ambitious), Rdio hoped to create a large online music library that would allow its listeners to specifically select a specific song they wished to hear at any given moment, utilizing a simple music library interface not wholly unlike the iTunes interface, though completely online. Some will note that is precisely what competitor Spotify created and launched shortly after Rdio came onto the scene. The two services shared very similar features, with the key distinction being that Rdio launched first while Spotify launched shortly after.^{43 44} This is in juxtaposition to competitors such as Pandora that allowed only radio type services, not allowing the listener to select individual songs or albums, but instead only allowing the listener to choose genres or radio stations.⁴⁵

This leap to allowing listeners the freedom to choose their own songs, albums, and even playlists was the obvious next step in the music streaming industry, but it would be Rdio who largely pioneered the process from concept to reality, even before Spotify.⁴⁶ Ultimately, however, this model would prove to be too costly, with the lion’s share of revenue going to large studios who maintained licensing agreements with Rdio.⁴⁷ The hope was that Rdio would eventually develop a large enough subscriber base that they could sustain themselves on volume,

⁴² [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders:\(I\) Authorizing Debtor to \(A\) Obtain Post-Petition Financing . . .](#), Doc. No. 3 at 4: 1-5.

⁴³ News.spotify.com, <https://perma.cc/8JAM-3JGY>, (Last visited April 24, 2017).

⁴⁴ Engadget.com, Nathan Ingraham, <https://perma.cc/68MQ-Y9LE>, (Last visited April 24, 2017).

⁴⁵ Diffen.com, <https://perma.cc/2RXF-46FZ>, (Last visited April 24, 2017).

⁴⁶ Engadget.com, Nathan Ingraham, <https://perma.cc/68MQ-Y9LE>, (Last visited April 24, 2017).

⁴⁷ [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders:](#) et al, Doc. No. 3 at 3: 17-29.

even with the extremely slim profit margins of the streaming industry.⁴⁸ Critics of Rdio, from inside and outside of the company, noted the distinct lack of a well-directed, dedicated marketing effort and blamed this largely for the stagnant growth of the platform’s user base -- contrasting competitor Spotify’s successful marketing blitz to publicize itself as essentially a free online version of iTunes immediately from its launch.⁴⁹

By the time of its petition for Chapter 11, Rdio was estimated to have monthly revenue of around \$1.6 million per month, derived chiefly from its subscribers, with a substantially smaller portion derived from ads.⁵⁰ This was simply not enough cashflow to sustain the business, as around the same time Rdio was estimated to be spending roughly \$4 million per month in expenses, maintaining expensive licensing agreements with major media studios and floating a somewhat extravagant payroll of silicon valley engineers and executives.⁵¹ Further, Rdio had approximately \$30 million in unsecured debt at the time it went under, and approximately \$190 million in secured debt.⁵² The majority of the secured debt was held by Rdio’s largest shareholder, Pulser Media Inc. (hereinafter “Pulser”).⁵³ “Equitable subordination” is not a catchy lyric in bankruptcy practice, but with the way Rdio had structured its debts with its parent company Pulser, it looked, at least to Rdio’s unsecured creditors, like that might be the hit single of this album.

III. Events Preceding Rdio’s Bankruptcy.

By late 2015, Rdio was running out of time. It had likely always planned on the possibility being acquired, but they missed a note when calculating their burn rate. Hemorrhaging capital, Rdio executives began seeking a buyer for their distressed company.⁵⁴ Unprofitability is not unusual in tech startups like Rdio. Oftentimes reckless companies following the Silicon Valley model seek to generate as much revenue as possible, regardless of

⁴⁸ *Id.*

⁴⁹ Engadget.com, Nathan Ingraham, <https://perma.cc/68MQ-Y9LE>, (Last visited April 24, 2017).

⁵⁰ [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders: . . .](#), Doc. No. 3 at 3: 13-16.

⁵¹ [Debtor’s Emergency Motion for Order: \(1\) Authorizing Debtor to \(A\) Pay and Honor Pre-Petition Employee Wages](#), et al. Doc. No. 6 at 4: 1-12.

⁵² *Id.* at 3:8-12.

⁵³ *Id.* at 3:8-12.

⁵⁴ *Id.* at 3:19-25.

what their actual profit is, with the hopes that their business will be highly valued, keeping in mind that overhead costs will shrink as the technology continues to develop.⁵⁵ With little doubt, Rdio had likely initially hoped to follow this model, but even by the low-to-no profit model of Silicon Valley startups, Rdio was failing. Despite all of this, Rdio did have some valuable assets and key personnel with intimate knowledge of those assets, comprised mostly of proprietary software and the engineers who created and maintained it.⁵⁶ Their main hope was to find someone who valued its key assets, and to give the main players in Rdio a chance retain the best value. Rdio hired a financial services company called Moelis to solicit offers, then along came Pandora (hereinafter interchangeably “Pandora” and the “Stalking Horse”).⁵⁷

In their distressed state, Rdio was approached by Pandora with an offer, according to some sources, of approximately \$100 million for Rdio’s “key assets.” These consisted of its most lucrative proprietary software and the personnel responsible for it.⁵⁸ By the time everything was finished, however, the purchase price would be lowered by some \$25 million down to \$75 million, which would be much to the disdain of the Unsecured Creditor’s Committee (hereinafter interchangeably the “Committee” or the “Unsecured Creditors Committee”).⁵⁹ Initially, Rdio hoped to be acquired outright by competitor Pandora, but Pandora wasn’t hearing it. They conditioned the purchase upon Rdio going through Chapter 11, and a stalking horse was born.⁶⁰

⁵⁵ Entrepreneur.com, <https://perma.cc/9WBF-PW7W>, (Last visited April 24, 2017).

⁵⁶ [Debtor’s Emergency Motion for Order: \(1\) Authorizing Debtor to \(A\) Pay and Honor Pre-Petition Employee Wages . . .](#), Doc. No. 6 at 14: 1-12.

⁵⁷ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . .](#); Doc. No. 13 at 9:3-9

⁵⁸ [Debtor’s Emergency Motion for Order: \(1\) Authorizing Debtor to \(A\) Pay and Honor Pre-Petition Employee Wages. . .](#), Doc. No. 6 at 14: 1-12.

⁵⁹ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . .](#); Doc. No. 13 at 16: 16-22.

⁶⁰ [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders: . . .](#), Doc. No. 3 at 5: 3-10.

IV. After the Petition is Filed, the Fights Begin.

A. The Petition

Rdio filed a voluntary petition for Chapter 11 bankruptcy in the United States Bankruptcy Court of the Northern District of California on November 16, 2015. On the petition, Rdio estimated that there would be funds available for distribution to unsecured creditors. It listed its creditors as more than 200, and fewer than 1,000. The petition listed Rdio's estimated assets at the time of filing as ranging between \$50 and \$100 million.⁶¹ The petition also listed Rdio's estimated liabilities, which were, according to the petition, between \$100 and \$500 million.⁶² Ron Bender, of Rdio's bankruptcy counsel Levene, Neale, Bender, Yoo & Brill LLP prepared and filed the petition, with Rdio General Counsel Elliot Peters providing the signature for the debtor, Rdio.⁶³

Attached as Exhibit A⁶⁴ to the petition were certain resolutions of Rdio's Board of Directors. These resolutions designate CEO Anthony Bay and General Counsel Elliot Peters as the parties responsible for handling the administration of the bankruptcy and authorize them to employ the bankruptcy counsel noted above (Levene, Neale, Bender, Yoo & Brill).⁶⁵ Further, blanket authority is given to Bay and Peters to employ additional professionals as needed to administer the bankruptcy. The directors' resolution expressly lays out objectives for Bay and Peters in the short term, while also noting that their authority is not limited exclusively to those objectives.⁶⁶ The key points of concern seem to be use of cash collateral, obtaining post-bankruptcy financing, resolving outstanding employee matters including compensation, hiring, and termination matters, collections of accounts receivable, negotiating with parties currently in contract with Rdio, soliciting offers for the liquidation of assets, and overseeing the creation and implementation of a plan. Bay and Peters' authority, however, was more expansive.⁶⁷ The resolutions contained several pages of boilerplate ensuring that Bay and Peters had the broadest

⁶¹ [Voluntary Petition, Rdio Inc.](#), Doc. No. 1.

⁶² *Id.* at 1.

⁶³ *Id.* at 4.

⁶⁴ *Id.* at 5-7.

⁶⁵ *Id.* at 5.

⁶⁶ *Id.* at 5-7.

⁶⁷ *Id.*

actual authority possible to execute the bankruptcy successfully, or alternatively, to remove the directors as culpable parties in the event of something going wrong.

