IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,[1]	Case No. 25-10475 (TMH)
	(Jointly Administered)
Debtors.	**Ref. Docket Nos. 9, 10, 69, 126, & 144**

DEBTORS' REPLY IN SUPPORT OF THE DIP MOTION

MORPHEUS

> This is your last chance. After this, there is no turning back. You take the blue pill – the story ends, you wake up in your bed and believe whatever you want to believe. You take the red pill – you stay in Wonderland and I show you how deep the rabbit hole goes.[2]

The Cartesian dichotomy famously offered to Neo in *The Matrix* is analogous to the choice presented to the Court by the Warner Bros. Objection. For its part, Warner Bros. would have the Court deny the DIP financing and send the Debtors into the cold grips of Agent Smith. Alternatively, the Debtors and a coalition of ***every other party in these cases*** — including the recently formed Official Committee of Unsecured Creditors — urge the Court to approve the financing so that they may prosecute these cases free from the control of a single unsecured creditor and in a manner that maximizes value for all stakeholders. It is clear which side adheres more closely to reality.

[1] The last four digits of Village Roadshow Entertainment Group USA Inc.'s federal tax identification number are 0343. The mailing address for Village Roadshow Entertainment Group USA Inc. is 750 N. San Vicente Blvd., Suite 800 West, West Hollywood, CA 90069. Due to the large number of debtors in these cases, which are being jointly administered for procedural purposes only, a complete list of the Debtors and the last four digits of their federal tax identification is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at https://www.veritaglobal.net/vreg.

[2] *The Matrix* (Warner Bros. Pictures, Village Roadshow Pictures, Groucho II Film Partnership, Silver Pictures 1999).

The above-captioned debtors and debtors in possession (collectively, the "Debtors"), hereby submit their reply (this "Reply") in support of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 9] (the "DIP Motion")[3] and in response to the objection thereto filed by Warner Bros. Entertainment Inc. and its affiliates (collectively, "Warner Bros.") [Docket No. 144] (the "Warner Bros. Objection"). In further support of the DIP Motion and this Reply, the Debtors state as follows:

PRELIMINARY STATEMENT

1. The Debtors filed these chapter 11 cases to run a sale process that will unlock and maximize the significant value of their assets for the benefit of all stakeholders. This process is already beginning to bear fruit.[4] Since the Petition Date, the Debtors have received competing stalking-horse bids which have generated over $50 million of additional value for the Debtors' Library Assets above the purchase price contemplated under the initial CP Stalking Horse APA. But the Debtors are not resting on their laurels. Together with their advisors, the Debtors continue to actively engage with a variety of interested third parties who are investing material time and resources into preparing potential bids—not only for the Library Assets, but for the Derivative Rights and the Studio Business as well. The Debtors are well-positioned to consummate one or more value-maximizing sales that will provide creditors with the greatest possible recovery.

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[3] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the DIP Motion.

[4] *See Debtors' Supplemental Motion for Entry of an Order (I) Approving (A) the Debtors' Designation of the New Stalking Horse Bidder for the Library Assets as Set Forth in the Stalking Horse Agreement, (B) the Debtors' Entry into the Stalking Horse Agreement, and (C) the Bid Protections, and (II) Granting Related Relief* (the "Stalking Horse Supplement"), and the declaration of Reid Snellenbarger in support of the Bid Procedures and Sale Motion and the Stalking Horse Supplement (the "Snellenbarger Declaration").

Against this backdrop, the Court should not lose sight of two key facts: (1) none of the progress achieved thus far would have been possible if the DIP Lenders had not provided the Debtors with a vital prepetition infusion of liquidity through the Bridge Notes; and (2) the Debtors unequivocally require access to the DIP Facility in order to see their sale process through its conclusion.

2. In the months leading up to the Petition Date, the Debtors faced a severe liquidity crisis. After marketing their assets for over a year, two potential purchasers had emerged at the forefront of a potential deal for the sale of the Library Assets. However, the Debtors did not have sufficient cash to execute on a transaction with either party, whether on an in-court or out-of-court basis. In addition, it quickly became clear that certain impediments to any out-of-court sale were likely insurmountable. The Debtors therefore had an urgent need for funding that would enable them to reach an agreement with a buyer for the sale of their Library Assets and concurrently prepare for a soft landing in chapter 11. The Bridge Notes, which were provided primarily for the benefit of the Library Debtors, allowed the Debtors to enter chapter 11 from a position of strength, armed with a $365 million stalking horse bid for the Library Assets.[5] Without the Bridge Notes, the Debtors would have been forced into either a chapter 7 proceeding or a crash chapter 11 filing with limited cash on hand. Indeed, as of the Petition Date, the Debtors had less than $150,000 in unrestricted cash.[6] Either scenario would have resulted in a value-destructive fire sale of the Debtors' assets and far more dubious prospects for creditor recoveries.

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[5] In addition to the Bridge Notes, in November 2023, the Prepetition Senior Secured Noteholders funded a prior round of bridge notes, which provided approximately $13.5 million in new money financing to keep the Debtors' operations afloat and allow them to continue exploring strategic alternatives with respect to a potential sale.

[6] *See Declaration of George N. Koutsonicolis in Support of Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* [Docket No. 10] (the "DIP Declaration").

