

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

DEX MEDIA, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 16-11200 (KG)

(Jointly Administered)

**Objection Deadline: June 6, 2016 at 4:00 p.m. (ET)**

**Hearing Date: June 13, 2016 at 1:00 p.m. (ET)**

**DEBTORS' APPLICATION FOR ENTRY OF AN  
ORDER (I) AUTHORIZING THE EMPLOYMENT AND  
RETENTION OF MOELIS & COMPANY LLC AS INVESTMENT  
BANKER AND FINANCIAL ADVISOR FOR THE DEBTORS  
AND DEBTORS IN POSSESSION, EFFECTIVE *NUNC PRO TUNC* TO THE  
PETITION DATE, AND WAIVING CERTAIN INFORMATION REQUIREMENTS  
IMPOSED BY LOCAL RULE 2016-2, AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) file this application (this “Application”) for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”), (a) authorizing the employment and retention of Moelis & Company LLC (“Moelis”) as investment banker and financial advisor for the Debtors, effective *nunc pro tunc* to the Petition Date (as defined herein), in accordance with the terms and conditions of certain engagement letters dated as of June 18, 2015 (the “Restructuring Engagement Letter”) and dated as of July 15, 2013 (as extended, the “Sale Transaction Engagement Letter,” and together with the Restructuring Engagement Letter,

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Dex Media, Inc. (0040); Dex Media East, Inc. (5763); Dex Media Holdings, Inc. (9762); Dex Media Service LLC (9647); Dex Media West, Inc. (7004); Dex One Digital, Inc. (9750); Dex One Service, Inc. (0222); R.H. Donnelley APIL, Inc. (6495); R.H. Donnelley Corporation (2490); R.H. Donnelley Inc. (7635); SuperMedia Inc. (5175); SuperMedia LLC (6092); and SuperMedia Sales Inc. (4411). The location of the Debtors' service address is: 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261.

the “Engagement Letters”),<sup>2</sup> annexed as **Exhibit 1** and **Exhibit 2**, respectively, to **Exhibit A** attached hereto, and (b) granting related relief. In support of this Application, the Debtors submit the Declaration of Zul Jamal, a Managing Director of Moelis (the “Jamal Declaration”), attached hereto as **Exhibit B** and incorporated herein by reference. In further support of this application, the Debtors respectfully state as follows.

### **Jurisdiction and Venue**

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtors confirm their consent pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”) to the entry of a final order by the Court in connection with this Application to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 327(a) and 328(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and rule 2014(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rules 2014-1 and 2016-2(h).

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning set forth in the applicable Engagement Letter.

### **Background**<sup>3</sup>

4. The Debtors are a leading provider of marketing solutions to more than 400,000 businesses across the United States, and are headquartered in Dallas, Texas. Specifically, a substantial portion of the Debtors' business is focused on marketing solutions that help businesses and consumers connect with each other. The Debtors' marketing consultants provide essential services, advice, and value to businesses to help them thrive in an increasingly fragmented and competitive marketing services landscape. The Debtors' portfolio of marketing solutions includes: print and digital directories, search engine marketing and optimization, website, video, online display advertising, mobile and CRM applications, online reputation management, social media solutions, and in-depth reports on customers' marketing programs.

5. On May 16, 2016 (the "Petition Date"), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On May 18, 2016, the Court entered an order [Docket No. 50] authorizing joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

### **Relief Requested**

6. The Debtors seek entry of the Order, (a) authorizing the employment and retention of Moelis as investment banker and financial advisor for the Debtors in accordance with the terms and conditions of the Engagement Letters, effective *nunc pro tunc* to the Petition

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<sup>3</sup> For more information regarding the Debtors' history, operations, and financial performance, see the *Declaration of Andrew Hede in Support of First Day Motions* [Docket No. 14] (the "First Day Declaration"), incorporated by reference herein.

Date, (b) approving the terms of Moelis' employment, including the proposed compensation arrangements and the indemnification provisions set forth in the Engagement Letters, as modified pursuant to the Order, under section 328(a) of the Bankruptcy Code, (c) modifying the time keeping requirements of Local Rule 2016-2 and the guidelines (the "U.S. Trustee Guidelines") established by the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") in connection with Moelis' proposed engagement, and (d) granting related relief.

### **Moelis' Qualifications**

7. Moelis is an investment banking firm with its principal office located at 399 Park Avenue, 5th Floor, New York, New York 10022. Moelis is a registered broker-dealer with the United States Securities and Exchange Commission and is a member of the Financial Industry Regulatory Authority. Moelis was founded in 2007 and is a wholly owned subsidiary of Moelis & Company Group LP. Moelis & Company Group LP, together with its subsidiaries, has approximately 650 employees based in 17 offices in North and South America, Europe, the Middle East, Asia, and Australia. Moelis & Company Group LP is a subsidiary of Moelis & Company, a public company listed on the New York Stock Exchange.

