**IN THE UNITED STATES BANKRUPTCY COURT**
**FOR THE DISTRICT OF DELAWARE**

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| In re: | Chapter 11 |
| VILLAGE ROADSHOW ENTERTAINMENT GROUP USA INC., *et al.*,[1] | Case No. 25-10475 (TMH) |
| | (Jointly Administered) |
| Debtors. | **Ref. Docket No. 1018** |

**DEBTORS' OBJECTION TO WARNER'S MOTION FOR AN ORDER GRANTING STANDING AND AUTHORIZING THE PROSECUTION OF CHALLENGE CLAIMS**

The above-captioned debtors and debtors in possession (collectively, the "Debtors" or "Village"),[2] file this objection (this "Objection") to *Warner Bros. Motion for an Order Granting Standing and Authorizing the Prosecution of Challenge Claims Against the Prepetition Senior Secured Notes Parties, and Certain Notes Debtors: The Derivative Rights Transferees* [Docket No. 1018] (the "Standing Motion") filed by Warner Bros. Entertainment Inc. and its affiliates (collectively, "Warner"). In support of this Objection, the Debtors rely on the declaration of Kevin Berg (the "Berg Declaration") filed contemporaneously herewith. In further support of this Objection, the Debtors respectfully state as follows:

[1] The last four digits of the Debtors Roadshow Entertainment Group USA Inc.'s federal tax identification number are 0343. The mailing address for the Debtors 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] Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Standing Motion, the *Debtors' Reply in Support of the Derivative Rights Sale* [Docket No. 946] (the "Derivative Rights Sale Reply"), or 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"), as applicable.



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## I. PRELIMINARY STATEMENT

1. The Proposed Complaint opens with this sentence: "[t]his action arises from a coordinated effort by the [Senior Secured Noteholders] and Village to hinder, delay, defraud, and prevent [Warner] from recovering on its over $100 million arbitration award through a series of fraudulent transfers." Prop. Compl., ¶ 1. The Proposed Complaint then asserts a series of Alleged Claims[3] predicated not on hard facts, but on conclusory deductions and inferences, all of which are fruit of this poisonous false premise. Warner's allegations not only lack factual foundation—they are wholly irreconcilable with the reality that Warner's claim against the Debtors' estates is fully protected. Indeed, through the consensually created Warner Bros. Reserve, the Debtors segregated $110 million—the agreed upon maximum value of Warner's Matrix Claim—to ensure that Warner's claim, once liquidated, can be paid in full.

2. It is well established that granting derivative standing is the "exception rather than the rule." *Scott v. Nat'l Century Fin. Enters. Inc. (In re Balt. Emergency Servs. II, Corp.)*, 432 F.3d 557, 562 (4th Cir. 2005). Here, the Debtors have dutifully upheld their obligations to maximize value and stand poised and ready to distribute that value in accordance with the Bankruptcy Code's priority scheme. The Debtors agree with Warner that for a creditor to be granted derivative standing—in addition to bankruptcy court approval—***such creditor has the burden of proving*** that (a) the debtors unjustifiably refused to pursue the claim, and (b) the claim is colorable. As more fully set forth below, an accurate recitation of the factual background and prevailing legal standard demonstrates that Warner cannot clear either hurdle.

[3] The "Alleged Claims" are the Counts I-VII in the Proposed Complaint.

3. In fact, Warner does not attempt to present any evidence in support of the first element and instead allocates only two conclusory—and demonstrably false[4]—sentences relating to this factor throughout its entire lengthy brief. *See* Standing Motion, ¶ 42. The Debtors were justified in declining to pursue the Alleged Claims because such pursuit would be futile. The Transfers did not harm the Debtor Transferors—who were solvent at the time of the Transfers and remain solvent today—or their creditors, and thus even the Debtors lack proper standing to pursue the Alleged Claims.[5] Warner falls woefully short of meeting its burden on this element and the Standing Motion should be denied on this basis alone.

4. The solvency of the Debtor Transferors, coupled with the lack of injury stemming from the Transfers, similarly undermines Warner's argument with respect to whether the Alleged Claims are colorable. Warner is unable to provide sufficient evidence to support the plausibility of Counts I and II—constructive fraudulent transfer and intentional fraudulent transfer—in light of a fact pattern that includes: (i) reasonably equivalent value in the amount of $17.4 million provided to the Debtors as consideration for the Transfers pursuant to the Fourth A&R NPA; (ii) the solvency of the Debtor Transferors; (iii) clear evidence that the Debtors had planned the Transfers years before the Matrix Arbitration was initiated for wholly unrelated reasons; and (iv) Warner's Matrix Claim—and all of the Debtor Transferors' unsecured claims—being paid in full. Further, Warner cannot sustain allegations that Counts III-VII are colorable in the absence

[4] Warner once again unabashedly misrepresents the statements of Debtors' counsel, citing to the First Day Hearing Transcript to support the assertion that "the Debtors were well aware of the fraudulent transfers at the first day hearing in these cases." *See* Standing Motion, ¶ 42. The Debtors were aware of the transfers, but never referred to them as "fraudulent transfers."

[5] "Fraudulent transfer claims may not be brought where they offer no benefit to creditors of the transferor's estate." *In re HH Liquidation, LLC*, 590 B.R. 211, 262 (Bankr. D. Del. 2018); *see also Adelphia Recovery Trust v. Bank of America, N.A.*, 390 B.R. 80, 95 (S.D.N.Y. 2008) ("Under the principles of federal jurisdiction a party does not have standing to sue where the party is not able to allege an injury that is likely to be redressed by the relief sought.").

of Count I and II, particularly with irrefutable evidence that the Senior Secured Noteholders properly perfected their security interests in the Derivative Rights through the filing of the UCC Financing Statements. *See* Berg Decl., Ex. E. Accordingly, Warner does not satisfy the requisite burden of proof necessary for the Standing Motion to be granted.

5. With only threadbare and implausible accusations to support the causes of action alleged in the Proposed Complaint, Warner additionally attempts to confuse the issues by raising irrelevant and explicitly direct—not derivative—potential claims that it may have against the Debtors. Warner admits that while it believed the Warner Bros. Reserve could have mooted the need for a standing motion, "the Debtors' recent actions in these cases suggest that ***Warner Bros. maintains additional damages against the Debtors' estates*** and maintains rights that must be protected." *See* Standing Mot., ¶ 5. These additional damages apparently stem from contract rejection, *Practical Magic 2*, or Purchased Unfunded Pictures in connection with the Derivative Rights sale to Alcon. The Debtors vigorously dispute that any action taken during these chapter 11 proceedings has caused Warner to suffer damages or given rise to additional claims. Further, none of Warner's purported "additional damages" relate to the Transfers or even appear in the Proposed Complaint. And of course, they could not: any speculative claims related to rejection damages, *Practical Magic 2*, or the Unfunded Purchased Pictures clearly would be liabilities that arose ***after the Petition Date***. Warner relies on these speculative claims in an attempt to provide a *post hoc* justification for unwinding the Transfers, but in reality, such claims have no relevance to Warner's claims against the Debtors ***at the time of the Transfers***.

6. Ultimately, inclusion of these potential direct claims in the Standing Motion and the causes of action in the Proposed Complaint expose what appears to be Warner's actual objective: to subordinate, disallow, or otherwise challenge all liens held by the Senior Secured

Noteholders, thereby preserving the Debtors' remaining assets for the satisfaction of any contingent or unsecured claims Warner might assert in the future. This objective—which lacks legal and factual support—directly contravenes the priority scheme provided for in the Bankruptcy Code and the purposes of chapter 11—to provide fair, orderly, and expedient restructuring and liquidation processes. This Court must not countenance a request for standing from Warner—a self-interested creditor whose only legitimate claim is fully protected—to take the extraordinary step of supplanting the Debtors' role and judgment, particularly when Warner's intentions are so blatantly opposed to the Debtors' goal of maximizing value for the benefit of ***all*** stakeholders.

