IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: VER TECHNOLOGIES HOLDCO LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 18-10834 (KG) (Jointly Administered) **Hearing Date: June 4, 2018 at 2:00 p.m. (ET)** **Objection Deadline: May 29, 2018 at 4:00 p.m. (ET)** **Re: Docket Nos. 184, 185, and 186**

OBJECTION OF FTF PARTIES TO DEBTORS' MOTION TO APPROVE (I) ADEQUACY OF THE DISCLOSURE STATEMENT, (II) SOLICITATION AND NOTICE PROCEDURES, (III) FORMS OF BALLOTS AND NOTICES IN CONNECTION THEREWITH, (IV) CERTAIN DATES WITH RESPECT THERETO, AND (V) GRANTING RELATED RELIEF

New FTF, Inc. ("FTF"), REVV Property, LLC ("REVV"), Ruberta Property, LLC ("Ruberta"), FAAST Leasing San Francisco, LLC ("FAAST SF"), FAAST Leasing San Diego, LLC ("FAAST SD"), FAAST Leasing Louisiana, LLC ("FAAST LA"), FAAST Leasing Texas, LLC ("FAAST TX"), FAAST Leasing Florida, LLC ("FAAST FL"), FAAST Leasing Arizona, LLC ("FAAST AZ"), FAAST Leasing Tennessee, LLC ("FAAST TN"), FAAST Leasing Georgia, LLC ("FAAST GA"), Vincent Dundee III ("V. Dundee"), and Judith Dundee ("J. Dundee" and, together with the foregoing, the "FTF Parties"), by and through their undersigned counsel, hereby respectfully submit this objection (the "Objection") to the *Motion to Approve (I) Adequacy of the Disclosure Statement, (II) Solicitation and Notice Procedures, (III) Forms of*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: VER Technologies HoldCo LLC (7239); CPV Europe Investments LLC (2533); FAAST Leasing California, LLC (7857); Full Throttle Films, LLC (0487); Maxwell Bay Holdings LLC (3433); Revolution Display, LLC (6711); VER Finco, LLC (5625); VER Technologies LLC (7501); and VER Technologies MidCo LLC (7482). The location of the Debtors' service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

Ballots and Notices in Connection therewith, (IV) Certain Dates with Respect thereto, and (V) Granting Related Relief (the "Motion") [D.I. 186] filed by the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned, jointly administered bankruptcy cases (collectively, the "Bankruptcy Cases").[2] In support thereof, the FTF Parties state as follows:

I. INTRODUCTION

1. Prior to the commencement of the Bankruptcy Cases, the Debtors, under the ownership and management of Catterton (defined below), systematically dismantled a once thriving business through a series of poorly-conceived investments and business decisions. In an effort to extricate itself, Catterton entered into a restructuring support agreement (the "RSA") with the Debtors and other interested parties, which requires, among other things, that the Debtors administer the bankruptcy estates at breakneck speed in order to meet certain milestones, including, without limitation, the confirmation of a plan of reorganization within 100 days of the Petition Date (defined below). To balance the potential detriment of such exigency and protect the interests of creditors, full and complete transparency and disclosure are essential so creditors and interested parties are fully apprised of material facts.

2. The Debtors, however, have failed to provide the necessary transparency to sustain the administration of the bankruptcy estates within the proposed milestones while ensuring no detriment will come to creditors and interested parties from such expedited proceedings. To the contrary, since the outset of the Bankruptcy Cases the Debtors have sought to deprive creditors and interested parties of essential information, including failing to provide relevant information regarding nearly $20 million in payments to prepetition unsecured creditors and the outright refusal to answer even the most basic of questions during the section 341(a)

[2] Unless otherwise defined, all capitalized terms shall have the meaning ascribed to them in the Plan.

meeting of creditors regarding the Plan (defined below) or *Disclosure Statement for the Joint Chapter 11 Plan of Reorganization of VER Technologies HoldCo LLC and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement") [D.I. 185]. The Disclosure Statement is yet another example of the absence of the requisite transparency and fulsome disclosure required to sustain the expedited schedule set forth in the RSA.

3. Indeed, the Disclosure Statement is replete with deficient disclosures and contradictory statements. As discussed below, the Disclosure Statement lacks essential disclosures regarding, among other things, (i) the treatment of GSO Capital Partners ("GSO"), the pre-petition and debtor in possession term lender, under the *Joint Chapter 11 Plan of Reorganization of VER Technologies HoldCo LLC and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* (the "Plan"), including, without limitation, whether GSO holds a deficiency claim in Class 4 of the Plan, (ii) the treatment of general unsecured creditors under the Plan, (iii) the assumption and assignment of executory contracts and unexpired leases, (iv) the valuation of assets under the Plan, including, without limitation, the claims and causes of actions the Debtors propose releasing under the Plan, (v) the treatment of intercompany claims and interests in Classes 5 and 7 of the Plan, (vi) the new loans required to consummate the proposed merger (the "Merger") with Production Resource Group Inc. (together with its affiliates, "PRG"), (vii) the financial condition and operational capabilities of PRG, (viii) financial relationships between various parties to the transaction, (ix) potential alternatives to the proposed Merger, and (x) the post-confirmation operations of the Debtors, Reorganized Debtors, and the surviving entity in the Merger (i.e., PRG II).

4. Furthermore, the Disclosure Statement is internally inconsistent and, in fact, contradicts prior statements regarding the treatment of certain claims. For instance, despite

GSO's statement in association with the debtor in possession financing that its entire prepetition claim would convert to equity under the Plan [D.I. 195, at p. 3 (The Plan "contemplates that 100% of this prepetition debt will be equitized.")], the Plan implies that GSO may have a deficiency claim in the class of general unsecured creditors in excess of $300 million. The Plan projections, however, contradict the terms of the Plan—once again suggesting that the GSO claim is being converted to equity in full. Such inconsistency is the antithesis of disclosure. Instead of providing clarity, these contradictory "disclosures" create confusion and uncertainty among creditors—especially when the inconsistency relates to a potential deficiency claim nearly five (5) times the amount of the currently estimated claims in Class 4, which is one of only two voting classes under the Plan.