Next, the petition lists the 20 largest unsecured creditors of Rdio and how much debt each one held. They are as follows:

1. Roku, Inc. (“Roku”) holding \$2,759,423.00
2. Sony Music Entertainment (“Sony”) holding \$2,399,906.05
3. AXS Digital, LLC (“AXS”) holding \$1,250,410.00
4. Shazam Media Services (“Shazam”) holding \$1,171,118.76
5. Warner Music Group (“Warner”) holding \$613,374.05
6. Dell Financial Services (“Dell”) holding \$554,305.44
7. Facebook Inc. (“Facebook”) holding \$495,548.90
8. Orchard Enterprises, Inc. (“Orchard”) holding \$383,959.52
9. Music Reports, Inc. (“Music Reports”) holding \$335,670.87
10. Tseries (“Tseries”) holding \$311,000.00
11. Universal Music Group Distribution (“Universal”) holding \$294,219.33
12. Nventive, Inc. (“Nventive”) holding \$272,230.00
13. Kahuna, Inc. (“Kahuna”) holding \$240,000.00
14. Tunecore (“Tunecore”) holding \$236,028.67
15. Mosaic NerworX, LLC (“Mosaic”) holding \$219,890.40
16. Digital Realty Trust, LP (“Digital Realty”) holding \$190,889.63
17. Merlin BV Music and Entertainment Rights Licensing Ind Ne (“Merlin”) holding \$134,960.04
18. Intervision Systems Technologies, Inc. (“Intervision”) holding \$130,908.27
19. China Basin Ballpark Company, LLC (“China Basin”) holding \$125,000.00
20. Ando Media, LLC (“Ando”) holding \$124,433.74⁶⁸

The petition also includes a creditor matrix that lists the names and addresses of every creditor of Rdio, secured and unsecured.⁶⁹ This goes on for more than 30 pages, listing all the major and minor players, and even including the popular indie rock band “Arcade Fire.”⁷⁰

⁶⁸ *Id.* at 8-10.

⁶⁹ [List of all Creditors](#). (no docket number listed).

⁷⁰ *Id.* at 2.

B. Significant First Day Motions

The Debtor filed a standard motion to pay selected post-petition creditors on November 18, 2015, this motion prayed that the court would allow Rdio to pay pre-petition employee wages and related payroll taxes, reimbursable and other employee expenses, and various employee benefits.⁷¹ It noted that no employee would receive more than \$12,475 if the motion were approved.⁷² It also detailed Rdio's company history as a music subscription service, and the woefully inadequate amount of monthly income Rdio produced, which was listed as approximately \$1.6 million per month. Rdio listed its assets which produced this income as "owned technology" (basically software and other propriety intellectual property), licensing agreements, subscribers, "employee talent pool", and goodwill.⁷³ It noted that these assets fail to produce sufficient revenue to cover the company's relative enormous operating expenses of approximately \$4 million per month.⁷⁴ Seeing as how the content licensing agreements and the "employee talent pool" were a sizeable portion of the operating expenses, there is naturally room for speculation as to whether or not these two "assets" were in fact liabilities, but regardless, the books as a whole looked particularly grim for Rdio. The motion made a point to state that Rdio at the time was employing no fewer than 140 American employees.⁷⁵

The motion also outlined the classes that would eventually need to combat one another: the \$190 million secured lenders, and the \$30 million unsecured. It then referred the Court to the Motion for Cash Collateral for a more expansive rendering of the creditors before beginning to detail another key player: Moelis & Company ("Moelis").⁷⁶ Moelis was hired by Rdio in the fall of 2014 to try to get new equity invested in the business. This failed. Moelis was then directed to find alternative forms of investment, a buyer, or possible merger partner.⁷⁷ All the while Rdio was burning to the ground. Then, "after conducting an extremely broad marking process, the

⁷¹ [Debtor's Emergency Motion for Order: \(1\) Authorizing Debtor to \(A\) Pay and Honor Pre-Petition Employee Wages. . .](#), Doc. No. 6.

⁷² *Id.* at 4: 17-23.

⁷³ *Id.* at 9: 25-28.

⁷⁴ *Id.* at 9-11.

⁷⁵ *Id.* at 2: 26-28.

⁷⁶ [Debtor's Emergency Motion for, and Memorandum of Points and Authorities in Support of, Entry of Interim and Final Orders: \(I\) Authorizing Debtor to \(A\) Obtain Post-Petition Financing . . .](#), Doc. No. 2.

⁷⁷ [Omnibus Declaration of Maikao Grare. . .](#), Doc. No. 9 at 5: 1-19.

highest and best offer” appeared. This offer was from Pandora in form of \$75 million cash for Rdio’s aforementioned technological assets.⁷⁸

Pandora had some interest in Rdio’s licensing agreements and IP related goodwill.⁷⁹ It did, however, have a great interest in muscling Rdio through Chapter 11, so much so that it conditioned the sale and purchase on Rdio filing a petition for bankruptcy *the same day* after the effective date listed in the Asset Purchase Agreement (the “APA”) between Rdio and Pandora.⁸⁰ This express framing of the agreement was listed *as the first recital* in the APA and was outlined in detail in the first day motions. Rdio’s motions were quick to note, however, that Pandora encouraged Rdio to seek overbids for these assets “to ensure the highest and best price [was] paid.”⁸¹ In other words, Pandora was very confident in its evaluation of \$75 million.

Rdio’s motions conveyed how competitive the market was in the music streaming field and the possibility of attrition by key employees that would be needed to navigate and close the sale to Pandora, noting that even those employees who would be offered jobs at Pandora could look elsewhere if they would need to wait until after the asset sale to be paid.⁸² Rdio implored the Court to move swiftly and favorably, citing provisions in the APA that allowed Pandora to back out if certain quotas of current Rdio employees did not transition to Pandora.⁸³ Essentially, Rdio, when speaking to the Court, categorizes the motion seeking approval of the APA as the domino that could bring down the entire contemplated transaction if not approved. Given the urgency presented, it should be observed that Rdio’s employees were up to date on their paychecks on the day before filing. Regardless, Rdio requested that the court approve their ability to continue paying employees.⁸⁴ Rdio also asked to allow its estate to honor any pre-petition checks or wire transfers sent to employees that had yet to clear as of the date of the first day motions, and further, it also wanted to be allowed to honor certain sick leave and vacation

⁷⁸ *Id.*

⁷⁹ [Declaration of Elliott Peters in Support of Debtor’s Motion for Authority to File Portions of a Document Under Seal, and to File Redacted Document](#), Doc. No. 48 at 25.

⁸⁰ *Id.* at 7.

⁸¹ *Id.* at 11.

⁸² [Debtor’s Emergency Motion for Order: \(1\) Authorizing Debtor to \(A\) Pay and Honor Pre-Petition Employee Wages . . .](#), Doc. No. 6.

⁸³ [Omnibus Declaration of Maikao Grare. . .](#), Doc. No. 9 at 5-6.

⁸⁴ *Id.*

time, as well as other employment benefits.⁸⁵ Rdio showed the Court that Pandora had taken it hostage in its first day motions, but it made some convincing arguments that its estate should be allowed to pay the ransom.

The Debtor also filed its first truly contentious motion, which was to allow it to employ a financial advisor.⁸⁶ It began its request by outlining many of the facts that will seem familiar at this point, the amount of money Rdio was taking in pre-petition, the amount of money Rdio was losing pre-petition, and the like. What is unique, however, is the level of detail in which Moelis's central role was described.⁸⁷ Moelis was employed by Pulser to find a solution to their Rdio problem, in the form of a buyer, merger, or otherwise.⁸⁸ The first day motions detailed those efforts to the Court, the intimate relationship Rdio had with Moelis at the time, and how Moelis was uniquely equipped to aid Rdio through the sale process due in large part to its existing familiarity with Rdio's finances.⁸⁹

C. Role of Moelis and Related Disputes

In its request for appointment of a financial advisor, Rdio laid out a rather expansive resume detailing Moelis's success and versatility as a financial advising firm. It then detailed a very long list of cases with which Moelis had been involved. Moelis's proposed role in going forward with the Chapter 11 would include business and financial analysis, solicitation of overbidders, due diligence in evaluating overbidders, serve as an intermediary between Rdio and overbidders, and assist in conducting the auction of Rdio assets.⁹⁰ Perhaps unsurprisingly, Pandora was set to stand as the highest, and only, bid to acquire Rdio's assets. This motion succeeded over an objection from the U.S. Trustee, and Moelis was brought on as post-petition financial advisor to the Debtor, racking up fees in the amount of:

- 1) \$100,000 per month,
- 2) \$2,250,000 +1% of sale proceeds above \$75 million up to \$100 million, and

⁸⁵ *Id.*

⁸⁶ [Appl. of Debtor and Debtor in Possession to Employ Moelis & Co. as Financial Advisor to Debtor Pursuant to 11 U.S.C. §§ 327, 328 and 330](#), Doc. No. 42

⁸⁷ *Id.* at 4.

⁸⁸ *Id.*

⁸⁹ *Id.* at 4: 19-23.

⁹⁰ *Id.* at 5-6.

3) +2.5% of sales proceeds that exceed \$100 million.⁹¹

However, the amount brought in by the sales fees would be reduced by the amount of monthly fees previously paid to Moelis.⁹² This structure, on the one hand, lent credit to the idea that Rdio and Moelis diligently sought a potential overbidder; on the other hand, the monthly fees were sizable enough that Moelis would have had no injury to itself by taking several additional months to solicit overbidders.⁹³ Lastly, Moelis would also be reimbursed for any expenses incurred in the sale process, including legal fees for their outside counsel.⁹⁴ Rdio also requested that Moelis not be required to maintain hourly records related to its billing of Rdio, as that was not their normal practice, and because “The Debtor believ[ed] that the ultimate benefits of Moelis’ services hereunder [could not] be measured by reference to the number of hours ...expended by Moelis’ professionals in the performance of such services.”⁹⁵ Rdio paid Moelis approximately \$35K for pre-petition services, and, when the motion to approve Moelis was filed, had already paid an initial \$100K advance payment in contemplation of the court approving Moelis as a financial advisor.⁹⁶

This motion was approved, but not before stirring a minor controversy in the case. Rdio had first retained Moelis & Company, LLC as a financial advisor in September 2014.⁹⁷ Moelis is a financial and professional services company, as well as an investment bank offering assistance with mergers and acquisitions, corporate restructuring, and the raising of capital for equity.⁹⁸ Rdio had originally hired Moelis to help find investors that might allow it to continue

⁹¹ *Id.* at 9.