8. Moelis provides a broad range of financial advisory and investment banking services to its clients, including: (a) general corporate finance; (b) mergers, acquisitions, and divestitures; (c) corporate restructurings; (d) special committee assignments; and (e) capital raising. Moelis and its senior professionals have extensive experience in the reorganization and restructuring of distressed companies, both out-of-court and in chapter 11 cases. Moelis' business reorganization professionals have served as financial advisors in numerous cases, including: *In re Allied Nevada Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. April 15, 2015); *In re ITR Concession Co. LLC*, No. 14-34284 (Bankr. N.D. Ill. Oct. 28, 2014); *In re GSE*

*Env't'l, Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Apr. 11, 2014); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 25, 2014); *In re Cengage Learning, Inc.*, No. 13-44106 (ESS) (Bankr. E.D.N.Y. Sept. 13, 2013); *In re OSH 1 Liquidating Corp. f/k/a Orchard Supply Hardware Stores Corp.*, No. 13-11565 (CSS) (Bankr. D. Del. July 15, 2013); *In re Revel AC, Inc.*, No. 13-16253 (JHW) (Bankr. D.N.J. Apr. 17, 2013); *In re AMF Bowling Worldwide, Inc.*, No. 12-36495 (KRH) (Bankr. E.D. Va. Dec. 20, 2012); *In re Residential Capital, LLC*, No. 12-12020 (MG) (Bankr. S.D.N.Y. Aug. 30, 2012); *In re AMR Corp.*, No. 11-15463 (SHL) (Bankr. S.D.N.Y. Mar. 7, 2012); *In re NewPage Corp.*, No. 11-12804 (KG) (Bankr. D. Del. Dec. 27, 2011); *In re Gen. Maritime Corp.*, No. 11-15285 (MG) (Bankr. S.D.N.Y. Dec. 15, 2011); *In re Jackson Hewitt Tax Serv., Inc.*, No. 11-11587 (MFW) (Bankr. D. Del. June 30, 2011); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011); *In re Innkeepers USA Trust*, No. 10-13800 (SCC) (Bankr. S.D.N.Y. Aug. 12, 2010); *In re Almatix B.V.*, No. 10-12308 (MG) (Bankr. S.D.N.Y. June 9, 2010); *In re Atrium Corp.*, No. 10-10150 (BLS) (Bankr. D. Del. Mar. 17, 2010); *In re Int'l Aluminum Corp.*, No. 10-10003 (MFW) (Bankr. D. Del. Jan. 27, 2010); *In re Reader's Digest Ass'n Inc.*, No. 09-23529 (RDD) (Bankr. S.D.N.Y. Aug. 24, 2009); *In re NV Broad. LLC*, No. 09-12473 (KG) (Bankr. D. Del. Aug. 5, 2009); *In re Fontainebleau Las Vegas Holdings, LLC*, No. 09-21481 (AJC) (Bankr. S.D. Fla. Nov. 25, 2009); *In re ION Media Networks Inc.*, No. 09-13125 (JMP) (Bankr. S.D.N.Y. July 13, 2009); *In re JGW Holdco, LLC f/k/a J.G. Wentworth LLC*, No. 09-11731 (CSS) (Bankr. D. Del. June 16, 2009); *In re Source Interlink Cos.*, No. 09-11424 (KG) (Bankr. D. Del. May 21, 2009); *In re Dayton Superior Corp.*, No. 09-11351 (BLS) (Bankr. D. Del. May 18, 2009); *In re Idearc Inc.*, No. 09-31828 (BJH)

(Bankr. N.D. Tex. May 27, 2009); *In re Muzak Holdings LLC*, No. 09-10422 (KJC) (Bankr. D. Del. Apr. 6, 2009); *In re Chemtura Corp.*, No. 09-11233 (REG) (Bankr. S.D.N.Y. Mar. 18, 2009); *In re Old All, Inc. f/k/a Aleris Int'l Inc.*, No. 09-10478 (BLS) (Bankr. D. Del. Mar. 16, 2009); *In re XMH Corp. f/k/a Hartmarx Corp.*, No. 09-02046 (BWB) (Bankr. N.D. Ill. Mar. 4, 2009); *In re Lyondell Chemical Co.*, No. 09-10023 (REG) (Bankr. S.D.N.Y. Jan. 6, 2009).<sup>4</sup>

9. The Debtors have selected Moelis as their financial advisor and investment banker based upon, among other things: (a) the Debtors' need to retain a skilled financial advisory and investment banking firm to provide advice with respect to the Debtors' complex restructuring activities; (b) Moelis' extensive experience and excellent reputation in providing financial advisory and investment banking services in complex chapter 11 cases such as these; and (c) Moelis' extensive knowledge of the Debtors, as described below. In light of the size and complexity of these chapter 11 cases, Moelis' resources, capabilities, and experience are crucial to the Debtors' successful restructuring. An experienced investment banker and financial advisor, such as Moelis, fulfills a critical need that complements the services provided by the Debtors' other restructuring professionals. For these reasons, the Debtors require Moelis' services.