5. In addition to the deficient disclosures, the Plan is patently unconfirmable and, thus, the Disclosure Statement cannot be approved. *See In re American Capital Equip., LLC*, 688 F.3d 145, 155-56 (3d Cir. 2012). More precisely, in addition to the dearth of information regarding feasibility or the best interests of creditors, the Plan fails to comply with the applicable provisions of title 11 of the United States Code (the "Bankruptcy Code") in violation of section 1129(a)(1) of the Bankruptcy Code.[3] The Plan provisions evidence that the Debtors have not proposed the Plan in good faith in violation of section 1129(a)(3). The Plan also proposes distributions on account of intercompany claims and interests (Classes 5 and 7) in violation of the "absolute priority rule" due to the non-payment of senior obligations—namely, general unsecured claims in Class 4 of the Plan—in violation of section 1129(b)(2).

6. In sum, the Disclosure Statement omits essential information and contains inconsistencies—leaving creditors with more questions than answers—and the Plan fails to comport with applicable law. Accordingly, the FTF Parties respectfully request that the Court

[3] Unless otherwise stated, "section ____ " refers to the specified section of the Bankruptcy Code.

deny approval of the Disclosure Statement.

II. BACKGROUND

7. In or about 1982, V. Dundee and Scott Dundee ("S. Dundee" and, together with V. Dundee, the "Dundees") established a small audio and video equipment rental company in California—Full Throttle Films, Inc. (d/b/a Video Equipment Rentals) (together with its affiliates, "VER" or "Full Throttle"). Over the three decades that followed, the Dundees grew VER through careful expansion and strategic acquisitions to meet the ever-expanding and increasingly-sophisticated demands of their clientele, and, above all else, through the provision of unsurpassed service and support. Ultimately, the Dundees developed VER into a world leader in the audio and video equipment rental industry—providing world-class products and services to thousands of customers globally, including some of the world's largest entertainers, event venues and entertainment companies, and generating hundreds of millions of dollars in revenue annually.

8. In early 2014, the Dundees entered into negotiations with L Catterton (f/k/a Catterton Partners) ("Catterton") regarding Catterton's potential acquisition of VER. Thereafter, Catterton conducted expansive and thorough due diligence with the assistance of numerous legal and financial professionals over a period of nearly ten (10) months. Ultimately, VER and Catterton reached an agreement by which Catterton agreed to acquire VER through a multi-step process. In sum, the transaction (the "2014 Transaction") took the form of a corporate restructuring, through which the Debtors were formed to mirror the preexisting operational structure of VER, and the purchase of the equity in a yet-to-be-formed holding company—namely, Video Equipment Rentals Holding, LLC (presently known as VER Technologies HoldCo, LLC ("VER HoldCo")).

9. The 2014 Transaction culminated with the execution of a Unit Purchase Agreement (the "UPA"), the New FTF Promissory Note, and Second Amended and Restated Limited Liability Company Agreement of Video Equipment Rentals Holdings LLC (the "LLC Agreement") in December 2014. Through the 2014 Transaction, an affiliate of Catterton, CP-VER Holdings Inc., acquired approximately 92% of the common units in VER HoldCo. As partial consideration, FTF received the New FTF Promissory Note, which had an initial principal balance of $30 million, and $50 million in deferred compensation, which is noted as "preferred units" in the LLC Agreement and payable on the earlier of March 11, 2021, the initial public offering of VER HoldCo, or sale of VER HoldCo.

10. Additionally, in association with the 2014 Transaction, REVV, Ruberta, FAAST SF, FAAST SD, FAAST LA, FAAST TX, FAAST FL, FAAST AZ, FAAST TN, and FAAST GA (collectively, the "Lessors"), entities owned and/or controlled by the Dundees, entered into a series of triple-net lease agreements (collectively, the "Leases") with one or more of the Debtors for the use and occupancy of certain improved parcels of commercial real property (collectively, the "Leased Premises") owned by the Lessors and located throughout the United States. The Debtors continue to use and occupy the Leased Premises.

11. Pursuant to the 2014 Transaction, Catterton assumed control of the operations of the Debtors and installed a new management team at significant additional expense. Immediately thereafter, Catterton shifted away from the traditionally measured and profitable growth of VER and took actions to alter the pre-transaction operations. Against the advice of the Dundees, the Debtors began paying Catterton's affiliates millions of dollars in fees for various activities, aggressively expanded into new, less profitable markets and business segments, and enlarged the products and services offered by the Debtors. To facilitate the growth, the Debtors

hired a large number of new employees to staff the newly-created divisions, which immediately began experiencing eight-figure annual deficits, and incurred substantial debt to acquire approximately $238,000,000 in new rental equipment.

12. The expansion proved disastrous for the Debtors. The new market segments failed to generate sufficient revenues to pay the increased costs associated with the new loans and the expanded management and employee base, or justify the expenditures to acquire new equipment. Unsurprisingly, the foregoing resulted in negative cash flow and diminishing profit margins. The expansion also placed the Debtors into competition with their own clients, which further diminished revenues as clients terminated long-standing business relationships. The ramifications of the resulting deficits were further exacerbated by increased debt obligations incurred by the Debtors, at Catterton's direction, to finance the ill-conceived expansion as well as the costs associated with the employment of numerous new professionals and consultants, including entities related to Catterton, to advise the Debtors' management regarding the expansion strategy and operation of the Debtors, among other things.

13. In just over two years, the Debtors' departure from the long-standing business model and practices of VER had irreparably harmed the Debtors' operational capabilities, burdened the Debtors with more than $700,000,000 in debt (the Dundees delivered the operation to Catterton free of all pre-closing debt), damaged client relationships and business opportunities, and created discord amongst the Debtors' employees and management team.

