



Jeffrey M. Gould
4530 Wisconsin Ave, NW, Suite 5
Washington, DC 20016
Tel. 202.851.4526
jeff@oandzlaw.com

DELIVERED VIA ECF

April 26, 2023

Honorable P. Kevin Castel
Daniel Patrick Moynihan
United States Courthouse
500 Pearl Street
New York, New York 10007-1312

Re: *Sony Music Entertainment, et al. v. Triller, Inc.*, 1:22-cv-7380 (PKC): Consent Request for Entry of Partial Final Judgment

Your Honor:

Plaintiffs Sony Music Entertainment, et al. (“Sony Music”) respectfully submit this consent request, pursuant to Federal Rule of Civil Procedure 54(b), for entry of partial final judgment in Sony Music’s favor and against Triller for \$4,574,250.00 on Sony Music’s breach of contract claim. Triller has stipulated to liability and the amount due on the contract claim, as shown in the attached Exhibit A, and there is no just reason to delay entry of partial final judgment. The next conference before the Court is scheduled for June 30, 2023 at 11:30 A.M. Dkt. 42. Counsel for Sony Music and Triller, Inc. (“Triller”) met and conferred regarding Sony Music’s anticipated motion, and Triller consents to the relief requested herein.¹

¹ Given Triller’s consent to the requested relief, Sony Music asks that the Court enter partial final judgment without the need for more formal motion papers. If the Court determines otherwise, Sony Music requests that the Court consider this a pre-motion letter regarding Sony Music’s anticipated motion for entry of partial final judgment, pursuant to Rule 54(b).

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I. Background

A. The Complaint

Sony Music asserts claims for breach of contract and copyright infringement against Triller, a social media app and website (the “Triller App”) that allows users to sync videos to a library of popular music. After Triller failed to make payment under a content distribution agreement, as amended, between the parties (the “Agreement”), Sony Music terminated the Agreement. However, Triller continued to use Sony Music’s sound recordings without authorization on the Triller App after the Agreement was terminated. Triller’s failure to make payment under the Agreement and continued use of Sony Music’s sound recordings after termination of the Agreement led Sony Music to file this case.

B. The Stipulation

Following Triller’s recent statement to Sony Music and the Court that Triller “has conceded liability under the contract,” Dkt. 34 at 1, the parties entered a stipulation establishing Triller’s liability for breach of the Agreement. Ex. A (the “Stipulation”); Dkt. 44.² Pursuant to the Stipulation, Triller agreed that as of April 4, 2023, Triller is liable to Sony Music on Sony Music’s breach of contract claim for \$4,574,250.00. *Id.*, see also Dkt. 39 at 3.

II. The Court Should Enter Partial Final Judgment for Breach of the Agreement

The Court may “direct entry of a final judgment as to one or more, but fewer than all, claims or parties” upon a determination “that there is no just reason for delay.” Rule 54(b), Fed.

² Sony Music has contemporaneously filed a motion to seal limited portions of this Stipulation. Dkt. 43.

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R. Civ. P. Entry of partial final judgment is warranted when “(1) there are multiple claims or parties; (2) at least one of the claims or the rights and liabilities of at least one party has been determined with finality; and (3) there is no just reason for delay.” *Swarna v. Al-Awadi*, 2009 WL 2190192, at *1 (S.D.N.Y. July 22, 2009) (Castel, J.) (quotation and citation omitted). Each of these factors is easily satisfied here.

A. There are multiple claims.

The first requirement evaluates whether the decided claims are “separate and distinct” from those of remaining claims—*i.e.*, whether they are susceptible to independent review as opposed to being “interrelated and dependent upon each other.” *Hudson River Sloop Clearwater, Inc. v. Dep’t of Navy*, 891 F.2d 414, 418 (2d Cir. 1989). There can be no dispute that Sony Music’s claims for breach of the Agreement and copyright infringement are separate and distinct such that they establish multiple claims. The claims arise under separate provisions of law and arise from separate behavior on the part of Triller. Specifically, the breach of contract claim concerns Triller’s failure to make contractual payments under a written agreement, whereas the copyright infringement claims concern Triller’s unauthorized use of Sony Music’s sound recordings in violation of the Copyright Act.