⁹² *Id.* at 6.

⁹³ [Cover Sheets for First Monthly and Final Application of Moelis & Company LLC for Compensation for Professional Services Rendered and Reimbursement of Actual and Necessary Expenses as Financial Advisor to the Debtor from 11/16/15 to 2/29/16](#), Doc. No. 193 at 1.

⁹⁴ *Id.*

⁹⁵ [Appl. of Debtor and Debtor in Possession to Employ Moelis & Co. as Financial Advisor to Debtor Pursuant to 11 U.S.C. §§ 327, 328 and 330](#), Doc. No.42 at 11: 8-12.

⁹⁶ *Id.* at 11: 17-20.

⁹⁷ *Id.* at 5: 4-8.

⁹⁸ Bloomberg.com, <https://perma.cc/28RE-K382>, (last visited April 24, 2017).

operations.⁹⁹ After this proved to be, in the Debtor’s own words, “unfeasible,” Rdio asked Moelis for additional assistance to find a buyer or potential partner.¹⁰⁰ It found Pandora.¹⁰¹

Pandora would eventually make an all cash offer of \$75 million for substantially all of Rdio’s technology and engineers, on the condition that the transaction be made pursuant to a Chapter 11 § 363 sale with Pandora as the Stalking Horse Bidder and on the condition of an expedient bidding procedure and adequate overbid protections.¹⁰² To this end the Debtor applied to the Court to appoint Moelis as the Debtor’s Financial Advisor.¹⁰³ It argued that Moelis’ role as the Debtors’ representative during the unsuccessful attempts to raise equity capital made Moelis uniquely qualified to serve as its financial advisor for the required overbid procedures (the specific procedures required in this case are discussed in detail on pages 27-29), and their prior history made Moelis the most cost effective firm under the circumstances.¹⁰⁴ It supported this argument with three supporting declarations filed on November 16, 2015 along with the other first day motions.^{105 106 107}

The U.S. Trustee’s office objected to this motion on December 3, 2015.¹⁰⁸ They based their objections on several issues including the nature of the proposed indemnity agreements

⁹⁹ [Appl. of Debtor and Debtor in Possession to Employ Moelis & Co. as Financial Advisor to Debtor Pursuant to 11 U.S.C. §§ 327, 328 and 330](#), Doc. No.42 at 5; 4-8.

¹⁰⁰ *Id.*

¹⁰¹ *Id.* at 5; 9-11

¹⁰² [Orders Approving Bidding and Bidding Procedures with Respect to the Transfer and Sale of Certain Assets](#). . . , Doc. No. 82 at 2; 1-22.

¹⁰³ [Appl. of Debtor and Debtor in Possession to Employ Moelis & Co. as Financial Advisor to Debtor Pursuant to 11 U.S.C. §§ 327, 328 and 330](#), Doc. No.42 at 6-7.

¹⁰⁴ *Id.* at 9-10.

¹⁰⁵ [Decl. of Elliot Peters in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14 at 9-11.

¹⁰⁶ [Decl. of Carlos Jimenez in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 15 at 5.

¹⁰⁷ [Decl. of Jeremy Liegl in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 16 at 2-3.

¹⁰⁸ [U.S. Trustee’s Objection to Debtor’s Appl. to Employ Moelis & Co.as Financial Advisor](#), Doc. No. 102

with Moelis and Rdio, insufficient disclosure about their pre-petition relationship, and by claiming that Moelis' fees would likely provide no benefit to the Debtor and be unreasonable insofar that the Debtor was, "already at great risk of administrative insolvency."¹⁰⁹ The first and most prominent claim was that there was a conflict of interest because Moelis had been previously employed to help find a buyer or merger partner for Rdio in the negotiations leading up to the deal with Pandora. The Trustee claimed that because Moelis was employed by Pulser for this service they would have an "irreconcilable conflict of interest," as part of this prior relationship.¹¹⁰

Rdio responded to this objection six days later, on December 9, 2015.¹¹¹ Its primary response was to highlight what it described as Moelis' limited role in, "marketing the Debtor's assets/business for overbid, rather than acting as the Debtor's restructuring advisor."¹¹² Rdio claimed this distinction was especially relevant because Moelis had previously only been engaged to find the highest possible value for Rdio in a merger or sale and that the function it was applying for in the Chapter 11 case was substantially the same. It was engaged to solicit overbids for the asset sale, as was required by the approved bidding procedures.¹¹³ Rdio claimed this function was, "to grow the pot of assets available for distribution" (as opposed to determining distribution).¹¹⁴ It further argued that this function meant there was no material conflict of interest because insofar as Moelis would be able to maximize the sale amount for Rdio's assets, Pulser and the Debtor would have aligned interests.¹¹⁵ Moelis also agreed to change some of the language in its engagement letter with the Debtor to help alleviate some of the Trustee's concerns.¹¹⁶

¹⁰⁹ *Id.* at 2: 9-22.

¹¹⁰ *Id.*

¹¹¹ [Reply of Debtor and Debtor in Possession to U.S. Trustees Objection to Debtor's Appl. to Employ Moelis and Co. LLC as Financial Advisor](#), Doc. No. 110

¹¹² *Id.* at 4: 22-24.

¹¹³ [Order \(A\) Approving Bidding and Bidding Procedures with Respect to the Transfer and Sale of Certain Assets, . . .](#), Doc. No. 82.

¹¹⁴ [Reply of Debtor and Debtor in Possession to U.S. Trustees Objection to Debtor's Appl. to Employ Moelis and Co. LLC as Financial Advisor](#), Doc. No. 110.

¹¹⁵ *Id.* at 9: 1-5.

¹¹⁶ *Id.* at 11-13.

The court held a hearing on the application to employ Moelis on December 10, 2015 and mostly addressed the indemnity language in the Debtor's engagement with Moelis then ruled that the Court would only allow Moelis to be employed if it changed the language in its engagement letter to include negligence in the list of things inapplicable to Moelis' indemnification agreement, which had only previously included "bad faith" and "gross negligence." The Court felt that without this included language, Moelis had effectively forced the Debtor to indemnify it in the event of Moelis' negligence, a provision the Court could not accept.¹¹⁷ In the end Moelis agreed to change the indemnification language in the engagement letter and the Court approved its employment.¹¹⁸

It is important to remember that Pandora was the only bidder to purchase the Debtor's assets and their original offer of \$75 million was accepted.¹¹⁹ Also, Moelis made a motion for compensation from the Debtor's estate in the amount of \$2,177,798.39. This included \$2.15 million in fees plus \$27,798.39 in allowed expenses. This order was entered April 13, 2016, approximately 4 months after Moelis was authorized for employment by the court on December 10, 2015.¹²⁰

V. The Sale to Pandora

The first step to pushing this deal through was to establish procedures for bidding at the 363 sale.¹²¹ Rdio filed a motion to this end on November 16, 2015.¹²² After a relatively exhaustive table of authorities, the motion began by asking for approval of the sale process and bidding procedures attached as exhibits, and for overbidders to use either:

1) substantially the same asset purchase agreement as negotiated with Pandora, or

¹¹⁷ [Order Authorizing the Employment and Retention of Moelis & Company LLC, as Financial Advisor to Debtor Pursuant to 11 U.S.C. §§ 327, 328 and 330](#), Doc. No. 127 At 5: 3-7.

¹¹⁸ [12/10/2015 Hearing Record 59:20-1:02:33](#), Doc. No. 120.

¹¹⁹ [Notice of Successful Bidder](#), Doc. No 133, at 2: 6-12.

¹²⁰ [Order on First Monthly and Final Application of Moelis and Company LLC for Compensation and Reimbursement of Actual and Necessary Expenses as Financial Advisor to the Debtor](#), Doc. No. 225 at 2: 18-24.

¹²¹ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . .](#); Doc. No. 13.

¹²² *Id.*

2) a redlined version of the APA negotiated with Pandora.

The Debtor also requested that Pandora be approved as the Stalking Horse Bidder and be given special bid protections, final approval on the forms for notice and procedures for objections, and a scheduling of an expedited hearing to finalize the sale and get the desired res judicata effect on the transfer of assets.¹²³ Some of the most onerous bid protections sought included:

- A minimum initial overbid requirement of \$1 million.¹²⁴
- Minimum bid increments of \$500,000.¹²⁵
- A requirement that prospective bidders post a bond of 10% or \$7.6 million, which is 10% of the Pandora bid added with the \$1 million overbid fee.¹²⁶
- A requirement that a potential bidder submit proof of their ability to pay the purchase price at least 5 days before the bidding deadline.¹²⁷
- A requirement that any bid must have a closing date no later than the proposed closing date in the proposed APA.¹²⁸

The Debtor again listed the circumstances that brought Rdio into bankruptcy and assured the court that Rdio was burning fast, and reasserted the urgency with which a sale needed to be conducted, and even explained how Pulser and Iconical agreed to provide DIP financing to facilitate liquidity throughout the sale process. This DIP financing came in the form of a \$3

¹²³ *Id.*

¹²⁴ *Id.* at 56.

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . .](#); Doc. No. 13 at 57.

