

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

In re

OPEN ROAD FILMS, LLC, a Delaware
limited liability company, *et al.*,¹

Debtors.

Chapter 11

Case No.: 18-12012 (LSS)

(Jointly Administered)

Ref. Docket No. 5

INTERIM ORDER (I) AUTHORIZING CONTINUED USE OF CASH MANAGEMENT SYSTEM, (II) AUTHORIZING THE CONTINUATION OF INTERCOMPANY TRANSACTIONS, (III) GRANTING ADMINISTRATIVE PRIORITY STATUS TO POSTPETITION INTERCOMPANY TRANSACTIONS, (IV) AUTHORIZING USE OF PREPETITION BANK ACCOUNTS, ACCOUNT CONTROL AGREEMENT, AND CERTAIN PAYMENT METHODS, (V) EXTENDING TIME TO COMPLY WITH REQUIREMENTS OF 11 U.S.C. § 345(b), AND (VI) SCHEDULING FINAL HEARING

Upon the motion (the "Motion")² of Open Road Films, LLC and its affiliated debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases") for entry of interim and final orders, pursuant to sections 105, 345, 363, 364(b), and 503(b) of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code"), Rule 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), (i) authorizing the Debtors' continued use of their existing cash management system, (ii) authorizing the continuation of Intercompany Transactions and Affiliate Transactions, (iii) granting administrative priority status to

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Open Road Films, LLC (4435-Del.); Open Road Releasing, LLC (4736-Del.); OR Productions LLC (5873-Del.); Briarcliff LLC (7304-Del.); Open Road International LLC (4109-Del.); and Empire Productions LLC (9375-Del.). The Debtors' address is 2049 Century Park East, 4th Floor, Los Angeles, CA 90067.

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

postpetition Intercompany Claims and Affiliate Claims, (iv) authorizing the Debtors to continue using prepetition bank accounts and account control agreements and using debit, wire, check, and ACH payments, (v) granting the Debtors a thirty (30) day extension of time to comply with the requirements of Bankruptcy Code section 345(b), without prejudice to the right to seek a further extension, and (vi) scheduling final hearing; and upon consideration of the First Day Declaration and the record of these Cases; and it appearing that the Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 1334 and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that the Motion is a core matter pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and it appearing that venue of these Cases and of the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that due and adequate notice of the Motion has been given under the circumstances, and that no other or further notice need be given; and it appearing that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, and good and sufficient cause appearing for the relief set forth in this Order, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis, as set forth herein.
2. A final hearing (the "Final Hearing") to consider entry of a final order (the "Final Order") on the Motion is scheduled for October 2, 2018 at 2:00 p.m. (prevailing Eastern time) before the Court. Any objections or responses to entry of the Final Order shall be filed on or before 4:00 p.m. (prevailing Eastern time) on September 25, 2018 and shall be served upon (i) proposed counsel to the Debtors, (a) Klee, Tuchin, Bogdanoff

& Stern LLP, 1999 Avenue of the Stars, 39th Floor, Los Angeles, California 90067, Attn: Michael L. Tuchin, Esq. and Jonathan M. Weiss, Esq., and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801, Attn: Michael R. Nestor, Esq. and Robert F. Poppiti, Jr. Esq.; (ii) counsel to the Agent, Paul Hastings LLP (a) 1999 Avenue of the Stars, 27th Floor, Los Angeles, California 90067, Attn: Susan Williams and (b) 200 Park Avenue, New York, New York 10166, Attn: Andrew V. Tenzer; (iii) counsel to any statutory committee appointed in these Cases; and (iv) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Linda Richenderfer, Esq. If no objections to entry of the Final Order are timely received, the Court may enter the Final Order without further notice or hearing.

3. The Debtors are authorized, in their sole discretion, to continue operating the Cash Management System in the ordinary course of business postpetition, except as otherwise set forth herein.

4. The Debtors are authorized, in their sole discretion, to continue to engage in the Intercompany Transactions and Affiliate Transaction and to continue to incur Intercompany Claims and Affiliate Claims in the ordinary course of business postpetition; *provided, however*, that during the interim period from the Petition Date until the entry of a final order on the Motion, unless otherwise ordered by the Court or agreed to by the Debtors, the U.S. Trustee and the Agent, the Debtors shall not make cash payments on account of postpetition Affiliate Claims in excess of \$700,000 in the aggregate. The Debtors shall maintain accurate and detailed records in the ordinary course of business reflecting transfers of cash, if any, including for Intercompany Transactions and Affiliate Transactions. Unless otherwise ordered by the Court, all

Intercompany Claims and Affiliate Claims arising after the Petition Date shall be accorded administrative expense priority in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code. The Debtors shall not pay any non-debtor affiliates on account of prepetition Affiliate Claims.

5. The Debtors are further authorized, in their sole discretion, to: (i) continue to use, with the same account numbers, all of the Bank Accounts in existence as of the Petition Date, including those accounts identified on **Exhibit B** and **Exhibit C** to the Motion; (ii) use, in their present form, all Business Forms related to the Bank Accounts existing immediately before the Petition Date, without reference to the Debtors' status as debtors in possession; (iii) treat the Bank Accounts for all purposes as accounts of the Debtors as debtors-in-possession; (iv) deposit funds in and withdraw funds from the Bank Accounts by all usual means, including checks, wire transfers, ACH payments, and other debits; and (v) pay any ordinary course prepetition or postpetition bank fees incurred in connection with the Bank Accounts, and to otherwise perform their obligations under the documents governing the Bank Accounts.