14. In an effort to salvage the once-profitable business, in or about 2017, the Debtors began exploring options for the restructuring of the Debtors or a sale of the Debtors or their assets. As part of this process, the Debtors entered into discussions with, among others, PRG, a major competitor of the Debtors, and GSO, the primary lender under a secured prepetition term

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loan facility and major lender to PRG, which was then owed over $400 million by the Debtors. The months of discussions culminated with the execution of a Restructuring Support Agreement ("RSA") among the Debtors, PRG, and GSO, as well as other interested parties, to facilitate the restructuring of the Debtors' existing debt facilities and, ultimately, a merger of the Debtors into PRG or a related entity via a chapter 11 plan of reorganization. [D.I. 19, at pp. 30-145]

15. On April 5, 2018 (the "Petition Date"), the Debtors commenced the Bankruptcy Cases, purportedly in accordance with the terms of the RSA. On April 30, 2018, the Debtors filed the Plan and Disclosure Statement [D.I. 184 and 185] as well as the Motion [D.I. 186].

16. By and through the Motion, the Debtors seek approval of the Disclosure Statement pursuant to section 1125. As discussed below, however, the Disclosure Statement does not qualify for approval under section 1125 due to the omission of essential information and disclosures, and patent deficiencies in the Plan that render the Plan unconfirmable.

III. ARGUMENT

A. The Disclosure Statement Fails To Provide Adequate Information Upon Which Creditors Can Rely To Make An Informed Judgment Regarding The Plan

17. Section 1125 requires that a disclosure statement contain "adequate information." 11 U.S.C. § 1125(a). Disclosure is the "pivotal" concept in a chapter 11 reorganization. *Westland Oil Dev. Corp. v. MCorp Management*, 157 B.R. 100, 102 (Bankr. S.D. Tex. 1993), *citing* 5 Collier on Bankruptcy, ¶ 1125.03 (15th ed. 1992); *see also Oneida Motor Freight, Inc. v. United Jersey Bank*, 848 F.2d 414, 417 (3d Cir. 1988) ("The importance of full disclosure is underlaid by the reliance upon the disclosure statement by creditors and the court. Given this reliance, we cannot overemphasize the debtor's obligation to provide sufficient data to satisfy the Code standard of 'adequate information.'"). The purpose behind the disclosure requirement is to prevent a debtor from seeking acceptance of its reorganization plan until it provides creditors and

other interested parties with a disclosure statement that contains “adequate information” about the details of the plan and its prospects of success. 11 U.S.C. § 1125(b).

18. Section 1125(a)(1) defines adequate information as “[i]nformation of a kind, and in sufficient detail, as far as is reasonably practicable in light of the nature and history of the debtor and the condition of the debtor’s books and records, that would enable a hypothetical reasonable investor typical of holders of claims or interests of the relevant class to make an informed judgment about the plan . . . .” 11 U.S.C. § 1125(a)(1). Congress intended that the disclosure statement serve as the primary source of information upon which creditors and shareholders could rely in making an informed judgment about a plan of reorganization. *In re Scioto Valley Mortgage Co*., 88 B.R. 168 (Bankr. S.D. Ohio 1988).

19. As discussed below, the Disclosure Statement omits essential information and disclosures regarding issues integral to the Plan. As such, the Disclosure Statement fails to satisfy the requirements of section 1125 and may not be approved.

1. The Disclosure Statement Lacks Adequate Disclosures regarding the Treatment of Class 4 Claims

20. The Disclosure Statement lacks sufficient information regarding the proposed treatment of Class 4 claims under the Plan. Per the Disclosure Statement, Class 4 is comprised of an estimated $61,961,668 in General Unsecured Claims (as defined in the Plan), which are anticipated to receive “*de minimis*” distributions under the Plan. [D.I. 185, at p. 11] The description of Class 4 and the proposed treatment of Class 4 claimants, however, are deficient so as to render the treatment of Class 4 ambiguous and, therefore, the Disclosure Statement lacking in adequate information.

a. The Disclosure Statement Lacks Adequate Disclosures Regarding the Constituency of Class 4

21. The Disclosure Statement fails to provide sufficient information regarding the constituency of Class 4. Under the Plan, "General Unsecured Claims" is defined as:

> [A]ny unsecured Claim (other than an Administrative Claim, a Priority Tax Claim, an Other Priority Claim, a Section 510(b) Claim, or an Intercompany Claim) against one or more of the Debtors, including (a) Claims arising from the rejection of Unexpired Leases and Executory Contracts to which a Debtor is a party, (b) Claim arising from any litigation or other court, administrative, or regulatory proceeding, including damages or judgments entered against, or settlement amounts owing by a Debtor related thereto, (c) claims by Catterton in respect of indebtedness or management fees and expenses, (d) the Promissory Notes Claims, and (e) the Prepetition Term Loan Deficiency Claims.

[D.I. 185, at p. 77] The Disclosure Statement, however, fails to provide sufficient information (*e.g.*, holders of claims, amount of claims, etc.) regarding (a) the estimated rejection damages claims, (b) the estimated litigation claims, or (c) the potential deficiency claim of GSO (the prepetition term lender). Indeed, the Disclosure Statement even fails to disclose whether the estimate of Class 4 claims ($61,961,668) includes any of the foregoing.

