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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re :  
: Chapter 7  
FYRE FESTIVAL LLC, :  
: Case No. 17-11883 (MG)  
: Debtor. :  
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**TRUSTEE’S FOURTH OMNIBUS APPLICATION FOR AN *EX-PARTE* ORDER,  
PURSUANT TO FED. R. BANKR. P. 2004, AUTHORIZING THE TRUSTEE TO  
EXAMINE (I) IMG MODELS, LLC; (II) BARCLAY DEVELOPMENT LLC; (III)  
RAYMOND ANDREWS; (IV) DNA MODEL MANAGEMENT LLC; (V) LANDRY &  
KLING, INC.; (VI) KENDALL JENNER INC.; (VII) GUSTO; (VIII) AIRCRAFT  
SERVICES GROUP, INC. (IX) SPECIAL EVENTS FLOORING; (X) JP GUTFREUND;  
(XI) CHEF ELLIS DUFF PASTRIES CATERING; (XII) BRICKSQUAD MONOPOLY  
INC.; (XIII) C.F. BUTLER ASSOCIATES; (XIV) MPR AUDIO SYSTEMS LLC; (XV)  
HEALTHPASS INSURANCE; (XVI) N.C. MACDUFFS LTD.; (XVII) DEANDRE WAY;  
(XVIII) LEROY ARCHER; (XIX) BROOKLYN EVENTS CENTER, LLC; (XX) EYES  
ABOVE WATER LLC; (XI) GUILDSMITH; (XXII) ZERO PARTY LLC;  
(XXIII) JERRY MEDIA, LLC; AND (XXIV) UNITED TALENT AGENCY**

**TO THE HONORABLE MARTIN GLENN,  
UNITED STATES BANKRUPTCY JUDGE:**

Gregory M. Messer, the Chapter 7 Trustee (the “Trustee”) for the estate of Fyre Festival LLC (the “Debtor”), by and through his special litigation counsel, Klestadt Winters Jureller Southard & Stevens, LLP, as and for his fourth omnibus application (the “Application”) for entry

of an *ex-parte*<sup>1</sup> order, pursuant to Fed. R. Bankr. P. 2004, authorizing him to examine (i) IMG Models, LLC; (ii) Barclay Development LLC; (iii) Raymond Andrews; (iv) DNA Model Management LLC; (v) Landry & Kling, Inc.; (vi) Kendall Jenner Inc.; (vii) Gusto; (viii) Aircraft Services Group, Inc. (ix) Special Events Flooring; (x) JP Gutfreund; (xi) Chef Ellis Duff Pastries Catering; (xii) Bricksquad Monopoly Inc.; (xiii) C.F. Butler Associates; (xiv) MPR Audio Systems LLC; (xv) Healthpass Insurance; (xvi) N.C. Macduffs Ltd.; (xvii) Deandre Way; (xviii) Leroy Archer; (xix) Brooklyn Events Center, LLC; (xx) Eyes Above Water LLC; (xxi) Guildsmith; (xxii) Zero Party LLC; (xxiii) Jerry Media, LLC; and (xxiv) United Talent Agency (each proposed examinee, an “Examinee,” collectively, the “Examinees”), respectfully represents:

### **PRELIMINARY STATEMENT**

As noted in his prior Applications, the Trustee’s investigation of the Debtor’s financial affairs has been challenging due to the lack of basic disclosures, the failure of the Debtor to file basic bankruptcy schedules and a statement of financial affairs, and the incarceration of the Debtor’s principal, Billy McFarland. The Trustee has had to obtain all information regarding the Debtor’s financial affairs from third parties. During the course of his investigation, the Trustee has discovered additional significant transfers to the Examinees totaling over \$5.2 million (not less than \$90k for each Examinee) made by the Debtor’s parent/affiliate, Fyre Media, Inc., or otherwise on the Debtor’s behalf. The Trustee believes that these transfers were made from funds that belong to the Debtor in connection with the Fyre Festival. In order to gain a full understanding of the reasons for these transfers and the consideration provided for them by the Examinees, if any, the Trustee respectfully requests that the Court enter an order in substantially the same form as that annexed hereto as Exhibit B (the “Proposed Order”), authorizing the Trustee to serve a subpoena

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<sup>1</sup> The Trustee’s first application for relief under Fed. R. Bankr. P. 2004 was filed on notice to the proposed examinees. The subsequent two applications, including this Application, were filed *ex-parte*.

*duces tecum* (each a “Subpoena,” collectively, the “Subpoenas”) upon each of the Examinees.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this application pursuant to 28 U.S.C. §§ 157 and 1334, and the “Amended Standing Order of Reference” of the United States District Court for the Southern District of New York (Preska, C.J.), dated January 31, 2012.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

3. Venue of this proceeding and this application is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicate for the relief requested herein is Rules 2004 and 9016 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), and Rule 45 of the Federal Rules of Civil Procedure (the “Federal Rules”).

### **INTRODUCTION**

5. On July 7, 2017 (the “Petition Date”), an involuntary chapter 7 petition (the “Involuntary Petition”) was filed by certain creditors of the Debtor.