7. Accordingly, for these reasons and as explained in more detail below, the Debtors respectfully request that the Court deny the Standing Motion.

## II. RELEVANT FACTS

8. The Alleged Claims center around two related prepetition transactions, both of which occurred on November 28, 2023: (i) the Assignments (as defined below) of the Derivative Rights[6] from certain Debtor entities (the Debtor Transferors) to certain other Debtor entities (the DR SPEs); and (ii) the Pledge (as defined below, and together with the Assignments, the "Transfers") of the Derivative Rights as collateral under the Senior Secured Notes. The Standing Motion provides a reductive summary of the Transfers that fails to account for the broader context in which they were made. An informed review of the events and circumstances giving rise to the Transfers makes clear that the Alleged Claims lack a factual and legal predicate.

[6] This term is defined as "Derivative Rights Assets" in the Derivative Rights Sale Reply.

**A. The Debtors' Prepetition Capital Structure.**

9. As set forth in the DIP Motion, as of the Petition Date, the Debtors had approximately $386,895,702.13 in outstanding funded debt obligations, consisting of the ABS Facility and the Senior Secured Notes (each as defined below).[7]

**i. *The Senior Secured Notes*.**

10. As of the Petition Date, certain of the Debtors (the "Notes Debtors")[8] had outstanding secured debt obligations in the aggregate principal amount of approximately $163,075,096.60 arising under certain senior secured notes (the "Senior Secured Notes"), which were issued in several tranches pursuant to a series of amended and restated notes purchase agreements (collectively, the "NPAs") by and among the Notes Debtors, the noteholders listed therein (the "Senior Secured Noteholders"), and Wilmington Savings Fund Society, FSB, as collateral agent (the "Collateral Agent," and together with the Senior Secured Noteholders, the "Senior Secured Notes Parties"). *See* Berg Decl., ¶ 4.

11. Tranches of Senior Secured Notes were issued pursuant that certain *Note Purchase Agreement*, dated as of September 11, 2015 (the "Original NPA"), that certain *Amended and Restated Note Purchase Agreement*, dated as of April 14, 2017 (the "A&R NPA"), that certain *Second Amended and Restated Note Purchase Agreement*, dated as of August 18, 2021 (the "Second A&R NPA"), that certain *Third Amended and Restated Note Purchase Agreement*, dated as of September 15, 2023 (the "Third A&R NPA"), that certain *Fourth*

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[7] A chart detailing the Debtors' corporate structure and related funded debt obligations is attached as Exhibit A to the *Declaration of Keith Maib in Support of First Day Relief* [Docket No. 2] (the "First Day Declaration").

[8] The Notes Debtors include Village Roadshow Entertainment Group (BVI) Limited ("VREG-BVI"), as borrower, and each of Crescent Film Holdings Limited ("CFHL"), Village Roadshow Entertainment Group USA Inc. ("VREG-USA"), Village Roadshow Pictures Entertainment Inc. ("VRPEI"), Village Roadshow Holdings USA Inc. ("VRH-USA"), VREG IP Global LLC ("VREG-IP"), VREG WW IP Global LLC ("VREG-WW"), VREG MM2 IP Global LLC ("VREG-MM2"), VREG J2 Global LLC ("VREG-J2"), and VREG OP Global LLC ("VREG-OP"), as subsidiary guarantors (collectively, the "Subsidiary Guarantors").

*Amended and Restated Note Purchase Agreement*, dated as of November 28, 2023 (the "Fourth A&R NPA"), and that certain *Fifth Amended and Restated Note Purchase Agreement*, dated as of January 21, 2025 (the "Fifth A&R NPA"). *See id.*

12. Pursuant to the NPAs and the other security and credit documents related thereto (collectively, the "Senior Secured Notes Credit Documents"), including that certain *Second Amended and Restated Security Agreement*, dated as of August 18, 2021 (the "Security Agreement"), the obligations of the Notes Debtors under the Senior Secured Notes are secured by senior liens on substantially all of the assets of the Notes Debtors (the "Senior Secured Notes Collateral"). *See id.* Under Section 4.6 of the Security Agreement, any subsidiary of VREG-BVI created or acquired after August 18, 2021 (other than Excluded Subsidiaries)[9] was required to, among other things, execute an Instrument of Assumption and Joinder, whereby such subsidiary would become a grantor and Subsidiary Guarantor under the Senior Secured Notes Credit Documents.[10] *See id.*, Ex. A.

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[9] Under the Security Agreement, "Excluded Subsidiaries" included Village Roadshow Distribution (BVI) Limited ("VRD-BVI"), Village Roadshow Productions (BVI) Limited ("VRP-BVI"), Village Roadshow Film Administration Management Pty Ltd ("VRFAM"), any subsidiaries of VRH-USA other than VRPEI, Village Roadshow Entertainment Group Asia Limited ("VREG-Asia"), and any subsidiaries of the foregoing. *See* Berg Decl., Ex. A.

[10] Specifically, Section 4.6(a) of the Security Agreement provides:

> With respect to each Subsidiary of the Company (other than Excluded Subsidiaries) created or acquired after the date hereof in any jurisdiction within the United States, deliver to the Collateral Agent as promptly as practicable (i) the Pledged Securities in and of such Subsidiary, together with undated stock or transfer powers executed in blank (if applicable), (ii) an Instrument of Assumption and Joinder whereby such Subsidiary becomes a Grantor hereunder, (iii) an agreement by which such Subsidiary grants to the Collateral Agent a Lien, for the benefit of the Secured Parties, on all of its assets (other than Excluded Assets) to secure the Secured Obligations on the terms set forth in this Agreement, (iv) UCC-1 financing statements and, to the extent applicable, a copyright security agreement, a trademark security agreement, and such other documentation as may be necessary to perfect such Lien and (v) upon request of the Collateral Agent or the Required Holders, an opinion of counsel reasonably acceptable to the Collateral Agent and the Required Holders opining on the creation and perfection of such Lien (including with regard to the Pledged Securities).

**ii. *The ABS Facility*.**

13. As of the Petition Date, certain of the Debtors (the "ABS Debtors")[11] had outstanding secured debt obligations in the aggregate outstanding principal amount of approximately $223,820,605.53 arising under asset-backed secured notes (the "ABS Facility") issued pursuant to that certain *Base Indenture*, dated as of November 10, 2020 (the "Base Indenture"), that certain *Group A Supplement*, dated as of November 10, 2020 (the "Group A Supplement"), and that certain *Series 2020-1 Supplement*, dated as of November 10, 2020 (the "Series Supplement"), each by and among the ABS Debtors and U.S. Bank National Association, as trustee (the "ABS Trustee"). *See* Berg Decl., ¶ 5.

