

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

<p>In re:</p> <p>VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No. 18-10834 (KG) (Jointly Administered)</p> <p>Hearing Date: TBD Objection Deadline: TBD</p>
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**MOTION OF 50 MEADOWLAND PARKWAY LLC FOR ENTRY OF AN ORDER COMPELLING THE DEBTORS TO VACATE REJECTED LEASE PREMISES**

50 Meadowland Parkway LLC (“Landlord”), creditor in the above-captioned bankruptcy case, by and through its undersigned counsel, files this *Motion of 50 Meadowland Parkway LLC for Entry of an Order Compelling the Debtors to Vacate Rejected Lease Premises* (the “Motion”).

In support of the Motion, Landlord respectfully represents as follows:

**JURISDICTION**

1. This Court has jurisdiction to hear this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of this Motion is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory bases for the relief requested herein are 11 U.S.C. §105, §365 and §541 of the Bankruptcy Code.

**BACKGROUND**

2. Landlord and VER Technologies LLC (“Debtor” or “VER”), as tenant, were parties to that certain lease, dated January 17, 2017, as amended (the “Lease”), for non-residential real estate located at 50 Enterprise Avenue, Seacaucus, New Jersey (“Premises”). A true and correct copy of the Lease was attached as Exhibit A to Doc. No. 665.

<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); CPV Europe Investments LLC (2533); FFAST Leasing California, LLC (7857); Full Throttle Films, LLC (0487); Maxwell Bay Holdings LLC (3433); Revolution Display, LLC (6711); VER Finco, LLC (5625); VER Technologies LLC (7501); and VER Technologies MidCo LLC (7482). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.



3. On April 5, 2018 (the “Petition Date”), VER and several of its affiliates (collectively with any successors in interest, “Debtors”) filed voluntary petitions (“Petitions”) for relief under chapter 11 of title 11 of the United States Code (“Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”). The Petitions are jointly administered. Doc. No. 58.

4. On July 26, 2018, the Bankruptcy Court confirmed the *Fourth Amended Joint Chapter 11 Plan of Reorganization of VER Technologies Holdco LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (“Plan”), which was attached as Exhibit A to the *Findings of Fact, Conclusions of Law, and Order Confirming the Fourth Amended Joint Chapter 11 Plan of Reorganization of VER Technologies Holdco LLC and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* (“Confirmation Order”). Doc. No. 647.

5. Pursuant to Article V of the Plan and paragraph 29 of the Confirmation Order, the Debtors rejected the Lease on August 21, 2018 (“Effective Date”). Doc. No. 749.

6. Despite the Debtors’ voluntary decision to reject the Lease, the Debtors have refused to vacate the Premises. Instead, the Debtors continue to unlawfully use and enjoy the Premises for their own personal benefit, to Landlord’s detriment.

**RELIEF REQUESTED**

7. This Honorable Court should grant Landlord immediate possession of the Premises, which the Debtors occupy pursuant to a Lease they chose to reject on August 21, 2018.

8. By its terms, section 365 of the Bankruptcy Code provides a direct remedy upon the rejection of a lease — immediate surrender. 11 U.S.C. § 365(d)(4). As stated by the United States District Court for the District of Delaware, once the lease is rejected, the landlord’s right

to the leased premises immediately accrues. *See, e.g., Chatlos Systems, Inc. v. Kaplan*, 147 B.R. 96, 100 (D. Del. 1992) (“Following rejection of the Lease, Chatlos had no statutory, contractual or possessory rights in the Property.”) The consequences of rejection are supported by the statutory “language and the legislative history of section 365(d)(4)[, which] demonstrate that Congress did not intend for creditors to pursue state-law remedies and that requiring creditors to pursue such remedies would frustrate the statute’s purpose.” *In re U.S. Fax, Inc.*, 114 B.R. 70, 73 (E.D. Pa. 1990).

9. The Bankruptcy Court has authority to grant an order compelling the Debtor to surrender possession of the Premises. *See, e.g., In re The Deli Den, LLC*, 425 B.R. 725, 727 (Bankr. S.D. Fla. 2010) (“Neither an adversary proceeding nor relief from the automatic stay are required for the implementation of § 365(d)(4).”). The Landlord should not have to petition a state court to resolve a dispute regarding a property right that arose as a result of the Debtor’s election under section 365 of the Bankruptcy Code. *Id.* at 726-7. (“A majority of courts which have addressed this question have held that § 365(d)(4) prevails over contrary state law, and that a lessor of non-residential real property is therefore entitled to immediate possession.”) In other words, rejection under § 365(d)(4) does not require a lessor to pursue remedies in state court to effectuate an immediate surrender of the leasehold. *In re Elm Inn, Inc.*, 942 F.2d 630, 634 (9th Cir. 1991) (“[T]he plain language and purpose of section 365(d)(4), the necessarily preemptive force of the Bankruptcy Code, and the broad equitable powers of bankruptcy judges all weigh in favor of granting a surrender order to a lessor who, under the terms of the provision, clearly deserves one.”)