10. Moelis has been advising the Debtors on strategic and restructuring initiatives since July 2013. On July 15, 2013, Moelis and the Debtors entered into the Sale Transaction Engagement Letter whereby Moelis agreed to act as the Debtors' non-exclusive financial advisor in connection with certain sale transactions. On June 18, 2015, Moelis and the Debtors agreed that Moelis' engagement under the Sale Transaction Engagement Letter would remain in effect until June 1, 2016, which date shall be further extended until December 1, 2016 unless the

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<sup>4</sup> Because of the voluminous nature of the orders cited herein, such orders are not attached to this Application. Copies of these orders are available upon request of the Debtors' proposed counsel.

Debtors provide written notice of their intent to terminate the Sales Transaction Engagement Letter at least 30 days prior to June 1, 2016. Further, on June 18, 2015, Moelis and the Debtors entered into the Restructuring Engagement Letter whereby Moelis confirmed its engagement by the Debtors to act as the Debtors' non-exclusive financial advisor and investment banker effective as of December 1, 2014, in connection with a proposed Restructuring, Amend and Extend Transaction, or Capital Transaction.

11. As a result of its work with the Debtors over the past two and a half years, Moelis has developed valuable institutional knowledge regarding the Debtors' businesses, financial affairs, operations, capital structure, and other material information. Having worked with the Debtors' management and their other advisors, Moelis has developed relevant experience and expertise regarding the Debtors that will assist it in providing effective and efficient services in these chapter 11 cases. Accordingly, the Debtors believe Moelis is well-qualified to represent them in a cost-effective, efficient, and timely manner, and the Debtors submit that the employment and retention of Moelis is in the best interests of the Debtors, their creditors, and all parties in interest.

#### **Services to Be Provided**

12. As of July 15, 2013, Moelis commenced its engagement with the Debtors to provide financial advisory advice in connection with a potential Sale Transaction and as of December 1, 2014, Moelis has been providing financial advisory and investment banking advice to the Debtors in connection with a potential Restructuring, Amend and Extend Transaction, or Capital Transaction. The terms and conditions of the Engagement Letters were the result of significant discussions and negotiations between Moelis and the Debtors, and they reflect the parties' mutual agreement as to the substantial efforts that will be required in this engagement.

The employment of Moelis also is necessary to enable the Debtors to execute their duties as debtors in possession and to effect their reorganization efforts.

13. Subject to further order of the Court, and consistent with the Engagement Letters, the Debtors propose to retain Moelis to continue rendering financial advisory services as outlined in the Engagement Letters and this Application. Many of these services began in July 2013, and may continue throughout these chapter 11 cases.

14. Throughout Moelis' engagement, Moelis has provided the following services, among others, to the Debtors in connection with their restructuring efforts and will continue to provide such services during these chapter 11 cases at the request of the Debtors:

- a. assist the Debtors in reviewing and analyzing the Debtors' results of operations, financial condition, and business plan;
- b. assist the Debtors in reviewing and analyzing a potential Restructuring, Amend and Extend Transaction, or Capital Transaction (or any combination thereof) and developing a strategy to effectuate the Sale Transaction;
- c. assist the Debtors in negotiating a potential Restructuring, Amend and Extend Transaction, or Capital Transaction (or any combination thereof);
- d. advise the Debtors as to the timing, structure, and pricing of a potential Capital Transaction;
- e. advise the Debtors on its preparation of information memorandum for a potential Capital Transaction (each, an "Information Memo");
- f. assist the Debtors in identifying and contacting prospective purchasers in respect of a Capital Transaction (the "Purchasers"), and providing, on behalf of the Debtors, such prospective Purchasers with the Information Memo and such information about the Debtors as may be appropriate and acceptable to the Debtors, subject to customary business confidentiality;
- g. advise the Debtors as to the strategy and tactics of negotiations with such prospective Purchasers and participate in such negotiations;
- h. if requested by the Debtors, participate in hearings before the court having jurisdiction over any Bankruptcy Cases commenced under the Bankruptcy Code to implement a Restructuring or Sale Transaction and provide

testimony on matters mutually agreed to by the Debtors and Moelis, subject to the Debtors obtaining a court order approving the retention of Moelis to act as financial advisor to the Debtors in such Bankruptcy Cases in substance reasonably acceptable to Moelis;

- i. if requested by the Debtors, prepare a going concern valuation analysis of the Debtors for submission to the court in a Bankruptcy Case and for inclusion in any disclosure statement used by the Debtors in connection with a Bankruptcy Case and assist the Debtors in the Debtors' preparation of a liquidation analysis of the Debtors for submission to the court in a Bankruptcy Case and for inclusion in any disclosure statement used by the Company in connection with a Bankruptcy Case;
- j. assist the Debtors in negotiating amendments to their and their subsidiaries' credit agreements with their respective lenders;
- k. assist the Debtors, in obtaining the consent (if necessary) of its lenders and bondholders for the Restructuring, Amend and Extend Transaction, or Capital Transaction (or any combination thereof) or Sale Transaction; *provided*, if Moelis is requested to solicit bondholder consents for a Restructuring, Amend and Extend Transaction, or Capital Transaction (or any combination thereof), or Sale Transaction to be effected out of court, such solicitation shall be pursuant to a customary solicitation agent agreement to be mutually agreed upon by the Debtors and Moelis; and
- l. at the Debtors' request, meet with the Debtors' Board of Directors, from time to time, to discuss the proposed Restructuring, Amend and Extend Transaction, or Capital Transaction (or any combination thereof) or Sale Transaction and its financial implications.