22. The most notable omission is the failure to address whether GSO possesses a deficiency claim against the Debtors, or any of them, which substantially impacts the accuracy of the estimate for Class 4 claims ($61,961,668) and potential distributions to holders of Class 4 claims. More precisely, the definition of General Unsecured Claims includes any "Prepetition Term Loan Deficiency Claims," which consists of the unsecured portion (*i.e.*, the amount of the claim in excess of the collateral) of the GSO claim. [D.I. 185, at p. 77] According to the Disclosure Statement, Class 3 (the GSO secured claim) is projected to receive a 33% recovery under the Plan on account of a $457,582,343 claim. [*Id.*] The Disclosure Statement, however, fails to indicate if the remaining 67% of the GSO claim (approx. $306,580,170) will be treated as a deficiency claim in Class 4. Based on the estimate of Class 4 claims ($61,961,668), it would

appear GSO will not have an allowed deficiency claim or the potential deficiency will not constitute a Class 4 claim—as the potential deficiency claim is nearly five (5) times the estimate of Class 4 claims. The projections appended to the Disclosure Statement further suggest that GSO will not have a deficiency claim. [D.I. 185, at 496 (projections assume conversion of more than $470 million in the Debtors' debt to equity)] The definition of "General Unsecured Claims" and the estimated recovery for Class 3, however, seem to contradict the statements indicating that the entire GSO claim will be converted to equity under the Plan. Without clarity on this issue, the treatment of Class 4 claims is ambiguous and, thus, holders of Class 4 claims are left without a reasonable basis to evaluate the Plan.

23. Similarly, the Plan fails to address the implications of any payments to "critical vendors" or foreign vendors. By and through the *Order (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Foreign Vendors, Shippers, Lien Claimants and 503(b)(9) Claimants and (II) Granting Related Relief* [D.I. 219] and *Order (I) Authorizing Debtors to Pay Certain Prepetition Claims of Critical Vendors and (II) Granting Related Relief* [D.I. 220] (together, the "Critical Vendor Orders"), the Court authorized the Debtors to pay up to $19,725,000 on account of certain prepetition unsecured claims. The Disclosure Statement, however, fails to state (i) how much has been paid to Class 4 claimants pursuant to the Critical Vendor Orders and (ii) whether the estimate for Class 4 claims accounts for any payments pursuant to the Critical Vendor Orders. As the Critical Vendor Orders authorized the Debtors to pay an amount equal to nearly one-third of the estimated Class 4 claims, it is imperative for the Disclosure Statement to address such payments and the impact of the same on Class 4. Absent such information, holders of Class 4 claims cannot make an informed determination regarding their treatment under the Plan.

24. The Disclosure Statement also lacks any discussion regarding the interest owing under the Promissory Notes Claims, which comprise approximately $25,000,000 of the Class 4 claims. The Promissory Notes Claims are comprised of the Catterton Promissory Note Claims and the amounts owing under the New FTF Promissory Note. With respect to the New FTF Promissory Note, the Debtors owe principal totaling approximately $18,750,000 plus interest accruing at a rate of seven percent (7%) *per annum*. While the Disclosure Statement discusses the New FTF Promissory Note, the Disclosure Statement fails to provide an estimate of the accrued and unpaid interest. [D.I. 185, at p. 20] The Disclosure Statement also apparently omits the accrued and unpaid interest from Class 4 without discussion or other explanation. As the accrued interest is due and owing, and payable as a Class 4 claim, the Disclosure Statement must accurately account for the total indebtedness due under the New FTF Promissory Note in Class 4. In addition to properly accounting for the New FTF Promissory Note claim, the Debtors must clarify that the cancellation of the New FTF Promissory Note [D.I. 185, at pp. 26-27] does not affect the rights of FTF under Class 4 of the Plan.

b. The Disclosure Statement Lacks Adequate Disclosures Regarding the Proposed Distribution to Holders of Class 4 Claims

25. The Disclosure Statement fails to adequately describe the proposed distributions to holders of Class 4 claims. To the contrary, the Disclosure Statement merely provides that each holder of a Class 4 claim "shall receive its Pro Rata Share of Cash equal to the liquidation value of any assets of the Debtors not subject to a Lien and available for distribution after giving effect to the treatment of, or distribution on account of, all Secured Claims, Administrative Claims, Professional Fee Claims and Priority Claims as provided in the Plan . . . ." [D.I. 185, at p. 8] This definition, however, does not provide any guidance due to the Debtors' failure in the Disclosure Statement to explicitly identify (i) any assets that are not subject to a lien, (ii) the

value of such assets, or (iii) the amount estimated to remain after payment of all senior claims. As opposed to providing actual disclosures, the Debtors merely state that distributions to Class 4 will be "*de minimis*." [D.I. 185, at p. 9] "*De minimis*" provides no assistance to creditors in determining whether to vote for or against the Plan—especially if "*de minimis*" is really $0.00 and conversion may permit a trustee to liquidate and recover assets beneficial to general unsecured creditors (*e.g.*, the more than $86.7 million owing to the Debtors from non-debtor affiliates, which the Debtors omit from the Plan).

26. The Disclosure Statement also fails to address whether prior payments to certain prepetition claimants pursuant to the Critical Vendor Orders will factor into the calculation of distributions under the Plan. For instance, if a "critical vendor" received 50% payment of its claim pursuant to the Critical Vendor Orders, will the "critical vendor" share *pro rata* or will any distribution under the Plan account for the prior payment by reducing the Plan distribution by the amount of the prior "critical vendor" payment? Such information is critical to the evaluation of the Plan—especially if distributions to General Unsecured Creditors are *de minimis*.

27. Similarly, the Disclosure Statement fails to provide sufficient disclosures regarding claims subject to setoff. Under the Plan, the Debtors may setoff any debt owing to the Debtors by a creditor against any proposed distributions under the Plan. [D.I. 185, at p. 36] The Debtors, however, have failed to identify the claims subject to setoff under the Plan or the amount of the purported setoff. As such, these creditors have no notice regarding the potential setoff and, thus, whether the Plan serves their interests. Additionally, creditors are unable to determine how much "Cash" will be made available for creditors not subject to setoff as a result of setting-off obligations owing to the Debtors, which is imperative for understanding the potential distributions a creditor may receive under the Plan.

