

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

VER TECHNOLOGIES HOLDCO LLC, *et al.*,<sup>1</sup>

Debtors.

) Chapter 11

) Case No. 18-10834 (KG)

) (Joint Administration Requested)

) Re: Docket No. 15

**INTERIM ORDER: (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, (II) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION INTERCOMPANY BALANCES, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")<sup>2</sup> 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 (i) continue to operate their Cash Management System, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing Business Forms in the ordinary course of business, and (iv) continue to perform Intercompany Transactions consistent with historical practice; (b) granting administrative expense status to postpetition intercompany balances; and (c) 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

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: 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.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.



Court for the District of Delaware, dated February 29, 2012; and the Debtors having confirmed their consent to the entry of final orders or judgment by the Court pursuant to Bankruptcy Rule 7008 and rule 9013-1(f); 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 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 May 4, 2018, at 1:30 p.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 April 27, 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, subject to the DIP Order, the DIP Documents, the DIP Budget (as defined in the DIP Order), and any and all claims created under the DIP Documents (collectively, the "DIP Claims"), to: (a) continue operating the Cash Management System, substantially as identified on Exhibit 1 attached hereto and as described in

the Motion; (b) honor their prepetition obligations related thereto; (c) maintain existing Business Forms; and (d) continue to perform Intercompany Transactions consistent with historical practice.

4. The Debtors are further authorized, but not directed, to: (a) continue to use, with the same account numbers, the Bank Accounts in existence as of the Petition Date, including those accounts identified on Exhibit 2 attached hereto, and need not comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Guidelines; (b) provided that once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; provided further that, with respect to checks which the Debtor on their agents print themselves, the Debtors shall begin printing the "Debtors in Possession" legend on such items within ten (10) days of this Order; (c) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors in possession; (d) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, and other debits; (e) pay the Bank Fees (including any prepetition amounts); and (f) pay any ordinary course Bank Fees incurred in connection with the Bank Accounts, and to otherwise perform their obligations under the documents governing the Bank Accounts; *provided* that once the Debtors' preprinted correspondence, Business Forms (including letterhead) and existing checks have been used, the Debtors shall, when reordering, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all such documents.

5. The Cash Management Banks are authorized, but not obligated or directed, to continue to maintain, service, and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course, and to receive, process,

honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued, presented, or drawn on the Bank Accounts after the Petition Date by the holders, makers, or payors thereof, as the case may be. Those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all the provisions of such agreements, including, without limitation, the termination and fee provisions, and any provisions relating to the offset or charge-back rights, shall remain in full force and effect.

6. The Debtors are authorized to, and hereby, ratify, amend, assume and affirm the Commercial Card Program under the WellsOne Commercial Card Agreement, dated on or around May 21, 2008 (as amended, restated, supplemented or otherwise modified from time to time, including, without limitation the Amendment, dated April \_\_, 2018, the "Card Agreement"), between Debtor Full Throttle Films, LLC ("Full Throttle") and Wells Fargo Bank, N.A. ("Wells Fargo"), subject to the terms and conditions thereof. Wells Fargo is authorized to make advances from time to time to Full Throttle with a maximum exposure at any time up to \$1,000,000.00. All prepetition and postpetition charges and fees are authorized to be paid. In order to collateralize all of the prepetition and postpetition indebtedness owed by Full Throttle to Wells Fargo arising under and incurred in connection with the Card Agreement, Full Throttle hereby grants, pledges and assigns to Wells Fargo a first priority lien and security interest in and to a cash collateral deposit in the amount of \$1,000,000, which shall be deposited by Full Throttle into a new bank account established at Wells Fargo. The Debtor is hereby authorized to (i) establish a new cash deposit account at Wells Fargo (the "Wells Fargo Special Account") and to enter into, execute, deliver and comply with all terms and conditions of, and perform any

obligations under the new deposit account agreement, together with all supporting documentation, (ii) enter into, execute, deliver and comply with the terms of the Amendment to Wellstone Commercial Card Agreement, (iii) enter into, execute, deliver and comply with all of the terms and conditions of the accompanying Security Agreement, dated as of April 6, 2018, and (iv) transfer the sum of \$1,000,000 in cash to Wells Fargo for deposit into the Wells Fargo Special Account. Wells Fargo is hereby granted a continuing, valid, binding, enforceable non-avoidable and automatically and properly perfected first priority postpetition lien and security interest in and to the cash collateral on deposit in the Wells Fargo Special Account, which liens and security interests shall be solely for the benefit of Wells Fargo, as collateral security for the obligations arising under and in connection with the Card Agreement, and, notwithstanding anything to the contrary in the DIP Order or the DIP Loan Documents, shall not be subject to the Carve Out or any of the liens and security interests granted in favor of any of the DIP Agents and DIP Lenders in accordance with the terms of the DIP Order and the DIP Loan Documents. Further, any proceeds applied by Wells Fargo from the Wells Fargo Special Account shall not be subject to any sharing or recapture by any of the Prepetition ABL Agent and/or the Prepetition ABL Lenders under the terms and conditions of the Prepetition ABL Credit Documents or the DIP ABL Agent and/or the DIP ABL Lenders under the terms and conditions of the DIP ABL Documents.

7. Wells Fargo may rely on the representations of the Debtors with respect to their use of the Commercial Card Program pursuant to the Card Agreement, and Wells Fargo shall not have any liability to any party for relying on such representations by the Debtors as provided for herein.