15. If the Debtors request that Moelis perform services not contemplated by the Engagement Letters, Moelis and the Debtors will agree, in writing, on the terms for such services and seek the Court's approval thereof.

#### **Professional Compensation**

16. Moelis' decision to advise and assist the Debtors in connection with these chapter 11 cases is subject to its ability to be retained in accordance with the terms of the Engagement Letters pursuant to section 328(a), and not section 330, of the Bankruptcy Code.

17. As set forth more fully in the Engagement Letters, and subject thereto, Moelis will be compensated as follows (the "Fee Structure"):

- a. **Monthly Fee:** a fee of \$200,000 per month (the “Monthly Fee”), payable for each month commencing as of May 1, 2015. The Debtors will pay the first and second Monthly Fee upon the execution of the Restructuring Engagement Letter, and all subsequent Monthly Fees prior to or on the first day of each month through the closing of a Restructuring or Amend and Extend Transaction. Whether or not a Restructuring or Amend and Extend Transaction occurs, Moelis shall earn and be paid the Monthly Fee every month during the term of the Restructuring Engagement Letter. Fifty percent (50%) of the initial six Monthly Fee payments and one hundred percent (100%) of any subsequent Monthly Fee payment, shall be offset, to the extent previously paid, against the Restructuring Fee, Amend and Extend Fee, and/or Sale Transaction Fee, as applicable.
- b. **Restructuring Fee:** at the closing of a Restructuring, a fee (the “Restructuring Fee”) of \$8,500,000.
- c. **Amend and Extend Fee:** at the closing of an Amend and Extend Transaction, a fee (the “Amend and Extend Fee”) of \$7,500,000.
- d. **Capital Transaction Fee:** at the closing of any Capital Transaction, a non-refundable cash fee (the “Capital Transaction Fee”) of: (i) 1% of the aggregate gross amount of secured debt obligations Raised in the Capital Transaction; and/or (ii) fees, to be mutually agreed upon between Moelis and the Debtors, consistent with fees paid to global investment banks for similar transactions on the aggregate gross amount of unsecured debt and equity Raised in the Capital Transaction. 50% of the Capital Transaction Fee shall be offset, to the extent previously paid (or paid contemporaneously), against any Restructuring Fee or Amend and Extend Fee. The Debtors will pay a separate Capital Transaction Fee in respect of each Capital Transaction in the event more than one Capital Transaction occurs.
- e. **Retainer Fee:** a retainer fee of \$250,000 (the “Retainer Fee”), paid upon execution of the Sales Transaction Engagement Letter. The retainer will be offset, to the extent previously paid, against the Sale Transaction Fee.
- f. **Opinion Fee:** an opinion fee (the “Opinion Fee”) equal to \$2,500,000, payable promptly upon delivery by Moelis of an Opinion to the Board of Directors of the Debtors, regardless of the conclusion reached in the Opinion. Such Opinion Fee shall be offset, to the extent previously paid, against the Sale Transaction Fee or the Termination Fee payable to Moelis by the Debtors in respect of the Sale Transaction. If the Debtors request any bring-downs of the opinion, the bring-down of the opinion shall be provided for no additional fee.
- g. **Sale Transaction Fee:** a transaction fee (the “Sale Transaction Fee”), payable promptly at the closing of a Sale Transaction of (i) \$11,500,000, if

a Sale Transaction is effected through a chapter 11 plan, or (ii) otherwise, \$13,500,000.

- h. ***Termination Fee:*** a termination fee (a “Termination Fee”) equal to the lesser of \$1,000,000 or 25% of any “termination fee,” “break-up fee,” or other similar form of compensation payable to the Debtors if, after the execution of an agreement for a Sale Transaction, the Sale Transaction fails to close and the Debtors receive any such compensation. The Debtors will pay the Termination Fee when the Debtors receive any such compensation. If the Debtors receive any such compensation in the form of, or receive an option for, securities or assets, the value thereof shall be the fair market value on the day the Debtors receive such compensation or are able to exercise such option.

18. If a Transaction simultaneously involves (i) a Restructuring and a Sale Transaction, the combined Restructuring Fee and Sale Transaction Fee shall be payable as applicable; *provided, however*, in no event will a combined Restructuring Fee and Sale Transaction Fee be greater than \$15,000,000 in the aggregate; or (ii) an Amend and Extend Transaction and a Sale Transaction, the combined Amend and Extend Fee and a Sale Transaction Fee shall be payable as applicable; *provided, however*, in no event will a combined Amend and Extend Fee and Sale Transaction Fee be greater than \$11,500,000 in the aggregate. Moelis shall not be entitled to both a Restructuring Fee and an Amend and Extend Fee.