6. On August 29, 2017, the Court entered an order for relief that directed the Debtor to file all schedules, statements, lists and creditors’ matrix with fourteen (14) days of its entry, or September 12, 2017.

7. On or around August 31, 2017, Gregory M. Messer was appointed interim trustee of the Debtor’s estate and duly qualified and became the permanent trustee herein by operation of section 702(d) of the Bankruptcy Code.

### **BACKGROUND**

8. In 2016, the Debtor and its principal, Billy McFarland, conceived of and began promoting the Fyre Festival (the “Festival”) as a unique concert experience that would take place

at Great Exuma Island, Bahamas (“Exuma”) over the course of two weekends in April and May of 2017. Tickets to the Festival were billed as “exclusive” and cost between \$1,200-\$100,000 per ticket or ticket package. In promotional materials, the Festival was called “the cultural experience of the decade” which included travel via private jet from Miami to Exuma, VIP accommodations and A-list musical performances from talents such as Blink-182, Major Lazer and Migos.

9. The Debtor spent tremendous amounts of time and borrowed money promoting the Festival through YouTube videos and social media promotions featuring famous celebrities. As a result of this advertising and promotional blitz, thousands of people purchased tickets to the Festival. Unfortunately, the Debtor’s management failed to ensure that Exuma was adequately prepared to host the Festival.

10. In late April 2017, reportedly thousands of Festival attendees flocked to Exuma for the event and instead of getting what they expected, “chaos ruled all facets of the festival: luggage was simply thrown out of the back of a truck, feral dogs ran around the festival site and there were few security guards or festival employees on-site to assist attendees.” Daniel Kreps, *Ja Rule’s Luxury Fyre Festival Canceled After Disastrous Start*, Rolling Stone, Apr. 28, 2017.<sup>2</sup>

11. The Debtor initially blamed standard growing pains for the failure, but eventually issued a notice on the Festival’s Instagram page postponing the Festival and promising to refund money to attendees. Beginning in May 2017, various attendees began filing class-action lawsuits against the Responsible Persons and the Debtor all over the country, and lenders and vendors began filing suit as well.<sup>3</sup>

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<sup>2</sup> See [www.rollingstone.com/music/news/ja-rules-luxury-fyre-fest-canceled-after-disastrous-start-w479298](http://www.rollingstone.com/music/news/ja-rules-luxury-fyre-fest-canceled-after-disastrous-start-w479298).

<sup>3</sup> See, e.g., Petrozziello v. Fyre Media, et al., Case No. 17-03018 (SDW) (D.N.J. May 2, 2017); National Event Services, Inc. v. Fyre Festival, et al., Case No. 17-02038 (JS) (E.D.P.A. May 3, 2017); Reel v. McFarland, et al., Case No. 17-21683 (FAM) (S.D.F.L. May 5, 2017); Jung v. McFarland, et al., Case No. 17-03245 (ODW) (C.D.C.A. May 7, 2017); Daly v. McFarland, et al., Case No. 17-03461 (KBF) (S.D.N.Y. May 9, 2017); and Jutla v. Fyre Media, et al., Case No. 17-03541 (ER) (S.D.N.Y. June 13, 2017).

12. The Debtor has not filed schedules or statements in accordance with the Order for Relief. Based on this, the Trustee filed a motion designating responsible persons and compelling such responsible persons to fulfill the Debtor's duties and comply with the Court's orders (the "Designate-Compel Motion") [Docket No.17]. On December 13, 2017, the Court entered an order approving the Designate-Compel Motion, designated Billy McFarland as the Debtor's responsible person and directed him to fulfill the Debtor's duties and comply with this Court's Order for Relief. See Designate-Compel Order [Docket No. 26]. Unfortunately, Mr. McFarland has largely spent the majority of his time since the Petition Date in the midst of a criminal proceeding resulting from his operation of the Debtor among other things that recently resulted in his being sentenced to a six-year prison term in a federal penitentiary. As such, the Debtor's schedules, statements and creditors' matrix have not been filed.

13. Due to the lack of basic disclosures and books and records, the Trustee has been forced to obtain critical financial information related to the Debtor through third parties. Over the course of his investigation the Trustee discovered that the Debtor's borrowed and other funds were taken in and disbursed by its parent, Fyre Media, Inc. ("Fyre Media"). The Debtor maintained only one bank account of its own, which it used exclusively in connection with booking air travel. All of the Debtor's funds were run through Fyre Media or other non-debtor accounts, including Billy McFarland's personal accounts.

14. Each of the Examinees is either a company or individual who provided promotional services, advertisements, social media posts, musical performances, logistical support, vendor services, or guidance to the Debtor in connection with the preparation for the Festival. The Trustee has uncovered transfers made to each of the Examinees and due to the lack of information currently in the Trustee's possession, it is unclear whether any consideration was ever provided in exchange

for the same.