28. Moreover, the Disclosure Statement fails to provide sufficient information regarding claims subject to third party payment. Under the Plan, the Debtors disclaim responsibility for the payment of any claims that may be satisfied by insurance or other third parties. [D.I. 185, at p. 37] The Debtors, however, fail to provide sufficient information to evaluate this disclaimer and the impact on creditors. More specifically, the Debtors fail to identify (i) the claims purportedly subject to third party payment, (ii) the holders of such claims (so they have notice), (iii) the class in which the claims are currently classified, (iv) the third party or insurer purportedly liable for the payment of such claims, (v) the applicable insurance policy (if any), (vi) the policy limits for any insurance policies, (vii) the number of claims entitled to payment under each insurance policy, (viii) the deadline for submitting claims for payment under the policies, (ix) whether the Debtors are liability for any claims in excess of policy limits, (x) the potential amount of any excess liability, (xi) the treatment of claims relating to excess liability under the Plan, or (xii) the efforts the Debtors have made to secure payment from the third parties. Absent such information, the affected creditors have no notice of the potential treatment of their claims and other creditors are left unable to evaluate the implications of any third party payments for the treatment their claims under the Plan.

29. In sum, the Disclosure Statement omits relevant information integral to Class 4 creditors' evaluation of the Plan and their respective treatment under the Plan. As such, the Disclosure Statement fails to satisfy the standards for approval under section 1125.

2. The Disclosure Statement Lacks Integral Information for the Evaluation of the Release Provisions

30. By and through the Plan, the Debtors intend to grant broad releases to third parties, including, without limitation, non-debtor affiliates that presently owe the Debtors in excess of $86.7 million—a sum sufficient to pay all estimated Class 4 claims in full. [D.I. 185,

at pp. 41-43] The reasonableness of the proposed releases must be evaluated separately with respect to each of the subject parties to determine if the particular release is appropriate. *See In re Wash. Mutual*, 442 B.R. 314, 346 (Bankr. D. Del. 2011). The Disclosure Statement, however, fails to provide any information regarding the claims the Debtors intend to release. The Disclosure Statement does not specifically identify (i) the parties receiving the releases, (ii) any amounts these parties owe to the Debtors, (iii) any claims or causes of action the Debtors may have against these parties, (iv) the value of any claims being released, (v) whether the Debtors conducted an investigation or valuation regarding potential claims and causes of action prior to agreeing to the terms of the release, or (vi) what benefit, if any, the parties receiving a release under the Plan provided to the estates in exchange for or warranting the release of any claims or causes of action.

31. Similarly, the Disclosure Statement lacks relevant information regarding the ongoing investigation by the Debtors' independent board member (the "Independent Director") regarding 2014 Transaction. Indeed, the Disclosure Statement fails to provide (i) when the Independent Director will conclude the investigation, (ii) whether the Independent Director will prepare a report regarding his findings, and (iii) whether the report will be made available to creditors and interested parties. [D.I. 185, at p. 22]

32. In short, the Debtors have failed to provide any disclosures or information supporting the proposed third party releases, which intend to release, among others, certain intercompany claims that may be sufficient to pay all Class 4 claims in full. Furthermore, the Debtors have failed to inform creditors and interested parties if and when the Independent Director will conclude his investigation and whether creditors and interested parties will receive a report regarding his findings, which may prove essential to evaluating the validity of the

proposed releases. Such deficiencies are especially troubling as the Debtors propose an "opt-out" procedure for the releases by which creditors and interested parties must determine whether to consent to the proposed releases during the voting process for the Plan.

3. The Disclosure Statement Lacks any Information regarding the Potential Indemnity Provisions in the Bylaws and Operating Agreements for the Reorganized Debtors

33. In addition to the dearth of information regarding the releases, the Disclosure Statement also lacks any disclosures regarding the potential indemnification liabilities of the Reorganized Debtors. More precisely, under the Plan, the Reorganized Debtors must amend their bylaws and organizational documents to indemnify certain insiders. [D.I. 185, at p. 26] The Debtors, however, fail to provide (i) any information regarding the scope of the proposed indemnity, other than the fact that the provisions must be similar in scope to PRG's standard indemnity provisions (which are not discussed), (ii) whether the new indemnity provisions expand the indemnity (if any) presently provided by the Debtors, (iii) whether there are any existing or potential claims the Reorganized Debtors would be liable to indemnify pursuant to the expanded indemnity provisions, (iv) whether the Debtors possess any insurance that may cover indemnity claims, or (v) whether the new indemnity provisions will be covered under any existing policy. In short, the Debtors provide no information regarding an amendment to their bylaws and organizational documents that may result in additional liability.

4. The Disclosure Statement Lacks Necessary Disclosures Regarding the Valuation of the Debtors

34. The Disclosure Statement also lacks relevant information regarding the valuation relied upon by the Debtors in crafting the Plan. Indeed, the Disclosure Statement contains little, if any, information as to how the Debtors valued the Debtors' operations or the equity in PRG II, which is used to satisfy the Class 3 claims. The only "valuation analysis" provided by the

Debtors in support of the Plan consists of 3 1/2 pages (the majority of which is consumed with caveats) compiled by PJT Partners LP ("PJT") evaluating the potential value of the post-Merger operation. [D.I. 185, at pp. 528-31] The valuation does not, however, provide an analysis regarding many other relevant issues, including, without limitation, the current valuation of the Debtors and their assets, the value of the equity to be received by GSO under the Plan, or the valuation of the assets of the Debtors on an individual basis, as opposed to an enterprise basis, which is imperative in evaluating whether the Plan unfairly or disproportionately affects the interests of certain creditors. Simply put, the valuation is completely inadequate and prevents creditors and interested parties from (i) evaluating the proposed consideration provided to GSO under the Plan or the *bona fides* of the entire Merger, or (ii) evaluating and, if necessary, challenging the methodology and findings of PJT, which may prove to be an essential element in any contested confirmation hearing.

5. The Disclosure Statement Fails to Provide Sufficient Information regarding Intercompany Claims in Classes 5 and 7.

35. Under the Plan, the Debtors classify intercompany claims and interests in Classes 5 and 7, respectively. The Disclosure Statement provides that these classes are either impaired or unimpaired and projected to receive either a 0% or 100% distribution under the Plan. [D.I. 185, at p. 9] The Debtors must provide a definitive treatment of Classes 5 and 7 to enable creditors and other interested parties to evaluate the Plan and implications of the treatment of Classes 5 and 7 on the benefits and confirmability of the Plan—especially in light of the potential absolute priority rule issues that may arise if Classes 5 and 7 receive 100% recoveries under the Plan while Class 4 receives only *de minimis* distributions.

