

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE 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 CONFIRMATION OF
JOINT CHAPTER 11 PLAN OF LIQUIDATION PROPOSED BY
DEBTORS AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

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

1. I am a Senior Managing Director at FTI Consulting, Inc. (“FTI”), 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”).

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. I am also generally familiar as a business person with the terms and provisions of the *Joint Chapter 11 Plan of Liquidation Proposed By Debtors and Official Committee of Unsecured Creditors* attached as Exhibit A to the Disclosure Statement (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Plan”) and the related

¹ The Debtors and the last four digits of their taxpayer identification numbers include: 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 1800 Century Park East, Suite 600, Los Angeles, California 90067.

disclosure statement [Docket No. 821] (including all exhibits thereto and as amended, modified or supplemented from time to time, the “Disclosure Statement”).²

3. I submit this declaration (the “Declaration”) in support of confirmation of the Plan and the *Memorandum of Law in Support of Confirmation of Joint Chapter 11 Plan of Liquidation Proposed By Debtors and Official Committee of Unsecured Creditors*, submitted concurrently herewith.

4. Except as otherwise indicated, all facts set forth in this Declaration are based upon: (i) my personal knowledge; (ii) my review of relevant documents; and/or (iii) my opinion based upon my experience, knowledge, and information concerning the Debtors, including discussions with the Debtors’ former or present personnel and my colleagues at FTI. If I were called upon to testify, I would testify competently to the facts set forth herein.

Background

5. On September 6, 2018, each of the Debtors commenced with this Bankruptcy Court a voluntary case under chapter 11 of the Bankruptcy Code. Each Debtor is authorized to continue to operate its business and manage its property as a debtor in possession.

6. On September 14, 2018, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors (together with the Debtors, the “Plan Proponents”). No trustee or examiner has been appointed in the Cases.

7. On December 19, 2018, the Bankruptcy Court entered an order [Docket No. 483] approving the sale (the “Sale”) of substantially all of the Debtors’ assets to OR Acquisition Co, LLC (“Buyer”). The closing of the Sale took place on December 21, 2018.

² All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Plan and in the Disclosure Statement, as applicable.

8. On July 17, 2019, the Plan Proponents filed the Plan and Disclosure Statement.

The Plan

9. Plan Negotiations and Formulation. Based on my own interactions with parties in interest in these Cases, I believe that the Plan is proposed following extensive, arm's length negotiations and discussions with key constituencies in these Cases. I also believe that the Plan has been proposed with the legitimate and honest purpose of maximizing recoveries for all of the Debtors' creditor constituencies, and timely and efficiently completing the liquidation and wind-down of the Debtors' Estates.

10. Section 1129(a) of the Bankruptcy Code. I have been advised and believe that the Plan complies with all of the requirements of Section 1129(a) of the Bankruptcy Code (other than section 1129(a)(8) with respect to those Classes that are deemed to have rejected the Plan).

11. Releases, Exculpations, and Injunctions. Article IX of the Plan includes certain release, exculpation, and injunction provisions. It is my belief that, among other things, these provisions are the product of arm's-length negotiations, have been important to obtaining the support of the various constituencies for the Plan, have been reviewed by the professionals for the official committee of unsecured creditors, have not been objected to by any party in interest in the Cases, are an appropriate exercise of the Debtors' business judgment, and are reasonable. In addition, in the case of the Exculpated Parties, such Exculpated Parties participated in good faith in formulating and negotiating the Plan. I believe that the release, exculpation, and limitation of liability provisions set forth in the Plan allow the Plan Proponents to, among other things, avoid unnecessary litigation, promptly and efficiently wind-down the Debtors' Estates, and provide increased certainty and finality with respect to these Cases.

12. Substantive Consolidation. Section 5.2 of the Plan provides for the substantive consolidation of the Debtors' Estates. I believe that, absent the substantive consolidation

provided for in the Plan, the process of disentangling the assets and liabilities of the Debtors would be time consuming, counterproductive, and costly, and, given the limited assets of the Estates, would not be worthwhile.

13. First, the vast majority of all of the assets at all of the Debtors were the collateral of the Prepetition Lenders. The Global Settlement agreed to between the Debtors, the Committee and the Prepetition Lenders specified certain amounts to be paid to the Prepetition Lenders, and certain amounts to be left in the Debtors' estates to fund the costs of winding down the Debtors' estates and satisfying claims. The Global Settlement did not specify which cash should be remitted to the Prepetition Lenders and which should stay with the Debtors' estates. Litigating this issue amongst the Debtors would be inefficient and wasteful. The funding for the Plan is a result of amounts agreed to be left at the Debtors' estates under the Global Settlement and the Global Settlement does not differentiate amongst individual Debtors. As of August 31, 2019, the recoverable assets at the Debtors other than Open Road Films primarily consisted only of approximately \$268,000 in cash, with three of the Debtors having no assets whatsoever. To date, the Debtors other than Open Road Films have not paid any of the professional fees related to administering these Cases. Similarly, the Debtors other than Open Road Films have not paid any significant amount of the associated operating costs, including any share of personnel costs since the Petition Date. Any litigation or efforts to determine what their fair burden of those costs are and if any assets would remain would be inefficient and wasteful. In addition, although the Debtors are aware that claims have been filed in these Cases specifying certain Debtors other than Open Road Films, and such claims are yet to be evaluated, the Debtors' records indicate that no amounts are owed (primarily) by Debtors other than Open Road Films (other than Intercompany Claims, which are being waived under the Plan). However, all of the Debtors are

obligated to the Prepetition Lenders for the amounts due to the Prepetition Lenders and settled under the Global Settlement. Absent substantive consolidation, it is therefore difficult to determine how the Debtors' Estates' remaining Cash should be allocated among the Estates. Apportioning the value of the Debtors' assets and associated liabilities would thus be an exceedingly difficult task—with no guarantee of a clear answer.