19. The Restructuring Engagement Letter provides that, in connection with a Restructuring, Sale Transaction, or Capital Transaction (or any combination thereof) intended to be consummated in connection with a pre-packaged Plan, (i) Moelis will have earned 100% of the Restructuring Fee, Sale Transaction Fee, and/or Capital Transaction Fee prior to the commencement of the Bankruptcy Case, and (ii) the Debtors will pay, (a) 50% of the Restructuring Fee, Sale Transaction Fee, and/or Capital Transaction Fee prior to the commencement of the Bankruptcy Case; *provided* that if the Plan contemplating such Restructuring, Sale Transaction, or Capital Transaction (or any combination thereof) does not become effective, then Moelis shall credit the Restructuring Fee, Sale Transaction Fee, and/or

Capital Transaction Fee against any Restructuring Fee, Sale Transaction Fee, and/or Capital Transaction Fee that becomes due and payable upon the closing of another Restructuring, Sale Transaction, or Capital Transaction (or any combination thereof)) and (b) the remaining 50% of the Restructuring Fee, Sale Transaction Fee, and/or Capital Transaction Fee at the subsequent closing of the Restructuring, Sale Transaction, or Capital Transaction (or any combination thereof).

20. If, at any time prior to the expiration of 15 months following the termination of the Sales Transaction Engagement Letter (including automatic termination), the Debtors enter into an agreement that subsequently results in a Sale Transaction, or consummates a Sale Transaction, then the Debtors will pay Moelis the Sale Transaction Fee in cash promptly upon closing of the Sale Transaction. If, at any time prior to the expiration of 15 months following termination of the Sales Transaction Engagement Letter (including automatic termination), the Debtors enter into an agreement for a Sale Transaction and the Sale Transaction subsequently fails to close, then the Debtors will pay Moelis the Termination Fee.

21. If, at any time before the end of the 12 months following the expiration or termination of the Restructuring Engagement Letter (except if Moelis unilaterally terminates the Restructuring Engagement Letter in writing for any reason), the Debtors consummate a Restructuring, Amend and Extend Transaction, or Capital Transaction, or a Plan is filed regarding a Restructuring and a Restructuring is subsequently consummated, then the Debtors shall pay Moelis the appropriate fee specified in the Restructuring Engagement Letter immediately upon the closing of each such transaction.

22. In addition to any fees payable to Moelis, the Debtors will reimburse Moelis for all of its reasonable out-of-pocket expenses as they are incurred in entering into and performing

services under the Engagement Letters, including the costs of Moelis' legal counsel (without the need for such legal counsel to be retained as a professional in these chapter 11 cases and without regard to whether such legal counsel's services satisfy section 330(a)(3)(C) of the Bankruptcy Code), *provided* that such expenses shall not exceed \$50,000 (plus if the Debtors request an Opinion, an additional \$75,000) without the prior written approval of the Debtors.

23. Moelis intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, and any other applicable procedures and orders of the Court, including any order approving this Application (to the extent compliance is not waived) and consistent with the proposed compensation set forth in the Engagement Letters.

24. Moelis will maintain records in support of any actual, necessary costs and expenses incurred in connection with the rendering of its services in these chapter 11 cases. However, because: (a) it is not the general practice of investment banking firms such as Moelis to keep detailed time records similar to those customarily kept by attorneys; (b) Moelis does not ordinarily keep time records on a "project category" basis; and (c) Moelis' compensation is based on a fixed Monthly Fee and fixed transaction fees, the Debtors respectfully request that only Moelis' restructuring professionals be required to maintain records (in summary format) of the services rendered for the Debtors, including summary descriptions of those services, the approximate time expended in providing those services (in hourly increments), and the identity of the restructuring professionals who provided those services. Moelis will present such records to the Court in its fee application(s). Moreover, the Debtors respectfully request that Moelis'

restructuring professionals not be required to keep time records on a “project category” basis, that its non-restructuring professionals and personnel in administrative departments (including legal) not be required to maintain any time records, and that it not be required to provide or conform to any schedule of hourly rates. To the extent that Moelis would otherwise be required to submit more detailed time records for its professionals by the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, or other applicable procedures and orders of the Court, the Debtors respectfully request that this Court waive such requirements.

25. The Debtors believe the Fee Structure is consistent with, and typical of, compensation arrangements entered into by Moelis and other comparable firms in connection with the rendering of similar services under similar circumstances, both in and out of bankruptcy proceedings. The Debtors also believe that the Fee Structure reflects a balance between a fixed, monthly fee, and a contingency amount, which is tied to the consummation and closing of the transactions and services contemplated by the Debtors and Moelis in the Engagement Letters. In determining the Fee Structure and the reasonableness of such compensation, the Debtors compared Moelis’ fee proposal to comparable precedents. After such comparison, followed by discussions and arm’s-length negotiations, the Debtors believe that the Fee Structure is in fact reasonable, market-based, and designed to compensate Moelis fairly for its work.

26. Moelis’ strategic and financial expertise, as well as its capital markets knowledge, financing skills, and restructuring capabilities, some or all of which has and will be required by the Debtors during the term of Moelis’ engagement, were important factors to the Debtors in determining the Fee Structure. The Debtors believe that the ultimate benefits of Moelis’ services hereunder cannot be measured by reference to the number of hours to be expended by Moelis’ professionals in the performance of such services. The Debtors and Moelis agreed upon the

Fee Structure in anticipation that a substantial commitment of professional time and effort would be required of Moelis and in light of the fact that (a) such commitment could have and may still foreclose other opportunities for Moelis and (b) the actual time and commitment required of Moelis and its professionals to perform the Restructuring Services may vary substantially from week to week and month to month, creating “peak load” issues for Moelis.