3. Fast forwarding to the present, the Debtors currently have approximately $110,000 in unrestricted cash on hand, all of which is attributable to funding provided by the DIP Lenders pursuant to the Interim DIP Order. As detailed in the updated DIP Budget attached hereto as **Exhibit A** (the "DIP Budget"), the Debtors' cash burn rate on account of necessary operational expenditures alone is approximately $100,000 per week. The Debtors also continue to accrue obligations in connection with the administration of these cases, which will start to become payable in a matter of weeks. Without access to additional funding under the DIP Facility, the Debtors will run out of cash by the week of May 2. Claims that the Debtors would be able to complete their sale process using solely cash on hand[7] are simply not based in fact. Indeed, there is a reason that no party has objected to the DIP Facility's new money component—if the Debtors are unable to draw on additional funds, their sale process will come to a screeching halt to the detriment of all creditor constituencies.

4. With the need for financing established, the DIP Facility and its terms and conditions must be considered in their totality, as a package of economic and legal terms and consideration granted in exchange for the critical funding the Debtors require to continue operating, successfully administer these cases, and consummate a sale which is now valued at more than $417 million. But Warner Bros. does not consider the DIP facility as a whole. Instead, Warner Bros. cherry-picks at certain terms, aiming its sights at the Roll-Up and the Prepetition Senior Secured Noteholders' proposed adequate protection package, and selectively excises the terms that represent the *quid pro quo* on the DIP Lenders' side of the bargain to extend the prepetition Bridge Notes. As with any hard negotiated debtor in possession financing agreement,

[7] *See* Warner Bros. Obj. ¶ 3 ("[T]he DIP Budget does not reflect a dire need for cash to execute on the proposed sale process.").

there are some provisions that favor the DIP Lenders. However, Warner Bros. ignores that the Roll-Up and the Prepetition Senior Secured Noteholders' proposed adequate protection package are material, bargained-for terms of the DIP Facility, without which the DIP Lenders would not be willing to provide additional funding. Warner Bros. further fails to acknowledge that the prepetition obligations subject to the Roll-Up—*i.e.*, the Bridge Notes obligations—were incurred for the benefit of the Library Debtors. The only reason the DIP Lenders did not insist that the Bridge Notes be secured by liens on the Library Assets in the first instance is that the granting of such liens would have triggered a breach under the Prepetition ABS Credit Documents.

5. Warner Bros. also does not account for the numerous concessions that the DIP Lenders have in fact agreed to during both prepetition and postpetition negotiations. Even a cursory review of the proposed Final DIP Order filed concurrently herewith (the "Proposed Final DIP Order") reveals that the DIP Lenders have incorporated numerous comments from parties in interest, including Warner Bros., and made concessions to resolve the vast majority of formal and informal objections raised to the DIP Facility. Most notably, the DIP Lenders have agreed to significant limitations on the scope of the DIP Roll-Up liens and SSN Adequate Protection Liens. In addition, among other concessions, the DIP Lenders have agreed to use commercially reasonable efforts to marshal away from the proceeds of Avoidance Actions and Commercial Tort Claims first before turning to such proceeds for payment of DIP Obligations.

6. The fundamental question before the Court is whether the Debtors' estates and creditors are better off with the DIP Facility, including the Roll-Up and the Prepetition Senior Secured Noteholders' proposed adequate protection package, or without the DIP Facility. The answer is indisputably the former. For these reasons and the reasons set forth below, the Debtors

respectfully request that the Court overrule the Warner Bros. Objection, approve the DIP Motion and enter the Proposed Final DIP Order.

REPLY

I. The Roll-Up Is Appropriate and Should Be Approved.

7. Warner Bros. argues that the Roll-Up of the Debtors' obligations on account of the Bridge Notes is overbroad and that granting (a) DIP Roll-Up liens on the Library Assets and (b) superpriority administrative expense claims against the Library Debtors for rolled-up amounts should not be permitted.[8] Warner Bros. argument fails to acknowledge the reality of the Debtors' operations and the structure of the proposed financing as a whole. Warner Bros. is also incorrect with respect to the applicable law. As detailed herein, there is ample precedent in this district and others that supports approving postpetition financing on similar terms.

8. First and foremost, the DIP Facility and the Roll-Up satisfy the relevant legal standards for approval of debtor in possession financings, and are an appropriate exercise of the Debtors' sound business judgment.[9] The Debtors simply were unable to secure reasonable financing without the Roll-Up,[10] and Warner Bros. has failed to provide any evidence to the

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[8] Warner Bros. Obj. ¶¶ 39–45.

[9] *See, e.g.*, *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purposes is not so much to the benefit the estate as it is to benefit parties in interest.").

[10] Warner Bros.' assertions that the Debtors made an inadequate effort to obtain postpetition financing are baseless. *See* Warner Bros. Obj. ¶ 40. The Debtors ran a prepetition marketing process to raise liquidity on a compressed timeline. *See* DIP Decl. ¶ 13. During this process, the Debtors' advisors reached out to several third parties to solicit interest in providing financing. *See id.* However, the Debtors did not have unencumbered assets that could serve as collateral sufficient to entice those third parties to provide financing. The Prepetition Secured Parties were also unwilling to consent to any priming liens on their collateral. The DIP Lenders were the only party to offer a viable financing proposal to the Debtors. *See id.*; *In re Snowshoe Co., Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) ("[Section 364] imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable. This is particularly true when, as the court determined here, time is of the essence.").

contrary.[11] Absent the DIP Facility, the Debtors would have been forced to liquidate their enterprise expeditiously through a value-destructive fire sale. In addition, the standard applicable when evaluating proposed postpetition financing is whether the terms of the financing are "fair and reasonable" in light of the relative circumstances of both the debtor and the potential lender.[12] As detailed above, the terms of the DIP Facility represent the best—and only—terms available for the Debtors to access postpetition financing.