14. Pursuant to the Base Indenture, the Group A Supplement, the Series Supplement, and the other security and credit documents related thereto (collectively, the "ABS Credit Documents"), the obligations of the ABS Debtors under the ABS Facility were secured by senior liens in favor of the ABS Trustee on substantially all of the ABS Debtors' assets, subject to certain exceptions (the "ABS Collateral"). *See id.* Specifically, in connection with closing of the ABS Facility, VREG-BVI, VRF-BVI, VRFNA, and the ABS Trustee entered into that certain *Excluded Assets Put and Call Rights Agreement*, dated as of November 10, 2020 (the "Excluded Assets Agreement"), whereby the parties agreed that the Derivative Rights (which, at that time, were owned by VRF-BVI and VRFNA) would be explicitly excluded from the ABS Collateral. *See id.*

[11] The ABS Debtors include VR Funding LLC ("VR Funding") and VR Films Holdings (BVI) Limited ("VRFH-BVI"), as parent co-issuers (together, the "Parent Co-Issuers"), and each of Village Roadshow Films (BVI) Limited ("VRF-BVI"), Village Roadshow Films North America Inc. ("VRFNA"), Village Roadshow Films Global Inc. ("VRFG"), and Village Roadshow VS Films LLC ("VRVS"), as subsidiary co-issuers (collectively, the "Subsidiary Co-Issuers").

15. Due to various restrictions under the ABS Facility's securitization structure, which was implemented in November 2020 in connection with closing of the ABS Facility, the ABS Debtors were prohibited from incurring additional debt beyond their obligations under the ABS Facility. *See id.*, ¶ 6. As a result, after the closing of the ABS Facility, the ABS Debtors would be unable to directly participate in co-financing any new motion pictures or incurring any associated liabilities. *See id.* The Debtors therefore sought to ensure that they would have the ability to transfer the Derivative Rights (which were excluded from the ABS Collateral) to Village entities outside the ABS securitization structure when an opportunity to co-finance derivative works arose. *See id.* Accordingly, pursuant to the Excluded Assets Agreement, VRF-BVI and VRFNA each granted, and the ABS Trustee acknowledged, an option right in favor of VREG-BVI to purchase, or to cause any of its subsidiaries to purchase, all right, title, and interest of VRF-BVI and VRFNA, as applicable, in the Derivative Rights for a purchase price equal to $1.00 per film plus the assumption of any associated liabilities. *See id.*

**B. Omnibus Amendment No. 2 to Co-Ownership Agreements.**

16. In light of the ABS Facility and the Debtors' intent to transfer the Derivative Rights to Village entities outside the ABS securitization structure when an opportunity to co-finance derivative works arose, the Debtors sought to amend their Co-Ownership Agreements with Warner to permit such transfers. *See id.*, ¶ 8. Accordingly, on November 10, 2020—*i.e.*, ***the date the ABS Facility closed***—VRF-BVI, VRFNA, and ***Warner*** entered into that certain Omnibus Amendment No. 2 ("Omnibus Amendment No. 2"), whereby the parties agreed to amend the Co-Ownership Agreements in order to align with the provisions of the Excluded Assets Agreement and other ABS Credit Documents, ***and explicitly allow the Village entities to transfer the Derivative Rights to other entities within their corporate structure***. *See id.* Specifically, Section 2(f)(i) of the Omnibus Amendment No. 2 provides:

[redacted]

*See id.*, Ex. C.

**C. The Matrix Arbitration.**

17. [redacted]

[12] The Arbitration Debtors include VRFNA, VRF-BVI, Village Roadshow Pictures North America Inc. ("VRPNA"), and VRD-BVI.

[redacted]

**D. The Assignments and the Pledge.**

18. By 2023, Warner was either actively producing, developing, or intending to develop derivative works based on the parties' co-owned film library—specifically, derivative works based on *Charlie and the Chocolate Factory*, *Mad Max: Fury Road*, *Joker*, and the *Ocean's* franchise. *See id.*, ¶ 10. As they had anticipated at the time the ABS Facility closed, the Debtors needed to transfer the Derivative Rights out of the ABS securitization structure so that they could be in a position to co-finance those derivative works. *See id.*

19. Accordingly, the Debtors created five new subsidiaries of VREG-BVI to serve as assignees of the Derivative Rights: (i) VREG-WW (created to be the assignee for the Derivative Rights in *Charlie and the Chocolate Factory*); (ii) VREG-MM2 (created to be the assignee for the Derivative Rights in *Mad Max: Fury Road*); (iii) VREG-J2 (created to be the assignee for the Derivative Rights in *Joker*); (iv) VREG-OP (created to be the assignee for the Derivative Rights in the *Ocean's* franchise); and (v) VREG-IP (created to be the assignee for the remainder of the Debtors' Derivative Rights, other than the Derivative Rights with respect to the *Matrix* franchise, which remained with VRF-BVI and VRFNA) (collectively, the "DR SPEs"). *See id.* In compliance with Omnibus Amendment No. 2, the DR SPEs were each created as wholly owned subsidiaries of VREG-BVI. *See id.*

20. The Debtors recognized that each of the DR SPEs—as subsidiaries of VREG-BVI that did not constitute Excluded Subsidiaries—would be required to execute an Instrument of Assumption and Joinder and become a grantor and Subsidiary Guarantor under the Senior Secured Notes Credit Documents. *See id.*, ¶ 11. As a result, the Derivative Rights, which were to be assigned to the DR SPEs, would become part of the Senior Secured Notes Collateral. *See id.* In light of the fact that new assets would be added to the Senior Secured Notes Collateral, the Debtors and the Senior Secured Noteholders negotiated the Fourth A&R NPA, pursuant to which VREG-BVI agreed to authorize the issue and sale of, and the Senior Secured Noteholders agreed to purchase, a tranche of Senior Secured Notes in the aggregate principal amount of $17,470,000,[13] which provided significant value to the Debtors' entire business enterprise through working capital.[14] The Fourth A&R NPA was subject to certain conditions precedent, including the formation of the DR SPEs and the assignment of the Derivative Rights to the DR SPEs. *See id.*

21. Accordingly, on November 28, 2023, the Debtors took the following actions:

- VREG-BVI, in the exercise of its rights under the Excluded Assets Agreement, caused VRF-BVI, VRFNA, and VRPNA (together, the "Debtor Transferors") to assign the Derivative Rights to the DR SPEs for a per-transfer purchase price of $1.00 plus the assumption of associated liabilities (the "Assignments");[15]

[13] Under the Fourth A&R NPA, the Senior Secured Noteholders purchased (i) Senior Secured Notes in the aggregate principal amount of $13,470,000 on November 29, 2023, and (ii) Senior Secured Notes in the aggregate principal amount of $4,000,000 on February 9, 2024.

[14] The additional capital under the Fourth A&R NPA not only provided the Debtors' entire corporate enterprise with valuable operational liquidity, it also allowed the Debtors to initiate and fund an extensive marketing and sale process for their assets—including both the Library Assets and the Derivative Rights—through the Debtors' prepetition investment banker, Goldman Sachs. *See* Berg Decl., ¶ 11.

[15] The Assignments were also recorded with the United States Copyright Office. *See* Berg Decl., ¶ 12.

- VREG-BVI, VRF-BVI, and VRFNA delivered an Officer's and Director's Certificate to the ABS Trustee to provide notice that VREG-BVI had exercised its option right under the Excluded Assets Agreement;
- The Debtors provided written notice of the Assignments to Warner in accordance with Omnibus Amendment No. 2;
- The DR SPEs each executed an Instrument of Assumption and Joinder, thereby becoming a grantor and Subsidiary Guarantor under the Senior Secured Notes; and
- The Notes Debtors and the Senior Secured Noteholders entered into the Fourth A&R NPA and executed certain other related closing documents.

*See id.*, ¶ 12.

22. On November 30, 2023, the Senior Secured Noteholders properly perfected their security interests against all assets of each of the DR SPEs through the filing of UCC financing statements (the "UCC Financing Statements"). *See id.*, ¶ 13. Despite having received notice of the Assignments on the day they occurred (*i.e.*, November 28, 2023), Warner did not raise any concerns regarding the Assignments until five months later. *See* Prop. Compl. ¶ 43.