B. The breach of contract claim has been decided with finality.

“Finality” in this context considers whether resolution of the decided claim “ends the litigation of that claim on the merits and leaves nothing for the Court to do but execute the judgment entered on that claim.” *Ginnett v. Computer Task Grp. Inc.*, 962 F.2d 1085, 1092 (2d Cir. 1992) (internal marks omitted). Triller has conceded liability and the amount of damages

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due to Sony Music on the breach of contract claim. All that is left for the Court to do is “execute the judgment entered on that claim.” *Id.*

C. There is no just reason for delay.

Deciding whether there is “no just reason for delay,” “is left to the sound judicial discretion of the district court” and “is to be exercised in the interest of sound judicial administration.” *Curtiss–Wright Corp. v. General Elec. Co.*, 446 U.S. 1, 8 (1980). The two guiding principles are (i) the promotion of judicial efficiency, and (ii) the balance of equities as to the parties. *See Naught v. Weiss*, 2013 WL 1859221, at *1 (S.D.N.Y. May 2, 2013). “This assessment includes consideration of whether delay would cause financial hardship to either party and particularly whether the potential insolvency of the judgment debtor would endanger the eventual satisfaction of judgment, a factor that weighs strongly in favor of Rule 54(b) certification.” *Raffles Tree Apparel Pte. Ltd. v. A Base IX Co. LLC*, 2019 WL 2117643, at *1 (S.D.N.Y. Apr. 29, 2019) (citation omitted). In the history and context of this case, all of these considerations heavily favor immediate entry of judgment on the contract claim.

Delaying the inevitable execution of judgment on the contract claim would serve no valid purpose; on the contrary, it would undermine the principle of judicial efficiency. Triller’s liability on the contract claim is final with nothing left to resolve. Discovery on the copyright claims, meanwhile, is ongoing and Triller’s belated production is still not complete. Even if fact discovery proceeds without further delays or difficulties, as currently set, summary judgment motions are not likely to be resolved until late in 2023. Importantly, the Court’s ultimate determination of the copyright claim could not have any effect on Triller’s extant contract

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liability. Nor, given Triller’s stipulation to liability, could there be an appeal of the contract claim and so all that is left is the mere execution of judgment. Prompt entry of partial final judgment will advance the case without delay and reduce, if not eliminate, the need for separate motions and other steps relating to prejudgment asset freezes and attachments.

Equitable considerations also strongly favor prompt entry of partial final judgment. As the Court is aware, Triller has claimed an “inability to pay.” Dkt. 34 at 2. Prompt entry of judgment is needed to protect against any further dissipation of Triller’s assets or, worse still, a bankruptcy filing. Courts routinely recognize that if “a delay in entry of judgment” would impair that party’s “ability to collect on the judgment, that would weigh in favor of certification” under Rule 54(b). *Curtiss-Wright Corp.*, 446 U.S. at 12; *see also Pereira v. Cogan*, 275 B.R. 472, 474 (S.D.N.Y. 2002) (“Courts have frequently found no just reason for delay, and entered a Rule 54(b) judgment, when the judgment debtor is insolvent or may become insolvent before the conclusion of judicial proceedings.”) (collecting cases). That risk here is palpable. Delaying final judgment on the contract claim would prejudice Sony Music’s ability to collect damages from Triller, which is “exactly the sort of hardship and denial of justice through delay that rule 54(b) was designed to eliminate.” *Ginett v. Comput. Task Grp., Inc.*, 962 F.2d 1085, 1097 (2d Cir. 1992) (quoting *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950)) (internal quotation marks omitted). Though Triller concedes liability, it has not yet agreed to pay, so Sony Music needs the a final judgment to enforce.

The history of the case—including Triller’s default, repeated failures to comply with Court deadlines, discovery delays and violations, and Sony Music’s pending sanctions motion—

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further warrants immediate entry of partial final judgment. *See* Dkt. 37. Sony Music has been forced to litigate, through no fault of its own and at substantial cost, a contract claim that Triller now concedes. Triller is more than a year late on some of those contract payments and Sony Music should not have to wait longer to enforce a judgment to collect.³ And given Triller's claim of an "inability to pay," Dkt. 34 at 2, Sony Music should be permitted to seek enforcement on Triller's conceded contract liability now as it assesses further expenses and use of judicial resources in pursuing its copyright infringement claims. All considerations strongly favor prompt entry of partial final judgment.