9. Moreover, while Warner Bros. has sought to cherry-pick provisions of the DIP Facility with which it does not agree, the law does not require that every term of the proposed financing be optimal.[13] Indeed, courts have held that even debtor in possession financing that contains unfavorable terms can satisfy the fair and reasonable standard:

> Some of the terms of the bargain reached between the debtor and creditor may reach beyond the usual terms of a loan agreement. However, such terms are perfectly normal considering the 'unusual' situation of a bankrupt firm. In such situations the bankruptcy court would rightfully be more interested by the requirements and provisions of section 364 of the Code, than it would be by a picayune examination of every legal argument that could be brought against separate provisions of the proposed agreement.[14]

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[11] Warner Bros. further suggests that, because it was not approached to provide financing, this somehow indicates that the Debtors' marketing process was inadequate. *See* Warner Bros. Obj. ¶ 40. This argument is puzzling at best. The Debtors and Warner Bros. were in the midst of years-long, highly contentious litigation. It strains credulity to claim that such a financing arrangement was a viable option, let alone that it could have been executed on the Debtors' necessarily compressed timeline. In addition, any postpetition financing provided by Warner Bros. would need to be secured by priming liens on the Library Assets, to which the ABS Trustee has indicated it would not consent. Pursuing such financing would cause an unnecessary nonconsensual priming dispute, waste estate resources, distract from the Debtors' sale process, and undermine the Debtors' efforts to garner the ABS Parties' support in these cases. *See Declaration of Keith Maib in Support of the Debtors' Request for Entry of an Order Authorizing the Debtors to Enter into Transaction Support Agreement* [Docket No. 211].

[12] *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) ("Viewed in isolation, several of the terms of the [postpetition financing] might appear to be extreme or even unreasonable. Certainly, many of them favor the DIP Lenders. But, taken in context, and considering the relative circumstances of the parties, the Court does not believe that the terms are unreasonable.").

[13] *Id.*; *see also In re Ellingsen MacLean Oil Co.*, 65 B.R. 358, 365 (W.D. Mich. 1986), *aff'd*, 834 F.2d 599 (6th Cir. 1987).

[14] *Ellingsen MacLean Oil Co.*, 65 B.R. at 365.

Furthermore, "[i]t is not impermissible for a [lender] to use its superior bargaining power to obtain creditor-favorable terms in a financing agreement."[15] Here, the Debtors have demonstrated not only that the terms of the proposed DIP Facility are the only terms available, but also that these terms are fair and reasonable under the circumstances of these chapter 11 cases.

10. Warner Bros.' claims that "the permissibility of roll-ups under the Bankruptcy Code is, at best, uncertain"[16] ignores that roll-ups are a common feature of debtor in possession financing arrangements. Courts in this district and others have repeatedly recognized their importance by granting relief similar to that requested in the DIP Motion.[17] In addition, the proportion of DIP Roll-Up Loans (approximately $5.8 million) to the New Money Commitment Amount ($7,000,000) is less than 1:1, which is eminently reasonable.[18]

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15 *Farmland Indus., Inc.*, 294 B.R. at 886 (citation omitted).

16 Warner Bros. Obj. ¶ 43.

17 *See, e.g.*, *In re SiO2 Medical Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 26, 2023) (authorizing an approximately $120 million DIP facility, including a $60 million roll-up of the prepetition term loan); *In re Extraction Oil & Gas, Inc.*, No. 20-11548 (CSS) (Bankr. D. Del. Jul. 20, 2020) (authorizing an approximately $50 million DIP facility including a $22 million roll-up); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Jul. 23, 2019) (authorizing an approximately $240 million DIP facility, including a $100 million roll-up of the prepetition term loan and an additional $140 million in incremental liquidity, pursuant to interim order); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 26, 2018) (authorizing an approximately $1,230 million DIP, including a full roll-up of the prepetition ABL outstanding principal of $639 million and an additional $250 million in additional liquidity, pursuant to interim order); *In re Remington Outdoor Co., Inc.*, No. 18-10684 (BLS) (Bankr. D. Del. Mar. 28, 2018) (authorizing approximately $338 million DIP and a roll-up of approximately $150 million, including a full ABL roll-up of $114 million, pursuant to interim order).