**E. The Chapter 11 Cases.**

23. As detailed in the First Day Declaration, the Debtors filed these chapter 11 cases in order to conduct a value-maximizing marketing and sale process for substantially all of their assets. This sale process has resulted in Court approval of sales of the Debtors' Library Assets (for a purchase price of $417.5 million), Derivative Rights (for a purchase price of $18.5 million), and Studio Business (for a purchase price of $4 million), all to Alcon Media Group, LLC ("Alcon"). These remarkably successful results were made possible by the DIP Facility, which provided the Debtors with critical access to capital needed to fund the sale process.

24. In addition to approving the DIP Facility, the DIP Order [Docket No. 280] provided for the creation of the Warner Bros. Reserve, pursuant to which the Debtors funded $110 million—the agreed upon maximum value of Warner's Matrix Claim—of proceeds from

the Library Assets sale into a segregated account to ensure that Warner's claims, once liquidated, can be paid in full. The DIP Order further established June 2, 2025 as the deadline for any party to assert a Challenge with respect to the Prepetition Lien and Claim Stipulations by the Debtors (the "Challenge Deadline"). The Senior Secured Notes Parties subsequently entered into five different stipulations with the Committee and Warner, whereby the Challenge Deadline was extended to October 31, 2025. *See* Docket Nos. 460, 613, 700, 784, and 895. The Senior Secured Notes Parties and the Committee entered into a sixth stipulation, pursuant to which the Challenge Deadline with respect to the Committee was extended to the earlier of (i) January 31, 2026, or (ii) the effective date of a chapter 11 plan in these cases. *See* Docket No. 1016.

25. As stated on the record at the hearing held on October 20, 2025,[16] the Debtors, the Committee, and the Senior Secured Noteholders engaged in extensive and good faith negotiations, which have culminated in an agreement between the parties as to the terms of a settlement (the "Committee Settlement"), which shall be effectuated pursuant to a proposed chapter 11 plan of liquidation (the "Plan"). The Committee Settlement provides that, in summary and among other things: (i) the Debtors and the Committee shall form a trust to be administered for the benefit of holders of allowed general unsecured claims against Non-Library Debtors;[17] (ii) each holder of an allowed general unsecured claim against Non-Library Debtors General shall receive a recovery of 85% of its allowed claims; (iii) the reconciliation process for general unsecured claims against Non-Library Debtors be completed as soon as practicable following the effective date; (iv) the Debtors shall waive all preference claims against holders of allowed general unsecured claims against Non-Library Debtors; and (v) any estate claims against

[16] *See* Derivative Rights Sale Hr'g Tr. 6:15–8:24 (October 20, 2025).

[17] "Non-Library Debtors" means all Debtors other than the "Library Debtors," which are VRF-BVI, VRFNA, VRPNA, VRD-BVI, VRFG, VRVS, VRFH-BVI, and VR Funding.

the Senior Secured Notes Parties shall be fully released and the Debtors and the Committee shall be afforded maximum exculpation allowed under applicable law.

26. In the Debtors' judgment, the Committee Settlement is reasonable and in the best interest of the Debtors, their estates, creditors and all parties in interest. The Committee Settlement was the product of good-faith and arm's-length negotiations between the parties. The Committee Settlement resolves once and for all the disputes regarding potential outstanding objections to the Senior Secured Notes Parties' claims in an efficient, consensual, and cost-effective manner that will avoid litigation and the time and uncertainty it involves. As a result of the Committee Settlement, each holder of an allowed general unsecured claims against Non-Library Debtors will receive a recovery that would either be unlikely or the result of substantial, costly and time-consuming litigation, absent the Committee Settlement. The Debtors have reasonably determined that entry into the Committee Settlement is in the best interests of the estates and reflects a fair and reasonable compromise. Furthermore, the Committee and the Senior Secured Notes Parties support the Committee Settlement.

## III. OBJECTION

### A. The Legal Standard Governing Derivative Standing.

27. Chapter 11 empowers a debtor in possession to manage its own restructuring. *See* 11 U.S.C. § 1107(a) ("[A] debtor in possession shall have all the rights . . . and powers, and shall perform all the functions and duties . . . of a trustee serving in a case under this chapter."); *In re Adelphia Commc'ns Corp.*, 544 F.3d 420, 424 (2d Cir. 2008) (the derivative standing doctrine does not "undermine either the debtor's central role in handling the estate's legal affairs or the court's responsibility to monitor for abuses by the parties"). Thus, the general rule is that the debtor in possession maintains "the privilege of prosecuting" causes of action held by its estate. *Balt. Emergency Servs. II*, 432 F.3d at 560.

28. A debtor-in-possession—the only fiduciary responsible to all parties in interest, unlike a single creditor—should not be second-guessed on its determination not to pursue a claim unless the "system [breaks] down" and the debtor "violate[s] its fiduciary duty to maximize [its] estate's value." *See Official Comm. of Unsecured Creditors of Cybergenics Corp. ex rel. Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568 (3d Cir. 2003); *see also In re Adelphia Comm'cns Corp.*, 544 F.3d at 424 (holding it is "the debtor's duty to wisely manage the estate's legal claims, and this duty is implicit in the debtor's duty as the estate's only fiduciary"). Accordingly, third parties like Warner are generally not well-situated to manage the estate's legal claims. *Smart World Techs., LLC v. Juno Online Servs. (In re Smart World Techs.)*, 423 F.3d 166, 180 (2d Cir. 2005) ("As a general matter, other parties to a bankruptcy proceeding have interests that differ from those of the estate and thus are not suited to act as the estate's legal representative."). Derivative standing, therefore, is the rare exception to the general rule that the trustee or debtor in possession retains control of various actions on behalf of the estate and is appropriate only in extraordinary circumstances. *Balt. Emergency Servs. II*, 432 F.3d at 560; *see In re Weyandt*, 544 F. App'x 107, 110 (3d Cir. 2013) (quoting *Balt. Emergency Servs. II*, 432 F.3d at 562); *In re Ashford Hotels, Ltd.*, 226 B.R. 797, 803 (Bankr. S.D.N.Y. 1998) ("A creditor may sue on behalf of the trustee or the debtor in possession where there are extraordinary circumstances or the trustee abuses his discretion.").

29. Further, where a party fails to prove that prosecuting derivative claims will benefit the debtors' estates as a whole, the request for derivative standing "is necessarily improper." *In re Redden*, No. 04-12335, at *3 (Bankr. D. Del. Sept. 30, 2013); *see also In re Murray Metallurgical Coal Holdings, LLC*, 614 B.R. 819, 834 (Bankr. S.D. Ohio 2020) ("[A] committee's failure to prove that the claim it seeks to bring would benefit the estate provides an

additional basis for denying its request for derivative standing."); *In re Nat'l Forge Co.,* 326 B.R. 532, 548 (W.D. Pa. 2005) ("In determining whether a [d]ebtor's refusal is unjustified, courts generally perform a cost-benefit analysis of the claims to determine whether the creditors' claims have colorable merit and whether, in light of the probable costs of litigation, the claims would likely benefit the estate if pursued.").