¹²⁸ *Id.*

million super-priority credit facility. There was also a tentative carve out of \$500K for the administrative class.¹²⁹

The motion to approve the bidding procedures also addressed the secured elephant in the room.¹³⁰ With \$190 million in secured debt, the expected sale price of \$75 million would leave the unsecured creditors with nothing. The motion made no promises for the likes of the Committee, but rather kicked the can down the road on that issue by saying only that it was open to negotiating a carve out of the sales proceeds for the unsecured class.¹³¹ The recurring theme in the first day motions was the extremely urgent need for a prompt, swift, and final disposal of assets to Pandora, in order to capture what little value was left in Rdio before it was too late. All the first day motions were filed on November 11, 2015 and Pandora purportedly required that approval of the bidding procedures needed to be completed by December 1, 2015 or it would walk away.¹³² The Debtor recited multiple times, almost talismanically, the magic words of “irreparable harm.” Their oft repeated position was that time was of the essence, the sale needed to proceed, and it was prudent to postpone the inevitable fight with the unsecured creditors for later in the process.¹³³ Pandora’s unsubtle ultimatum finally gave Rdio the exact ammunition it needed to pressure the Court into approving the sale as quickly as possible.

The remainder of the motion to approve the sale consisted mostly of form facts that also appeared in almost every filing in the case: Rdio had unsustainable operating losses, the proposed asset sale solicited needed to be conducted by Moelis, and the sale was urgent. Rdio also cites the commitment of secured creditors Pulser and Iconical to providing DIP financing moving forward.¹³⁴ There was little mention of the secured creditors at this early stage. A substantial amount of the language in all the first day motions was identical to the declarations in

¹²⁹ [Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures; \(2\) Approving Stalking Horse Bid Protections Including Break-Up Fee and Expense Reimbursement. . .](#); Doc. No. 13 at 6: 13-27.

¹³⁰ *Id.* at 7.

¹³¹ *Id.*

¹³² [Decl. of Elliot Peters in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 7 at 1-7.

¹³³ *Id.* at 9: 5.

¹³⁴ *Id.* at 8: 1-15.

support of the bidding protections from Rdio General Counsel and VP Elliot Peters, Moelis agent Carlos Jimenez, and Pandora Chief Corporate Counsel Jeremy Leigl.^{135 136 137}

The declarations supporting the sale to Pandora began with Senior Vice President and General Counsel of Rdio, Elliot Peters, supporting the bidding procedures that would ultimately culminate in Pandora's successful stalking horse bid.^{138 139} The description of the Debtor, its business, and its assets added nothing new as far as facts. In his declaration, Peters listed the assets of the business, and the then-current debts of approximately \$190 million in secured debt with Pulser Media owning approximately \$186 million of that secured debt.¹⁴⁰ The declaration also notes that Pulser was the majority owner of Rdio, owning approximately 79% of Rdio's equity.¹⁴¹ The other \$4 million in secured debt was owned by the only other secured debtor: Iconical II. Both Iconical II and Pulser held a blanket interest in more or less all of Rdio's assets.¹⁴²

In keeping with Rdio's narrative of events, Mr. Peters' declaration detailed the long and involved history of Moelis, its past business with the Debtor, and how it was able to solicit a letter of intent from Pandora to acquire Rdio's key assets for \$75 million.¹⁴³ In this same transaction, Pandora agreed to assume certain key contracts including employment contracts for important personnel who were essential to effectively utilizing, maintaining, and further

¹³⁵ [Decl. of Elliot Peters in Support of Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14.

¹³⁶ [Decl. of Carlos Jimenez in Support of Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 15.

¹³⁷ [Decl. of Jeremy Liegl in Support of Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 16.

¹³⁸ [Decl. of Elliot Peters in Support of Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14.

¹³⁹ [Notice of Successful Bidder](#), Doc. No 133

¹⁴⁰ [Decl. of Elliot Peters in Support of Debtor's Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14 at 3-4.

¹⁴¹ *Id* at 3.

¹⁴² *Id.*

¹⁴³ *Id* at 4: 21-27.

developing the software.¹⁴⁴ Various stakeholders in these contracts, including some third parties, would of course be allowed time to object, and Pandora would work to cure any problems caused by its assumptions.¹⁴⁵ 15% of the purchase price would be put in escrow as well for Rdio to indemnify Pandora in the event of any breaches.¹⁴⁶ In a true instance of everyone realizing the meaning of “mutual best interests,” Iconical agreed to guarantee Rdio’s indemnification of Pandora as well in order to make the deal go through.¹⁴⁷ The declaration was eager to point out that Pandora’s acquisition of key assets was premised upon key employees coming over to Pandora.¹⁴⁸ This was extremely important in the larger context of the bankruptcy, because there were many instances in which Rdio asked the court to allow it to pay, not only regular salaries and benefits to employees, but also to pay out what amounted to “retention bonuses.”¹⁴⁹ While that may seem extravagant at first, their argument for such retention bonuses was substantially more meritorious than at first glance.

Rdio had been exceeding its burn rate for a long time.¹⁵⁰ Many of the employees of Rdio were very likely already shopping around for future employment, knowing that it was only a matter of time until Rdio went under. Once it became clear that Rdio was filing for bankruptcy, and that Pandora was not acquiring the company outright, it was essential to the deal for certain employees be retained in order to preserve value in the sale.¹⁵¹ Without key engineers, and a team to run the software, the value of Rdio would plummet, and all Rdio’s creditors would take a much larger hit. What many outsiders might be tempted to label as Wall Street style greed, was actually in the best interests of all parties involved. Pandora would not go through on the sale without the employees, and without Pandora, Rdio was just a pile of code and overpriced licensing agreements that would be worth only a small fraction of the already low purchase

¹⁴⁴ *Id.* at 3: 12.

¹⁴⁵ *Id.* at 6: 1-8.

¹⁴⁶ [Decl. of Elliot Peters in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14 at 6: 9-12.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* at 12: 6-25.

¹⁴⁹ [Order Granting Debtor’s Emergency Motion for Authority to Honor Prepetition Cash Bonus Incentive Agreements](#), Doc. No. 55.

¹⁵⁰ [Declaration of Elliott Peters in Support of Debtor’s Emergency Motion for Entry of Interim and Final Orders: . . .](#), Doc. No. 3 at 3-5.

¹⁵¹ *Id.* at 8: 19-28.

price.¹⁵² The entire deal with Pandora was subject to brief deadlines that, in essence, made Rdio the hostage of Pandora. The implication was that if the court did not comply with the demands, Pandora would pull the trigger and the value for all creditors to fight over would fall nearly to zero. Following with that dynamic, Pandora built in several preferential provisions into the deal.¹⁵³

Pandora built in a “Break-Up Fee” of \$2.25 million that would go to Pandora if it remained the highest bidder at auction.¹⁵⁴ Pandora would also be reimbursed up to \$500K for expenses it undertook during and related to the auction. Peters’ declaration told the court that these provisions and fees, designed to virtually ensure that Pandora, as the stalking horse, would win the auction, were all “intensely negotiated,” and “an integral part of the [s]ale.”¹⁵⁵ The protections, “were absolutely required in order that the Purchaser [would] proceed with [the] sale transaction.”¹⁵⁶

Pulser and Iconical also agreed to keep Rdio afloat until the sale was finalized.¹⁵⁷ This seemed designed to signal to the Court that the secured creditors, the Debtor, and the stalking horse were all on the same page, implicitly asking the Court to consider their agreement if other parties were to try to dispute the validity of the sale. To further solidify this dynamic, Peters’ declarations also carefully used the following language to show the Court that, even if the interests of the unsecured creditors were adverse to other interests, the secured creditors were team players:

Also, the secured creditors have not excluded the possibility of negotiating with the Debtor and the creditors’ committee (if appointed) a further “carve out” from the sale proceeds to fund administrative expenses and provide a meaningful distribution to unsecured creditors.¹⁵⁸

¹⁵² *Id.*

¹⁵³ [Decl. of Elliot Peters in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14 at 7: 14-24.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.*

¹⁵⁷ *Id.* at 6: 9-17.

¹⁵⁸ *Id.* at 8: 11-13.

This quote masterfully signals to the Court that the Debtor, stalking horse, and secured creditors are, according to their own narrative, the rational parties here. At the same time, this language promises anything of substance.

After insinuating to the Court that they were the morally superior faction, the declaration outlines why they were ostensibly the logically superior faction as well. The only bold text in the entire declaration, aside from headings, stated that, “the timing of the sale process is critical,”¹⁵⁹ While true, the urgency with which Peters hammers this home is arguably hyperbolic. The declarations repeatedly urge the Court to approve the bidding and sale procedure, noting that “particularly with regard to potential loss of its employee talent, the continuing desirability and value of the Debtor’s business is clearly jeopardized by delay,”¹⁶⁰ “The Purchaser has understandably required a prompt sale process,”¹⁶¹ and “Purchaser advised the Debtor that it would only proceed with a transaction if that transaction were conducted as part of a Chapter 11 filing and a purchase pursuant to a sale under the Bankruptcy Code.”¹⁶² The repeated implication was that Rdio had to submit to the demands of Pandora if they wanted to retain any value in their failed venture. While this was true, every time they engaged in this line of rhetoric, they failed to point out that the unsecured creditors would likely be left with virtually nothing. The proceeds from the sale could not cover the secured debt, and it would only be after four failed plans and external litigation that Pulser was forced to agree to reclassify a substantial portion of its secured debt as the lowest class of unsecured debt, which essentially made that portion worthless.

Peters support for the bid protections concluded by stating that Pandora “[was] uniquely situated in regard to the Debtor’s assets, that the prospects for any overbid to Purchaser’s offer [were] extremely remote, and that purchase price offered by Purchaser is very likely to be substantially higher than the purchase price that any other buyer would be willing to pay, based on the complimentary nature of the respective businesses.”¹⁶³ The Court approved the bidding

¹⁵⁹ [Decl. of Elliot Peters in Support of Debtor’s Emergency Motion for an Order: \(1\) Approving Bidding Procedures . . .](#), Doc. No. 14 at 9: 5.