18 *See, e.g.*, *In re Franchise Group, Inc.*, No. 24-12480 (JTD) (Bankr. D. Del. Dec. 11, 2024) (authorizing a $750 million DIP facility, including a $500 million roll-up, constituting a 2:1 ratio); *In re Airspan Networks Holdings Inc.*, No. 24-10621 (TMH) (Bankr. D. Del. Apr. 19, 2024) (authorizing a $53.8 million DIP facility, including a $37.3 million roll-up, constituting a 2.26:1 ratio); *In re Sientra, Inc.*, No. 24-10245 (JTD) (Bankr. D. Del. Mar. 3, 2024) (authorizing a $90 million DIP facility, including a $67.5 million roll-up, constituting a 3:1 ratio); *In re NanoString Technologies, Inc.*, No. 24-10160 (CTG) (Bankr. D. Del. Feb. 6, 2024) (authorizing $142.5 million DIP facility, including a $95 million roll-up, constituting a 2:1 ratio); *In re Restoration Forest Products Group, LLC*, No. 24-10120 (KBO) (Bankr. D. Del. Feb. 1, 2024) (authorizing approx. $93.3 million DIP facility, including approx. $64.3 million roll-up, constituting a 2.2:1 ratio); *In re Phoenix Servs. Topco LLC*, Case No. 22-10906 (MFW) (Bankr. D. Del. Sept. 29, 2022) (approving a $100 million interim DIP facility with a 3:1 roll-up ratio consisting of $75 million of prepetition debt and $25 million of new money); *In re TPC Grp. Inc.*, Case No. 22-10493 (CTG) (Bankr. D. Del. June 3, 2022) (approving an interim DIP facility with a 1.85:1 roll-up ratio); *In re Carbonlite Holdings LLC*, Case No. 21-10527 (JTD) (Bankr. D. Del. Mar. 10, 2021) (approving a $42 million interim DIP facility with a 2:1 roll-up ratio); *In re Shiloh Industries Inc.*, No. 20-12024 (LSS) (Bankr. D. Del. Sep. 1, 2020) (authorizing roll-up with 4.5:1 ratio of rolled-up amounts to new money).

11. And contrary to Warner Bros.' claim that securing the DIP Roll-Up Loans by the Library Assets is impermissible, cross-collateralization is not *per se* prohibited by any provision of the Bankruptcy Code. As one court has noted:

> [s]ome courts assert that . . . cross-collateralization may never be approved . . . [o]ther courts, correctly, examine all the facts and circumstances to determine if the estate is being benefitted rather than principally the pre-petition creditor. . . . These cases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised.[19]

Indeed, debtor in possession financing arrangements featuring similar elements as the Roll-Up proposed in these cases have been approved in chapter 11 cases in this district and others.[20]

12. Nevertheless, as set forth in the Proposed Final DIP Order, the DIP Lenders have agreed to material concessions with respect to the Roll-Up, including that the DIP Liens in the Derivative Rights granted with respect to the DIP Roll-Up Loans shall be of the same validity as the prepetition liens therein securing the Prepetition Senior Secured Notes.

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[19] *In re Ames Dep't Stores, Inc.*, 115 B.R. at 39; *see also In re Adams Apple, Inc.*, 829 F.2d 1484, 1488–91 (9th Cir. 1987) ("[C]ross-collateralization clauses appear to be covered by section 364. . . . [A] lender may be willing to take the risk of advancing funds to a debtor only if the gain derived from cross-collateralization is available. If the lender is the sole lender willing to finance the debtor, a cross-collateralization clause may mean the difference between an ongoing enterprise and a company in liquidation.").

[20] *See, e.g.*, *In re Uno Rest. Holdings Corp.*, Case No. 10-10209 (MG) (Bankr. S.D.N.Y. Feb. 18, 2010) [Docket No. 156] (final order approving the inclusion of previously unencumbered assets as part of DIP collateral, including proceeds of all lease and leasehold interests, proceeds of any and all lawsuits or causes of action, and avoidance actions); *In re Westmoreland Coal Co.*, Case No. 18-35672 (MI) (Bankr. S.D. Texas, Nov. 15, 2018) [Docket No. 520] (final order approving the inclusion of previously unencumbered assets, including proceeds of avoidance actions, as part of DIP collateral); *In re Brookstone Holdings Corp.*, Case No. 18-11780 (BLS) (Bankr. D. Del. Aug. 30, 2018) [Docket No. 278] (final order approving the inclusion of previously unencumbered assets as part of DIP collateral, including previously unencumbered avoidance actions, commercial tort claims, and the debtors' leasehold interests); *In re Rockport Co., LLC*, Case No. 18-11145 (LSS) (Bankr. D. Del. June 29, 2018) [Docket No. 320] (final order approving the inclusion of previously unencumbered property as part of DIP collateral, including interest in non-obligor debtor entities and subsidiaries of those entities, with a nonpossessory pledge from the non-obligor debtors securing the DIP loans); *In re The Standard Register Co.*, Case No. 15-10541 (BLS) (Bankr. D. Del. Apr. 16, 2015) [Docket No. 290] (final order approving the inclusion of previously unencumbered property as part of DIP collateral, including interests in and assets of non-obligor entities).

II. The Prepetition Senior Secured Noteholders Are Entitled to Adequate Protection Because the DIP Liens Are Priming the Prepetition Senior Secured Notes Liens.

13. Adequate protection is intended to preserve the secured creditor's position at the time of the case filing.[21] Warner Bros. erroneously asserts that the "Prepetition Noteholders are not entitled to adequate protection for any diminution in value of the Equity-Pledged Debtor Entities" because "[e]quity is neither used nor leased in the Debtors' operations."[22] In support of this position, Warner Bros. relies solely on section 363(e), which provides, in relevant part: "on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."[23]

14. Warner Bros. ignores section 364(d)(1)(B), which provides that a bankruptcy court "may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if . . . there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted."[24] It is undisputed that the DIP Liens are priming the Prepetition Senior Secured Notes Liens with respect to the Prepetition Senior Secured Notes Collateral. Accordingly, the Prepetition Senior Secured Noteholders are entitled to adequate protection to the extent of any diminution in the value of the Prepetition Senior Secured Notes Liens.[25]

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[21] *See In re WorldCom, Inc.*, 304 B.R. 611, 618-619 (Bankr. S.D.N.Y. 2004).