30. Accordingly, courts in the Third Circuit only grant derivative standing if a creditor demonstrates that: (a) the debtors unjustifiably refused to pursue that claim (demand was futile); (b) the claim is colorable; and (c) the bankruptcy court has granted the creditor permission to commence the action. *In re Wash. Mut., Inc.*, 461 B.R. 200, 254 (Bankr. D. Del. 2011); *see also I Infinity Investors Ltd. Ex rel Yes! Entm't Corp. v. Kingsborough (In re Yes! Entm't Corp.)*, 316 B.R. 141, 145 (D. Del. 2004) (same); *In re Centaur, LLC*, 2010 WL 4624910, at *4 (Bankr. D. Del. Nov. 5, 2010) (same). Significantly, the burden is on the movant "to demonstrate that it has satisfied the test for derivative standing." *G-I Holdings, Inc. v. Those Parties Listed on Exhibit A (In re G-I Holdings, Inc.)*, 313 B.R. 612, 629 (Bankr. D.N.J. 2004).

31. Here, the Standing Motion should be denied for several key reasons. ***First***, Warner has not and cannot show that the Debtors have unjustifiably refused to pursue the Alleged Claims because (a) the Transfers did not harm the Debtor Transferors or their creditors and the Debtors therefore lack standing to bring the Alleged Claims; and (b) to the extent any claims against the Senior Secured Noteholders exist, the Debtors settled such claims through the proposed Plan, in exchange for significant value to the estates, rather than incur the cost and delay of litigating the Alleged Claims. ***Second,*** the Alleged Claims are not colorable considering the pervasive and significant legal and factual defects therein. ***Third***, Warner should not be granted exclusive authority to settle estate claims, as such an outcome would supplant the

authority conferred to the Debtors under the Bankruptcy Code and undermine the Debtors' ability to effectuate a Plan.

**B. The Debtors Have Not "Unjustifiably Refused" to Pursue the Alleged Claims.**

32. Courts should deny requests for derivative standing in the absence of proof of unjustified behavior. *See In re Diocese of Camden*, No. 20-21257 (JNP), 2022 WL 884242, at *9, *12 (Bankr. D.N.J. Mar 24, 2022) (denying committee's motion for derivative standing despite there being potentially colorable claims "[b]ecause the Committee has not shown that Debtor is unjustified in refusing to pursue the claims asserted by the Committee"); *see also In re Milazzo*, 450 B.R. 363, 378 (Bankr. D. Conn. 2011); *In re Copperfield Invests., LLC*, 421 B.R. 604, 609 (Bankr. E.D.N.Y. 2010) (emphasizing that "[t]he party seeking derivative standing bears the burden of establishing, by competent evidence, that the proposed claims are colorable and that the trustee unjustifiably refused to bring suit"). Warner has failed to meet its burden because the Debtors are justified in their refusal to pursue the Alleged Claims. The Standing Motion should be denied on this basis alone.

**i. The Legal Standard for Justifiable Refusal.**

33. In determining whether a debtor's refusal is unjustified, "[t]he court should weigh the 'probability of success and financial recovery,' as well as the anticipated costs of litigation, as part of a cost-benefit analysis to determine whether the prosecution of claims is likely to benefit the debtor's estate." *In re Sabine Oil & Gas Corp.*, 547 B.R. 503, 516 (Bankr. S.D.N.Y.), *aff'd*, 562 B.R. 211 (S.D.N.Y. 2016) (citation omitted). Warner bears the burden to produce evidence to "assure [the Court] that there is a sufficient likelihood of success to justify the anticipated delay and expense to the bankruptcy estate that the initiation and continuation of litigation will likely produce." *In re G-I Holdings*, 313 B.R. at 629 (quoting *In re STN Enters.*, 779 F.2d 901, 905-06 (2d Cir. 1985)).

34. A cost-benefit analysis requires more than "blind confidence." *Diocese of Camden,* 2022 WL 884242, at *10. The party challenging the debtor's refusal to bring a claim must "allege sufficient facts" that address the "litigation risks" and likelihood of success for the specific claims. *Id.* Furthermore, the alleged benefit to the estate must be supported by analysis that demonstrates "why [the] amount is accurate or reliable." *Id.* at *11. ***Conclusory allegations of potential value, even if "substantial," "d[o] not adequately analyze the costs and risks of . . . litigation, and therefore, fail[] to provide a cost-benefit analysis that meets [the] burden of proof" to establish standing***. *Id.* at *9 (emphasis added).

35. Warner, however, has not provided a cost-benefit analysis or otherwise alleged sufficient facts or addressed the litigation risks to support the assertion that the Debtors unjustifiably refused to pursue the Alleged Claims. In fact, Warner only included two sentences in support of this factor in the Standing Motion, neither of which hold weight. *See* Standing Mot., ¶ 42. Such deficiency supports denial of the Standing Motion outright. *See In re Caesars Ent. Operating Co., Inc.*, 561 B.R. 457, 469 (Bankr. N.D. Ill. 2016) ("Because the [movant] has addressed neither potential recovery nor potential cost, the [movant] has not shown that the recovery might justify the cost.").

**ii. The Debtors are Justified in Not Bringing the Alleged Claims Because They Lack Standing to Do So.**

36. "Under the principles of federal jurisdiction a party does not have standing to sue where the party is not able to allege an injury that is likely to be redressed by the relief sought." *Adelphia Recovery Trust v. Bank of America, N.A.*, 390 B.R. 80, 95 (S.D.N.Y. 2008) (quoting *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332 (2006)), *aff'd*, 379 F.App'x 10 (2d Cir. 2010); *see also In re HH Liquidation, LLC*, 590 B.R. 211, 262 (Bankr. D. Del. 2018) ("Fraudulent transfer claims may not be brought where they offer no benefit to creditors of the transferor's estate."); *In*

*re New Life Adult Med. Day Care Ctr., Inc.*, No. 11-43510 (NLW), 2014 WL 6851258, at *6 (Bankr. D.N.J. 2014) (holding that "there is no conceivable benefit to the estate" from pursuing fraudulent transfer claims where creditors of the transferors are paid in full).

37. In *Adelphia Recovery Trust*, the plaintiff (a bankruptcy recovery trust) sued several lender-defendants to claw back funds that would go to the debtors' creditors. 390 B.R. at 86. The lender-defendants moved to dismiss for lack of standing, arguing that the plaintiff was not alleging any injury because "all of the creditors of the . . . Debtors have been paid in full, and [so] recovery on the Bankruptcy Claims would therefore benefit none of the . . . Debtor's creditors." *Id.* at 91. The district court agreed, holding that "the [plaintiff] lacks standing to assert the Preference Claims, as the terms of the [Bankruptcy] Plans establish as a matter of law that the creditors of the . . . Debtors have been paid in full and do not stand to benefit from the [plaintiff]'s recovery on these claims under the facts alleged in the Amended Complaint." *Id.* at 98. The district court further agreed with the lender-defendants' observation that the plaintiff's recovery "would have a completely circular result" and granted the motion to dismiss for lack of standing. *Id.* The Second Circuit affirmed on appeal. 379 F. App'x 10.

38. Here, like in *Adelphia Recovery Trust*, the Debtor Transferors are solvent, and there is no injury to allege—all creditors of the Debtor Transferors will be paid in full. Accordingly, any attempt by the Debtors to pursue the Alleged Claims would be futile—there is no credible harm for which recovery can be sought—and any such pursuit would only serve to further deplete the Debtors' resources.

