

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

| | | |
|---|---|----------------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹ |) | Case No. 18-10834 (____) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |

**DEBTORS’ MOTION FOR ENTRY OF
INTERIM AND FINAL ORDERS AUTHORIZING
THE DEBTORS TO HONOR CERTAIN PREPETITION
OBLIGATIONS TO CUSTOMERS AND TO OTHERWISE CONTINUE
CERTAIN CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

VER Technologies HoldCo LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),² respectfully state the following in support of this motion:

Relief Requested

1. By this motion, the Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (respectively, the “Interim Order” and the “Final Order”): (a) authorizing the Debtors to maintain and administer their existing customer-related programs (collectively, the “Customer Programs”) in the ordinary course of business and in a manner consistent with past practice, and honor prepetition obligations related

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FAAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, is set forth in greater detail in the *Declaration of Lawrence Young, Chief Restructuring Officer of VER Technologies HoldCo LLC, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.



thereto; and (b) granting related relief. The Debtors also request that the Court (as defined herein) schedule a final hearing to consider entry of the Final Order within approximately 25 days of the commencement of these chapter 11 cases.

Jurisdiction and Venue

2. 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. The Debtors confirm their consent, pursuant to rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and 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 motion 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.

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

4. The statutory bases for the relief sought herein are sections 105(a) and 363(b) of the title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 6003, and Local Rule 9013-1(m).

Background

5. The Debtors are one of the largest suppliers of rental production equipment and solutions in the world. Corporate, television, cinema, live music, hotel, and sports clients rely on the Debtors for their expansive inventory of equipment, deep expertise, global reach, and culture of service. The Debtors offer their clients three primary services: pure equipment rental, creation

of equipment specified to the client's expectations through the use of internal support resources, and full-service consulting throughout the client's specific event or process. In addition, the Debtors provide custom LED installations for corporate clients, with displays designed to meet such clients' unique specifications. The Debtors and their affiliates operate in approximately 31 locations in North America and four locations in Europe, from which they are able to provide service and support to most of the world.

6. As of the date hereof (the "Petition Date"), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No party has requested the appointment of a trustee or examiner in these chapter 11 cases, and no committees have been appointed or designated.

The Debtors' Customer Programs

7. As further described in the First Day Declaration, the Debtors, together with their non-Debtor affiliates, have been in the equipment rental business for more than 30 years and are one of the largest production equipment rental companies in the world. Throughout locations across the United States, Canada, and Europe, the Debtors rent a broad variety of video, lighting, and sound equipment to customers all over the world. The Debtors' customers fall into three primary categories: (a) corporate and hotel customers; (b) television and cinema customers; and (c) live music customers. Although the average length of the Debtors' rentals vary by customer, they are typically short, averaging less than 47 days. Given the short-term nature of the Debtors' rentals, it is imperative that the Debtors maintain their long-term customer relationships. To help

develop and maintain customer loyalty and to maximize efficient use of their rental assets, the Debtors have developed the Customer Programs, including the warranty, credit, discount, and rebate programs, each of which are described in greater detail below.³

8. To effectuate a smooth transition into and out of chapter 11, the Debtors must maintain customer loyalty and goodwill by honoring the Customer Programs. The Debtors compete in a highly-competitive market dominated by short-term contracts and individual purchase orders, which makes it easy for the Debtors' competitors to lure away the Debtors' customers if the Debtors fail to perform at the highest standards of the industry. The Debtors implemented the Customer Programs in the ordinary course of business prior to the Petition Date to maintain positive, productive, and profitable relationships with their customers, encourage additional rentals, enhance customer satisfaction, and ensure that the Debtors remain competitive in the industry. Each of the Customer Programs is designed to encourage the Debtors' customers to increase their rental frequency and volume, resulting in larger net revenues for the Debtors and, in return, greater satisfaction for the customers.

9. Accordingly, the Debtors' ability to honor the Customer Programs is necessary for the Debtors to retain their customer base and reputation as an industry leader. The Debtors may owe certain obligations to their customers on account of the Customer Programs (collectively, the "Customer Obligations"), arising both before and after the Petition Date.