¹⁶⁰ *Id.* at 8: 20-28.

¹⁶¹ *Id.*

¹⁶² *Id.* at 8: 16-20.

¹⁶³ *Id.* at 9: 13-20.

protections and procedures and ultimately, the sale to Pandora.¹⁶⁴ ¹⁶⁵ There was no overbid.¹⁶⁶ The remainder of the fighting, which lasted for nearly a year, would be over how the proceeds were to be distributed.¹⁶⁷ That distribution, more precisely, would be what amount the unsecured creditors could dig out of Pulser with the looming threat of seeking equitable subordination

VI. The Debtor has Difficulty Approving a Plan.

A. The First Plan.

The first plan began with the standard summaries of law, disclaimers of reliance on the information for any purpose other than confirmation, and other form language regarding how, when and where to vote.¹⁶⁸ As with virtually all Chapter 11 plans, administrative claims and priority tax claims came first.¹⁶⁹ Class 1 under this plan would have been Iconical's secured claims, and would have been paid in full.¹⁷⁰ Class 2 would have been Pulser and its secured claims, and proposed to pay Pulser all estate funds and any future recoveries by the Debtor, with the only caveats being that:

- 1) this would not happen until the higher priority classes were paid in full;
- 2) class 3 would have to be paid in full;
- 3) the tax escrow would have to be fully funded; and
- 4) the settlement fund would have to be fully filled.¹⁷¹

¹⁶⁴ [Order \(A\) Approving Bidding and Bidding Procedures with Respect to the Transfer and Sale of Certain Assets, . . .](#), Doc. No. 82.

¹⁶⁵ [Order \(A\) Authorizing the Debtor to Transfer and Sell Certain Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests . . .](#), Doc. No. 151.

¹⁶⁶ *Id* at 2: 1-13.

¹⁶⁷ [Debtor's Plan of Reorganization dated August 18, 2016](#), Doc. No. 398.

¹⁶⁸ [Debtor's Plan of Reorganization \(Dated March 31, 2016\)](#), Doc. No. 216.

¹⁶⁹ *Id* at 5.

¹⁷⁰ *Id* at 5: 20-22.

¹⁷¹ *Id* at 14-15.

The Debtor would have also released all causes of action against the secured creditors in consideration of being allowed to use cash collateral.¹⁷² This ensured that the unsecured creditors could not, through the debtor, get at the secured creditors.¹⁷³ Also, in this plan, Class 3 was not the unsecured creditors, but rather non-tax priority claims such as employee salaries and benefits.¹⁷⁴ Class 4 would have been allowed pro rata shares of the settlement fund and would have been compromised essentially of all unsecured creditors except those of Sony, Warner, and Universal who would have gotten their own class, class 5.¹⁷⁵

Class 5 was more detailed than the other classes. The first plan listed the claims each of the major unsecured creditors in this class, then listed the smaller amounts that the Debtor claimed to owe. The first plan then proceeded to state the amount which would have been paid to members of Class 5. That amount would have been not what the Debtor believed was the amount of their claim but rather something else entirely.¹⁷⁶ This bold gambit is described here:

As outlined in more detail below, the Debtor believes that it has substantial and valuable claims against the Labels as a result of wrongful conduct by the Labels, which, if pursued, will result in a substantial affirmative recovery by the Debtor. The Debtor believes that the pursuit of these claims against the Labels will result in the complete disallowance of the class 5 claims of the Labels or, at a minimum, the complete equitable subordination of the class 5 claims of the Labels to all other allowed claims. In order to avoid the delay and expense of litigating the class 5 claims of the Labels, the Debtor is offering each of the Labels a settlement under the Plan. The settlement offer is for each of the Labels to receive a payment from the Debtor *equal to 5% of the amount of the midpoint between the scheduled claims and filed claims of the Labels.*¹⁷⁷

To put this in perspective, the Debtor claimed that it owed Sony alone \$2.7 million, while Sony claimed that it was owed \$12.4MM. That is a very large haircut for all the secured creditors. The payment amounts under this plan were laid out as follows:

¹⁷² *Id.* at 15: 20-25.

¹⁷³ *Id.*

¹⁷⁴ [Debtor's Plan of Reorganization \(Dated March 31, 2016\)](#), Doc. No. 216 at 6-7.

¹⁷⁵ *Id.* at 7-8.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 9: 2-17.

- A payment of \$506,074.84 to Sony as 5% of the amount of the midpoint of \$10,121,496.72;¹⁷⁸
- a payment of \$29,755.15 to Warner as 5% of the midpoint of \$595,102.92;¹⁷⁹ and
- a payment of \$52,779.16 to Universal as 5% of the midpoint of \$1,055,583.27).¹⁸⁰

This settlement would have included a release of all claims of most parties against all other parties, ending the standoff. Unfortunately for Rdio and its management, this first draft of the plan was not accepted.¹⁸¹ There would ultimately be 5 proposed plans in total, the 5th and final plan being the result of negotiations aided by a court appointed mediator.¹⁸²

B. The Second Plan

In the second proposed plan, the administrative claims, priority tax claims, class 1, class 2, and class 3 would have been treated essentially the same as they would have been under the first plan.¹⁸³ Class 4 was estimated in this plan to get between \$0.20 and \$0.25 on the dollar.¹⁸⁴ Class 2, Pulser, would get whatever was left after paying fixed settlements to class 5, as well as paying the various funds and escrows needing to be filled to satisfy the other classes.¹⁸⁵ While the methodology of how Pulser was to be paid would have been the same under this plan, the final amount would have been different. The feasibility of this plan depended on class 4 and class 5, which both got a bump up in payment from the first plan, but it was ultimately not enough to end this dispute.

In this plan the following amounts of settlement were offered and rejected by class 5:

¹⁷⁸ *Id* at 9: 5-6

¹⁷⁹ *Id* at 7.

¹⁸⁰ *Id* at 8.

¹⁸¹ [Debtor's Second Amended Plan of Reorganization \(Dated June 1, 2016\)](#), Doc. No. 312.

¹⁸² [Stipulation and Order Appointing Mediator](#), Doc. No. 376.

¹⁸³ [Debtor's Second Amended Plan of Reorganization \(Dated June 1, 2016\)](#), Doc. No. 312.

¹⁸⁴ *Id* at 6-7.

¹⁸⁵ *Id* at 20.

- \$775,000 total cash to Sony¹⁸⁶;
- \$100,000.00 cash to Warner¹⁸⁷; and
- \$125,000.00 cash to Universal¹⁸⁸.

This would have been accompanied by the standard release of all claims by, between, and among all parties.¹⁸⁹ Rdio also included an acknowledgment in the plan that Sony, Universal, and Warner believed the Debtor's supposed causes of action against them were worthless.¹⁹⁰ This ultimately resulted in approximately a 40% increase to the settlement payments offered to the music labels by the Debtor, but still far, far below what the unsecured creditors claimed they were owed. These proposals were all against the backdrop of, what the unsecured creditors had speculated, was Pulser's sham equity masquerading as secured debt.¹⁹¹

C. The Third Plan

The third plan, once again, made substantive changes to classes 4 and 5.¹⁹² Class 4 under this plan would have received an estimated amount of approximately \$0.054 on the dollar, or in other words, 5.4% of their claims, which was still quite a big hit downward from the last plan.¹⁹³ Clearly class 5 had enough bargaining power, such that the secured creditors, the Debtor, and class 4 altogether could not persuade class 5 into accepting the deal as it had been offered so far. In this proposed plan, Pulser would have taken a haircut in the amount of approximately \$35.7 million by reducing its unsecured claim (which already was reduced from its earlier, much larger

¹⁸⁶ *Id.* at 11: 10-13.

¹⁸⁷ *Id.* at 11: 12-13

¹⁸⁸ *Id.*

¹⁸⁹ [Debtor's Second Amended Plan of Reorganization \(Dated June 1, 2016\)](#), Doc. No. 312 at 11: 14-20.

¹⁹⁰ *Id.* at 11: 2-8.

¹⁹¹ *Id.* at 11: 8.

¹⁹² [Debtor's Third Amended Plan of Reorganization Dated July 12, 2016](#), Doc. No. 358 at 15-16.

¹⁹³ *Id.* at 16: 5-14.

secured claim) down to \$100 million, of which it would have still received only pennies on the dollar.¹⁹⁴

There was some progress by the 3rd plan, however, in the form of a settlement with Universal, which agreed to settle and release all claims, so they could walk away for \$125K paid from the Unsecured Creditors Fund.¹⁹⁵ The terms of the settlement would be written up in a separate agreement, but this was significant progress from earlier attempts.¹⁹⁶ Each time a major studio stopped fighting, the remaining big labels and other unsecured creditors were backed a little more in the corner, all the while the administrative class was billing hours and increasing its claim.

Class 6 would have consisted of Warner, and they also reached a settlement in the amount of \$100K.¹⁹⁷ Class 7 would have been equity, and would have received nothing. Sony's claim was still being vigorously disputed and negotiations apparently broke down. This plan contemplated using various supposedly meritorious claims owned by the Debtor against Sony to aid in financing the rest of the plan, and to repay the amount of Pulser's secured claim that had been split into class 4.¹⁹⁸ Reading this plan alone, it would seem as though Pulser, through Rdio, was preparing to go to war with Sony. The claims, insofar as this plan is concerned, were still being determined, but they were tentatively outlined as anti-trust in nature.^{199 200} This was not altogether unpredictable, as Sony was the largest unsecured creditor, and they had filed a lawsuit in New York against Rdio's management, which Rdio had unsuccessfully tried to halt with a temporary restraining order.²⁰¹ The dispute between the debtor and Sony in the media and in the courts is discussed more fully in section E below.

