

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 (KG) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |

**DEBTORS’ MOTION FOR
ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

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. The Debtors seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and “Final Order,” respectively): (a) authorizing, but not directing, the Debtors to pay Critical Vendor Claims (as defined herein) in an amount not to exceed \$12.7 million pursuant to the Interim Order (the “Interim Order Cap”) and, in the aggregate, inclusive of amounts paid pursuant to the

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 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.



Interim Order, an amount not to exceed \$14.0 million pursuant to the Final Order (the “Final Order Cap”), in each case absent further order of the Court; and (b) granting related relief.³ In support of this motion, the Debtors submit the *Declaration of Lawrence Young in Support of the Debtors’ Critical Vendor Motion and Foreign and Priority Vendor Motion* (the “Young Declaration”), filed contemporaneously herewith. In addition, the Debtors request that the Court schedule a final hearing within approximately 25 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

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.

³

Contemporaneously herewith, the Debtors have sought the authority, but not direction, to pay certain claims held by certain prepetition creditors pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Claims of Certain Foreign Vendors, Lien Claimants, and 503(b)(9) Claimants, and (II) Granting Related Relief* (the “Foreign and Priority Vendor Motion”). By this motion, the Debtors do not seek authority to pay prepetition claims that may be paid pursuant to the relief requested pursuant to the Foreign and Priority Vendor Motion.

4. The bases for the relief requested herein are sections 105(a), 363, 503, 1107(a), and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rules 6003 and 6004, 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’ Critical Vendors

7. In the ordinary course of their businesses, the Debtors engage a limited number of providers for certain critical services, equipment inventory, replacement parts, and other

materials the Debtors depend upon to provide top-quality products and services to their clients. The Debtors obtain such services, equipment, or parts from a limited number of highly specialized vendors, service providers, and other businesses (collectively, the “Critical Vendors”)—often on an order-by-order basis and without long-term contracts—replacement of which likely would be impossible or would result in substantially higher costs for the Debtors. Further, certain Critical Vendors are the sole source providers of replacement parts necessary to maintain the Debtors’ equipment, and the inability to acquire these parts would result in the deterioration of the Debtors’ equipment.

8. The Debtors rely on timely and frequent delivery of these equipment, parts, and services, and any interruption in this supply—however brief—would disrupt the Debtors’ operations, impact their revenue, and their ability to service clients, likely causing irreparable harm to their businesses, reputation, goodwill, employees, customer base, and market share. Such harm would likely far outweigh the cost of payment of certain of the prepetition claims held by certain Critical Vendors and accrued in the ordinary course of business (collectively, the “Critical Vendor Claims”).

9. The Debtors believe some of their vendors may be unfamiliar with the chapter 11 process and unwilling to do business on existing terms—assuming such parties will continue to supply the Debtors at all. Indeed, prior to the Petition Date, certain of the Debtors’ vendors cancelled existing favorable trade terms due to rumors of a bankruptcy filing. As a result, certain vendors that previously allowed payments on a net 30 or net 60 day basis instead began requiring the Debtors to pay cash on delivery. Any further loss of trade terms, whether on account of demands for cash in advance, cash on delivery, or otherwise, will negatively impact the Debtors’

liquidity and jeopardize their ability to maintain and service their equipment and to purchase any additional equipment required to service their clients.