6. The Disclosure Statement Omits Any Discussion Regarding Intercompany Debt of Non-Debtors Affiliates

36. The Disclosure Statement fails to address a key asset of the bankruptcy estates—namely, claims the Debtors hold against non-debtor affiliates. More precisely, the schedules for Full Throttle Films LLC ("FTF LLC") indicate that non-debtor affiliates owe FTF LLC approximately $86.7 million. [D.I. 167, at pp. 27-28] The Disclosure Statement, however, fails to disclose these assets. The Disclosure Statement also fails to make clear that the release provisions of the Plan [D.I. 185, at pp. 41-43] purport to release the non-debtor affiliates from any obligation to pay more than $86.7 million to the Debtors, which, if collected, appears sufficient to pay all Class 4 claims in full. Given the substantial impact of the release of more than $86.7 million in claims on the treatment of General Unsecured Claims, the Debtors must expressly address the intercompany debt, the valuation of the intercompany debt, and the consideration provided by the non-debtor affiliates for the release of more than $86.7 million in obligations pursuant to the Plan. Alternatively, the Debtors must disclose the manner in which the Debtors intend to collect these obligations, identify the funds as a source of assets available to pay obligations under the Plan, and amend the treatment of Class 4 claims to account for the availability of funds potentially sufficient to pay Class 4 claims in full.

7. The Disclosure Statement Fails to Account for the Assumption of the LLC Agreement and Required Payments Thereunder, or the Alternate Treatment of the Claim Under the LLC Agreement

37. The Disclosure Statement fails to account for obligations under the LLC Agreement. More precisely, the Debtors identify the LLC Agreement as an executory contract on Schedule G for VER Technologies HoldCo LLC. [D.I. 164, at p. 41] The LLC Agreement governs, among other things, the ultimate ownership of the Debtors and, as such, the authority to govern and approve the Merger. Accordingly, in order to consummate the Merger, the Debtors

must assume the LLC Agreement. To assume the LLC Agreement, however, the Debtors must cure any and all defaults under the LLC Agreement and, thereafter, abide by the terms of the LLC Agreement, including, without limitation, the obligation to pay FTF the deferred compensation from the 2014 Transaction ($50 million) plus interest (five percent (5%) *per annum* compounding annually) (the "Deferred Compensation") upon consummation of the Merger. At present, the Disclosure Statement fails to discuss (i) the assumption of the LLC Agreement, (ii) the need to cure any defaults under the LLC Agreement, or (iii) the manner in which the Debtors intend to pay the Deferred Compensation. Such disclosures are integral as they affect the payments to creditors and the feasibility of the Merger.

38. Alternatively, in the event the Debtors dispute FTF's entitlement to payment of the Deferred Compensation, the Debtors must provide a reserve equal to no less than the amount due and payable on account of the Deferred Compensation (approx. $60 million) pending resolution of the dispute, and amend the Plan and projections to account for such a reserve. The failure to maintain a reserve may adversely affect the rights of FTF to the Deferred Compensation and, moreover, mislead creditors regarding the potential distributions under and feasibility of the Plan.

8. The Disclosure Statement Lacks Sufficient Disclosures Regarding the New Financing

39. The Disclosure Statement provides that "on the Effective Date, (i) PRG LLC and Reorganized HoldCo shall receive net cash proceeds under the New First Lien Loan and (ii) PRG LLC and Reorganized HoldCo shall issue the New Second Lien Term Loan." [D.I. 185, at p. 25] The Disclosure Statement, however, fails to provide any further information regarding the New First Lien Loan and New Second Lien Term Loan (together, the "Merger Financing Facilities"). Indeed, the only additional information readily available regarding the

Merger Financing Facilities—a key aspect of the proposed Merger—is set forth in a summary of the RSA, which is appended as an exhibit to an exhibit to the Disclosure Statement. [D.I. 185][4] Absent further information, creditors are unable to evaluate the feasibility of the Merger or the Plan. Additionally, without further information regarding the Merger Financing Facilities, among other things, creditors are unable to determine whether PRG is financial capable of consummating the transaction or maintaining operations post-Merger (a crucial inquiry in evaluating feasibility)—especially in light of the estimated $1.1 billion in existing debt carried by PRG. [Ex. A, at p. 65:17-22][5] A true and correct copy of excerpts from the May 10, 2018 section 341(a) meeting of creditors for the Debtors are attached hereto as **Exhibit A** and incorporated herein by reference.

9. The Disclosure Statement Lacks Sufficient Disclosures regarding PRG

40. The Plan is premised upon the Merger with PRG. The Disclosure Statement, however, fails to provide integral information regarding the financial condition, financial capabilities, or operational capabilities of PRG. In short, the Disclosure Statement lacks adequate information permitting a creditor or interested party to determine whether PRG can consummate the Merger or that the Merger with PRG will not result in a subsequent bankruptcy or liquidation—an outcome that is entirely possible due to the current debt carried by PRG (approx. $1.1 billion) [Ex A, at p. 65:17-22] and new obligations in the form of the Merger Financing Facilities. In order to evaluate the *bona fides* of the Plan, further disclosures regarding PRG are essential.

[4] The summary is part of Exhibit B to the Disclosure Statement; however, a page number is not noted on the filed version of the document.
[5] The page number references for Exhibit A refer to the page number for the transcript and not the Exhibit.

