

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re

OPEN ROAD FILMS, LLC, a Delaware  
limited liability Debtors, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No.: 18-12012 (LSS)

(Jointly Administered)

Ref. Docket Nos. 63, 93, and 96

**ORDER, PURSUANT TO 11 U.S.C. §§ 105(a) AND 363(b), AUTHORIZING THE DEBTORS TO (I) EMPLOY AND RETAIN FTI CONSULTING, INC. TO PROVIDE THE DEBTORS A CHIEF RESTRUCTURING OFFICER AND CERTAIN ADDITIONAL PERSONNEL AND (II) DESIGNATE AMIR AGAM AS CHIEF RESTRUCTURING OFFICER FOR THE DEBTORS NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “Application”)<sup>2</sup> of Open Road Films, LLC and its affiliated debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”) seeking authorization to (i) employ and retain FTI Consulting, Inc. (“FTI”) to provide the Debtors with a Chief Restructuring Officer (“CRO”) and certain additional supportive staff of FTI to assist the CRO (the “FTI Professionals”), and (ii) designate Amir Agam as CRO in the Cases *nunc pro tunc* to the Petition Date; and upon consideration of the Agam Declaration submitted concurrently with the Application, and as supplemented prior to the entry of this Order [Docket No. 93], and the First Day Declaration also submitted by Amir Agam; and the Court being satisfied that the employment of FTI is necessary and in the best interests of the Debtors and the Debtors’ estates; and this Court having jurisdiction over this matter under 28 U.S.C. §§

<sup>1</sup> 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.

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

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 this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), 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 Application in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Application having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and this Court having reviewed the Application; and after due deliberation and good and sufficient cause appearing therefor, it is hereby:

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Application is GRANTED, as set forth herein.
2. Notwithstanding anything to the contrary in the Engagement Letter:
  - a. the Debtors shall not reimburse FTI for allocated expenses;
  - b. FTI shall not charge the Debtors any fee if the Debtors hire an FTI employee who worked on this engagement during the engagement and for a period of one year thereafter;
  - c. there shall be no limitation of liability for FTI;
  - d. fees shall not be paid in advance as contemplated by page 5 of the Engagement Letter under the heading “Hourly Temporary Staff”; and
  - e. FTICA shall not perform any services for the Debtors.
3. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtors are authorized to employ and retain FTI to provide the Debtors with a CRO and Hourly Temporary Staff, and to designate Amir Agam as CRO for the Debtors, *nunc pro tunc* to the Petition Date, on the terms set forth in the Engagement Letter, as modified by this Order and subject to the following terms, which apply notwithstanding anything to the contrary in the Engagement Letter, the Application, or any of the exhibits related thereto:

- a. FTI and its affiliates shall not act in any other capacity (for example, and without limitation, as a financial advisor, claims agent/claims administrator, or investor/acquirer) in connection with the Cases.
- b. In the event the Debtors seek to have FTI personnel assume executive officer positions that are different than the positions disclosed in the Application, or to materially change the terms of the engagement by either (i) modifying the functions of personnel, (ii) adding new executive officer positions or (iii) altering or expanding the scope of the engagement, an application or motion to modify the retention shall be filed.
- c. No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of the above-captioned Debtors during the pendency of the Cases.
- d. The Debtors are authorized, but not directed, to pay, in the ordinary course of business, in accordance with the Engagement Letter, all amounts invoiced by FTI for fees and expenses incurred in connection with FTI's engagement under this Order.
- e. FTI shall file with this Court and provide copies to the United States Trustee ("U.S. Trustee") and all official committees appointed in the Cases, reports of compensation earned, expenses incurred, and staffing on the Cases (the "Compensation and Staffing Report") on a monthly basis by the 30<sup>th</sup> of each month for the previous month. The Compensation and Staffing Report shall include summary charts describing the name, hourly rate, number of hours billed, and services provided by each FTI Professional; the aggregate compensation earned by FTI; the hours worked and fees by activity category; and the expenses incurred by FTI. In addition, each FTI Professional shall maintain and the Compensation and Staffing Reports shall include (i) detailed time entries identifying activities or issues he or she addressed on a daily basis, grouped to the nearest one-tenth of an hour (0.1 hour) for each activity category each day and the corresponding charge (time multiplied by hourly rate) for each activity category; and (ii) detailed expense records. The first Compensation and Staffing Report shall cover the period from the Petition Date through and including September 30, 2018, and shall be submitted within thirty (30) days thereafter.
- f. Objections to Compensation and Staffing Reports shall be filed on or before twenty-one (21) days from service of a Compensation and Staffing Report. All compensation and staffing shall be subject to review by the Court, and in the event an objection is filed and remains unresolved by agreement of the objecting party, the Debtors and FTI: (i) all rights of the objecting party, the Debtors, and FTI are reserved; and (ii) the Debtors shall deduct an amount equal to the unresolved amount objected to from the next payment to FTI for fees and expenses incurred in connection with FTI's engagement under this Order until such objection is resolved, either

by agreement of the objecting party, the Debtors and FTI or by order of this Court.

- g. The success fees, transactions fees, or other back-end fees (including but not limited to the “Additional Fee” or any other additional fees referenced in the Engagement Letter) shall be approved by the Court at the conclusion of the Cases on a reasonableness standard and are not being pre-approved by entry of this Order. No success fee, transaction fee or back-end fee shall be sought upon conversion of the case, dismissal of the case for cause, or appointment of a trustee.
- h. The Debtors are permitted to indemnify those persons serving as executive officers on the same terms as provided to the Debtors’ other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors’ D&O policy.
- i. There shall be no indemnification of FTI, its affiliates or non-officer employees of FTI.
- j. For a period of three years after the conclusion of the engagement, neither the CRO, FTI nor any of its affiliates shall make any investments in the Debtors or any reorganized Debtor.
- k. FTI shall disclose any and all facts that may have a bearing on whether FTI, its affiliates, and/or any individuals working on the engagement hold or represent any interest adverse to the Debtors and their estates. The obligation to disclose identified in this subparagraph is a continuing obligation of FTI.

4. FTI is authorized to apply the Retainer to satisfy any unbilled or other prepetition remaining fees and expenses of which FTI becomes aware. The remaining balance of the Retainer shall be applied to FTI’s final request for fees and expenses in connection with the Cases as set forth in its final Compensation and Staffing Report. In the event the Retainer exceeds the unpaid fees and expenses, FTI shall remit the excess to the Debtors or their successors, as applicable.

5. To the extent there is inconsistency between the terms of the Engagement Letter, the Application, and this Order, the terms of this Order shall govern.

6. The Debtors are authorized to take all action necessary or appropriate to effectuate the relief granted pursuant to this Order.

7. This Court shall retain jurisdiction and power to hear and determine all matters arising from or related to the implementation of this Order.



**LAURIE SELBER SILVERSTEIN**  
**UNITED STATES BANKRUPTCY JUDGE**

**Dated: October 2nd, 2018**  
**Wilmington, Delaware**