10. The Critical Vendors generally fall into the following categories:

- Equipment Suppliers. The Debtors purchase rental equipment from a variety of equipment manufacturers and third parties (collectively, the “Equipment Suppliers”). The Equipment Suppliers provide the Debtors with various types of highly specific and technical pieces of equipment, including cameras, lighting equipment, LED and video equipment, projection equipment, rigging equipment, and sound equipment (collectively, the “Equipment”) on trade terms that create considerable liquidity for the Debtors’ business. Given the unique and highly technical nature of the Equipment that the Debtors rent to their customers, the Equipment Suppliers cannot be easily replaced or substituted by alternative vendors. Indeed, the Equipment Suppliers are the sole source of certain pieces of Equipment. Furthermore, wear and tear on the Equipment creates suboptimal performance over time, forcing the Debtors to continually stock, maintain, or replace the most in-demand items. As such, the Debtors are wholly reliant on procuring Equipment from the Equipment Suppliers.
- Parts Suppliers. The Debtors also rely on a core group of parts suppliers (collectively, the “Parts Suppliers”) for various parts that enable the Debtors to maintain the functionality of their Equipment. Given the highly technical nature of the Equipment, any given replacement part can generally only be procured from a single Parts Supplier, often the manufacturer. Without a steady stream of parts, the Debtors will not be able to keep the Equipment functional, putting a stop to their operations.
- Repair and Service Providers. Although the Debtors perform their own routine maintenance and repair work on their Equipment, the Debtors also rely heavily on other essential vendors (the “Repair and Service Providers”) for more extensive repair and maintenance services that the Debtors are unable to perform in a cost-efficient manner or do not have the technical expertise to administer. From time to time, the Repair and Service Providers also supply the Debtors with a limited quantity of replacement parts largely related to their repair services. Without the Repair and Service Providers, the Debtors will not be able to keep some of their most highly sought-after Equipment in good working order.
- Sub-Rental Vendors. At times, the Debtors’ clients require Equipment in an amount or type that the Debtors do not maintain in their inventory. In certain cases, entire orders could be in jeopardy for cancellation as a result of one missing piece of equipment. In order to properly supply these clients, the Debtors turn to other rental companies to provide the additional equipment on a short term, order-by-order basis. These rental companies (the “Sub-Rental Vendors”) allow the Debtors to effectively supply their clients despite the unpredictable ebbs and flows in demand for the Equipment. If the Debtors were unable to utilize the Sub-Rental Vendors, they would

be unable to meet the terms of existing customer contract and would quickly begin to lose further customer orders.

11. The Debtors' operations depend upon close coordination and integration between the Debtors, their clients, and their suppliers. Given the unique and highly technical nature of the equipment and services provided by the Debtors' vendors, an adequate supply of equipment and timely services from the vendors to the Debtors, and from the Debtors to their clients, are vital to continue and maintain operations and to avoid significant costs associated with missing contractual deadlines.

I. The Debtors' Process for Identifying Critical Vendors.

12. Recognizing that payment of all prepetition claims of third-party vendors outside of a plan of reorganization would be extraordinary relief, the Debtors, with the assistance of their advisors, spent significant time reviewing and analyzing their books and records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements and the purchase orders incorporated thereunder, and analyzing applicable laws, regulations, and historical practice to identify the limited number of vendors that are critical to the continued and uninterrupted operation of the Debtors' businesses• the loss of which could materially harm their businesses, reduce their enterprise value, or impair going-concern viability. Specifically, in identifying the Critical Vendors, the Debtors examined each of their vendor relationships with the following criteria in mind:

- whether a vendor is a sole- or limited-source or high-volume supplier for goods or services critical to the Debtors' business operations;
- whether alternative vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms and whether failure to pay under an agreement would

result in the vendor refusing to ship goods or provide critical services under other non-contractual arrangements;

- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship goods or to provide critical services on a postpetition basis; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

13. In addition to these factors, the Debtors and their advisors examined the health of each vendor relationship, their familiarity with the chapter 11 process, and the extent to which each vendor's prepetition claim could be satisfied elsewhere in the chapter 11 process. This process resulted in the Debtors identifying approximately 130 critical vendors, which account for approximately 13 percent of their prepetition vendors that have amounts outstanding as of the Petition Date.

14. In summary, the Debtors' selection process balanced the need to ensure that these chapter 11 cases do not disrupt their operations, adversely affect their market share, or injure their customer relationships, with the need to limit the expenditure of estate resources. To that end, the Debtors undertook a lengthy process to ensure that the Critical Vendors truly represent those vendors that are vital to the Debtors' ongoing operations. Paying targeted Critical Vendor Claims renders a benefit to the Debtors' estates both monetarily and operationally by preserving liquidity and enabling the Debtors to operate smoothly during the chapter 11 cases.

15. The Debtors submit that the requested relief will allow the Debtors to preserve stakeholder value by paying certain prepetition claims of certain counterparties where critical to unlock incremental liquidity for the Debtors' business enterprise. The Debtors therefore seek authority, but not direction, to honor prepetition obligations to Critical Vendors. As of the Petition Date, the Debtors owe approximately \$14 million to the Critical Vendors on account of

prepetition goods and services, approximately \$12.7 million of which will become due within the first 25 days of these chapter 11 cases.