10. The Disclosure Statement Omits Material Information Regarding the Prepetition Loan Facilities and DIP Loan Facilities

41. The Disclosure Statement also lacks necessary disclosures to avoid confusion regarding the prepetition lending facilities. More precisely, the Disclosure Statement contains a summary discussion of the prepetition lending facilities. [D.I. 185, at pp. 19-20] The discussion, however, omits necessary information regarding the debtor in possession loan facilities, including, without limitation, the use of the debtor in possession ABL facility to pay-off the prepetition ABL facility. The absence of this information renders the disclosures incomplete and confusing, which may lead interested parties to conclude that the Debtors remain obligated on the prepetition ABL facility and in possession of the $300 million borrowed under the post-petition debtor in possession ABL facility. The Disclosure Statement should be modified to discuss the implications of the debtor in possession financing on the prepetition loans in order to provide a clear picture of the current liabilities of the Debtors.

11. The Disclosure Statement lacks any Information regarding the Alternatives to the Merger or Whether the Debtors Considered any Alternatives

42. In addition to the foregoing, the Disclosure Statement lacks adequate information regarding the potential alternatives to the Merger or the Debtors' efforts to evaluate potential alternatives. To the contrary, the Disclosure Statement merely contains a truncated and conclusory analysis of the potential reorganization mechanisms considered and available—issues integral to the determination of whether the Merger serves the best interests of creditors and other interested parties. More precisely, the Disclosure Statement provides:

> In the first half of 2017, in addition to undergoing managerial changes, the Debtors, together with their advisors, engaged with various constituents, including PRG, GSO, and Bank of America Merrill Lynch, in good-faith discussions regarding various restructuring alternatives. The goal of these discussions was to explore all viable in-court and out-of-court restructuring alternatives that would meaningfully deleverage the Debtors' balance sheet, result in improved liquidity,

> and provide for necessary operational changes. These discussions culminated in the execution of the Restructuring Support Agreement.

[D.I. 185, at pp. 21-22] This statement falls woefully short of a discussion of alternatives or the efforts undertaken to reorganize the Debtors in a manner designed to maximize the benefits to creditors. As such, creditors and interested parties are unable to fully evaluate the Merger, the benefits of the Merger, and the availability of alternatives, and, as a result, whether the Plan serves the best interests of creditors.

B. The Plan Is Patently Unconfirmable And, As Such, The Disclosure Statement Should Not Be Approved

43. "If, on the face of the plan, the plan could not be confirmed, then the Court [should] not subject the estate to the expense of soliciting votes and seeking confirmation. Not only would allowing an unconfirmable plan to accompany a disclosure statement, and be summarized therein, constitute inadequate information, it would be misleading and be a needless expense to the estate." *In re Pecht*, 57 B R. 137, 139 (Bankr. E.D. Va. 1986); *see In re American Capital Equip., LLC*, 688 F.3d 145, 155-56 (3d Cir. 2012) (affirming bankruptcy court's refusal to approve disclosure statement because plan was not proposed in good faith and was not feasible, rendering it facially unconfirmable); *In re Dakota Rail, Inc.*, 104 B.R. 138, 143 (Bankr. D. Minn. 1989) (allowing a facially nonconfirmable plan to accompany a disclosure statement is both inadequate disclosure and a misrepresentation); *In re Copy Crafters Quickprint, Inc.*, 92 B.R. 973, 980 (Bankr. N.D.N.Y. 1988) ("approval should be withheld if, . . . it is apparent that the plan will not comply with Code § 1129(a)"); *see also In re Beyond.com Corp.*, 289 B.R. 138, 140 (Bankr. N.D. Cal. 2003) ("Because the underlying plan is patently unconfirmable, the disclosure statement may not be approved."). The Plan proposed by the Debtors is patently unconfirmable and, as such, the Court should not approve the Disclosure Statement and cause the estates to waste further assets soliciting votes on a deficient plan.

1. The Debtors Failed to Propose the Plan in Good Faith

44. Section 1129(a)(3) of the Bankruptcy Code requires a plan be proposed in good faith and not by any means forbidden by law. 11 U.S.C. § 1129(a)(3). "The Bankruptcy Code does not define the term 'good faith,' but case law has defined the term as requiring, alternatively that (1) the plan be consistent with the objectives of the Bankruptcy Code; (2) the plan be proposed with honesty and good intentions and with a basis for expecting that reorganization can be achieved; or (3) there was fundamental fairness in dealing with the creditors." *Stonington Partners, Inc. v. Official Comm. of Unsecured Creditors (In re Lernout & Hauspie Speech Prods. N.V.)*, 308 B.R. 672, 675 (D. Del. 2004). The Plan fails to satisfy these requirements and, thus, may not be confirmed.

45. More precisely, under the Plan, the Debtors propose providing releases to non-debtor affiliates, which, in effect, waive more than $86.7 million owing to the Debtors from these entities, while simultaneously proposing to pay Class 4 claims a *de minimis* amount. In other words, the Debtors intend to release affiliates at the direct expense of general unsecured creditors. Favoring affiliates at the expense of general unsecured creditors—the most vulnerable claimants in a bankruptcy case—directly contravenes the foundational equitable principals of bankruptcy and must not be condoned.

46. Similarly, the Debtors attempt to take advantage of creditors by imposing substantial burdens in order to avoid granting third parties releases under the Plan. More precisely, under the Plan, a creditor must "opt-out" of the release provisions of the Plan by filing an objection to confirmation of the Plan or voting against the Plan. While voting for a plan is relatively inexpensive, objecting to confirmation of a Plan is an expensive process—requiring creditors, which may hold small claims receiving *de minimis* distributions under the Plan, to

retain counsel, pay counsel to review the Plan, pay counsel to prepare an objection to confirmation, and, in all likelihood, pay counsel to appear for the confirmation hearing in person due to the potential for live testimony. It is unconscionable for the Debtors to impose such burdens on creditors. The Debtors' willingness to employ such a strategy to obtain "consent" for disfavored third party releases for its affiliates further demonstrates the absence of good faith.

