

EXHIBIT B

Agam Declaration

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)

**DECLARATION OF AMIR AGAM IN SUPPORT OF DEBTORS' MOTION FOR
ENTRY OF AN ORDER AUTHORIZING THE IMPLEMENTATION OF A KEY
EMPLOYEE RETENTION PROGRAM, APPROVING THE TERMS
THEREOF, AND GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. § 1746, I, Amir Agam, hereby declare under penalty of perjury that the following is true and correct to the best of my knowledge and belief:

1. I am a Senior Managing Director at FTI Consulting, Inc. ("FTI"), and I have been appointed to serve and am currently serving as the Chief Restructuring Officer ("CRO") for Open Road Films, LLC and its affiliated debtors and debtors in possession (collectively, the "Debtors"), in the above-captioned chapter 11 cases (the "Cases"). I am familiar with the day-to-day operations and business and financial affairs of the Debtors, having served in my current capacity as CRO for the Debtors since August 3, 2018.

2. I submit this declaration (this "Declaration") in support of the *Debtors' Motion for Entry of an Order Authorizing the Implementation of a Key Employee Retention Program, Approving the Terms Thereof, and Granting Related Relief* (the "Motion").² I have reviewed the Motion and am familiar with the information contained therein.

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 All capitalized terms used and not defined herein shall have the meanings ascribed to them in the Motion.

3. Except as otherwise indicated herein, all facts set forth in this Declaration are based on my personal knowledge; my discussions with other members of the Debtors' management, with my colleagues who are also working on this matter, and with the Debtors' professional advisors; my review of the KERP and other relevant documents; or my opinion based on my experience, knowledge, and information concerning the Debtors' operations and financial condition and companies in chapter 11.

4. If called to testify, I would testify competently to the facts set forth in this Declaration.

I. The KERP

5. Pursuant to the Motion, the Debtors are seeking authority to implement the KERP to help ensure that certain valuable non-insider members of the Debtors' workforce, who are essential to the continuing operation of the Debtors' business, the ongoing process for the sale of substantially all of the Debtors' assets (the "Sale"), and the Cases generally, are properly motivated to continue working for the Debtors, and to maximize the value of the Debtors and their estates for the benefit of their stakeholders.

6. During the process of developing the KERP, the Debtors carefully analyzed their workforce to determine which non-insider members of their workforce would be appropriate to include in the KERP considering, among other things, the importance of achieving a successful marketing and Sale process. The Debtors selected fourteen (14) important non-insider members of the Debtors' workforce to participate in the KERP (collectively, the "KERP Participants"). The Debtors also consulted with the professional advisors to the Agent and the Committee as the Debtors were formulating the KERP.

7. The KERP Participants include individuals that perform all or substantial portions of their work for the Debtors, but are formally employed by an affiliated non-debtor entity. Some of the KERP participants have their time allocated to render services between the Debtors and non-debtor affiliates, as more fully described in the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Payment of Limited Prepetition Employee Benefits and Confirming Right to Continue Employee Benefits on Postpetition Basis, (II) Authorizing Payment of Reimbursement for Prepetition Expenses, (III) Authorizing Payment of Withholding and Payroll-Related Taxes, (IV) Authorizing Banks to Honor Prepetition Checks and Fund Transfers for Authorized Payments, and (V) Scheduling Final Hearing* [Docket No. 4].

8. Each KERP Participant has a designated KERP amount (a "KERP Payment") based on the assessment by the Debtors' management and me, in my role as Chief Restructuring Officer, of the appropriate amount considering factors such as (a) that KERP Participant's bi-weekly salary, (b) the percentage of that KERP Participant's work spent working for the Debtors, and (c) the nature and criticality of the KERP Participant's work.

9. Under the KERP, if earned, KERP Payments range from approximately 6% to 17% of the respective KERP Participant's annual base salary. The average base salary for the KERP Participants (allocated across all of the Debtors and their non-debtor affiliates) is approximately \$130,000, and the average KERP Payment, if earned, is approximately \$15,000. The aggregate amount of the potential KERP Payments is approximately \$206,000, and the total potential cost of the KERP to the Debtors' estates, including the anticipated payroll taxes related to the KERP Payments, is estimated at roughly \$222,000.