8. Immediately upon entry of this Interim Order, each of the Cash Management Banks at which Bank Accounts that are subject to automatic transfers, or “sweeps,” as part of the Cash Management System, is authorized, but not obligated or directed, without further order of this Court, to recommence such transfers or sweeps without regard to whether the funds swept and/or transferred include funds deposited prior to the Petition Date; *provided* that such authorization shall be subject to the provisions of the DIP Order.

9. The Debtors are authorized to continue using the Fuel Cards and the Fuel Card Program and to pay any prepetition amounts in connection therewith.

10. The relief granted in this Interim Order is extended to any new bank account opened by the Debtors after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened, which bank shall be deemed a Cash Management Bank. As required herein, to the extent the Debtors open a new bank account, they shall provide notice to the U.S. Trustee and counsel to any official statutory committee appointed in these chapter 11 cases and any new bank account shall be opened at an authorized depository.

11. All banks, including the Cash Management Banks, provided with notice of this Interim Order maintaining any of the Bank Accounts, shall not honor or pay any bank payments drawn on the listed Bank Accounts or otherwise issued before the Petition Date, for which the Debtors specifically issue stop payment orders in accordance with the documents governing such Bank Accounts.

12. In the course of providing cash management services to the Debtors, the Cash Management Banks are authorized, without further order of this Court, to deduct the applicable prepetition and postpetition fees (including any Bank Fees) from the appropriate Bank Accounts.

13. Notwithstanding any other provision of this Interim Order, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to, on, or after the Petition Date should be honored pursuant to any order of this Court, and no bank shall have liability to any party for relying on such representations, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors, (b) or in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake despite implementation of customary handling procedures shall not be deemed to be, nor shall be, liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Interim Order.

14. Any bank, including the Cash Management Banks, are further authorized, but not directed, to: (a) honor the Debtors' directions with respect to the opening and closing of any Bank Account; and (b) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

15. The Debtors are authorized, subject to the DIP Order and the DIP Documents, to: (a) open any new bank accounts (including the DIP Collateral Account (as defined in the DIP Order)) or close any existing Bank Accounts; and (b) enter into any ancillary agreements, including new deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; *provided* that the Debtors give notice within 15 days thereafter to the Office of the United States Trustee for the District of Delaware and any statutory committees



appointed in these chapter 11 cases; *provided, further*, that the Debtors shall open any such new Bank Account at banks that have executed a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, or at such banks that are willing to immediately execute such an agreement.

16. The Debtors shall maintain accurate and detailed records of all transfers, including intercompany transfers, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and postpetition transactions.

17. Notwithstanding anything to the contrary set forth herein, subject to the DIP Order, the DIP Documents, the DIP Budget, the DIP Claims, and any further order of this Court, the Debtors are authorized to continue Intercompany Transactions arising from or related to the operation of their businesses in the ordinary course on a postpetition basis; *provided* that the Debtors shall maintain accurate and detailed records of all such transfers and transactions, including the Intercompany Transactions, so that all transactions may be readily ascertained, traced, recorded properly and distinguished between prepetition and post-petition transactions; *provided, further*, that the Debtors shall not transfer funds from any Bank Account to a Non-Debtor Subsidiary Account without the prior written consent of the DIP ABL Agent and the DIP Term Agent (each as defined in the DIP Order), which consent shall not be unreasonably withheld in the case of the transfer of funds to a Non-Debtor Subsidiary Account in the ordinary course of business.

18. All postpetition payments from a Debtor to another Debtor or from a Debtor to a non-Debtor affiliate under any postpetition Intercompany Transactions authorized hereunder are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code (it being understood that any such claims shall be junior to the DIP Claims and any other

superpriority claim granted in the DIP Order and the Carve Out (as defined in the DIP Order) in accordance with the DIP Order and the DIP Documents). The automatic stay shall be modified solely to the extent required to enable the Debtors to continue the Intercompany Transactions.

19. Nothing contained in the Motion or this Interim Order shall be construed to: (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date; or (b) alter or impair any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date.

20. Section 345 of the Bankruptcy Code and any provision of the U.S. Trustee Guidelines requiring that the Bank Accounts be U.S. Trustee authorized depositories is waived with respect to HSBC Bank Canada; *provided*, however, that such waiver shall only be in effect for 30 days pending entry of the Final Order.

21. For banks at which the Debtors hold Bank Accounts that are party to a Uniform Depository Agreement with the Office of the United States Trustee for the District of Delaware, within 30 days of the date of entry of this Interim Order the Debtors shall: (a) contact each bank; (b) provide the bank with each of the Debtors' employer identification numbers; and (c) identify each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case, and provide the case number.

22. For banks at which the Debtors hold accounts that are not party to a Uniform Depository agreement with the Office of the United States Trustee for the District of Delaware, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of this Order. The U.S. Trustee's rights to seek further relief from this Court on

notice in the event that the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

23. Notwithstanding the Debtors' use of a consolidated Cash Management System, the Debtors shall calculate quarterly fees under 28 U.S.C. § 1930(a)(6) based on the disbursements of each Debtor, regardless of which entity pays those disbursements.

24. 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, subject to the DIP Order, the Debtors expressly reserved their rights to contest the extent, validity, or perfection or seek avoidance of all such liens.

25. 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.

26. Notwithstanding anything in the Motion or this Interim Order to the contrary, any payment made by the Debtors pursuant to the authority granted herein, as well as the exercise of any and all other rights and authorizations granted or approved hereunder, shall be subject in all respects to the DIP Order, the DIP Documents, and the DIP Budget, as applicable.

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

28. 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.

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

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

31. 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: April 6, 2018  
Wilmington, Delaware

  
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THE HONORABLE KEVIN GROSS  
UNITED STATES BANKRUPTCY JUDGE