2. Proposed Treatment of Intercompany Claims and Interests Violates Absolute Priority Rule

47. The "absolute priority rule" prohibits the payment of junior creditors over the objection of a dissenting class of creditors. 11 U.S.C. § 1129(b)(2)(B)(ii). At present, the Plan violates the absolute priority rule by providing for payments on account of junior intercompany claims and interests (Classes 5 and 7) while providing only a "*de minimis*" distribution to Class 4 general unsecured creditors. [D.I. 185, at p. 9] As the Plan violates the absolute priority rule, it is patently unconfirmable and, thus, the Disclosure Statement should not be approved.

3. The Plan Violates Several Provisions of the Bankruptcy Code and, thus, may not be Confirmed as Proposed

48. Section 1129(a)(1) provides that "[t]he court shall confirm a plan only if . . . (1) the plan complies with the applicable provisions of this title . . . ." 11 U.S.C. § 1129(a)(1). Section 1129(a)(1) requires that the Plan comply with the structural and drafting requirements for a plan under sections 1122 and 1123 as well as the substantive provisions of the Bankruptcy Code. The Plan proposed by the Debtors violates both the substantive and procedural aspects of the Bankruptcy Code.

49. First, the Plan improperly classifies the claim of FTF to the Deferred Compensation in violation of section 1122. Section 1122 provides: "[A] plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Under the Plan, the Debtors (apparently)

categorize the Deferred Compensation claim in Class 6 as an equity interests in VER HoldCo. The "preferred units" associated with the Deferred Compensation, however, do not establish an "Equity Interest" in VER HoldCo. Indeed, the purported "preferred units" do not grant any rights generally associated with an ownership interest in a limited liability company or corporate entity; rather, the "preferred units" merely memorialize an obligation of VER HoldCo embodied in the LLC Agreement to pay the Deferred Compensation on the maturity date of the obligation or upon the initial public offering for VER HoldCo or sale of VER HoldCo. As such, the Deferred Compensation claim is not "substantially similar to the other claims or interests" in Class 6—*i.e.*, the common units in VER HoldCo, which actually represent Equity Interests—and, thus, the categorization of the Deferred Compensation in Class 6 violates section 1122(a).

50. Second, the Plan proposes an impermissible exculpation clause. [D.I. 185, at p. 43] More precisely, the Plan contains an exculpation clause that purports to release the Debtors and their representatives from any liability related to the Plan or preparation of the Plan, including conduct prior to the Petition Date. [*Id.*] As this Court recently ruled in *In re Patriot National, Inc.*, Case No. 18-10189 (KG), exculpation must be limited to postpetition conduct. As such, the exculpation clause in the Plan is overbroad and, thus, the Plan may not be confirmed as drafted.

51. Third, the Plan contains provisions regarding the disallowance of claims that contravene the law and procedures applicable to the disallowance of claims. More precisely, the Plan provides that any claim held by a recipient of an avoidable transfer shall be deemed disallowed pursuant to section 502(d). [D.I. 185, at p. 38] While section 502(d) permits the Court to temporarily disallow the claim of a recipient of an avoidable transfer, the Debtors bear the burden of establishing the claimant received an avoidable transfer and, thus, its claim may be

disallowed. 11 U.S.C. § 502(d). The *per se* rule proposed in the Plan violates the presumption of validity applicable to any duly-filed claim against the Debtors and burden of proof applicable to the disallowance of presumptively valid claims. Fed. R. Bankr. P. 3001(f).

52. Based on the foregoing, the Court should not approve the Disclosure Statement.

4. The Debtors have Failed to Establish any Basis to Conclude the Plan Serves the Best Interests of Creditors or is Feasible

53. Under sections 1129(a)(7) and (a)(11), the Court may only confirm a plan of reorganization if the plan serves the best interests of creditors and is feasible. 11 U.S.C. §§ 1129(a)(7) & (a)(11). At present, the dearth of relevant information—especially regarding PRG and it financial capabilities—renders it difficult to determine whether the Plan serves the best interests of creditors or is feasible, which highlights the need for further disclosures.

54. Notwithstanding, the information presently known indicates that the Plan does not serve the best interests of creditors and, furthermore, is not likely feasible. More precisely, the Plan apparently contravenes the best interests of general unsecured creditors as Class 4 will receive little, if anything, under the Plan while the Debtors propose sweeping releases for its insiders and non-debtor affiliates, including affiliates that owe the Debtors more than $86.7 million. In so doing, the estates are releasing an unknown amount of claims that may be capable of repaying all general unsecured claims in full if the Bankruptcy Cases were administered via an alternate plan or under chapter 7 of the Bankruptcy Code. Additionally, the Plan may be infeasible due to the financial condition of PRG; however, the Debtors have failed to disclose such information and, thus, a determination at this time is difficult, if not impossible. Regardless, the Debtors testified that PRG presently carries in excess of $1.1 billion in debt and, through the Merger, is set to incur more than $400 million in addition debt—bringing its total debt to approximately $1.5 billion, which is twice the amount of debt that caused the Debtors to

file the Bankruptcy Cases; thereby raising serious questions about the feasibility of the Plan and financial and operational capabilities of the post-Merger entity (*i.e.*, PRG II).

55. As the questions of feasibility and best interests cannot be determined at this time due to the concealment or withholding of relevant information and disclosures, the FTF Parties respectfully submit that the ambiguity of these integral issues should weigh in favor of disapproving the Disclosure Statement.

RESERVATION OF RIGHTS

56. The FTF Parties expressly reserve the right to amend or supplement this Objection and to assert any other rights, objections and remedies under and/or relating to the Plan, the Disclosure Statement, the Bankruptcy Code or other applicable law, including, without limitation, the rights to raise additional arguments or objections concerning the proposed approval of the Disclosure Statement or subsequent confirmation of the Plan, and to interpose amended or further responses or objections at a later date, as may be warranted by attendant facts and circumstances.

CONCLUSION

57. WHEREFORE, the FTF Parties respectfully request that the Court enter an order (a) denying the Motion in its entirety, (b) denying approval of the Disclosure Statement under section 1125, and (c) granting such further or additional relief the Court deems prudent.

Dated: May 29, 2018
Wilmington, Delaware

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