### **RELIEF REQUESTED**

15. Pursuant to section 704(a) of the Bankruptcy Code, the Trustee is obligated to, among other things: “(4) investigate the financial affairs of the debtor; . . .” 11 U.S.C. § 704(a)(4).

16. Bankruptcy Rule 2004(a) provides that “upon the motion of any party in interest, the court may order the examination of any entity.” It is well established that the investigation envisioned by this rule is broad-based, relating to any and all matters affecting the administration of the Debtor’s estate, as well as the conduct, liabilities or property of the Debtor.

17. Discovery under Rule 2004 is broader than that available under the Federal Rules of Civil Procedure. In re Drexel Burnham Lambert Group, Inc., 123 B.R. 702, 711 (Bankr. S.D.N.Y. 1991). “As a general proposition, [Bankruptcy] Rule 2004 examinations are appropriate for revealing the nature and extent of the bankruptcy estate and for ‘discovering assets, examining transactions, and determining whether wrongdoing has occurred.’” In re Enron Corp., 281 B.R. 836, 840 (Bankr. S.D.N.Y. 2002) (citations omitted). As such, courts have acknowledged that “[Bankruptcy] Rule 2004 examinations are broad and unfettered and in the nature of fishing expeditions.” Id. see also, In re Coffee Cupboard, Inc., 128 B.R. 509, 514 (Bankr. E.D.N.Y. 1991); In re Silverman, 36 B.R. 254, 258 (Bankr. S.D.N.Y. 1984).

18. The Rule 2004 examinations of the Examinees are necessary in order to get a full understanding of the nature of the transfers listed in the chart attached to this Motion as Exhibit A (collectively, the “Transfers”).

19. As noted above, the Principal’s failure to file required schedules and a statement of financial affairs has required the Trustee to uncover as much information as he can from third parties in order to gain a full understanding of the Debtor’s financial affairs. In this case, the

Examinees are the only source the Trustee has to gain a full understanding of the nature of the Transfers.

20. The Rule 2004 examinations of the Examinees sought herein are necessary for the Trustee to fulfill his duties under the Bankruptcy Code.

21. For all the foregoing reasons, the Trustee respectfully submits that he has demonstrated ample cause and a right to conduct the examinations contemplated herein.

### **PROPOSED PROCEDURE**

22. The Trustee proposes that any examination be held at either (i) the offices of Trustee's counsel, Klestadt Winters Jureller Southard & Stevens, LLP, 200 West 41<sup>st</sup> Street, 17<sup>th</sup> Floor, New York, New York, 10036-7203; (ii) any other location as agreed to by the Trustee and his counsel; or (iii) if this Court does not have subpoena power to compel the personal testimony of any examinee, at such other location as may be appropriate and permissible under Bankruptcy Rules 2004, 2005, 9001(5) and 9016.

23. The Trustee proposes to serve all subpoenas *duces tecum* at least fourteen (14) days prior to the due date for the production or inspection of any documents or electronic files, or the date of an intended deposition.

### **NOTICE**

24. The Trustee has filed the Application *ex-parte*. Applications for relief under Rule 2004(a) are usually granted *ex-parte*. 9 *Collier on Bankruptcy* ¶ 2004.01[2] (15<sup>th</sup> ed. 2009), *citing* 1983 Advisory Committee Note to Fed. R. Bankr. P. 2004, *reprinted in* ch. 2004, App. 2004; In re Sutera, 141 B.R. 539, 540 (Bankr. D. Conn. 1992); In re Wilcher, 56 B.R. 428, 434 (Bankr. N.D.Ill. 1985); In re Silverman, 10 C.B.C.2d 1219, 36 B.R. 254 (Bankr. S.D.N.Y. 1984). Some bankruptcy courts even adopt local rules allowing the service of subpoenas under Bankruptcy Rule

2004(a) without having to file any application at all. See e.g., D.N.J. L.B.R. 2004-1(b).

25. Pursuant to the Honorable Martin Glenn's Chambers' Rules, "[r]equests for 2004 orders may be submitted *ex parte* but the Court in its discretion may require notice and a hearing."

26. While the Application has been filed *ex-parte*, the Examinees will have ample opportunity to seek from this Court protection from any Subpoena or information sought by the Subpoena issued by the Trustee that the Examinee believes it has a basis to challenge.

27. Based upon the foregoing, the Trustee submits that the Application can and should be granted *ex-parte*, and that no notice should be required.

**NO PRIOR RELIEF**

28. The Trustee has sought and received authority to examine various insiders of the Debtors, financial institutions and certain transfer recipients pursuant to Bankruptcy Rule 2004. However, the Trustee has not previously sought authority to examine any of the proposed Examinees covered by this Application. Except as specifically stated, no previous application for the relief sought herein has been made to this or any other court.

*[Continued on next page]*



**WHEREFORE**, the Trustee respectfully requests that this Court enter an order, substantially in the form of the Proposed Order, and for such other and further relief as the Court determines to be just and proper.

Dated: New York, New York  
January 25, 2019

**KLESTADT WINTERS JURELLER  
SOUTHARD & STEVENS, LLP**

By: /s/ Fred Stevens

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