

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re

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

Debtors.

Chapter 11

Case No.: 18-12012 (LSS)

(Jointly Administered)

**Hearing Date:**

**November 9, 2018 at 10:00 a.m. (ET)**<sup>2</sup>

**DEBTORS' REPLY IN SUPPORT OF MOTION FOR ENTRY OF AN ORDER,  
PURSUANT TO BANKRUPTCY CODE SECTION 365, AUTHORIZING  
REJECTION OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Open Road Films, LLC ("Open Road Films") and its affiliated debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases") hereby reply in support of the *Debtors' Motion for Entry of an Order, Pursuant to Bankruptcy Code Section 365, Authorizing Rejection of Executory Contracts and Unexpired Leases* [Docket No. 84] (the "Motion") and in response to the objection [Docket No. 152] (the "Objection") filed by Bryce Campbell (the "Objector"). In support of this Reply, the Debtors rely on the *Declaration of Amir Agam* appended as **Exhibit A** hereto and respectfully represent as follows:

**I. PRELIMINARY STATEMENT**

1. There is a fundamental difference under the Bankruptcy Code between the determinations of (i) whether a contract may be rejected and (ii) whether any claims asserted

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<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> **TO THE EXTENT THAT THE OBJECTOR WISHES TO PARTICIPATE TELEPHONICALLY IN THE HEARING ON THE MOTION, THE OBJECTION AND THIS REPLY, ARRANGEMENTS CAN BE MADE THROUGH COURT-CALL AT (866) 582-6878, AND THE UNDERSIGNED COUNSEL FOR THE DEBTORS (IAN J. BAMBRICK OF YOUNG CONAWAY STARGATT AND TAYLOR, LLP) MAY BE CONTACTED BY THE OBJECTOR FOR ASSISTANCE IN MAKING ANY SUCH ARRANGEMENTS.**

under a rejected contract are valid. By the Motion, the Debtors sought only the former—an order of this Court authorizing the rejection of the Objector’s contract. The Objection, however, includes no justification for why that request should be denied. Instead, the Objection focuses solely on the latter—listing numerous alleged claims arising out of the subject contract. Although the Debtors disagree with those allegations, that is simply not the issue at hand, and the Objector may assert any such claims at the appropriate time and in the appropriate manner.<sup>3</sup> Rejection of the underlying contract, however, has been amply supported by the Debtors’ business judgment and should therefore be granted.

## II. REPLY

2. Rejection of an executory contract under Bankruptcy Code section 365(a) is appropriate where rejection would benefit the estate. *See L.R.S.C. Co. v. Rickel Home Ctrs., Inc. (In re Rickel Home Ctrs., Inc.)*, 209 F.3d 291, 298 (3d Cir. 2000); *Sharon Steel Corp. v. Nat’l Fuel Gas Distrib. Corp.*, 872 F.2d 36, 39 (3d Cir. 1989). The decision to assume or reject an executory contract or unexpired lease is a matter within the “business judgment” of the debtor. *Sharon Steel Corp.*, 872 F.2d at 39-40 (“propriety of trustee’s decision to reject contract measured under traditional ‘business judgment test’” (citing *In re Wheeling-Pittsburgh Steel Corp.*, 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987)); *see also Delightful Music Ltd. v. Taylor (In re Taylor)*, 913 F.2d 102, 107 (3d Cir. 1990); *Computer Sales Int’l, Inc. v. Fed. Mogul (In re Fed. Mogul Global, Inc.)*, 293 B.R. 124, 126 (D. Del. 2003); *In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003).

3. If the debtor’s business judgment has been reasonably exercised, a court should approve the assumption or rejection of an executory contract. *See, e.g., NLRB v. Bildisco &*

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<sup>3</sup> Prior to filing this Reply, counsel for the Debtors contacted the Objector to make this clear. However, the Objector indicated that he wanted to move forward with his Objection.

*Bildisco*, 465 U.S. 513, 523 (1984); *In re Fed. Mogul Global, Inc.*, 293 B.R. at 126. In applying the business judgment standard, courts show great deference to the debtor's decisions to reject. *See e.g., Bildisco & Bildisco*, 465 U.S. at 523; *In re Armstrong World Indus., Inc.*, 348 B.R. 136, 162 (D. Del. 2006) ("Courts have uniformly deferred to the business judgment of the debtor to determine whether the rejection of an executory contract or unexpired lease by the debtor is appropriate under section 365(a) of the Bankruptcy Code."); *In re Fed. Mogul Global, Inc.*, 293 B.R. at 126 (holding that a court should approve a debtor's decision to reject a contract unless the decision is the product of bad faith or a gross abuse of discretion); *Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) ("court approval under Section 365(a) ... except in extraordinary situations, should be granted as a matter of course"). *Cf. Comm. of Asbestos-Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a debtor's management decisions" and upon articulation of "a reasonable basis for its business decisions," "courts will generally not entertain objections to the debtor's conduct.").

4. Here, the Debtors' decision to reject the Objector's Employment Agreement, dated July 11, 2011, effective *nunc pro tunc* to the Petition Date, represents a sound exercise of the Debtors' business judgment. Agam Decl. ¶ 3. The Objector was formerly an employee of Debtor Open Road Films in its theatrical distribution group. *Id.* Prior to the Petition Date, the Debtors undertook a reduction in force pursuant to which approximately 37 former employees (including shared employees of non-Debtor affiliates who performed work for the Debtors) were terminated in the aggregate. *Id.* Those terminated included the majority of the Debtors' theatrical distribution group. The Objector's employment contract was terminated, effective as of August 28, 2018, as part of this prepetition reduction in force, because the Debtors

determined, in the exercise of their reasonable business judgment, that the services of the Objector would no longer be necessary to the Debtors. *Id.* Upon termination, the Objector received a final paycheck in the amount of \$2,962.31 in respect of wages for the pay period from August 18, 2018 through August 28, 2018. *Id.* Although the Objector's contract was terminated prior to the Petition Date, the Debtors nevertheless included the Employment Agreement in the Motion out of an abundance of caution, to the extent that it was an executory contract as of the Petition Date, to ensure that no unnecessary administrative expenses would become owing in respect of an agreement that was unnecessary to the Debtors' ongoing business operations.