27. Prior to the Petition Date, according to the Debtors’ books and records, the Debtors paid Moelis \$3,950,000.00 for fees and \$62,490.15 for reimbursement of expenses during the 90-day period before the Petition Date. As of the Petition Date, the Debtors do not owe Moelis any fees for services performed or expenses incurred under the Engagement Letters in excess of \$15,000, which Moelis is holding on account for prepetition expenses incurred in connection with the Sale Transaction Engagement Letter.<sup>5</sup>

### **Indemnification**

28. As part of the overall compensation payable to Moelis under the terms of the Engagement Letters, the Debtors have agreed to certain indemnification, contribution and reimbursement obligations, set forth in Annex A of the Engagement Letters (the “Indemnification Agreements”). The Indemnification Agreements provide that the Debtors will indemnify and hold harmless Moelis, its affiliates, and their respective current and former directors, officers, partners, managers, agents, representatives, or employees (each, an “Indemnified Person” and collectively, the “Indemnified Persons”) from and against any losses, claims, damages, or liabilities (collectively, “Losses”) incurred by an Indemnified Person (a) related to or arising out of oral or written statements or omissions

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<sup>5</sup> To the extent Moelis’ prepetition expenses are less than \$15,000, Moelis will, at the Debtors’ option, either return such excess amounts to the Debtors or apply such amounts to Moelis’ postpetition fees and expenses approved by the Court.

made in information provided by the Debtors or their agents, or (b) otherwise arising out of, related to, or in connection with the Engagement Letters or Moelis' performance, except that clause (b) shall not apply to Losses that are finally judicially determined to have resulted primarily from the bad faith, gross negligence, or willful misconduct of such Indemnified Person.

29. The Engagement Letters' indemnification and contribution provisions were fully negotiated by the Debtors and Moelis at arm's-length and in good faith and the Debtors respectfully submit that these indemnification and contribution provisions of the Engagement Letters are reasonable, subject to the modifications set forth in the proposed Order. The Debtors believe that the indemnification provisions in the Engagement Letters are appropriate and reasonable for financial advisory engagements both out of court and in chapter 11 cases, and reflect the qualifications and limitations on indemnification provisions that are customary in this district and other jurisdictions.

#### **No Duplication of Services**

30. The Debtors believe that the services provided by Moelis will not duplicate the services that other professionals will be providing to the Debtors in these chapter 11 cases. Specifically, Moelis will carry out unique functions and will use reasonable efforts to coordinate with the Debtors and their professionals retained in these chapter 11 cases to avoid the unnecessary duplication of services.

#### **Moelis' Disinterestedness**

31. Moelis has reviewed the list of parties in interest provided by the Debtors. To the best of the Debtors' knowledge, information, and belief, and except to the extent disclosed herein and in the Jamal Declaration, Moelis: (a) is a "disinterested person" within the meaning of section 101(14) of the Bankruptcy Code; (b) does not hold or represent an interest materially

adverse to the Debtors' estates; and (c) has no connection to the Debtors, their creditors, or related parties herein, except as disclosed in the Jamal Declaration.

32. Given the large number of parties in interest in these chapter 11 cases, despite the efforts to identify and disclose Moelis' relationships with parties in interest in these chapter 11 cases, Moelis is unable to state with certainty that every client relationship or other connection has been disclosed in the Jamal Declaration. Moelis will make continued inquiries following the filing of the Application, on a periodic basis, with additional disclosures to this Court if necessary or otherwise appropriate.

33. The Debtors are informed that Moelis will not share any compensation to be paid by the Debtors, in connection with services to be performed after the Petition Date, with any other person, other than principals and employees of Moelis, to the extent required by section 504 of the Bankruptcy Code.

### **Basis for Relief**

#### **I. The Debtors Should be Permitted to Retain and Employ Moelis on the Terms in the Engagement Letters Pursuant to Sections 327 and 328 of the Bankruptcy Code.**

34. The Debtors seek approval of the retention and employment of Moelis pursuant to sections 327(a), 328(a), and 1107(b) of the Bankruptcy Code. Section 328(a) provides, in relevant part, that a debtor in possession, "with the court's approval, may employ or authorize the employment of a professional person under section 327 . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Section 327(a) of the Bankruptcy Code, in turn, authorizes a debtor in possession to employ professionals that "do not hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a). Section 1107(b) of the Bankruptcy Code provides that "a person is not disqualified for

employment under section 327 of [the Bankruptcy Code] by a debtor in possession solely because of such person's employment by or representation of the debtor before the commencement of the case." 11 U.S.C. § 1107(b).