[22] Warner Bros. Obj. ¶ 47.

[23] 11 U.S.C. § 363(e).

[24] 11 U.S.C. § 364(d)(1)(B).

[25] *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) ("Section 364(d)(1) of the Code provides that the bankruptcy court may authorize post-petition financing supported by a superpriority lien only if 'there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.'").

15. Warner Bros. also incorrectly asserts that the Prepetition Secured Parties should not be granted adequate protection liens on assets that were not part of their respective prepetition collateral packages.[26] This argument ignores that section 361(2) expressly authorizes debtors to provide "an additional or replacement lien" as adequate protection when required under section 364.[27] Moreover, the Prepetition Senior Secured Noteholders have agreed to significant concessions regarding their adequate protection package. Specifically, the Proposed Final DIP Order provides that (i) the Prepetition Senior Secured Notes Parties agree to exercise commercially reasonable efforts to marshal away from assets included in the DIP Collateral that were not part of their respective Prepetition Collateral before turning to such non-Prepetition Collateral for payment with respect to the Adequate Protection Liens and 507(b) Claims, and (ii) the SSN Adequate Protections Liens will be limited to the DIP Collateral of the Notes Debtors.

16. The Prepetition Senior Secured Noteholders' adequate protection package is narrowly tailored to protect against any diminution in value of their collateral. Nothing in the Bankruptcy Code precludes the grant of such an adequate protection package. Indeed, were adequate protection liens limited to the same assets constituting prepetition collateral, then such

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[26] *See* Warner Bros. Obj. ¶ 49.

[27] 11 U.S.C. § 361(2); *see also In re Bayonne Med. Ctr., Inc.*, No. 07-15195 (MS), 2009 WL 1025123, at *5, n.11 (Bankr. D.N.J. Feb. 3, 2009) (noting that adequate protection was "granted to the secured creditors by way of replacement liens and additional liens that encompassed essentially all of the debtor's otherwise unencumbered assets, and, if needed, a superpriority administrative claim"); *In re Satcon Tech. Corp.*, No. 12-12869 KG, 2012 WL 6091160, at *6, *7 (Bankr. D. Del. Dec. 7, 2012) (finding that "(i) interest payments at the applicable default rate, (ii) payment of the Secured Lenders' legal fees and expenses incurred in these chapter 11 cases and (iii) replacement liens on the collateral" to be appropriate forms of adequate protection that "protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use by the debtor"); *In re AppliedTheory Corp.*, 2008 WL 1869770, at *1 (Bankr. S.D.N.Y. Apr. 24, 2008) ("Of course those assets started out unencumbered. But those assets can thereafter be encumbered (or made available to satisfy superpriority claims), if necessary to provide adequate protection. That is expressly authorized under section 361(2).").

replacement liens would offer little incremental protection to secured parties.[28] Here, the Debtors and the DIP Lenders negotiated an adequate protection package that was an integral part of the DIP Lender's agreement to provide the DIP Financing, is authorized under the Bankruptcy Code, and should be approved.

III. The Proposed Liens on the Proceeds of Avoidance Actions Are Reasonable and Should Be Approved.

17. Warner Bros. argues that the Debtors should not be permitted to grant liens on proceeds of Avoidance Actions, either as collateral under the DIP Facility or as adequate protection.[29] Warner Bros. offers no credible argument why the Debtors cannot grant liens on their unencumbered assets in exchange for the DIP Facility.

18. As with any estate asset and as specifically permitted by the Bankruptcy Code, a debtor may grant liens on avoidance actions (or their proceeds) or any other unencumbered asset to secure postpetition financing or provide adequate protection, and it can also grant superpriority claims payable from all of a debtor's unencumbered assets.[30] These causes of action are estate assets that may be used in the debtor's business judgment.[31] Liens on the proceeds of avoidance actions are a common form of protection afforded to postpetition lenders in complex cases and have been granted in many financing orders entered in this district.[32] Further, courts in this district

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[28] *See In re Reading Tube Indus.*, 72 B.R. 329, 333 (Bankr. E.D. Pa. 1987) ("In order for the court to find that the debtor's proposed replacement lien affords adequate protection, the debtor must prove that the value of the replacement lien is greater or equal to the difference between the value of the [lender's] liens on debtor's property and the value of the liens after being primed.").

[29] *See* Warner Bros. Obj. ¶ 50.

[30] *See* 11 U.S.C. §§ 361(2), 364(c)(2); *Applied Theory Corp.*, 2008 WL 1869770, at *1.

[31] *See* 11 U.S.C. §§ 550(a) (preserving recoveries on avoidance actions "for the benefit of the estate"), 541(a)(3), 541(a)(4).