¹⁹⁴ *Id* at 17: 21-28.

¹⁹⁵ *Id* at 20: 10-14.

¹⁹⁶ *Id* at 20: 14-25

¹⁹⁷ *Id* at 22: 1-8.

¹⁹⁸ [Debtor's Third Amended Plan of Reorganization Dated July 12, 2016](#), Doc. No. 358 at 18-19.

¹⁹⁹ *Id* at 29: 6-10.

²⁰⁰ [Disclosure Statement Describing Debtor's Third Amended Plan of Reorganization Dated July 12, 2016](#), Doc. No. 357 at 79-81.

²⁰¹ [Order Denying Plaintiff's Motion for a Temporary Restraining Order and Preliminary Injunction, In re: Rdio, Inc., Debtor and Debtor in Possession, Rdio, Inc., Plaintiff, v. Sony Music Entertainment, Defendant, Adversary Proceeding No. 16-03045](#), Doc. No. 13.

D. The Fourth Plan

In the fourth and penultimate plan, Sony came back to the negotiating table. Rdio's threats of antitrust litigation seemed to have died down, and Pulser agreed to "purchase" all of Sony's claims against Rdio, which had grown to approximately \$17 million by Sony's estimates.²⁰² This draft still gave Universal a \$125K settlement²⁰³, and Warner a \$100K settlement.²⁰⁴ Through this arrangement, there would have been approximately \$5 million left in the Unsecured Creditors Fund to pay out class 4, which was estimated to have been between \$20 and \$30 million in claims.²⁰⁵ The Debtor estimated that class 4 would have received approximately 17%-20% of their claims, or \$0.17 - \$0.20 on the dollar.²⁰⁶ It was also during the negotiation of this plan that all parties agreed to stipulate on the appointment of a mediator, which the court accepted on August 2, 2016. This was approximately four months after Rdio tried to get its first plan approved.²⁰⁷

E. Analysis of the Dispute with Sony.

Throughout the negotiations on the various plans, Sony was not pleased with how Rdio's Chapter 11 was turning out. Sony was by far the largest unsecured creditor of Rdio with claims, it estimated, between \$12 and \$17 million, and it was in danger of taking home little, if anything.²⁰⁸ Sony filed a complaint in the United States District Court for the Southern District of New York against Rdio General Counsel Elliot Peters, Rdio CEO Anthony Bay, and Jim Rondinelli, the Senior Vice President of Rdio, for fraud.²⁰⁹ The complaint stated in relevant part, among other things:

²⁰² [Debtor's Plan of Reorganization Dated August 10, 2016](#), Doc. No. 389 at 12: 4-15.

²⁰³ *Id.* at 13: 1-4.

²⁰⁴ *Id.* at 14: 1-5.

²⁰⁵ *Id.* at 15: 10-26.

²⁰⁶ *Id.*

²⁰⁷ [Debtor's Plan of Reorganization \(Dated March 31, 2016\)](#), Doc. No. 216.

²⁰⁸ *Id.* at 9.

²⁰⁹ [Complaint, Sony Music Entertainment, v. Anthony Bay, Elliott Peters, and Jim Rondinelli, No1:16-cv-02505-RJS, \(S.D.N.Y. Apr. 4, 2016\)](#), Doc. No. 1.

Defendant Bay was—and upon information and belief still is—also an owner, executive officer, and director of Pulser Media, Inc., which owned 79% of Rdio and held 98% of the secured debt issued by Rdio. *Thus, in the event of an Rdio bankruptcy, Pulser and Bay expected to be first in line to recover whatever value remained in Rdio.*²¹⁰

It further alleged:

Unbeknownst to [Sony Music Entertainment], however, at the same time that Rdio was negotiating the amendment to its Content Agreement with SME, it was simultaneously negotiating its deal with Pandora—under which Rdio would file for bankruptcy; Pandora would buy Rdio’s assets out of bankruptcy; defendant Bay (as part-owner, executive officer, and director of Rdio’s secured creditor) would expect to be first in line to receive proceeds of the Pandora deal; and SME (as an unsecured creditor) *would receive pennies on the dollar for the amounts owed to it under the amended Content Agreement.*

Defendants knew that, had SME learned about Rdio’s negotiations with Pandora at any time during the negotiations to amend the Content Agreement, SME would have demanded immediate payment of the \$5.5 million that Rdio owed to SME, and would have refused to grant Rdio further access to the recordings owned by SME. That in turn would have substantially diminished Rdio’s business and jeopardized the secret proposed sale to Pandora. In order to induce SME to continue to provide Rdio with the rights to SME’s catalog, Defendants continued to negotiate the terms of an amendment to the Content Agreement—exchanging term sheets that contemplated payments by Rdio over a period of years—*while concealing from SME the fact that Rdio was negotiating an agreement with Pandora that Defendants knew would render Rdio unable to meet these obligations to SME.*²¹¹

²¹⁰ *Id* at 2, ¶ 6.

²¹¹ *Id* at 2, ¶ 10-12.

These were obviously very serious claims coming from Sony, and if successfully litigated could have been disastrous for Rdio's executives, which were the named defendants.²¹² If the defendants named under this complaint were in fact culpable of knowingly committing a fraud against Sony, and if that type of bad faith behavior were not covered by insurance, then Sony would have had to know it wasn't going to recover much of its judgment, other than possibly foreclosure proceeds on the defendants personal assets. Sony, it could be easily argued, was litigating on principle or for some other reason, like leverage.

If the facts alleged in the complaint were true, then there was some egregious behavior from Rdio's leadership. The complaint alleged that the day before executing a renewal amendment with Sony, Rdio had already signed a letter of intent with Pandora signaling its intent to file a Chapter 11 petition and, consequently, never pay Sony at all.²¹³ It is understandable why Sony would be so outraged if any of these allegations were indeed correct. Interestingly, however, even though Sony claimed Rdio's largest unsecured creditor to the tune of approximately \$12 million²¹⁴, it's not as if they had actually loaned Rdio cash for a mere promise to pay. Their status as a creditor was, in essence, for unpaid bills in regards to licensing agreements from Sony.²¹⁵ Sony was out of lost profits, and there is something to be said for an argument that Sony was akin to a lost-volume seller, but other than labor in negotiating these contracts, Sony was not truly losing cash, which may contributed to the ultimate decision to settle.

The Sony complaint went on to allege that Rdio officers intentionally misrepresented their plans and ability to raise operating capital to pay Sony so that Sony would stay at the table and negotiate, all the while Rdio was trying to close its deal with Pandora, which may have walked away if it heard that Sony had stopped licensing to Rdio.²¹⁶ The facts, as they are presented in the complaint, seem to make sense with the history of events that led up to Rdio's Chapter 11 petition.

²¹² *Id* at 1.

²¹³ *Id* at 4, ¶ 14.

²¹⁴ [Debtor's Plan of Reorganization \(Dated March 31, 2016\)](#), Doc. No. 216 at 8: 6-10.

²¹⁵ *Id* at 8: 3-15.

²¹⁶ [Complaint, Sony Music Entertainment, v. Anthony Bay, Elliott Peters, and Jim Rondinelli, No1:16-cv-02505-RJS, \(S.D.N.Y. Apr. 4, 2016\)](#), Doc. No. 1 at 3: ¶ 11.

Meanwhile, back in California in the Bankruptcy Court, Sony was filing a motion to appoint an examiner.²¹⁷ They truly began to attack Rdio on all fronts. That motion, in relevant part, stated:

It is clear that from the commencement of this chapter 11 case the Debtor has sought to improperly leverage the provisions of chapter 11 for the sole benefit of Pulser and Iconical II, their affiliates, and their shared officers and directors. The Debtor has proposed settling the Debtor's recharacterization and equitable subordination claims against Pulser and Iconical II – the estate's largest and most valuable asset – for pennies on the dollar. It is unclear who “negotiated” the agreement on behalf of the Debtor with Pulser and Iconical II, but given Iconical II's and Pulser's complete dominion and control over the Debtor and shared executives, *it is clear that the negotiation could not have been at arms' length.*²¹⁸

Alternatively, Sony asked that the case be converted to a Chapter 7.²¹⁹ That request began by citing numerous authorities that purported to show when it was appropriate to convert to Chapter 7. Further, it stated that the enumerated causes for conversion in the Bankruptcy Code are not exhaustive, and that the Court has wide discretion in determining when it is appropriate to make such a conversion.²²⁰ Sony also pointed out that, as all parties to this proceeding know, Rdio was cashflow negative and has no chance of being “reorganized” in the true spirit of Chapter 11.²²¹ Sony's problem was that, in essence, this was a controlled liquidation with Sony at the bottom, or near bottom, of the priority ladder; and Sony was threatening to burn the whole thing down.²²² Sony pointed to the enormous and ever growing costs of the administrative class, including the time wasted in trying to confirm plans that Rdio knew Sony would not allow to go through, as well as the continued loss of money to maintaining payroll, including paying the very

²¹⁷ [Sony Music Entertainment's and Orchard Enterprises NY, Inc.'S Motion for Entry of an Order Pursuant to Sections 1104\(C\) and 1112\(B\) of the Bankruptcy Code Appointing an Examiner . . .](#), Doc. No. 266.

²¹⁸ *Id* at 12: 25-28.

²¹⁹ *Id* at 1.

²²⁰ *Id* at 13-14.

²²¹ *Id* at 15: 3-14.