35. Section 328 of the Bankruptcy Code permits the compensation of professionals, including investment bankers and financial advisors, on more flexible terms that reflect the nature of their services and market conditions. As the U.S. Court of Appeals for the Fifth Circuit recognized in *Donaldson Lufkin & Jenrette Secs. Corp. v. Nat'l Gypsum Co. (In re Nat'l Gypsum Co.)*, 123 F.3d 861 (5th Cir. 1997):

Prior to 1978 the most able professionals were often unwilling to work for bankruptcy estates where their compensation would be subject to the uncertainties of what a judge thought the work was worth after it had been done. That uncertainty continues under the present § 330 of the Bankruptcy Code, which provides that the court award to professional consultants "reasonable compensation" based on relevant factors of time and comparable costs, etc. Under present § 328 the professional may avoid that uncertainty by obtaining court approval of compensation agreed to with the trustee (or debtor or committee).

123 F.3d at 862 (footnote omitted).

36. Additionally, Bankruptcy Rule 2016 and Local Rule 2016-2 require retained professionals to submit applications for payment of compensation in chapter 11 cases. Local Rule 2016-2(d) also requires retained professionals to submit detailed time entries that set forth, among other things, a detailed description of each activity performed, the amount of time spent on the activity (in tenth of an hour increments), the subject matter of the activity and the parties involved with the activity at issue. Local Rule 2016-2(h), however, allows a retained professional to request a waiver of these requirements for cause.

37. The Court's approval of the Debtors' retention of Moelis in accordance with the terms and conditions of the Engagement Letters is warranted. First, as discussed above and in the Jamal Declaration, Moelis satisfies the disinterestedness standard in section 327(a) of the

Bankruptcy Code.<sup>6</sup> Moelis had been advising the Debtors for a considerable period of time prior to the commencement of these chapter 11 cases and has already committed a significant amount of time and effort with respect to these chapter 11 cases. Moelis is needed postpetition to continue to assist with negotiations, as necessary, to provide expert advice and testimony regarding financial matters related to the proposed transactions and to enable the Debtors to discharge their duties as debtors and debtors in possession. Moelis has extensive experience and an excellent reputation in providing high-quality investment banking services to debtors and creditors in bankruptcy reorganizations, mergers and acquisitions, and other restructurings. Moelis has become familiar with the Debtors' business operations, capital structure, financing documents, and other material information and is able to assist the Debtors in their restructuring efforts. The Debtors believe that Moelis is well qualified to provide its services to the Debtors in a cost-effective, efficient, and timely manner. Furthermore, as detailed above, Moelis does not hold or represent an interest adverse to the estate and is disinterested.

38. In addition, the Debtors believe that the Fee Structure is market-based, fair, and reasonable under the standards set forth in section 328(a) of the Bankruptcy Code. The Fee Structure reflects Moelis' commitment to the variable level of time and effort necessary to perform the restructuring and investment banking services, Moelis' particular expertise, and the

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<sup>6</sup> Bankruptcy Rule 2014(a) requires that an application must be made for retention of professionals pursuant to section 327 of Bankruptcy Code. Under Bankruptcy Rule 2014(a), such application shall: "state the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for the selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." Additionally, the application "shall be accompanied by a verified statement of the person to be employed setting forth the person's connections" to the parties in interest listed above. 11 Fed. R. Bankr. P. 2014. Here, Bankruptcy Rule 2014 is satisfied by the contents of this Application and the Jamal Declaration attached hereto.

market prices for Moelis' services for engagements of this nature both out of court and in a chapter 11 context. Indeed, the Debtors believe that the Fee Structure appropriately reflects: (a) the nature and scope of services to be provided by Moelis; (b) Moelis' substantial experience with respect to investment banking services; and (c) the fee structures typically utilized by Moelis and other leading investment banks and financial advisors who do not bill their clients on an hourly basis.

39. Also, notwithstanding the foregoing, under the Order, the U.S. Trustee retains all rights to object to Moelis' fee application (including expense reimbursement) pursuant to section 330 of the Bankruptcy Code.

40. As set forth above, and notwithstanding approval of the Engagement Letters under section 328 of the Bankruptcy Code, Moelis intends to apply for compensation for professional services rendered and reimbursement of expenses incurred in connection with these chapter 11 cases, subject to the Court's approval and in compliance with applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines, and any other applicable procedures and orders of the Court, with certain limited modifications.

41. The Debtors request that the requirements of Local Rule 2016-2(d) and the U.S. Trustee Guidelines be tailored to appropriately reflect Moelis' engagement and its compensation structure. Moelis has requested, pursuant to section 328(a) of the Bankruptcy Code, payment of its fees on a fixed-rate and/or fixed-percentage basis. Additionally, it is not the general practice of investment banking firms to keep detailed time records similar to those customarily kept by attorneys. As discussed above, however, Moelis' restructuring personnel will keep summary time records in hourly increments describing their daily activities and the identity of persons who performed such tasks. Apart from the time

recording practices described above, however, Moelis' restructuring personnel do not maintain their time records on a "project category" basis. As such, the Debtors request modification of the requirements pursuant to Local Rule 2016-2(h).