II. Customary Trade Terms.

16. Subject to the Court's approval, the Debtors intend to pay Critical Vendor Claims only to the extent necessary to preserve their businesses. The Debtors have designated a core group of executives, advisors, and employees who have experience in the Debtors' businesses and in the reorganization process to review, assess, and potentially recommend any payment on account of a Critical Vendor Claim. In return for paying the Critical Vendor Claims, the Debtors will use commercially reasonable efforts to condition payment of Critical Vendor Claims upon each Critical Vendor's agreement to continue supplying goods and services on terms that were in place in the 120 days prior to the Petition Date or are otherwise acceptable to the Debtors in light of customary industry practices (the "Customary Trade Terms").

17. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this motion and thereafter does not continue to provide goods or services on Customary Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon written request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by this motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

Basis for Relief

I. Authority Supports Payment of the Critical Vendor Claims as Provided Herein.

18. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations, including payments to critical vendors, where necessary to protect and preserve the estate. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts “have approved . . . ‘critical vendor’ orders that allow payment of essential suppliers’ prepetition invoices”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (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 Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a bankruptcy court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

19. Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may be authorized where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Indeed, courts have recognized that there are instances when a debtor’s fiduciary duty can “only be fulfilled by the preplan satisfaction of a prepetition claim.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

20. 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 codifies the Court's inherent equitable powers 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 authorize pre-plan payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825. 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"). *Ionosphere Clubs*, 98 B.R. at 176.

21. Indeed, the United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). 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.* (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) (holding 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 their pre-reorganization claims have been paid"); *Just for Feet*, 242 B.R. at 824–25 (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).

22. This flexible approach is particularly critical where, as here, the Critical Vendors are crucial to the Debtors' reorganization. In *In re Structurlite Plastics Corp.*, 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988), the bankruptcy court recognized that "a bankruptcy court may exercise

its equity powers under section 105(a) of the Bankruptcy Code to authorize payment of prepetition claims where such payment is necessary ‘to permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.’” *Id.* The court explained that “a *per se* rule proscribing the payment of prepetition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code.” *Id.* at 932.

23. Allowing the Debtors to pay Critical Vendor Claims pursuant to sections 363(b) and 105(a) of the Bankruptcy Code is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999). As described above, the Debtors require a steady stream of Equipment and related services to ensure they have inventory to meet customer demand, as well as other goods and services critical to the value of the Debtors’ businesses. Without the supplies and services described in this motion, the Debtors would experience a significant disruption of their supply chain while they search, likely in vain, for substitute vendors, which would in turn jeopardize customer goodwill and significantly impair the value of the Debtors’ businesses. Ensuring these Critical Vendors continue to supply and serve is therefore vital to the success of these chapter 11 cases and the ability of the Debtors to remain a going-concern.

24. The relief requested herein is well within the range of customary relief approved in this district. Courts routinely authorize payment of prepetition claims for critical vendors in similar or greater amounts to that requested here. *See, e.g., In re Charming Charlie Holdings Inc.*, No. 17-12906 (CSS) (Bankr. D. Del. Jan. 10, 2018) (authorizing payment of \$3.11 million in critical vendor claims); *In re True Religion Apparel, Inc.*, No. 17-11460 (CSS) (Bankr. D. Del.

July 31, 2017) (authorizing payment of \$4.0 million in critical vendor claims); *In re GST AutoLeather, Inc.*, No. 17-12100 (LSS) (Bankr. D. Del. Nov. 13, 2017) (authorizing payment of \$6.0 million in critical vendor claims); *In re TK Holdings Inc.*, No. 17-11375 (BLS) (Bankr. D. Del. Aug. 9, 2017) (authorizing the payment of all prepetition critical vendor claims up to \$47.44 million on a final basis); *In re CST Indus. Holding Inc.*, No. 17-11292 (BLS) (Bankr. D. Del. July 17, 2017) (authorizing the payment of prepetition critical vendor claims up to \$5.0 million); *In re Am. Apparel, Inc.*, No. 15-12055 (BLS) (Bankr. D. Del. Nov. 2, 2015) (same); *In re Signal Int'l, Inc.*, No. 15-11498 (MFW) (Bankr. D. Del. Aug. 11, 2015) (authorizing payment of critical vendor claims that represent approximately 16% of aggregate prepetition trade claims); *In re Quiksilver, Inc.*, No. 15-11880 (BLS) (Bankr. D. Del. Oct. 28, 2015) (authorizing the payment of prepetition critical vendor claims up to \$55 million); *In re Exide Techs.*, No. 13-11482 (KJC) (Bankr. D. Del. July 11, 2013) (authorizing the payment of \$10.0 million in critical vendor claims).