14. Second, the foregoing uncertainty as to the proper allocation of assets and liabilities among the Debtors' Estates could lead to prolonged disputes or litigation among the individual Debtors and their Estates. Absent substantive consolidation, reconciliation and treatment of Intercompany Claims would be required, which could be difficult and costly (and possibly disputed). The costs attendant to resolving these disputes would diminish recoveries for creditors and delay resolution of these Cases, to the detriment of all the Debtors' stakeholders.

15. In sum, I believe that the process of separating out the assets and liabilities of the Debtors would be expensive and would diminish recoveries for all creditors in these Cases. Put frankly, were the Estates to fight over which Estate should get which cash, there would be little left to fight over. The proposed substantive consolidation will allow the Plan Proponents to avoid costly and time consuming litigation, and ensure that the Debtors and these Cases can be wound down in a timely and efficient manner. It is my understanding that no objections have been filed or otherwise received with respect to the substantive consolidation proposed in the Plan, and that an overwhelming number of creditors have voted in favor of the Plan, which lends further support to substantive consolidation being appropriate under the facts and circumstances of these Cases.

16. Liquidation Under Chapter 7. I have been advised that with respect to each Class of Claims and Equity Interests that is Impaired under the Plan, each Holder of a Claim or Equity

Interest has either accepted the Plan or, to the extent that such Holder has not accepted the Plan, I believe that such Holder will receive under the Plan at least as much as would be received in a chapter 7 liquidation. This is based on my understanding and belief that a liquidation under chapter 7 of the Bankruptcy Code would increase costs and likely cause delay and uncertainty in these Cases. The Debtors are on the verge of effectuating a chapter 11 plan. On the other hand, a chapter 7 trustee would need to retain professionals and get up to speed on the Debtors' affairs and the status of these Cases, which would result in the Estates' bearing significant additional fees and costs. Moreover, the addition of a chapter 7 trustee at this stage in the Cases would likely provide no benefit, as substantially all of the Debtors' assets have already been liquidated, and the Debtors' Plan already contemplates the establishment of a Plan Administrator to wind down the few remaining assets of the Estates in a cost-effective manner.

17. Miscellaneous Provisions of Section 1129 of the Bankruptcy Code. The Debtors (i) do not provide retiree benefits (*i.e.*, payments to an entity or person for the purpose of providing or reimbursing payments for retired employees and their spouses and dependents, for medical, surgical, or hospital care benefits, or benefits in the event of sickness, accident, disability, or death under any plan, fund, or program (through the purchase of insurance or otherwise)); (ii) are not required by any judicial or administrative order, or by statute, to pay any domestic support obligation; (iii) are not individuals; and (iv) are not nonprofit corporations.

18. Feasibility. The Plan Proponents believe the Debtors' cash on hand as of the Effective Date will be sufficient to allow the Plan Administrator to make all payments required to be made under the Plan. In addition, the cash on hand may be supplemented by any additional proceeds from the liquidation of the Debtors' remaining assets.

19. Assumption and Rejection of Contracts. Section 6.1 of the Plan provides that, with certain exceptions (such as, among others, those contracts specifically identified in the Plan Supplement), on the Effective Date, all executory contracts and unexpired leases of the Debtors not previously assumed, rejected, sold, conveyed, or otherwise assigned shall be deemed rejected, pursuant to the Confirmation Order, as of the Effective Date.

20. I believe that rejection of nearly all of the Debtors' remaining executory contracts and unexpired leases will benefit the Debtors' Estates because these are liquidating cases, and the Debtors have no further need for their remaining contracts or leases.

21. However, in consultation with the Committee, the Debtors have identified three contracts that, are beneficial for the Debtors to assume. These contracts constitute (i) two contracts for administrative services (record maintenance and e-mail archiving) that will benefit the Liquidating Debtors, and (ii) one film distribution contract that was not previously sold that the Plan Proponents believe the Liquidating Debtors will attempt to monetize.

22. With respect to the administrative services contracts, the Debtors, in consultation with the Committee, have determined that such contracts will provide value for the Liquidating Debtors by ensuring continuity of the Debtors' records—both paper and electronic—as the Liquidating Debtors and the Plan Administrator implement the Plan and wind-down the Debtors' affairs. In any event, assumption of these contracts poses little risk for the Debtors, as the amounts necessary to cure such contracts are minimal, and each contract expires by its terms (subject to renewal) within one year—ensuring that the Liquidating Debtors will not be saddled with burdensome obligations.

23. With respect to the film distribution contract (known as “The Tank” contract), such contract represents the lone remaining film distribution contract believed to be beneficial to

assume that is not already disposed of by the Debtors during these cases. The Debtors have been in contact with at least one party that has expressed interest in purchasing the Debtors' rights in The Tank, and I expect that the Liquidating Debtors will be able to consummate a transaction post-Effective Date to sell these rights to a third party and thus monetize the Debtors' position in The Tank. Importantly, although the remaining expected revenues from The Tank under the distribution agreement are modest, the Debtors' books and records reflect that the Debtors are "in the money"—in other words, there is more expected revenue from the film to the Debtors than obligations to be paid by the Debtors (incidentally, the Debtors' books and records reflect no cure amount due).

24. Section 1129(d) of the Bankruptcy Code. I do not believe that the principal purpose of the Plan is avoidance of taxes or the avoidance of the application of Section 5 of the Securities Act of 1933.

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

Executed on September 27, 2019

/s/ Amir Agam
Amir Agam, Chief Restructuring Officer