42. Courts in this jurisdiction have approved relief similar to the relief requested in this Application. *See e.g., In re Allied Nevada Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. April 15, 2015) (authorizing retention of Moelis as investment banker and financial advisor to the debtors); *In re GSE Envtl., Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014) (same); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Apr. 11, 2014) (same); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re OSH 1 Liquidating Corp. f/k/a Orchard Supply Hardware Stores Corp.*, No. 13-11565 (CSS) (Bankr. D. Del. July 15, 2013) (same); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011) (same).

## **II. The Indemnification and Contribution Terms of the Engagement Letters are Appropriate.**

43. The indemnification and contribution provisions in the Engagement Letters, as modified by the Order attached hereto, were fully negotiated between the Debtors and Moelis. The Debtors and Moelis believe that the indemnification provisions in the Engagement Letters are customary and reasonable for investment banking engagements both out of court and in chapter 11 cases. The Debtors are seeking approval of the modified indemnification provisions consistent with other orders of the Court where Moelis has been retained. *See, e.g., In re Allied Nevada Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. April 15, 2015); *In re GSE Envtl., Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Apr. 11, 2014); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 25, 2014); *In re OSH 1 Liquidating Corp. f/k/a*

*Orchard Supply Hardware Stores Corp.*, No. 13-11565 (CSS) (Bankr. D. Del. July 15, 2013); *In re Appleseed's Intermediate Holdings LLC*, No. 11-10160 (KG) (Bankr. D. Del. Feb. 23, 2011).

44. Accordingly, the Debtors respectfully submit that the terms of the modified indemnification provisions are reasonable and customary and should be approved in these chapter 11 cases.

### **III. The Debtors Should be Permitted to Retain and Employ Moelis *Nunc Pro Tunc* to the Petition Date.**

45. The Debtors also believe that employment of Moelis effective *nunc pro tunc* to the Petition Date is warranted under the circumstances of these chapter 11 cases. Moelis has provided, and will continue to provide, valuable services to the Debtors regarding the contemplated restructuring transactions. *See, e.g., In re Arkansas Co.*, 798 F.2d 645, 648 (3d Cir. 1986) (“[T]he bankruptcy courts have the power to authorize retroactive employment of counsel and other professionals under their broad equity power.” (collecting cases)); *see also* Local Rule 2014-1(b) (“If the retention motion is granted, the retention shall be effective as of the date the motion was filed, unless the Court orders otherwise.”).

46. Courts routinely grant *nunc pro tunc* relief in this jurisdiction. *See, e.g., In re Allied Nevada Gold Corp.*, No. 15-10503 (MFW) (Bankr. D. Del. April 15, 2015) (granting *nunc pro tunc* relief); *In re GSE Envtl., Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014) (same); *In re MACH Gen, LLC*, No. 14-10461 (MFW) (Bankr. D. Del. Apr. 11, 2014) (same); *In re Sorenson Commc'ns, Inc.*, No. 14-10454 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same); *In re Vertis Holdings, Inc.*, No. 12-12821 (CSS) (Bankr. D. Del. Nov. 20, 2012) (same); *In re WP Steel Venture LLC*, No. 12-11661 (KJC) (Bankr. D. Del. Sept. 18, 2012) (same).

#### **IV. The Retention of Moelis is Critical to the Debtors' Success.**

47. The Debtors submit that the retention of Moelis is in the best interests of all parties in interest in these chapter 11 cases. Moelis is a preeminent investment banking firm that is intimately familiar with the Debtors' businesses. Denial of the relief requested herein will deprive the Debtors of the assistance of uniquely qualified investment banking professionals who have served them since approximately July 2013. Indeed, if the Debtors were forced to engage a new investment banker who lacks a thorough understanding of the Debtors' businesses and the initiatives that have been implemented over the course of Moelis' extensive engagement, such change would mandate the commitment of significant resources to educate a replacement. As discussed above, based on services performed to date, Moelis has been integral to preparing the Debtors for these chapter 11 cases.

48. Based on the foregoing, the Debtors submit that they have satisfied the requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules to support entry of an order authorizing the Debtors to retain and employ Moelis in these chapter 11 cases on the terms described herein and in the Engagement Letters.

#### **Notice**

49. The Debtors will provide notice of this Application to: (a) the Office of the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agents of the Debtors' prepetition secured credit facilities; (d) counsel to the ad hoc group of the Debtors' prepetition secured lenders; (e) the indenture trustee for the Debtors' prepetition subordinated notes; (f) counsel to the indenture trustee for the Debtors' prepetition subordinated notes; (g) counsel to the administrative agents under the Debtors' prepetition credit agreements; (h) counsel to the ad hoc group of the Debtors' prepetition subordinated note holders; (i) counsel to Mudrick Capital

Management, L.P.; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the Environmental Protection Agency; (m) the office of the attorneys general for the states in which the Debtors operate; (n) the Securities and Exchange Commission; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

**No Prior Request**

50. No prior request for the relief sought in this Application has been made to this or any other court.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter the Order, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Wilmington, Delaware  
Dated: May 23, 2016

A handwritten signature in black ink, appearing to read 'AH', is positioned above a horizontal line.

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Andrew Hede  
Chief Restructuring Officer  
Dex Media, Inc., *et al.*