Processing of Checks and Electronic Fund Transfers Should Be Authorized

25. 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 Critical Vendor Claims. 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 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

26. 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 pay Critical Vendors 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 businesses 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

27. 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)

28. 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

29. 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; (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

30. 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 Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

[Remainder of page intentionally left blank]

Wilmington, Delaware
Dated: April 5, 2018

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)

KLEHR HARRISON HARVEY BRANZBURG LLP

919 North Market Street, Suite 1000

Wilmington, Delaware 19801

Telephone: (302) 426-1189

Facsimile: (302) 426-9193

-and -

Morton Branzburg (*pro hac vice* admission pending)

KLEHR HARRISON HARVEY BRANZBURG LLP

1835 Market Street, Suite 1400

Philadelphia, Pennsylvania 19103

Telephone: (215) 569-2700

Facsimile: (215) 568-6603

-and-

Joshua A. Sussberg, P.C. (*pro hac vice* admission pending)

Cristine Pirro (*pro hac vice* admission pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

601 Lexington Avenue

New York, New York 10022

Telephone: (212) 446-4800

Facsimile: (212) 446-4900

Email: joshua.sussberg@kirkland.com

cristine.pirro@kirkland.com

- and -

James H.M. Sprayregen, P.C.

Ryan Blaine Bennett (*pro hac vice* admission pending)

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

300 North LaSalle

Chicago, Illinois 60654

Telephone: (312) 862-2000

Facsimile: (312) 862-2200

Email: james.sprayregen@kirkland.com

ryan.bennett@kirkland.com

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 (KG) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |
| |) | Re: Docket No. ___ |

**INTERIM ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

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, but not directing, the Debtors to pay certain prepetition Critical Vendor Claims in an amount not to exceed the Interim Order Cap absent further order of the Court; (b) granting related relief; and (c) scheduling a final hearing to consider approval of the Motion on a final basis; all as more fully set forth in the Motion 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

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.

found that the Debtors' notice of the Motion and opportunity for a hearing on 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 a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Eastern Time, on _____, 2018, and shall be served on: (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 a 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 pay or honor prepetition Critical Vendor Claims in an interim amount not to exceed \$12.7 million (the "Interim Order Cap") absent further order of the Court.

4. The Debtors are authorized, but not directed, in their reasonable business judgment, to pay Critical Vendor Claims, in whole or in part, subject to the Interim Order Cap, upon such terms and in the manner provided in this Interim Order; *provided* that, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs

(including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Interim Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be deemed to have agreed to the terms and provisions of this Interim Order.

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 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 Critical Vendor Claims.

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 terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

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

14. 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 (KG) |
| |) | |
| Debtors. |) | (Joint Administration Requested) |
| |) | |
| |) | Re: Docket No. ___ |

**FINAL ORDER (I) AUTHORIZING DEBTORS TO PAY CERTAIN PREPETITION
CLAIMS OF CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”):

(a) authorizing, but not directing, the Debtors to pay certain prepetition Critical Vendor Claims; and (b) granting related relief; all as more fully set forth in the Motion; 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 the Motion were appropriate under the circumstances and no other notice need be

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.

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 as set forth herein on a final basis.
2. The Debtors are authorized, but not directed, to pay or honor prepetition claims of the Critical Vendors in an aggregate amount not to exceed \$14.0 million (the "Final Order Cap") on a final basis absent further order of the Court.
3. The Debtors are authorized, but not directed, in their reasonable business judgment, to pay Critical Vendor Claims, in whole or in part, subject to the Final Order Cap, upon such terms and in the manner provided in this Final Order; *provided* that, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with trade terms at least as favorable to the Debtors as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances, product mix, availability, and other programs) in place in the 120 days immediately prior to the Petition Date, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief

requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise. The Debtors shall provide a copy of this Final Order to the applicable party prior to such party's acceptance of any payment hereunder. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be deemed to have agreed to the terms and provisions of this Final Order.

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 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 Critical Vendor Claims.

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