²²² *Id* at 16: 2-15.

same officers that allegedly perpetrated a fraud against Sony.²²³ Sony then finished this volley by filing a request for discovery that Rdio hand over everything it had forming a basis for Rdio's allegations that Sony was engaged in various anti-trust violations, including price-fixing.²²⁴

As for Rdio, they never filed a complaint against Sony. The most in-depth elaboration they give in any document filed is in their supporting documents when they filed the 3rd plan. There is a brief "claims against Sony" section that states in relevant part as follows:

...the Debtor believes that Sony and Orchard have engaged in anticompetitive conduct to fix and control prices and unreasonably restrain trade for the licensing, marketing, and use of music by services, like the Debtor, for the digital streaming of music to consumers worldwide.²²⁵

Rdio essentially accused Sony of collusive price-fixing to maintain excessively high prices for licensing its content to music streaming services like Rdio.²²⁶ Not much else is said to support these allegations, other than Rdio expressly reserved the right to pursue all causes of action against Sony, and by the time of the 4th plan, Sony had come back into the fold and was willing to settle.²²⁷ However, to an impartial observer, these raw allegations from Rdio, without more, could be evaluated as mere posturing. It was possible that both Sony and Rdio were merely posturing against one another, and jockeying for more leverage at the negotiation table, but if that was indeed the case, it looks as if Sony was more adept at the practice. Negotiation strategies aside, the Debtor was finally able to confirm a plan in mid-August, 2016.

²²³ [Sony Music Entertainment's and Orchard Enterprises NY, Inc.'S Motion for Entry of an Order Pursuant to Sections 1104\(C\) and 1112\(B\) of the Bankruptcy Code Appointing an Examiner . . .](#), Doc. No. 266 at 7: 12-18.

²²⁴ [Sony Music Entertainment's Notice Of Motion And Motion For Order Pursuant To Rule 2004 . . .](#), Doc. No. 366 at 2: 15-25.

²²⁵ [Disclosure Statement Describing Debtor's Third Am. Plan of Reorganization Dated July 12, 2016](#), Doc. No. 357 at 79: 1-7.

²²⁶ *Id.*

²²⁷ [Debtor's Plan of Reorganization dated August 18, 2016](#), Doc. No. 398, at 11: 22-24.

F. The Final Plan is Confirmed.

While Rdio voluntarily filed their Chapter 11 petition on November 16, 2015,²²⁸ they did not get a final plan approved until August 18, 2016, when Rdio created its “Debtor’s Plan of Reorganization Dated August 18, 2016.” (hereinafter the “Plan”).²²⁹ The Plan was purportedly supported by the Unsecured Creditors Committee, the secured creditors (Pulser and Iconical), and the “big three” studios.²³⁰ The Plan, once enacted, would be immune to appeal or rehearing.²³¹

The Plan kept certain claims unclassified because they would not be impaired, and therefore would not be entitled to vote on the plan²³²: these were administrative expenses and certain priority tax claims, essentially setting aside funds so that the lawyers, accountants, and other professionals who administered the bankruptcy, and the government, would be paid in full.²³³ This approach is very common, and it has the additional effect of keeping these parties disinterested and removed from the possibility of muddying the negotiations for the major parties moving forward.²³⁴

The Plan takes the typical approach of classifying the remaining claims into secured and unsecured, with appropriate sub categories.²³⁵ The secured claims would be divided first into “Class 1,” which consisted solely of secured creditor Iconical’s claim, and “Class 2” which similarly consisted solely of secured creditor Pulser’s claim.²³⁶ Class 1 would be paid approximately \$4,500,000, ostensibly satisfying it in full and consequently removing it from voting on the Plan.²³⁷ Class 2, Pulser’s secured claim of more than \$180 million, would be split

²²⁸ [Voluntary Petition, Rdio Inc.](#), Doc. No. 1.

²²⁹ [Debtor’s Plan of Reorganization dated August 18, 2016](#), Doc. No. 398.

²³⁰ *Id* at 11-14.

²³¹ 11 U.S.C.A. § 1141 (b)

²³² [Debtor’s Plan of Reorganization dated August 18, 2016](#), Doc. No. 398 at 4: 12-18.

²³³ *Id* at 4-6.

²³⁴ Michael L. Bernstein & George W. Kuney, *Bankruptcy in Practice*, (5th edition), at 19.

²³⁵ [Debtor’s Plan of Reorganization dated August 18, 2016](#), Doc. No. 398, at 4-10.

²³⁶ *Id* at 8: 11-13.

²³⁷ *Id* at 8: 15.

to approximately \$47,000,000 left in class 2, and shunting the remaining \$136,000,000 to fall into Class 4, which would be a category of unsecured claims.²³⁸ The Plan further stated that Pulser would not receive any of this remaining \$136,000,000 unsecured claim. This may seem like a steep hit, but remember that Pulser was the majority stakeholder of Rdio, and likely made those secured loans as an alternative to investing more equity, which they knew they would lose entirely in bankruptcy.

Frankly, an argument could be made that Pulser makes out very handsomely, even after it voluntarily subordinated such a large portion of its claim, because it would not be inconceivable that it could have been equitably subordinated by Court order, putting its entire secured claim either with the unsecured, or with equity, leaving them with little or nothing. Pulser was the first player to be impaired under the Plan, so they would get a vote in whether or not to approve the plan moving forward.²³⁹ The Plan did offer Pulser one additional “freebie” of sorts: it stated that, “On account of its class 2 secured claim, Pulser [would] receive all of the Estate Funds remaining on the Effective Date after all required Plan payments have been made....”²⁴⁰ It is highly unlikely that there would be anything left over after the execution of the Plan, but if there was, Pulser would get to cash the check. Lastly, Rdio and Rdio’s bankruptcy estate agreed to release Pulser and Iconical from any claims or liabilities. This additional consideration could have been worth a relatively meager sum, or quite a sizeable one.²⁴¹

Moving forward, the Plan detailed treatment for the unsecured claims, first setting up treatment for priority unsecured claims, “Class 3,” entitled to such under the bankruptcy code.²⁴² Here those priority unsecured claims would be approximately \$270,000 for former employees.²⁴³ The next class of unsecured claims in the Plan is “Class 4.”²⁴⁴ This excludes the unsecured claims of Universal, Warner, and Sony, which settled their disputes against the Debtor.²⁴⁵ The

²³⁸ *Id* at 11: 11-26.

²³⁹ *Id* at 12: 1-8.

²⁴⁰ *Id* at 16: 11-16.

²⁴¹ [Debtor’s Plan of Reorganization dated August 18, 2016](#), Doc. No. 398, at 18: 3-18.

²⁴² *Id* at 10: 9-21.

²⁴³ *Id*.

²⁴⁴ *Id* at 11-12..

²⁴⁵ *Id* at 10-14.

total amount of unsecured claims in Class 4 was estimated in the Plan to be anywhere from approximately \$25,000,000 to approximately \$49,000,000.²⁴⁶

Sony settled by reaching an agreement with Pulser where Pulser would purchase all of Sony's claims which they valued at approximately \$17,000,000²⁴⁷, after their day-long mediation session in front of retired bankruptcy judge Allan Gropper on August 4, 2016.²⁴⁸ Universal and their subsidiaries or affiliates total claims amounted to approximately \$1,300,000, of which they settled for \$125,000.²⁴⁹ Warner claimed approximately \$619,000, and settled for \$100,000.²⁵⁰ The last class, "Class 5," consisted of equity and would receive nothing, and would not be entitled to vote on the Plan.²⁵¹

The preferential treatment of administrative and tax claims in this case is more or less industry standard, but it is not insignificant.²⁵² Rdio's bankruptcy counsel, Levene, Neale, Bender, Yoo & Brill, LLP, comes out with \$1,000,000 in *estimated* pre-petition fees, and not counting additional post-petition fees as well. Another law firm retained by the debtor to, Winston & Strawn LLP, which was listed as "special litigation counsel," that was applied for by the debtor, and approved by the Court to assist the estate in evaluating and pursuing its claims against the major record labels.²⁵³ Its fees come out with \$100,000 post-petition retainer.²⁵⁴ The Unsecured Creditors' Committee's counsel, Pachulski Stang Zeihl & Jones LLP, would collect an estimated \$500,000 in pre-petition fees in addition to post-petition fees not listed in the

²⁴⁶ [Disclosure Statement Describing Debtor's Plan of Reorganization Dated August 18, 2016](#), Doc. No. 399, at 53: 8-16.

²⁴⁷ *Id* at 64: 4-10.

²⁴⁸ *Id* at 50: 18-27.

²⁴⁹ *Id* at 65: 2-3.

²⁵⁰ *Id* at 65: 26-28

²⁵¹ *Id* at 69: 1-11.

²⁵² [Disclosure Statement Describing Debtor's Plan of Reorganization Dated August 18, 2016](#), Doc. No. 399, at 54-56. (\$1.9 million in estimated administrative claims as of the filing of the disclosure statement.)

²⁵³ [Order Granting Am. Appl. of Debtor and Debtor in Possession to Employ Winston & Strawn LLP As Special Litigation Counsel . . .](#), Doc. No. 322.

²⁵⁴ [Am. Appl. of Debtor and Debtor in Possession to Employ Winston & Strawn LLP as Special Litigation Counsel . . .](#), Doc. No. 305, at 9: 10-13.