[32] *See, e.g., In re Never Slip Holdings, Inc.*, No. 24-10663 (LSS) (Bankr. D. Del. Apr. 26, 2024); *In re Number Holdings, Inc.*, No. 24- 10719 (JKS) (Bankr. D. Del. May 9, 2024); *In re View, Inc.*, No. 24-10692 (CTG) (Bankr. D. Del. Apr. 23, 2024); *In re Airspan Networks Holdings Inc.*, No. 24-10621 (TMH) (Bankr. D. Del. Apr. 19,

routinely reject the argument that avoidance action proceeds are reserved for the benefit of general unsecured creditors.[33]

19. Moreover, as part of concessions made in favor of the Committee, the DIP Lenders have agreed to use commercially reasonable efforts to marshal away from the proceeds of Avoidance Actions and Commercial Tort Claims first before turning to such proceeds for payment of DIP Obligations. The Prepetition Senior Secured Notes Parties have further agreed to limit the SSN Adequate Protections Liens to the DIP Collateral of the Notes Debtors, meaning the SSN Adequate Protection Liens will only attach to the proceeds of Avoidance Actions and Commercial Tort Claims held by the Notes Debtors.

IV. The Bankruptcy Code Permits the Debtors to Pledge Their Interests in the Library Assets and the Derivative Rights Notwithstanding Provisions in the Debtors' Agreements with Warner Bros. to the Contrary.

20. Warners Bros. flagrantly mischaracterizes the Debtors' assets and property rights, as well as the Debtors' ability to provide the same as collateral for the DIP Facility. Specifically, Warner Bros. claims that "the Library Assets are contract rights in films that Warner Bros. created and the Derivative Rights are potential contract rights in films that Warner Bros. may create in the future. . . . The Debtors' assets consist of contract rights from its executory agreements with

2024); *In re JoAnn Inc.*, No. 24-10418 (CTG) (Bankr. D. Del. Apr. 12, 2024); *In re Quorum Health Corp.*, No. 20-10766 (KBO) (Bankr. D. Del. May 6, 2020) Hr'g Tr. 225:19–225:20 [Docket No. 296] ("The liens on avoidance actions do not trouble me given the lack of unencumbered collateral available to the DIP lenders."); *In re Metaldyne Corp.*, No. 09-13412 (MG), 2009 WL 2883045, at *4 (Bankr. S.D.N.Y. June 23, 2009) (approving the encumbrance of avoidance action proceeds where "[t]he Debtors have only limited unencumbered assets upon which replacement liens can be provided: avoidance actions and unencumbered foreign stock"); *AppliedTheory Corp.*, 2008 WL 1869770, at *1 ("I was surprised to see the Creditors' Committee arguing that under no circumstances could the Lenders have a claim on the proceeds of avoidance actions and other initially unencumbered assets, even if necessary to give them adequate protection . . . those assets can [] be encumbered (or made available to satisfy superpriority claims), if necessary to provide adequate protection. That's expressly authorized under section 361(2).").

[33] *See In re TECT Aerospace Grp. Holdings, Inc., et al.*, No. 21-10670 (KBO) (Bankr. D. Del. May 11, 2021), Hr'g Tr. 67:25–68:6 [Docket No. 172] ("And also, as a matter of law . . . I actually disagree that avoidance actions are exclusively for the benefit of general unsecured creditors. They're a benefit for the estate.").

Warner Bros. As such, they are subject to the limitations imposed by the contracts themselves, as well as the Bankruptcy Code and applicable law."[34] Warner Bros. further cites to certain provisions in its contracts with the Debtors that restrict the Debtors' ability to *transfer* certain of their property and contractual rights.[35] Curiously, Warner Bros. proceeds to cite section 365(c)(1)—which governs restrictions on the assignability of executory contracts—in support of its conclusion that the Debtors cannot pledge the Library Assets or the Derivative Rights as collateral for the DIP Facility.[36]

21. To be clear, the Debtors jointly own the underlying copyrights to the films that comprise the Library Assets, as well as the Derivative Rights. For each motion picture film co-financed by the Debtors and Warner Bros. (each, a "Picture"), the parties entered into a Rights Purchase Agreement, whereby the Debtors acquired discrete interests and rights in and with respect to the relevant Picture.[37] Similarly, for each Picture, the Debtors and Warner Bros. entered into a Co-Ownership Agreement, which governs the parties' respective interests and rights in connection with their co-ownership of the Derivative Rights for the relevant Picture. The interests and rights that the Debtors acquired—and still own—are separate and apart from the interests and rights owned by Warner Bros.

22. The DIP Facility does not contemplate the transfer or assignment of, or the granting of any DIP Liens on, any of Warner Bros.' assets. In addition, to the extent that Warner Bros. has valid and perfected liens on the Debtors' assets, such liens are expressly made senior to any DIP Liens pursuant to the Proposed Final DIP Order. The Debtors simply do not require Warner Bros.

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[34] Warner Bros. Obj. ¶¶ 5, 31.

[35] *See id.* ¶¶ 32–33.

[36] *See id.*

[37] *See* Declaration of Wayne M. Smith in support of the Warner Bros. Objection [Docket No. 147] (the "Smith Declaration"), ¶¶ 6–14.

consent to provide their own assets as collateral for the DIP Facility.[38] By mischaracterizing the Debtors' assets and their value, Warner Bros. risks causing material harm to the Debtors' sale process and, by extension, its own recovery as a creditor of the Debtors' estates. This irrational approach suggests Warner Bros.' actions are motivated by animus resulting from years of contentious litigation rather than a practical interest in reaching resolution.