**iii. Even If the Debtors Did Have Standing to Pursue the Alleged Claims, Any Benefits Are Outweighed by the Cost of Litigation and Any Claims Have Been Settled Through the Settlements Proposed in the Plan.**

39. A debtor's exercise of its fiduciary duties includes the pursuit of both litigation and settlement as a means of maximizing value. The Third Circuit has emphasized that

"compromises are favored in bankruptcy" since they minimize litigation costs and provide for the efficient resolution of bankruptcy cases. *Myers v. Martin (In re Martin)*, 91 F.3d 389, 393 (3d Cir. 1996); *see also In re World Health Alts., Inc.*, 344 B.R. 291, 296 (Bankr. D. Del. 2006) (finding settlements "generally favored in bankruptcy"). Additionally, the Third Circuit has recognized that "[i]n administering reorganization proceedings in an economical and practical manner it will often be wise to arrange the settlement of claims as to which there are substantial and reasonable doubts." *In re Penn Cent. Transp. Co.*, 596 F.2d 1102, 1113 (3d Cir. 1979) (quoting *Protective Comm. For Indep. S'holders of TMT Trailer Ferry Inc. v. Anderson*, 390 U.S. 414, 424 (1968)). Accordingly, pursuit of claims is not limited to litigation—settlement is a form of "pursuit" as well. *See In re Manley Toys Ltd.*, No. 16-15374 (JNP), 2020 WL 1580244, at *8 (Bankr. D.N.J. Mar. 31, 2020) ("Engaging in settlement discussions with opposing parties is evidence that the [Debtors] are in fact pursuing the Claims.").

40. In this case, while the Debtors do not believe they have standing to assert the Alleged Claims, any potential estate claim was investigated and resolved through the Committee Settlement. Specifically, the Debtors, the Committee, and the Senior Secured Noteholders negotiated the Committee Settlement, which provides a multitude of benefits to the Debtors' estates and maximizes recoveries for a broad array of stakeholders. Ultimately, the concessions the Debtors and the Committee obtained from the Senior Secured Noteholders provide benefits to the Debtors' estates that far outweigh any purported benefits that could result from pursuit of meritless claims. In other words, the Debtors did investigate the Alleged Claims, and "[t]he [D]ebtors' decision to forego pursuing the claims in favor of settling them through a plan is a reasonable exercise of the debtors' judgment." *Caesars Ent.*, 561 B.R. at 469 (finding that "debtors have supplied an adequate justification for their decision not to pursue the claims,"

namely that debtors "favor resolving the claims through a comprehensive plan of reorganization that will provide distributions to creditors"). The Debtors' decisions to settle rather than pursue the Alleged Claims represent a sound exercise of their business judgment and there has been no "break[] down" in the system that would justify granting derivative standing to Warner. *See Cybergenics Corp.*, 330 F.3d at 568.

**C. Warner's Proposed Complaint Fails to Allege Colorable Claims.**

41. To assess whether a claim is colorable, the court must determine if the movant "has asserted 'claims for relief that on appropriate proof would support a recovery.'" *In re G-I Holdings, Inc.*, 313 B.R. at 631 (quoting *In re STN Enters.*, 779 F.2d at 913). In many ways, "[t]his inquiry is like that of a motion to dismiss for failure to state a claim." *Diocese of Camden, New Jersey*, 2022 WL 884242, at *4. Accordingly, each of the movant's proposed claims must be "plausible on its face." *See In re Roman Catholic Diocese of Rockville Ctr., New York*, 654 B.R. 212, 220 (Bankr. S.D.N.Y. 2023) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). ***"[T]he Court is not bound to accept as true legal conclusions couched in [f]actual allegations, and 'threadbare recitals of elements of a cause of action, supported by mere conclusory statements, will not suffice***." *Diocese of Camden*, 2022 WL 88242, at *4 (citation omitted) (emphasis added). Unlike a motion to dismiss, however, the Court should also "examine the facts for any dispositive affirmative defenses and may deny a motion for standing when an affirmative defense appears on its face." *Id.* (citation omitted); *see also ALA, Inc. v. CCAIR, Inc.*, 29 F.3d 855, 859 (3d Cir. 1994) (same).

42. A thorough analysis of each cause of action asserted in Warner's Proposed Complaint—considered in light of the factual history of the Transfers and these chapter 11 cases—confirms that the Alleged Claims lack merit and are not colorable.

**i. Counts I and II: Warner's Fraudulent Transfer Claims Are Not Colorable.**

43. In Counts I and II of the Proposed Complaint, Warner seeks to unwind the Transfers as constructive and/or intentional fraudulent transfers. Warner alleges that the Transfers constitute a constructive fraudulent transfer because (i) the Debtors received less than reasonably equivalent value for the Transfers; and (ii) the Debtors were insolvent at the time of the Transfers. Additionally, Warner claims that the Transfers constitute an actual fraudulent transfer because the Debtors and Senior Secured Noteholders completed the Transfers with actual intent to hinder, delay, or defraud Warner.

44. These claims are not colorable because (i) all creditors of the Debtor Transferors—including Warner—are projected to be paid in full, meaning there are no creditors who stand to benefit from avoidance of the Transfers, (ii) the Debtor Transferors received reasonably equivalent value for the Transfers, (iii) the relevant Debtor Transferors were not insolvent at the time of the Transfers, and (iv) the Proposed Complaint does not adequately plead facts showing actual intent to hinder, delay, or defraud Warner.

a. <u>As with the Debtors, Warner Lacks Standing Because It Has Not Suffered Any Injury as a Result of the Transfers</u>.

45. "Fraudulent transfer claims may not be brought where they offer no benefit to creditors of the transferor's estate." *HH Liquidation*, 590 B.R. at 262; *see also Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (in order to establish standing, plaintiff must allege an injury that is "actual or imminent, not conjectural or hypothetical") (citation omitted); *Thorne v. Pep Boys Manny Moe & Jack, Inc.*, 980 F.3d 879, 893 (3d Cir. 2020) ("This element is intended to weed out claims that are nothing 'more than an ingenious academic exercise in the conceivable.'") (quoting *United States v. Students Challenging Reg. Agency Procs. (SCRAP)*, 412 U.S. 669, 688–89 (1973)). "This rule precludes recovery actions when the transferor is

solvent and the transferor's creditors are all being paid in full." *Id.*; *see also Wellman v. Wellman*, 933 F.2d 215, 218 (4th Cir. 1991) (an avoidance action cannot be maintained unless the estate is benefitted by recovery of the transferred property).

46. The same standard set forth above that bars the Debtors from bringing the Alleged Claims applies to Warner with equal force. *See supra*, (III)(B)(ii). All creditors of the Debtor Transferors, including Warner, will be paid in full. Thus, neither Warner nor any other creditor of the Debtor Transferors was harmed by the Transfers, and therefore none could derive a benefit from clawing back the Transfers. This is not conjecture; the Warner Bros. Reserve includes $110 million set aside to guarantee the full satisfaction of Warner's Matrix Claim, the only claim that Warner holds. The $110 million amount of the Warner Bros. Reserve was not picked at random—it was extensively negotiated and agreed to by Warner in connection with the Debtors' DIP financing.[18]

47. The Proposed Complaint does not implicate any potential claims Warner raises related to rejection damages, *Practical Magic 2*, or the Unfunded Purchased Pictures. To be clear, no such claims exist and Warner's unsupported allegation that they ***may*** exist is insufficient to grant Warner standing to pursue the Alleged Claims. For one, these claims are "conjectural and hypothetical" and thus cannot establish standing. *See Spokeo, Inc.*, 578 U.S. at 339; *Thorne*, 980 F.3d at 893 (an alleged injury consisting of "a highly speculative chain of future events that does not constitute a material risk of harm" is insufficient to establish standing). Further, any such claims arose ***after the Petition Date*** and have no relevance to Warner's claims against the Debtors ***at the time of the Transfers***.