10. On July 16, 2018, the Debtors caused the *Notice Regarding Executory Contracts and Unexpired Leases to be Rejected Pursuant to the Plan* (“Rejection Notice”) to be served.

Doc. No. 577. The Rejection Notice identified the Lease as a contract to be rejected. *Id.*, at \*27. Pursuant to the Rejection Notice, the deadline to file rejection damages claims was August 16, 2018 (“Rejection Damages Bar Date”). Doc. No. 577, \*2. Pursuant to Section V(A) of the Plan, however, the Debtors had until the Effective Date to choose whether or not to assume or reject a lease. The Effective Date in this case occurred on August 21, 2018. Doc. No. 647 and 749.

11. By email dated July 18, 2018, Debtors’ counsel confirmed that they intended to consider the rejection damages bar date to be twenty-one days from the entry of any order confirming the plan, not twenty-one days from the Effective Date.

12. As it is nearly impossible to accurately calculate rejection damages until the Debtors vacate the Premises, beginning on approximately August 2, 2018, the Landlord’s counsel began inquiring when the Debtors intended to vacate the Premises. On approximately August 10, 2018, the Debtors’ counsel began to represent to Landlord’s counsel that the Debtors intended to assume and assign the Lease. Despite the absence of a revised assumption notice confirming this asserted intention, the Debtors’ counsel continued to make these representations until after the Rejection Damages Bar Date occurred. Accordingly, despite the Debtors’ continued use and occupancy of the Premises, the Landlord filed an amended Proof of Claim (the “Amended Claim”) including, to the best of its ability, a rejection damages calculation. The Amended Claim will have to be further amended after the Debtors finally vacate the Premises. Candidly, prior to Landlord filing its Amended Claim, Debtors’ counsel orally represented that they did not intend to enforce the August 16, 2018 Rejection Damages Bar Date (despite their prior written communication and docketed Rejection Notice to that effect).

However, no document was filed prior to the Rejection Damages Bar Date to confirm this representation so Landlord was forced to file its Amended Claim.

13. A few days later, on August 18, 2018, the Debtors indicated that they had again changed course and now intended to exclude the Lease from the list of executory contracts to be assumed in schedule 2.6(a) of the Plan.

14. In short, after a month of inquiries about when the Debtors actually intended to vacate the Premises and more than a week of representations that the Lease would be assumed, the Debtor finally elected to reject the lease on August 21, 2018. Doc. No. 647 and 749.

15. In addition to this Court's general equitable powers under section 105 of the Bankruptcy Code, it is well established that the Debtors' rejection terminates the Debtors' rights to use and occupy the Premises. Nevertheless, the Debtors continue to use and enjoy the Premises, thereby unlawfully depriving Landlord of its property. Accordingly, the Landlord, as a final resort, has sought relief from this Court to compel the Debtors to surrender the Premises.

### **CONCLUSION**

WHEREFORE, for the foregoing reasons, Landlord respectfully requests that this Honorable Court enter an Order, substantially in the proposed form filed herewith, that: a) grants the Motion; b) directs the reorganized Debtors and any successors in interest to immediately surrender the Premises to Landlord; c) compels the reorganized Debtors and any successors in interest to immediately pay: i) the costs and fees associated with this Motion; ii) the costs and fees associated with any action taken to enforce any order entered granting this Motion; and iii) \$12,047.91 per day for each day the reorganized Debtors, or any successors in interest thereto,

remain in the Premises after August 31, 2018;<sup>2</sup> and d) grants such other and further relief as the Court deems just and proper.

Dated: August 29, 2018  
Wilmington, Delaware

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<sup>2</sup> Pursuant to paragraph 24.02, when the Debtors fail to surrender the lease, they occupy the Premises at the sufferance of the Landlord “subject to all of the provisions of this Lease, except that the monthly Fixed Rent shall be twice the Fixed Rent in effect during the last month of the term, except the holdover rate for the first month if Landlord is notified and if paid prior thereto shall be 150% of such Fixed Rent.” Landlord rejected the lease on August 21, 2018, so August is the first month the Debtor occupied the Premises at the sufferance of the Landlord and September would be the second month. Landlord’s Amended Claim includes estimations of the annual amount of rent owed for fixed costs in 2018 and 2019. To reach the daily rate, the Landlord added the amount of the fixed costs owed under the terms of the Lease for 2018, including annual expenses already paid, (\$4,397,488.82) and then divided by 365 (\$12,047.91).