10. The KERP Payments are earned if the KERP Participants remain a member of the Debtors' workforce through and including the date that is thirty (30) days after the closing of the

Sale (such date, the “Effective Date”). If earned, the KERP Payments will be paid in cash in the Debtors’ first regularly scheduled payroll that is not less than seven (7) days after the Effective Date (such date, the “KERP Payment Date”). If any KERP Participant voluntarily leaves or is terminated for cause prior to the Effective Date, such KERP Participant shall forfeit his or her KERP Payment. If a KERP Participant is terminated without “cause” (which is defined in the KERP) prior to the Effective Date, such KERP Participant shall receive his or her KERP Payment on the KERP Payment Date.

11. In the event that any KERP Participant forfeits or otherwise becomes ineligible to receive the KERP Participant’s KERP Payment under the terms set forth herein, the Debtors seek authority to reallocate any KERP amounts associated with such participant to other valuable non-insider members of the Debtors’ workforce. I believe that such relief will provide the Debtors with the necessary flexibility to ensure that members of their workforce are properly motivated to continue working for the Debtors and to achieve a successful outcome in connection with the Sale. The flexibility to re-allocate unearned KERP Payments will also allow the Debtors to address potential retention issues arising in the future, without incurring unnecessary additional costs.

12. In my opinion, the terms of the KERP are necessary and appropriate, particularly in light of the importance of the KERP Participants to the Debtors’ business operations and their chapter 11 efforts, and will help to ensure the retention of the KERP Participants at a critical time for the Debtors and their estates. I also believe that key employee retention plans, such as the KERP, are commonplace in chapter 11, particularly in liquidating cases such as these Cases. Based upon my general knowledge, as well as that of my colleagues working on this matter, I believe that the KERP Payments are generally within restructuring industry norms.

II. The Debtors' Need for the KERP

13. It is my belief and business judgment that the KERP Participants may be faced with significant pressure to leave the Debtors' workforce during these Cases given the impending sale of the Debtors' assets, and the distinct possibility that the KERP Participants may not have opportunities for continued employment with the Debtors. Many of the KERP Participants have developed valuable institutional knowledge regarding the Debtors' business operations that would be difficult, time-consuming, and expensive to replace, especially at this critical juncture, on an expedited basis. Retention of the KERP Participants through the consummation of the Sale, and for an appropriate period of time thereafter, is essential to maximizing estate value for the benefit of all stakeholders in these Cases.

14. I believe that the KERP will help to ensure that the KERP Participants, each a valuable, non-insider member of the Debtors' workforce, who is important to the Debtors' chapter 11 and sale efforts, will remain employed through the closing of the Sale and for such time thereafter as is necessary to commence an orderly wind-down of the Debtors' estates. Further, I believe that the relatively modest KERP Payments are reasonable in light of the importance of the KERP Participants to the Debtors' business operations, the Sale process, and these Cases generally, and that the costs of the KERP are significantly outweighed by its benefits.

15. For these reasons, I believe that the requested relief in the Motion is necessary, prudent and a sound exercise of the Debtors' business judgment.

III. The KERP Participants Are Not Insiders of the Debtors

16. As an initial matter, none of the KERP Participants are a member of the Debtors' Board of Directors (the "Board"), or have been elected or appointed to their positions by the

Board. The KERP Participants do not attend Board meetings, do not have the authority to make company-wide decisions for the Debtors, and do not report to the Debtors' Board. Furthermore, the KERP Participants' duties do not extend to the Debtors' business operations as a whole, but rather to specific and discreet areas of the Debtors' operations.

17. Each of the KERP Participants with the title of "director," "vice president," "manager," "executive vice president" or the like, which are common in the Debtors' industry, reports to a more senior member of the Debtors' workforce, and must obtain approval from appropriate senior personnel before taking any significant action with respect to, among other things, the Debtors' corporate policies or the disposition of significant assets. Therefore, while the titles of certain of the KERP Participants reflect their individual roles and functions, they do not confer officer status upon these employees, and the KERP Participants do not take part in the direction or management of the Debtors' overall business operations, notwithstanding the valuable role that they play in the Debtors' organization.

18. None of the KERP Participants are relatives of any director, officer, or person in control of the Debtors. None of the KERP Participant had any role in or provided any input with respect to the development or proposed implementation of the KERP.

19. In short, given their intermediate positions in the corporate chain of command and the limited extent of their corporate authority, I believe and am advised that none of the KERP Participants are "insiders," as that term is defined in the Bankruptcy Code.

20. In light of the foregoing, for the reasons stated herein and in the Motion, I believe that the relief sought in the Motion should be granted by the Court, as it represents a key step in the Debtors' chapter 11 efforts and an appropriate exercise of their business judgement.

Executed October 19, 2018
Los Angeles, California

By: /s/ Amir Agam

Amir Agam
Chief Restructuring Officer