10. The success and viability of the Debtors' businesses, and ultimately the Debtors' ability to maximize the value of their estates, are dependent upon the patronage and loyalty of their customers. In this regard, the Customer Programs are critical, and any delay in honoring

³ Although this motion is intended to be comprehensive, the Debtors may have inadvertently omitted some Customer Programs. By this motion, the Debtors request relief with respect to all Customer Programs, regardless of whether such Customer Program is specifically identified herein.

Customer Obligations will severely and irreparably impact customer relations and drive away valuable customers, thereby harming the Debtors' efforts to maximize value for all stakeholders.

I. Warranties.

11. To help maintain their reputation for quality and to maximize customer loyalty, the Debtors provide, in the ordinary course of business and consistent with industry practice, general product warranties covering defects in rental equipment and equipment malfunctions (collectively, the "Warranties"). Generally, the Warranties cover latent defects that are not immediately discoverable by the customer and not attributable to external factors, such as damage caused by the customer or other third parties. The Warranties also cover rental equipment that does not perform according to manufacturer specifications. The Warranties extend through the length the rental, which vary by customer type. For example, corporate rentals average 18 days while live music rentals average 47 days. During the warranty or rental period, the Debtors may either repair or replace qualifying faulty rental equipment, if able, or, based on the specific circumstances, potentially provide a refund to the customer.

12. The Debtors operate in a highly competitive market where warranties, similar to those offered by the Debtors, are standard. Without the ability to continue the Warranties and to satisfy related Customer Obligations, the Debtors risk surrendering their customers to their competitors. As of the Petition Date, the Debtors are not aware of any outstanding obligations on account of the Warranties. However, the Debtors seek authority, out of an abundance of caution, to pay any prepetition amounts currently outstanding on account of the Warranties and to continue offering the Warranties in the ordinary course of business, consistent with historical practices.

II. Credits.

13. In the ordinary course of business, the Debtors offer credits for, among other things, refunds and billing adjustments to their customers (collectively, the “Credits”). Such Credits are determined on a case-by-case basis. The ability to offer and process the Credits in accordance with past practices is critically important to the reputation of the Debtors and the continuation of their relationships with customers. The Credits generate customer loyalty and goodwill, increase the Debtors’ competitive position, and ensure customer satisfaction. As of the Petition Date, the Debtors are not aware of any outstanding obligations on account of any Credits. However, the Debtors seek authority, out of an abundance of caution, to pay any prepetition amounts currently outstanding on account of the Credits and to continue offering the Credits in the ordinary course of business, consistent with historical practices.

III. Discounts.

14. To help maximize rental volume and to enter into new customer relationships, the Debtors provide discounts in the ordinary course of business to certain customers (collectively, the “Discounts”). The Discounts are generally calculated as a percentage of rental equipment revenue less product returns, freight, labor, discounts, late fees, taxes, and other service-related costs (the “Net Rental Cost”). Historically, the Discounts include incentive discounts, volume discounts, and referral discounts.

15. The Debtors provide incentive discounts upfront to entice customers to enter into a rental services agreement. In contrast, the Debtors provide volume discounts to incentivize customer spending to increase rental volume. Volume discounts increase based on the type of rental equipment utilized by a customer and the total cost of the project. For example, a customer would receive a higher volume discount if they rented camera, LED, and lighting

equipment for an ongoing scripted television series at a total Net Rental Cost of \$100,000 than if they rented just camera equipment for a single broadcast show for a total Net Rental Cost of \$25,000. The Discounts generate higher rental volume and help the Debtors develop and maintain a broader customer base. To that end, the Debtors periodically offer referral discounts in exchange for customers referring the Debtors as an exclusive vendor to the customer's other brands or stakeholders.

16. The Debtors believe that maintaining the Discounts is essential to the continued health and sustainability of the Debtors' businesses, and that the benefits of the Discounts far outweigh the cost. The Debtors seek authority, but not direction, to honor all prepetition obligations with respect to the Discounts in the ordinary course of business and to continue to honor the Discounts on a postpetition basis, consistent with historical practice.