23. Warner Bros. also misinterprets the plain language of the parties' Omnibus Amendment No. 2 to the Co-Ownership Agreements in arguing that the DIP Liens and DIP Superpriority Claims should not include the proceeds of avoidance actions "[b]ecause the prepetition transfers of the Derivative Rights were likely fraudulent transfers."[39] The transfers that Warner Bros. refers to are the assignment by Debtor Village Roadshow Films (BVI) Limited ("VRF") and Debtor Village Roadshow Films North America Inc. ("VRFNA") of certain Derivative Rights to certain wholly-owned subsidiaries of Village Roadshow Entertainment Group (BVI) Limited ("VREG") (collectively, the "Assignments"). Far from fraudulent transfers, Warner Bros. expressly agreed that VRF and VRFNA would have the right to make such Assignments pursuant to the Omnibus Amendment No. 2. Specifically, Section 2(f)(i) of the Omnibus Amendment No. 2 provides:

(f) [redacted]

(i) [redacted]

[redacted]

[38] *See Brownstein v. Lindsay*, 742 F.3d 55, 68, 69 (3d Cir. 2014); *Davis v. Blige*, 505 F.3d 90, 99 (2d Cir. 2007) (holding that co-owner of copyright may freely transfer own interest in the copyright, but requires consent of co-owner to transfer co-owner's interest).

[39] Warner Bros. Obj. ¶¶ 8, 20, 50.

[redacted][40]

24. Pursuant to the Assignments, VRF and VRFNA assigned their respective interests in the Derivative Rights for each applicable Picture to a wholly-owned subsidiary of VREG.[41] Warner Bros. claims that the Assignments violated the contractual exception because [redacted][42] However, the effect of Section 2(f)(i) of the Omnibus Amendment No. 2 was [redacted].[43] Thus, the Omnibus Amendment No. 2 only requires [redacted]. There is no requirement that [redacted]. Further, VRF, VRFNA, and VREG provided written notice of the Assignments to Warner Bros. on November 28, 2023—*i.e.*, the date on which the Assignments were made.[44] And by its own admission, Warner Bros. did not raise any concerns with respect to the

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40 *See* Smith Declaration, Exhibit 5 (emphasis added).

41 *See id.*, Exhibit 19.

42 Warner Bros. Obj. ¶ 32, n. 14.

43 *See, e.g.*, Smith Declaration, Exhibit 3.

44 *See id.* ¶ 26.

Assignments until five months after it received notice of the assignments.[45] Thus, despite Warner Bros.' claims to the contrary, the Assignments abided by the terms of the Omnibus Amendment No. 2 and were expressly permitted.

V. The Challenge Period Is Appropriate.

25. Warner Bros. asserts that the 75-day challenge period is insufficient.[46] This position is unwarranted. A 75-day challenge period matches or exceeds the challenge periods that are routinely approved by courts overseeing complex financial restructurings.[47] Indeed, the Local Rules identify 75 days as an appropriate amount of time to commence a challenge.[48]

26. Given the facts and circumstances of this case, nothing at this juncture suggests that Warner Bros. will require more time to complete an investigation. Moreover, to accommodate the requested extensions, the Debtors would necessarily require additional financing that they simply do not have. Warner Bros. has thus far failed to show sufficient cause for an extension of the Challenge Period beyond the timeframe prescribed under the Local Rules. The Debtors believe that an extension of the Challenge Period is not necessary or required and would only result in additional professional fees that will eat away at creditor recoveries. That said, the Debtors will continue to work constructively with Warner Bros. and its advisors to help them complete their investigations expeditiously. Indeed, the Debtors already agreed to adjourn the second day hearing

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45 *See id.*

46 *See* Warner Bros. Obj. ¶ 50.

47 *See, e.g.*, *In re Franchise Group, Inc.*, 24-12480 (JTD) (Bankr. D. Del, Dec. 11, 2024) [Docket No. 414] (approving 75-day after interim order challenge period); *In re Reverse Mortgage Investment Trust Inc.*, 22-11225 (MFW) (Bankr. D. Del, Feb. 23, 2023) [Docket No. 500] (approving 75-day after interim order challenge period over objections); *In re Fluid Market, Inc.*, 24-12363 (CTG) (Bankr. D. Del, Nov. 19, 2024) [Docket No. 158] (approving 75-day after interim order challenge period over U.S. Trustee objection); *In re Jevic Holding Corp.*, No. 08-11006 (BLS), 2021 WL 1812665 (Bankr. D. Del. May 5, 2021) (approving 75-day after petition date challenge period over objections).

48 *See* Local Rule 4001-2(a)(i)(Q).

to provide to provide Warner Bros. additional time to get up to speed, and the Debtors have agreed to extend certain sale milestones to address certain of Warner Bros.' timing concerns.

27. Moreover, in the event Warner Bros. subsequently identifies any specific need for an extension, the Proposed Final DIP Order provides that the Court, upon the application of a party in interest demonstrating good cause, may extend the challenge period.[49] Thus, the Challenge Period may be extended if Warner Bros. demonstrates the requisite cause to the Court's satisfaction. For these reasons, the Debtors believe the Challenge Period and related provisions of the Proposed Final DIP Order are fair and reasonable.