[18] Indeed, while discussing the Warner Bros. Reserve and Warner's Matrix Claim at the final hearing on the DIP Motion, Warner's counsel stated: "[s]o, this solution that everybody creatively worked on very hard, over the last few days especially, I think at least preserves that until the arbitration is dealt with." Final DIP Hr'g Tr. at 42:16–18 (April 22, 2025).

b. Constructive Fraudulent Transfer: The Proposed Complaint Does Not Adequately Plead a Lack of Reasonably Equivalent Value**.**

48. In determining whether a debtor received reasonably equivalent value for an obligation or a transfer, "[t]he Third Circuit employs a 'common sense' approach and has held that 'a party receives reasonably equivalent value for what it gives up if it gets roughly the value it gave.'" *EiserAmper LLP v. Morgan (In re SRC Liquidation LLC)*, 581 B.R. 78, 97 (D. Del. 2017) (quoting *VFB LLC v. Campbell Soup Co.*, 482 F.3d 624, 631 (3d Cir. 2007)). A court should conduct this inquiry by using "a totality of the circumstances" approach that considers the good faith of the parties, the difference between the value given and received, and whether the transaction was at arm's-length. *Solmonese v. Shyamsundar (In re Amcad Holdings, LLC)*, 579 B.R. 33, 41 (Bankr. D. Del. 2017) (citation omitted). In addition, "value" includes both direct and indirect benefits. *See Mellon Bank v. Metro Commc'ns, Inc.*, 945 F.2d 635, 646 (3d Cir. 1991) ("[I]n evaluating whether reasonably equivalent value has been given the debtor under section 548, indirect benefits may also be evaluated."); *In re R.M.L., Inc.*, 92 F.3d 139, 148 (3d Cir. 1996) (noting that value exists if consideration had a chance of conferring an economic benefit).

49. Warner alleges that "[t]he total consideration given for the Derivative Rights in the Transfers was $9.00" and "[n]o consideration was given for the Derivative Rights under the Pledge." Prop. Compl., ¶ 64. As an initial matter, this allegation omits the fact that the DR SPEs also assumed liabilities (past, present, and future) arising under the transferred Derivative Rights Agreements (*e.g.*, any claims for rejection damages would be brought against the DR SPEs). Critically, the Proposed Complaint also ignores the broader transaction structure that encompassed the Assignments and Pledge, whereby the Senior Secured Noteholders provided $17.4 million to the Debtors through the Fourth A&R NPA as consideration for the Transfers,

which were a condition precedent to the Senior Secured Noteholders entering into the Fourth A&R NPA. *See supra,* II(C). This transaction provided significant value to the Debtors' entire business enterprise through working capital—and remarkably, nearly market value as well—the Derivative Rights were sold for a similar number of $18.5 million. *See Telefest, Inc. v. VU-TV, Inc.*, 591 F. Supp. 1368, 1379 (D.N.J. 1984) ("[T]he notion that a benefit accrues to a subsidiary only when there is a direct flow of capital to that entity the result of its guarantee of a loan to its parent is inhibitory of contemporary financing practices, which recognize that cross-guarantees are often needed because of the unequal abilities of interrelated corporate entities to collateralize loans"); *Mellon Bank*, 945 F.2d at 646-48, 650 (finding reasonably equivalent value for a debtor corporation's guaranty of an affiliate's debt when the loan strengthened the corporate group as a whole, such that the guarantor corporation would benefit from "synergy" within the corporate group).

50. Further, Warner fails to account for the fact that the economic terms of the Transfers were ***dictated by and effectuated pursuant to the Excluded Assets Agreement***. Pursuant to the Excluded Assets Agreement (which was executed in 2020), the Debtor Transferors granted VREG-BVI a contractual option right to purchase (or to cause its subsidiaries to purchase) the Derivative Rights for the consideration reflected in the Assignments. VREG-BVI exercised that option right through the Assignments. Thus, Warner cannot unwind the Assignments without first proving that the purchase option granted pursuant to the Excluded Assets Agreement was a fraudulent transfer. While Warner ignores the Excluded Assets Agreement in order to frame the Assignments in a vacuum for their own benefit, Warner's failure to even mention the Excluded Assets Agreement, let alone allege that it

constituted a fraudulent transfer, plainly demonstrates that Warner's fraudulent transfer claims are not colorable.[19]

c. Constructive Fraudulent Transfer: The Proposed Complaint Does Not Adequately Plead Insolvency.

51. Even if the Debtor Transferors did not receive reasonably equivalent value from the Assignments and the Pledge—and they did—Warner's proposed constructive fraudulent transfer claims still would not be colorable. Indeed, Warner barely even attempts to establish insolvency—the only allegations with respect to this element in the Proposed Complaint are threadbare recitations of the applicable legal standard.[20] This is insufficient to adequately allege that the Debtor Transferors were insolvent. *See Miller v. Welke (In re United Tax Grp., LLC)*, LLC, No. 14–10486 (LSS), 2016 WL 7235622, at *4 (Bankr. D. Del. Dec. 13, 2016) (dismissing constructive fraudulent transfer claim because bare allegation that debtor was insolvent was "too conclusory"). In reality, the Debtor Transferors were manifestly solvent at the time of the Transfers regardless of which solvency test is applied. *See Peltz v. Hatten*, 279 B.R. 710, 742 (D. Del. 2002) (in order to succeed on a constructive fraudulent transfer claim, movant must

[19] Warner cannot plausibly claim that it was unaware of the Excluded Assets Agreement. Indeed, the Excluded Assets Agreement is explicitly referenced in the Assignments, which the Debtors produced ***in March*** in response to Warner's informal document requests. *See, e.g.*, Assignment (Derivative Rights) (VRF/VREG IP Global LLC), § 2(a) ("For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged . . . the parties agree that the Assignee is exercising the Excluded Future Film Rights Call Option (***as defined in the Excluded Assets Agreement***) with respect to the Picture pursuant to ***Section 1(b) of the Excluded Assets Agreement*** . . . ."). Moreover, the Excluded Assets Agreement itself has been in the Debtors' sale process data room since the outset of these cases.

[20] *See* Prop. Compl. ¶¶ 60–62 ("[60.] At the time of the Transfers and the Pledge, Village, the Library Debtors, and the Derivative Rights Transferees, in accordance with Section 3439.02 of California UVTA (a) had, at a fair valuation, a sum of debts that was greater than all of the Debtors' assets, or (b) were generally not paying debts as they became due other than as a result of a bona fide dispute. [61.] At the time of the Transfers and Pledge, Village, the Library Debtors, and the Derivative Rights Transferees, in accordance with Section 1302 of the Delaware UFTA (a) had a sum of debts greater than all of the Debtors' assets, as fair evaluation and (b) were generally not paying debts as they became due. [62.] At the time of the Transfers and Pledge, the Debtors (a) were insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer, (b) were engaged or about to engage in business or a transaction for which its remaining assets were unreasonably small in relation to the business or transaction, or (c) intended to incur or believed it would incur debts beyond its ability to pay as such debts matured.").

prove that the debtor was insolvent under one or more of the tests set forth in section 548(a)(1)(B)(ii)).

52. ***Balance Sheet Test.*** Under the balance sheet test, courts evaluate whether liabilities exceed assets, using the fair value of those assets, as determined on a going concern basis. *See Moody v. Sec. Pac. Bus. Credit, Inc.*, 971 F.2d 1056, 1067 (3d Cir. 1992).