IV. Rebates.

17. The Debtors enter into fixed percentage, single-tiered rebate programs based on Net Rental Cost and multi-tiered rebate programs based on mutually agreeable Net Rental Cost thresholds that, if exceeded, trigger payment of a rebate upon issuing the final invoice (collectively, the "Rebates"). The Rebates are primarily driven by the Net Rental Cost volume, but can be customized by project type, rental equipment utilized in the project, and duration of the project. Historically, the Debtors have offered single-tiered and multi-tiered Rebates in varying percentages of the Net Rental Cost.

18. The Rebates vary greatly but are largely designed to focus on the unique needs of each customer in order to create and foster long-term customer relationships. Maintaining the Rebates is imperative for securing long-term contracts and maintaining and growing a customer-base that yields longer term, higher revenue projects, particularly in the television and cinema

sectors. The Rebates allow the Debtors to meet the individual demands of customers and to continue to grow the Debtors' core rental business. The ability to process the Rebates in accordance with past practices is critically important to the reputation and continued success of the Debtors, and the Debtors request authority to process such Rebates in the ordinary course of business. Accordingly, the Debtors seek authority, but not direction, to honor all prepetition obligations with respect to the Rebates in the ordinary course of business and to continue to honor the Rebates on a postpetition basis, consistent with historical practice.

Basis for Relief

19. The Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code. Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims. *See, e.g., In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code). A debtor's use of estate property should be authorized pursuant to section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for the transaction. *See, e.g., In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *Committee of Equity Sec. Holders v. The Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (Bankr. D. Del. 1999); *In re Filene's Basement, LLC*, 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014).

20. Moreover, once a debtor articulates a valid business justification for the use of property, “[t]he business judgment rule ‘is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith, and in the honest belief

that the action was in the best interests of the company.” *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995) (internal citations omitted); *Filene’s Basement, LLC*, 2014 WL 1713416, at *12 (“If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate”) (internal citations omitted); *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992); *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“a presumption of reasonableness attaches to a debtor’s management decisions”); *In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

21. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of a bankruptcy court, empowers courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Under section 105(a) of the Bankruptcy Code, courts may permit pre-plan payments of prepetition obligations when essential to the continued operation of a debtor’s business. *See, e.g., Ionosphere Clubs*, 98 B.R. at 175. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”). *See, e.g., id.* (“The ability of a Bankruptcy Court to authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”).

22. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New England Railway Co.*, 657 F.2d 570

(3d Cir. 1981). There, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* at 581 (stating courts may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (recognizing that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until its pre-reorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

23. The rationale for the necessity of payment rule—the rehabilitation of a debtor in reorganization cases—is “the paramount policy and goal of Chapter 11.” *Ionosphere Clubs*, 98 B.R. at 176; *see also Just for Feet*, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization.”); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (“[P]ayment by a debtor-in-possession of pre-petition claims outside of a confirmed plan of reorganization is generally prohibited by the Bankruptcy Code,” but “[a] general practice has developed . . . where bankruptcy courts permit the payment of certain pre-petition claims, pursuant to 11 U.S.C. § 105, where the debtor will be unable to reorganize without such payment.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (approving payment of prepetition unsecured claims of tool makers as “necessary to avert a serious threat to the Chapter 11 process”); *Burchinal v. Cent. Wash. Bank (In re Adams Apple*,

Inc.), 829 F.2d 1484, 1490 (9th Cir. 1987) (recognizing that allowance of “unequal treatment of pre-petition debts when necessary for rehabilitation” is appropriate); *Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition workers’ compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”).

24. Accordingly, sections 363(b) and 105(a) of the Bankruptcy Code permit the Court to authorize the Debtors to continue the Customer Programs and satisfy prepetition Customer Obligations arising thereunder.

25. Continuing the Customer Programs without interruption during the pendency of these chapter 11 cases is a proper exercise of the Debtors’ business judgment because it will help preserve the Debtors’ valuable customer relationships and goodwill, which will inure to the benefit of all of the Debtors’ creditors and the estates. In addition, continuing the Customer Programs will allow the Debtors to maintain their competitive edge in their industry. Importantly, as noted, the Debtors’ competitors maintain similar programs. As such, the Debtors’ various customers have a ready audience willing to meet such customers’ needs and take such customers’ business away from the Debtors. Thus, if the Debtors are unable to continue the Customer Programs postpetition or to pay amounts due and owing to their customers thereunder, the Debtors risk alienating certain customer constituencies, losing such customers and potential customers to the Debtors’ competitors, and suffering the corresponding losses in customer loyalty and goodwill that will harm the Debtors’ prospects for reorganization and maximizing value.