III. Conclusion

For the reasons explained above, Sony Music respectfully requests the Court enter partial final judgment against Triller on Sony Music's contract cause of action.

Respectfully submitted,

/s/ Jeffrey M. Gould

Jeffrey M. Gould
Matthew J. Oppenheim
OPPENHEIM + ZEBRAK, LLP
4530 Wisconsin Ave. NW, 5th Floor
Washington, DC 20016
Tel.: (202) 621-9027
matt@oandzlaw.com
jeff@oandzlaw.com

Andrew L. Guerra
OPPENHEIM + ZEBRAK, LLP

³ For the same reasons articulated here, any request to stay enforcement of the judgment would be unwarranted. *See Raffles Tree Apparel Pte. Ltd. v. A Base IX Co. LLC*, 2019 WL 2117643, at *3 (S.D.N.Y. Apr. 29, 2019) (denying stay of partial final judgment given risk of dissipation of assets).

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461 5th Avenue, Floor 19
New York, NY 10017
Tel: (212) 951-0122
andrew@oandzlaw.com

Attorneys for Plaintiffs

Music Business Worldwide (Copy)

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SONY MUSIC ENTERTAINMENT, et al.,

Plaintiffs,

v.

TRILLER, INC.,

Defendant.

Case No. 22-cv-7380 (PKC)

**DECLARATION OF JEFFREY M. GOULD IN SUPPORT OF
PLAINTIFFS' CONSENT REQUEST FOR ENTRY OF PARTIAL JUDGMENT**

I, Jeffrey M. Gould, hereby declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am a partner at Oppenheim + Zebak, LLP (“O+Z”), which represents Plaintiffs Sony Music Entertainment, Sony Music Entertainment US Latin LLC, Arista Records LLC, Provident Label Group LLC, Records Label, LLC, and Zomba Recording LLC (collectively “Sony Music” or “Plaintiffs”) in this action. I make the statements herein based on personal knowledge and/or my review of the documents and information referenced herein. If called upon to do so, I am able to testify competently to the matters set forth below.

2. I submit this declaration in support of Plaintiffs’ Consent Request for Entry of Partial Judgment.

3. Attached hereto as Exhibit A is a redacted copy of the true and correct Stipulation Regarding Triller’s Liability on Sony Music’s Breach of Contract Claim, entered into between Plaintiffs and Triller, Inc. on April 3, 2023.

Executed on this 26th day of April 2023 in Washington, D.C.

/s/ Jeffrey M. Gould

Jeffrey M. Gould

Music Business Worldwide (Copy)

REDACTED STIPULATION
CONTRACT
EXHIBIT A

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SONY MUSIC ENTERTAINMENT, et al.,

Plaintiffs,

v.

TRILLER, INC.,

Defendant.

Case No. 22-cv-7380 (PKC)

**STIPULATION REGARDING TRILLER'S LIABILITY
ON SONY MUSIC'S BREACH OF CONTRACT CLAIM**

Plaintiffs, Sony Music Entertainment, Sony Music Entertainment US Latin LCC, Arista Records LLC, Provident Label Group LLC, Records Label, LLC, and Zomba Recording LLC ("Sony Music"), filed its Complaint in this matter alleging direct and secondary copyright infringement under 17 U.S.C. §§ 101, *et seq.* and breach of contract under New York law against Triller, Inc. ("Triller"). Dkt. 13. In order to narrow issues in dispute, the parties hereby stipulate to Triller's liability on the breach of contract claim (but not on the copyright-infringement claims) as follows:

1. Triller and Sony Music entered into a content distribution agreement, dated September 1, 2016, as amended from time to time, inclusive of the Eleventh Amendment dated December 1, 2020 (inclusive of all amendments, the "Agreement").
2. Sony Music performed in accordance with the Agreement.