5. The Objection does not attempt to justify why rejection of the Employment Agreement is not proper (nor can it). Rather, the Objection articulates certain asserted claims against the Debtors under the Employment Agreement—including for alleged vacation pay and severance pay. The Objection also cites the alleged “unfair treatment of staff” by the Debtors, including management's alleged “willful intent to diminish and threaten [the Objector's] livelihood.” Although the Debtors do not agree with these assertions (and reserve all rights with respect to these and other issues raised in the Objection), the Objector is able to assert those claims at the appropriate time and in the appropriate manner. However, for purposes of the matter presently before the Court, nothing in the Objection constitutes grounds to deny the Debtors' business decision to reject the Employment Agreement.

6. In light of the facts and circumstances presented, the Debtors submit that rejection of the Employment Agreement, under section 365(a) of the Bankruptcy Code, *nunc pro tunc* to the Petition Date, benefits the estates, is a sound and prudent exercise of business judgment, and is in the best interests of the Debtors, their estates, and their creditors. *Id.* Accordingly, the Objection should be overruled.

### III. HEARING ON THE MOTION, THE OBJECTION AND THIS REPLY

7. ***A HEARING TO CONSIDER THE MOTION, THE OBJECTION AND THIS REPLY WILL BE HELD ON NOVEMBER 9, 2018 AT 10:00 A.M. (ET) BEFORE THE HONORABLE LAURIE SELBER SILVERSTEIN, AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 6<sup>TH</sup> FLOOR, COURTROOM #2, WILMINGTON, DE 19801. TO THE EXTENT THAT THE OBJECTOR WISHES TO PARTICIPATE TELEPHONICALLY IN THE HEARING, ARRANGEMENTS CAN BE MADE THROUGH COURT-CALL AT (866) 582-6878, AND THE UNDERSIGNED COUNSEL FOR THE DEBTORS (IAN J. BAMBRICK OF YOUNG CONAWAY STARGATT AND TAYLOR, LLP) MAY BE CONTACTED FOR ASSISTANCE IN MAKING ANY SUCH ARRANGEMENTS***

### IV. CONCLUSION

WHEREFORE, for the reasons set forth herein and in the Motion, the Debtors request that the Court overrule the Objection, and grant the relief requested in the Motion as it pertains to the Objection and such other and further relief to the Debtors as is just and proper.

Dated: October 31, 2018

*/s/ Robert F. Poppiti, Jr.*

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**EXHIBIT A**

**Declaration**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

<p>In re</p> <p>OPEN ROAD FILMS, LLC, a Delaware limited liability company, <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p>	<p>Chapter 11</p> <p>Case No.: 18-12012 (LSS)</p> <p>(Jointly Administered)</p> <p><b>Ref. Docket Nos. 84 &amp; 152</b></p>
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**DECLARATION OF AMIR AGAM**

1. I am a Senior Managing Director at FTI Consulting, Inc. and I am the Chief Restructuring Officer (“CRO”) for Open Road Films, LLC and its affiliated debtors and debtors in possession (the “Debtors”) in the above-captioned chapter 11 cases (the “Cases”). I submit this Declaration in support of the *Debtors’ Motion for Entry of an Order, Pursuant to Bankruptcy Code Section 365, Authorizing Rejection of Executory Contracts and Unexpired Leases* [Docket No. 84] (the “Motion”) and in response to the objection [Docket No. 152] (the “Objection”) filed by Bryce Campbell (the “Objector”).<sup>2</sup>

2. 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 Open Road Films, LLC since August 3, 2018. All facts set forth in this Declaration are based on my personal knowledge, my communications with other members of the Debtors’ senior management, discussions with my colleagues who are also working on this matter, my review of relevant documents, or my

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

opinion, based on my overall professional experience, in light of my personal knowledge of the Debtors' operations, business affairs, and financial condition. If called as a witness, I could and would competently testify to the matters set forth herein based on the foregoing.

3. The Debtors' decision to reject the Objector's Employment Agreement, dated July 11, 2011, effective *nunc pro tunc* to the Petition Date, represents a sound exercise of the Debtors' business judgment. The Objector was formerly an employee of Debtor Open Road Films in its theatrical distribution group. Prior to the Petition Date, the Debtors undertook a reduction in force pursuant to which approximately 37 former employees (including shared employees who did work for the Debtors) were terminated in the aggregate. The terminated employees included the majority of the Debtors' theatrical distribution group. The Objector's contract was terminated, effective as of August 28, 2018, as part of this prepetition reduction in force, because the Debtors determined, in the exercise of their reasonable business judgment, that the services of the Objector would no longer be necessary to the Debtors. Upon termination, the Objector received a final paycheck in the amount of \$2,962.31 in respect of wages for the pay period from August 18, 2018 through August 28, 2018. Rejection of the Employment Agreement benefits the estates, is prudent, and is in the best interests of the Debtors, their estates, and their creditors.

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

Executed this 31st day of October 2018 at Los Angeles, California.

By /s/ Amir Agam  
Amir Agam  
Chief Restructuring Officer