26. Where retaining the loyalty and patronage of customers is critical to successful chapter 11 cases, courts in this district and others have granted relief similar to that requested here. *See, e.g., In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 1, 2018) (approving continuation of customer programs); *In re Aspect Software Parent, Inc.*, No. 16-10597 (MFW) (Bankr. D. Del. Apr. 1, 2016) (same); *In re Energy Future Holdings Corp.*, No. 14-10979 (CSS) (Bankr. D. Del. June 4, 2014) (same); *In re GSE Env'tl., Inc.*, No. 14-11126 (MFW) (Bankr. D. Del. May 30, 2014) (same); *In re Dolan Co.*, No. 14-10614 (BLS) (Bankr. D. Del. Mar. 25, 2014) (same).⁴

27. Accordingly, the Debtors submit that the substantial benefit conferred on the Debtors' estates by the Customer Programs warrants the authority to continue and honor the Customer Programs and any Customer Obligations relating thereto, whether arising prepetition or postpetition. The Debtors respectfully request the authority to continue their Customer Programs in the ordinary course of business and honor prepetition commitments related thereto.

Processing of Checks and Electronic Fund Transfers Should be Authorized

28. The Debtors have sufficient funds to pay the amounts described in this motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations, debtor-in-possession financing, and anticipated access to cash collateral. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Customer Programs. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by

⁴ Because of the voluminous nature of the orders cited herein, such orders have not been attached to this motion. Copies of these orders are available upon request to the Debtors' proposed counsel.

the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

The Requirements of Bankruptcy Rule 6003 are Satisfied

29. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, authorizing the Debtors to satisfy obligations with respect to the Customer Programs and granting the other relief requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. For the reasons discussed herein, the relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

Reservation of Rights

30. Nothing contained herein is intended or shall be construed as: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors’ right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors’ rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common

law, statutory, or otherwise) satisfied pursuant to the motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

Waiver of Bankruptcy Rule 6004(a) and 6004(h)

31. To implement the foregoing successfully, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

Notice

32. The Debtors will provide notice of this motion 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) counsel to the agent under the Debtors' asset-based lending debtor-in-possession financing facility; (d) counsel to certain of the lenders under the Debtors' debtor-in-possession term loan facility; (e) counsel to the agent under the Debtors' debtor-in-possession term loan facility; (f) counsel to the agent under the Debtors' prepetition asset-based lending facility; (g) counsel to the agent under the Debtors' prepetition term loan facility; (h) counsel to the lender under Debtors' 12.0% subordinated notes; (i) counsel to the indenture trustee for the New FTF Inc. Note; (j) the United States Attorney's Office for the District of Delaware; (k) the Internal Revenue Service; (l) the office of the attorneys general for the states in which the Debtors operate; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking "first day" relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in

respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as the Court deems appropriate.

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Wilmington, Delaware
Dated: April 5, 2018

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)

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Proposed Counsel to the Debtors

EXHIBIT A

Proposed Interim Order

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

| | | |
|---|---|----------------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹ |) | Case No. 18-10834 (____) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |

**INTERIM ORDER AUTHORIZING THE DEBTORS
TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND TO OTHERWISE CONTINUE CERTAIN
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to maintain and administer their existing Customer Programs in the ordinary course of business and in a manner consistent with past practice, and honor prepetition obligations related thereto and (b) granting related relief; and upon the First Day Declaration; and this Court having 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; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FFAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis as set forth herein.
2. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2018 at __:__ .m. (prevailing Eastern Time). Any objections or responses to entry of the Final Order shall be filed on or before _____, 2018 at 4:00 p.m. (prevailing Eastern Time), and served on the following parties: (a) the Debtors, VER Technologies HoldCo LLC., 757 West California Avenue, Building 4, Glendale, California 91203, Attn: Mick Gavin, and 909 Third Avenue, 30th Floor, New York, New York 10022, Attn: Lawrence Young; (b) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, P.C. and Cristine Pirro, and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn: Ryan Blaine Bennett and Jamie R. Netznik; (c) proposed co-counsel to the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 North Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti, and Klehr Harrison Harvey Branzburg LLP, 1835 Market Street, Suite 1400, Philadelphia, Pennsylvania 19103, Attn: Morton Branzburg; (d) counsel to certain of the lenders under the Debtors' debtor-in-possession term loan facility, Morgan, Lewis & Bockius LLP, One Federal Street, Boston, Massachusetts, 02110-1726, Attn: Andrew Gallo and Christopher L. Carter; (e) counsel to the agent under the Debtors' debtor-in-possession term loan facility, Alston & Bird LLP, Bank of America Plaza,

101 South Tryon Street, Suite 4000, Charlotte, North Carolina 28280-4000, Attn: Jason J. Solomon; (f) counsel to the agent under the Debtors' prepetition asset-based lending facility and debtor-in-possession asset-based financing facility, Skadden, Arps, Slate, Meagher & Flom LLP, 4 Times Square, New York, New York 10036, Attn: Shana A. Elberg, and Skadden, Arps, Slate, Meagher & Flom LLP, 155 N. Wacker Drive, Chicago, Illinois 60606, Attn: Christopher M. Dressel; (g) counsel to the lender under the Debtors' 12.0% subordinated notes, King & Spalding LLP, 1185 Avenue of the Americas, New York, New York 10036, Attn: Jeffrey Pawlitz; (h) counsel to the indenture trustee for the New FTF Inc. Note, Robins Kaplan LLP, 2049 Century Park East, Suite 3400, Los Angeles, California 90067, Attn: Howard J. Weg and Michael T. Delaney; (i) counsel to any statutory committee appointed in these cases; and (j) the Office of The United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: David Buchbinder, Esq. In the event no objections to entry of the Final Order on the Motion are timely received, this Court may enter such Final Order without need for the Final Hearing.

3. The Debtors are authorized, but not directed, to satisfy any prepetition obligations arising from the Customer Programs in the ordinary course of business as they become due.

4. The Debtors are authorized, but not directed, to continue the Customer Programs in the ordinary course of business.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the

Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Customer Programs.

8. Notwithstanding anything to the contrary set forth herein; (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto); and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the

Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

12. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

13. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Dated: _____, 2018
Wilmington, Delaware

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

| | | |
|---|---|----------------------------------|
| |) | |
| In re: |) | Chapter 11 |
| |) | |
| VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹ |) | Case No. 18-10834 (____) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | Re. Docket No_ |

**FINAL ORDER AUTHORIZING THE DEBTORS
TO HONOR CERTAIN PREPETITION OBLIGATIONS
TO CUSTOMERS AND TO OTHERWISE CONTINUE CERTAIN
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of this final order (this “Final Order”), (a) authorizing the Debtors to maintain and administer their existing Customer Programs in the ordinary course of business and in a manner consistent with past practice, and honor prepetition obligations related thereto and (b) granting related relief; and upon the First Day Declaration; and this Court having 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; and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FFAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to satisfy any prepetition obligations arising from the Customer Programs in the ordinary course of business as they become due.
3. The Debtors are authorized, but not directed, to continue the Customer Programs in the ordinary course of business.
4. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the validity of any claim against a Debtor entity; (b) a waiver of the Debtors' right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (g) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion are valid, and the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with any Customer Programs.

7. Notwithstanding anything to the contrary set forth herein; (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed on the Debtors under the Debtors' postpetition financing agreements (the "DIP Documents") and any orders approving the DIP Documents and governing the Debtors' use of cash collateral (including with respect to any budgets governing or relating thereto); and (b) to the extent there is any inconsistency between the terms of such orders approving the DIP Documents or the Debtors' use of cash collateral and any action taken or proposed to be taken hereunder, the terms of such orders approving the DIP Documents and use of cash collateral shall control.

8. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

9. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

10. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

11. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Dated: _____, 2018
Wilmington, Delaware

THE HONORABLE
UNITED STATES BANKRUPTCY JUDGE