[*Remainder of Page Intentionally Left Blank*]

[49] *See* Proposed Final DIP Order ¶ 12(a).

WHEREFORE, the Debtors respectfully request that the Court overrule the Warner Bros. Objection, enter the Proposed Final DIP Order, and grant such other and further relief as is just and proper.

Dated: April 21, 2025
Wilmington, Delaware

/s/ Joseph M. Mulvihill

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EXHIBIT A

DIP Budget

VILLAGE ROADSHOW ENTERTAINMENT GROUP
DIP Budget
PRIVILEGED AND CONFIDENTIAL
DRAFT - SUBJECT TO MATERIAL REVISION

	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast	Forecast
Forecast Week #	1	2	3	4	5	6	7	8	9	10	11	12	13
Week Ended	**04/18/25**	**04/25/25**	**05/02/25**	**05/09/25**	**05/16/25**	**05/23/25**	**05/30/25**	**06/06/25**	**06/13/25**	**06/20/25**	**06/27/25**	**07/04/25**	**07/11/25**
Receipts													
ABS Notes: Class A,B,C - Servicing Fees	$ -	$ -	$ -	$ -	$ -	$ 675,000	$ -	$ -	$ -	$ -	$ -	$ -	$ -
The Gutter - Magnolia Pictures, MG re domestic rights	-	-	-	(5,250)	12,800	-	-	-	-	-	-	-	-
Other Incoming Funds	-	-	-	-	-	-	-	-	-	-	-	-	-
Total Receipts	**-**	**-**	**-**	**(5,250)**	**12,800**	**675,000**	**-**	**-**	**-**	**-**	**-**	**-**	**-**
Operating Disbursements													
Salaries, Payroll Taxes, and Employee Benefits	(5,554)	-	(71,666)	(8,196)	(71,666)	-	-	(71,666)	(8,196)	(71,666)	-	(71,666)	(8,196)
Professional, Consulting, and Advisory fees	(38,750)	(27,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)
Office & Administrative Expenses (ex office rent and insurance)	(2,000)	(2,000)	(7,500)	(2,000)	(2,000)	(2,000)	(2,000)	(7,500)	(2,000)	(2,000)	(2,000)	(2,000)	(2,000)
Office Rent & Parking	-	-	-	(1,000)	-	-	-	(1,000)	-	-	-	(1,000)	-
VRFAM and VREG BVI - ANZ accounts funding	(100,000)	-	-	-	-	-	(100,000)	-	-	-	-	-	(100,000)
Total Operating Disbursements	**(146,304)**	**(29,000)**	**(81,166)**	**(13,196)**	**(75,666)**	**(4,000)**	**(104,000)**	**(82,166)**	**(12,196)**	**(75,666)**	**(4,000)**	**(76,666)**	**(112,196)**
Operating Cash Flow	**(146,304)**	**(29,000)**	**(81,166)**	**(18,446)**	**(62,866)**	**671,000**	**(104,000)**	**(82,166)**	**(12,196)**	**(75,666)**	**(4,000)**	**(76,666)**	**(112,196)**
Restructuring Items													
Restructuring Professional Fees	-	-	-	-	(2,825,000)	-	-	-	(2,725,000)	-	-	-	-
Adequate Protection Payments	(250,000)	-	-	-	(500,000)	-	-	-	-	-	-	-	-
Interest, Fees, & Other	-	-	-	-	-	-	-	-	-	-	-	-	-
US Trustee Fees	-	(8,540)	-	-	-	-	-	-	-	-	-	-	(64,356)
Total Restructuring Disbursements	**(250,000)**	**(8,540)**	**-**	**-**	**(3,325,000)**	**-**	**-**	**-**	**(2,725,000)**	**-**	**-**	**-**	**(64,356)**
Net Cash Flow	**$ (396,304)**	**$ (37,540)**	**$ (81,166)**	**$ (18,446)**	**$ (3,387,866)**	**$ 671,000**	**$ (104,000)**	**$ (82,166)**	**$ (2,737,196)**	**$ (75,666)**	**$ (4,000)**	**$ (76,666)**	**$ (176,552)**
Beginning Cash Balance	**$ 502,730**	**$ 106,426**	**$ 282,781**	**$ 201,615**	**$ 183,169**	**$ 295,302**	**$ 966,302**	**$ 862,302**	**$ 780,136**	**$ 829,045**	**$ 753,379**	**$ 749,379**	**$ 672,712**
Net Cash Flow	(396,304)	(37,540)	(81,166)	(18,446)	(3,387,866)	671,000	(104,000)	(82,166)	(2,737,196)	(75,666)	(4,000)	(76,666)	(176,552)
Bridge Draw/Paydown	-	(5,786,105)	-	-	-	-	-	-	-	-	-	-	-
DIP Draw/Paydown	-	6,000,000	-	-	3,500,000	-	-	-	2,786,105	-	-	-	-
Ending Cash Balance	**$ 106,426**	**$ 282,781**	**$ 201,615**	**$ 183,169**	**$ 295,302**	**$ 966,302**	**$ 862,302**	**$ 780,136**	**$ 829,045**	**$ 753,379**	**$ 749,379**	**$ 672,712**	**$ 496,161**

Notes:
Excludes DIP maturity and related fees
Excludes investment banker success fees and advisor transaction completion fees (Virtu)