Plan.²⁵⁵ The Committee's financial advisor, FTI Consulting, would estimate \$150,000 to be set aside for pre-petition fees, and of course that did not include post-petition fees either.²⁵⁶ As for tax, the Plan sets aside approximately \$130,000 pending adjustments as needed.²⁵⁷ In total, the lawyers and other consultants were paid more than \$4.4 million, including:

- Debtor's Counsel - \$1,017,332.66²⁵⁸
- Debtor's special Counsel - \$360,012.63²⁵⁹
- Debtor's Financial Advisor - \$2,177,798.39²⁶⁰
- Unsecured Creditor's Counsel - \$431,375.00²⁶¹
- Unsecured Creditor's financial consultant - \$415,013.50²⁶²

VI. The Future of Pandora, and the Streaming Music Business.

The music streaming industry exists in a harsh and unforgiving business landscape, that has only recently begun to show promise.²⁶³ As Rdio found out, the operating costs of acquiring and maintaining both licenses and listeners is enormous, and no streaming service to date has made profit from selling advertising alone.²⁶⁴ They need subscription fees in order to survive, and most people today are not willing to pay for music that they can readily get for free, with the notable exception of Apple Music listeners. Apple Music does not offer a free ad-supported

²⁵⁵ [Debtor's Plan of Reorganization dated August 18, 2016](#), Doc. No. 398, at 6: 1-6.

²⁵⁶ *Id* at 6: 6-12.

²⁵⁷ *Id* at 7: 6-8.

²⁵⁸ [Order Granting Final Fee Appl. of Levene, Neale, Bender, Yoo & Brill L.L.P.](#), at 2: 19-20.

²⁵⁹ [Order Granting Final Fee Appl. of Winston & Strawn LLP](#), at 2: 14-20.

²⁶⁰ [Order on First Monthly and Final Appl. of Moelis and Co. LLC for Compensation and Reimbursement of Actual and Necessary Expenses as Financial Advisor to the Debtor](#), Doc. No. 225 at 2: 18-24

²⁶¹ [Order Approving Final Fee Appl. of Pachulski Stang Ziehl & Jones LLP . . .](#), Doc. No. 458, at 2: 1-9.

²⁶² [Order Approving Final Fee Appl. of FTI Consulting, . . .](#), Doc. No. 457, at 1: 24-27.

²⁶³ Bloomberg.com, Lucas Shaw, <https://perma.cc/XF5J-76SF>, (Last visited April 25, 2017).

²⁶⁴ Medium.com, Cary Sherman, <https://perma.cc/6PLA-CU6X>, (Last visited April 26, 2017), (Mr. Sherman is the Chairman and CEO of the Recording Industry Association of America).

model, only premium with subscription fees. Apple music, however, is still not ironclad on its future profitability. If any service out there right now will remain standing after the collapse of glut of music streaming services currently available, however, it will likely be Apple Music.²⁶⁵ This is because Apple Music doesn't need to be strictly profitable on its own to be of value as a customer acquisition platform for the greater Apple family of products and services.²⁶⁶

Pandora and Spotify, on the other hand, don't have anywhere to send a customer once acquired. Their streaming services are the terminal destination. Apple, however, will gladly take some losses on Apple Music if it gets more people using its other products and services, and it believes this will happen. Further, Apple seems to have learned a few lessons from its competitors in this space, by offering only the subscription model, they are trying a different method in the game. Apple music is still relatively small compared to Spotify and Pandora, hosting approximately 13 million user in 2016.²⁶⁷ Apple doesn't need to make money with Apple Music, now, or in the future, in order to keep the service around. They also appear to be taking the slow and steady approach, instead of looking for explosive growth in revenues with the potential for a buyout if needed (which seems to be the more common approach among others in the music streaming space). Apple Music's future is still tenuous, but if any streaming service will survive, and most of them will not, it looks at this time that it will be Apple Music.

By comparison Spotify, the largest streaming service out right now, is not doing well either, and by most metrics, they are arguably the most successful music streaming service on the planet with approximately 90 million users.²⁶⁸ Regardless of their massive user base, they continue to report losses.²⁶⁹ Spotify reported losses of \$184MM in 2014 and \$206MM in 2015.²⁷⁰ This is due to the same problems Rdio had. The costs of overhead in running a music streaming service are enormous.²⁷¹ License agreements and payroll are colossal.²⁷² Further, once you've put out a free ad-supported model, there is really no going back to only offering

²⁶⁵ Billboard.com, Natalie Jarvey, <https://perma.cc/5CG8-LQE7>, (Last visited April 26, 2017).

²⁶⁶ Fool.com, Andrew Tonner, <https://perma.cc/39RG-EVLK>, (Last visited April 26, 2017).

²⁶⁷ Billboard.com, Natalie Jarvey, <https://perma.cc/5CG8-LQE7>, (Last visited April 26, 2017).

²⁶⁸ Fortune.com, Matthew Ingram, <https://perma.cc/Y487-PL3A>, (Last visited April 26, 2017).

²⁶⁹ *Id.*

²⁷⁰ *Id.*

²⁷¹ *Id.*

²⁷² *Id.*

premium. Ad-supported free accounts, as Rdio learned, and Spotify and Pandora know all too well, are valuable only insofar as they may turn into paying subscribers.²⁷³ The ads alone will likely never outpace the cost of providing the music, unless the studios creating the content change their pricing significantly. Lastly, while things look grim at the moment for Spotify, the service continues to lead the market in terms of overall revenue growth (even if losses continue) and growth of users.²⁷⁴ Spotify is hurting, but it doesn't look poised to be the next music streaming service to go under. That position is currently held by the company that bought out the remains of Rdio: Pandora.

Things have not gone well for Pandora since it acquired Rdio.²⁷⁵ Its stock price shot down precipitously upon the acquisition, and has not measurably gone up since that time.²⁷⁶ The company as a whole was valued at approximately \$7 billion in 2014 and has shot down to a rough evaluation of approximately \$2 billion since.²⁷⁷ There were rumors circulating for a time that Pandora was looking for buyers, and this caused a slight rally in their share prices, but that too was lost when the company switched CEOs and stopped looking for buyers.²⁷⁸ Pandora is currently operating with losses of nearly \$10 million per month, twice the operating losses Rdio had when it went into bankruptcy.^{279 280} Further, they estimated that they would lose nearly \$200 million in 2016 alone.²⁸¹ There were talks that maybe Amazon, Google, or Apple would acquire Pandora, mainly for their roughly 80 million userbase, but the price tag of \$2 billion was just too much.²⁸²

²⁷³ Medium.com, Cary Sherman, <https://perma.cc/6PLA-CU6X>, (Last visited April 26, 2017), (Mr. Sherman is the Chairman and CEO of the Recording Industry Association of America).

²⁷⁴ Fortune.com, Matthew Ingram, <https://perma.cc/Y487-PL3A>, (Last visited April 26, 2017).

²⁷⁵ Fortune.com, Matthew Ingram, <https://perma.cc/FSV9-WC6M>, (Last visited April 26, 2017).

²⁷⁶ *Id.*

²⁷⁷ Fortune.com, Matthew Ingram, <https://perma.cc/PH9Z-HHWS>, (last visited April 26, 2017).

²⁷⁸ Fortune.com, Matthew Ingram, <https://perma.cc/FSV9-WC6M>, (Last visited April 26, 2017).

²⁷⁹ *Id.*

²⁸⁰ [Declaration of Elliott Peters in Support of Debtor's Emergency Motion for Entry of Interim and Final Orders:\(I\) Authorizing Debtor to \(A\) Obtain Post-Petition Financing . . .](#), Doc. No. 3 at 3: 20-21.

²⁸¹ Fortune.com, Matthew Ingram, <https://perma.cc/FSV9-WC6M>, (Last visited April 26, 2017).

²⁸² Fortune.com, Matthew Ingram, <https://perma.cc/PH9Z-HHWS>, (last visited April 26, 2017).

There is a relative consensus among investors that Pandora is poised to go the same way Rdio did, and for more or less the exact same reasons.²⁸³ Pandora, however, unlike Rdio, is no longer a fresh startup. The company has been around since 2000, and for a while looked to be the undisputed champion of the music streaming space.²⁸⁴ Unfortunately for them, however, their “internet radio” approach where listeners choose only genres, as opposed to choosing specific albums and songs, has not held up as services like Spotify and Apple Music have come into the same market. Pandora hoped to use the assets it acquired from Rdio to revamp its services and being to offer individual song selection along with its traditional internet radio approach, but hope that this change in their model would allow them to outpace Spotify and Apple Music have faced a cruel reality that while Apple Music and Spotify are growing their user bases, Pandora is at best stagnant or at worst losing users, though reports vary.^{285 286 287} Regardless, one thing is clear, Pandora is currently in serious trouble, and while talks of bankruptcy are not yet publicly on the table, talks of being bought out by a competitor certainly are, and that was the exact same beginning which lead to Rdio being acquired by Pandora.²⁸⁸ It looks, at least at this time, that Pandora will go the same direction that Rdio did, if they decide to look for, and can find a buyer. Apple Music and Spotify may be content to simply watch Pandora fold completely and allow a natural acquisition of their users for free in the marketplace. Time will tell.

²⁸³ *Id.*

²⁸⁴ Vator.tv, Steven Loeb, <https://perma.cc/8PY4-CSC6>, (Last visited April 26, 2017).

²⁸⁵ Fortune.com, Matthew Ingram, <https://perma.cc/FSV9-WC6M>, (Last visited April 26, 2017).

²⁸⁶ TheStreet.com, Amanda Albright, <https://perma.cc/BDN4-CDW3>, (Last visited April 26, 2017).

²⁸⁷ TechTimes.com, James Geddes, <https://perma.cc/KS53-ZVPS>, (last visited April 26, 2017).

²⁸⁸ Fortune.com, Matthew Ingram, <https://perma.cc/PH9Z-HHWS>, (last visited April 26, 2017).