6. All Banks at which the Bank Accounts are maintained are authorized to continue to maintain, service, and administer the Bank Accounts as accounts of debtors in possession, without interruption and in the ordinary course of business. In this regard, the Banks are authorized to receive, process, honor, and pay any and all checks, ACH payments, and other instructions, and drafts payable through, drawn, or directed on the Bank Accounts after the Petition Date as instructed by the Debtors.

7. All Banks provided with notice of this 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.

8. The Deposit Account Control Agreements shall be maintained and shall continue to govern the postpetition cash management relationship between the Debtors and the banks party thereto, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect, and the Debtors, the secured parties thereto, or the banks party thereto may, without further Order of this Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to terms of those certain existing Deposit Account Control Agreements, including, without limitation, the opening and closing of bank accounts; *provided, however*, that nothing contained herein shall constitute an assumption of the Deposit Account Control Agreements pursuant to section 365 of the Bankruptcy Code.

9. For any accounts that are not subject to a Deposit Account Control Agreement, those certain existing deposit agreements between the Debtors and the depository and disbursement banks party thereto shall continue to govern the postpetition cash management relationship between the Debtors and the bank party thereto, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect. Either the Debtors or the banks party thereto may, without further order of the Court, implement changes to the cash management systems and procedures in the ordinary course of business pursuant to the terms of those certain existing deposit agreements, including, without limitation, the opening and closing of bank accounts.

10. In the course of providing cash management services to the Debtors, any Bank, without further order of this Court, is authorized to charge, and the Debtors are authorized to pay

or honor, both prepetition and postpetition service and other fees, costs, charges, and expenses to which the Banks are entitled under the terms and in accordance with their contractual arrangements with the Debtors.

11. Notwithstanding any other provision of this Order, any Bank may rely on the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors before the Petition Date should be honored pursuant to any order of this Court, and any Bank that honors a prepetition check or other item drawn on any account that is the subject of this Order (i) at the direction of the Debtors, (ii) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of an innocent mistake made despite the above-described protective measures, shall neither be deemed to be in violation of this Order nor be liable to the Debtors or their estates on their account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Order. Such Banks shall not have any liability to any party for relying on such representations by the Debtors.

12. Any Banks are further authorized to (i) honor the Debtors' directions with respect to the opening and closing of any Bank Account, and (ii) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; provided, in each case, that the Debtors' Banks shall not have any liability to any party for relying on such representations.

13. 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 fifteen (15) days of the date of entry of this Order the Debtors shall (i) contact each bank, (ii) provide the bank with each of the Debtors' employer identification numbers, and (iii) identify

each of their bank accounts held at such banks as being held by a debtor in possession in a bankruptcy case.

14. 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 thirty (30) 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.

15. The Debtors are authorized to use their existing check stock; *provided, however,* provided that once the Debtors' existing checks have been used, if the Debtors require additional checks, the Debtors shall, when reordering such checks, require the designation "Debtor in Possession" and the corresponding lead bankruptcy case number on all checks; *provided further, however,* that with respect to any checks which the Debtors or their agents print themselves, within ten (10) days of the date of entry of this Order, the Debtors shall begin printing on such checks the designation "Debtor in Possession" and the corresponding lead bankruptcy case number.

16. The Debtors shall have a thirty (30) day extension of time from the date of this Order to comply with the requirements of section 345 of the Bankruptcy Code, to the extent applicable, without prejudice to the Debtors' rights to seek a further extension of time or to seek to deviate from the requirements of section 345 of the Bankruptcy Code on a final basis.

17. Notwithstanding anything contained herein, despite 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 attributable to each Debtor, even if one Debtor pays certain disbursements on behalf of the other Debtors.

18. Each of the Debtors' Banks is authorized to debit the Debtors' accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Debtors' accounts which are cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (ii) all checks or other items deposited in one of Debtors' accounts with such Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (iii) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Bank as service charges for the maintenance of the Cash Management System.

19. Nothing contained herein shall prevent the Debtors from closing any Bank Account(s) or opening any additional bank accounts, as they may deem necessary and appropriate; provided, that any such additional bank accounts may be opened only with banks that are party to a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such agreement. Any relevant bank is authorized to honor the Debtors' requests to close or open such Bank Accounts or additional bank accounts, as the case may be; provided, that, notice of the opening or closure of any account shall be given to the U.S. Trustee and any statutory committee appointed in these Cases within fifteen (15) days.

20. Notwithstanding the relief granted herein and any actions taken hereunder, nothing contained in the Motion or this Order shall constitute, nor is it intended to constitute, an admission as to the validity or priority of any claim or lien against the Debtors or a waiver of the

Debtors' rights to dispute any claim or lien, a promise to pay any claim, or the assumption of any agreement pursuant to section 365 of the Bankruptcy Code.

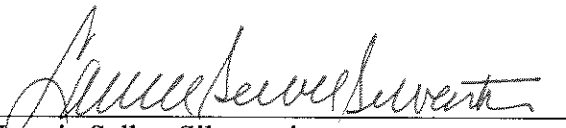
21. Bankruptcy Rule 6003(b) has been satisfied. The requirements of Bankruptcy Rule 6004(a), to the extent applicable, are waived under the circumstances.

22. Notwithstanding any provision in the Bankruptcy Rules to the contrary: (i) this Order shall be effective immediately and enforceable upon its entry; (ii) the Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this order; and (iii) the Debtors are authorized and empowered, and may in their discretion and without further delay, take any action necessary or appropriate to implement this Order.

23. Within three (3) business days from the date of entry of this Order, the Debtors will serve a copy of this Order to the Banks at which the Bank Accounts are maintained and will request that each Bank internally code each of the Bank Accounts as "debtor in possession" accounts.

24. The Court retains jurisdiction and power with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware
September 7, 2018


Laurie Selber Silverstein
United States Bankruptcy Judge