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

In re:  VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , <sup>1</sup>  Debtors.	Chapter 11  Case No. 18-10834 (KG) (Jointly Administered)  Hearing Date: TBD Objection Deadline: TBD.
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**NOTICE OF MOTION OF 50 MEADOWLAND PARKWAY LLC FOR ENTRY OF AN ORDER COMPELLING THE DEBTORS TO VACATE REJECTED LEASE PREMISES**

**PLEASE TAKE NOTICE** that 50 Meadowland Parkway LLC (“Landlord”), by and through its counsel, filed the *Motion of 50 Meadowland Parkway LLC for Entry of an Order Compelling the Debtors to Vacate Rejected Lease Premises* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3<sup>rd</sup> Floor, Wilmington, Delaware 19801 (the “Bankruptcy Court”). You are being served a copy of the Motion in conjunction with this Notice.

**PLEASE TAKE FURTHER NOTICE** that a hearing on the Motion will be held **on a date to be determined**, at the Bankruptcy Court, 824 Market Street, 6th Floor, Courtroom 3, Wilmington, Delaware 19801.

**PLEASE TAKE FURTHER NOTICE** that any objections to the Motion must be made in writing, filed with the Bankruptcy Court, and served upon, so as to be actually received by counsel to Landlord, on or before **a date to be determined**.

**PLEASE TAKE FURTHER NOTICE** that at the same time, you must also serve a copy of the response upon Landlord’s counsel at the address provided below.

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<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); CPV Europe Investments LLC (2533); FFAST Leasing California, LLC (7857); Full Throttle Films, LLC (0487); Maxwell Bay Holdings LLC (3433); Revolution Display, LLC (6711); VER Finco, LLC (5625); VER Technologies LLC (7501); and VER Technologies MidCo LLC (7482). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

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**PLEASE TAKE FURTHER NOTICE** that if no objection or other response to the Motion is filed, the Bankruptcy Court may grant the relief sought in the Motion without further notice or hearing.

Dated: August 29, 2018  
Wilmington, Delaware

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

In re:  VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , <sup>1</sup>  <p style="text-align: center;">Debtor.</p>	Chapter 11  Case No. 18-10834 (KG) (Jointly Administered)  Related Docket Nos. _____
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**ORDER GRANTING MOTION OF 50 MEADOWLAND PARKWAY LLC FOR ENTRY OF AN ORDER COMPELLING DEBTORS TO VACATE PREMISES**

Upon review and consideration of the Motion of 50 Meadowland Parkway LLC (“Landlord”) for entry of an Order Compelling Debtors to Vacate Premises (the “Motion”),<sup>2</sup> and any responses thereto; and sufficient cause appearing therefor; it is hereby

ORDERED that the Motion is GRANTED as set forth herein; and it is further

ORDERED that the reorganized Debtors, including any successors in interests thereto, must immediately surrender the Premises to Landlord; and it is further

ORDERED that the reorganized Debtors, including any successors in interests thereto, shall cause Landlord to receive, on a weekly basis until paid in full: i) \$\_\_\_\_\_ representing the costs and fees associated with the Motion; ii) any and all costs and fees associated with any action taken to enforce this Order; and iii) \$12,047.91 per day for each day the reorganized Debtors, including any successors in interests thereto, remain in the Premises after August 31, 2018.

Dated: \_\_\_\_\_, 2018  
Wilmington, DE

\_\_\_\_\_  
The Honorable Kevin Gross  
United States Bankruptcy Judge

<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); CPV Europe Investments LLC (2533); FFAST Leasing California, LLC (7857); Full Throttle Films, LLC (0487); Maxwell Bay Holdings LLC (3433); Revolution Display, LLC (6711); VER Finco, LLC (5625); VER Technologies LLC (7501); and VER Technologies MidCo LLC (7482). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

<sup>2</sup> All capitalized terms used but not otherwise defined herein shall have the same meaning ascribed to them as in the Motion.

**CERTIFICATE OF SERVICE**

I, Shannon D. Humiston, certify that in addition to the notice and service provided through the Court's ECF system, on August 29, 2018, I caused a true and correct copy of the *Motion of 50 Meadowland Parkway LLC for Entry of an Order Compelling the Debtors to Vacate Rejected Lease Premises* to be served via First Class Mail, postage pre-paid to the attached service list.

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