3. Triller is liable to Sony Music for breach of the Agreement based on Triller's failure to pay amounts owed under the Agreement. *See also* Dkt. 34 (Triller letter to Court stating that "Defendant has conceded liability under the contract in its Answer."); Dkt 25 (Answer ¶¶ 71-77).

4. Triller failed to make the first monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on March 1, 2022.

5. Triller failed to make the second monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on April 1, 2022.

6. Triller failed to make the third monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on May 1, 2022.

7. Triller failed to make the fourth monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on June 1, 2022.

8. Triller failed to make the fifth monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on July 1, 2022.

9. Triller failed to make the sixth monthly payment of \$ [REDACTED] to Sony Music under the Eleventh Amendment, due on August 1, 2022.

10. Sony Music terminated the Agreement on August 8, 2022.

11. Pursuant to section 13.02 of the Agreement, upon termination of the Agreement on August 8, 2022, "all monies then due or to become due" to Sony Music became "immediately due and payable," including the following amount:

- a. \$ [REDACTED], which would otherwise have been due September 1, 2022;
- b. \$ [REDACTED], which would otherwise have been due October 1, 2022; and
- c. \$ [REDACTED], which would otherwise have been due November 1, 2022.

12. Triller has failed to pay Sony Music interest of [REDACTED] per month on the non-payments listed above, as required by section 7.05 of the Agreement. As of today's date, interest totals \$ [REDACTED].

13. Accounting for all amounts owed under the Agreement as of today's date (including interest), Triller is liable to Sony Music in the following amount on Sony Music's breach of contract claim: \$4,574,250.00.

STIPULATED AS TO FORM AND SUBSTANCE:

Dated: April 3, 2023

/s/ Peter Fields

Peter Fields
Ritholz Levy Fields LLP
235 Park Ave S FL 3
New York, NY 10003-1405
(212) 448-1800
fields@rlflfp.com

-and-

Chris L. Vlahos
Jenna L. Harris
Ritholz Levy Fields LLP
131 S. 11th Street
Nashville, TN 37206
(615) 250-3939
cvlahos@rlflfp.com
jharris@rlflfp.com

Attorneys for Defendant

/s/ Jeffrey M. Gould

Jeffrey M. Gould
Matthew J. Oppenheim
OPPENHEIM + ZEBRAK, LLP
4530 Wisconsin Avenue NW, 5th Floor
Washington, DC 20016
Tel.: 202-621-9027
matt@oandzlaw.com
jeff@oandzlaw.com

Andrew L. Guerra
OPPENHEIM + ZEBRAK, LLP
461 5th Avenue, Floor 19
New York, NY 10017
Tel.: 212-951-0122
andrew@oandzlaw.com

Attorneys for Plaintiffs

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

SONY MUSIC ENTERTAINMENT, et al.,

Plaintiffs,

v.

TRILLER, INC.,

Defendant.

Case No. 22-cv-7380 (PKC)

**[PROPOSED] PARTIAL FINAL
JUDGMENT**

The Court, having considered Plaintiffs' Consent Motion for Partial Final Judgment, HEREBY FINDS good cause for, and ORDERS, entry of the following:

- 1) The Court expressly concludes that there is no just reason for delay in entering this Partial Final Judgment on Plaintiffs' breach of contract claim, and pursuant to Rule 54(b) of the Federal Rules of Civil Procedure, the Court directs entry of partial judgment against the Defendant as set forth herein. Entry of Partial Final Judgment is in the interests of sound judicial administration and justice. Plaintiffs' breach of contract claim for the matter herein is fully resolved.
- 2) In accordance with the parties' stipulation on Plaintiffs' breach of contract claim, the Court orders Defendant to pay Plaintiffs the sum of four million, five hundred seventy-four, two hundred fifty dollars (\$4,574,250.00).
- 3) This Partial Final judgment pertains only to Plaintiffs' breach of contract claim in the above-captioned matter. Nothing herein extends to, limits or waives any of Plaintiffs' other rights, claims or remedies.
- 4) This Court retains jurisdiction for the purpose of making any further orders necessary or

proper for the construction, implementation or modification of this Partial Final Judgment, the enforcement thereof and the punishment of any violations thereof.

On this _____ day of _____, 2023

IT IS SO ORDERED

P. Kevin Castel, United States District Judge