53. With respect to the Debtor Transferors, as of November 15, 2023, the aggregate amount outstanding under the ABS Facility was $275,473,979. *See* Berg Decl., ¶ 7. According to a report issued by Virtu Global Advisors, LLC on October 3, 2023, the ABS Collateral had an appraised value of $439,789,000 as of June 30, 2023. *See id.* Thus, at the time of the Assignments, the ABS Debtors had an equity cushion well in excess of $150 million. Even after accounting for Warner's initial Matrix Arbitration award (which was and remains contingent, unliquidated, disputed, and subject to an active appeal), the ABS Debtors' assets far exceeded their liabilities at the time of the Assignments. The positive equity value in the Debtor Transferors is further demonstrated by the sale of the Library Assets in these cases, which generated a purchase price of $417.5 million.

54. ***Capital Adequacy Test.*** The capital adequacy test examines whether the transaction at issue left the debtor with unreasonably small capital for the operation of its business. 11 U.S.C. § 548(a)(1)(B)(ii)(II). Warner cannot come close to showing insolvency under this test. First, the Debtor Transferors had no ability to use the Derivative Rights as a result of the restrictions under the ABS Facility. By transferring the Derivative Rights out of the ABS securitization structure, the Debtor Transferors ensured that the Derivative Rights could be monetized by the Debtors to participate in the co-financing of future derivative works and thereby generate profits that would inure to the benefit of the Debtors' entire corporate structure.

Second, the Fourth A&R NPA—which was only made possible as a result of the Pledge—infused ***additional*** capital into the Debtors' corporate structure. On their face, neither the Assignments nor the Pledge left the Debtor Transferors with unreasonably small capital for the operation of their business.

55. ***Cash Flow Test.*** The cash flow test considers whether the debtor intended or expected to incur debts beyond its ability to pay. 11 U.S.C. § 548(a)(1)(B)(ii)(III). Here, there is no evidence showing that the Debtor Transferors intended or expected to incur debts beyond their ability to pay at the time of the Transfers. On the contrary, the Debtor Transferors timely met their obligations under the ABS Facility at the time of and after the Transfers. *See id.* As detailed above, as a result of the significant equity cushion in the ABS Collateral the Debtor Transferors likewise had no reason to expect that they would have insufficient assets to satisfy any Matrix Claim.

d. Actual Fraudulent Transfer: The Proposed Complaint Does Not Adequately Plead Intent.

56. Section 548 of the Bankruptcy Code permits a trustee or debtor-in-possession to avoid a transfer or obligation incurred "if the ***debtor*** voluntarily or involuntarily—made such transfer or incurred such obligation with ***actual intent*** to hinder, delay, or defraud" the debtor's creditors. 11 U.S.C. § 548(a)(1)(A) (emphasis added); *see In re Mallinckrodt PLC*, 2024 WL 206682, at *23 (Bankr. D. Del. Jan. 18, 2024). Actual fraudulent transfer must be pleaded with particularity in accordance with heightened pleading standards under Rule 9(b) of the Federal Rules of Civil Procedure. *In re CTE 1 LLC*, No. 19-30256 (VFP), 2023 WL 5257940, at *12 (Bankr. D.N.J. Aug. 11, 2023). Pleading with particularity means pleading "the who, what, when, where, and how of the events at issue." *In re Aspect Software Parent, Inc.*, 578 B.R. 718,

723 (Bankr. D. Del. 2017) (internal quotations omitted) (quoting *In re Rockefeller Ctr. Props., Inc. Secs. Litig.*, 311 F.3d 198, 217 (3d Cir. 2002)).

57. The Proposed Complaint fails to make any specific factual allegations with respect to the actual subjective intent of the Debtor Transferors. Instead, the Proposed Complaint merely references certain cherry-picked factors that ***may*** be considered in determining whether actual fraudulent intent exists and summarily states that "[t]hese factors demonstrate that the Transfers and the Pledge were intentional fraudulent transfers." Prop. Compl., ¶ 72. But these conclusory allegations do not survive even the most cursory scrutiny. *See Friedman v. Wellspring Cap. Mgmt., LLC (In re SportCo Holdings, Inc.)*, No. 19-11299 (JKS), 2021 WL 4823513, at *14 (Bankr. D. Del. Oct. 14, 2021) ("Conclusory statements that badges of fraud are present are insufficient; the plaintiff must allege facts demonstrating that badges of fraud exist.").

58. Indeed, Warner's alleged "badges of fraud" are wholly inadequate. For example, while Warner alleges that the Transfers were insider transactions, the Proposed Complaint does not specify ***which party*** Warner alleges acted with fraudulent intent. Warner's summary statement that the Senior Secured Noteholders "exerted control over Village" does not suffice. Prop. Compl. ¶ 71(i); *see also In re Elrod Holdings Corp.*, 421 B.R. 700, 709 (Bankr. D. Del. 2010) (absent extenuating circumstances, it "is the intent of the transferor and not the transferee that is relevant for purposes of pleading a claim for intentional fraudulent conveyance under the Bankruptcy Code") (citing *Silverman v. Actrade Cap., Inc. (In re Actrade Fin. Techs. Ltd.)*, 337 B.R. 791, 808 (Bankr. S.D.N.Y. 2005)). Warner similarly fails to adequately plead its other alleged badges of fraud:

- "Whether the debtor retained possession or control of the property transferred after the transfer." UFTA 1304(b)(2); UVTA 3439.04(b)(2). Warner alleges that "following the Transfers and the Pledge, the Derivative Rights remained under the control of ***Village*** and became part of the Debtors' estates, and, as of

the date hereof, are subject to a pending bankruptcy sale." Prop. Compl. ¶ 71(ii) (emphasis added). Warner does not specify which "Village" entities allegedly retained control of the Derivative Rights, nor does Warner allege any specific facts regarding the ***Debtor Transferors'*** retention of control or possession of the Derivative Rights. The Derivative Rights are part of the bankruptcy estates of the ***DR SPEs***—*i.e.*, the assignees of the Derivative Rights.

- "Whether before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit." UFTA 1304(b)(4); UVTA 3439.04(b)(4). Warner alleges that "the Transfers and Pledge were initiated following the award of damages in the Matrix Arbitration." Prop. Compl. ¶ 71(iii). The Assignments and the Pledge occurred ***over five months after*** the original award was issued in the Matrix Arbitration. Moreover, the timing of the transactions was a byproduct of the Debtors having learned that Warner was actively developing various derivative works, not a result of the Matrix Arbitration.

- "Whether the debtor removed or concealed assets." UFTA 1304(b)(7); UVTA 3439.04(b)(7). Warner alleges that "the proceeds of any sale of the Derivative Rights will be unavailable to creditors of the Library Debtors, who would have had rights to such proceeds if not for the Transfers." Prop. Compl. ¶ 71(iv). As Warner itself admits, the Debtors provided notice of the Transfers to Warner on the same day that they occurred. *See* Prop. Compl. ¶ 38. The Debtors in no way concealed the Transfers or the Derivative Rights from Warner.

- "Whether the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred." UFTA 1304(b)(8); UVTA 3439.04(b)(8). Warner alleges that "the Derivative Rights were initially transferred to the Derivative Rights Transferees for $9.00, before then being transferred to the Prepetition Senior Secured Parties through the Pledge by the Derivative Rights Transferees for de minimis cash consideration." Prop. Compl. ¶ 71(v). Among other things, this allegation wholly fails to account for the over $17.4 million in additional funding provided by the Senior Secured Noteholders in connection with the Fourth A&R NPA. As detailed above, there was reasonably equivalent value for the Assignments and the Pledge. *See supra* ¶¶ 49–51.

- "Whether the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred." UFTA 1304(b)(9); UVTA 3439.04(b)(9). Warner alleges that "the ***Debtors*** did not have sufficient capital to pay their debts as they came due in the period preceding the Petition Date." Prop. Compl. ¶ 71(vi) (emphasis added). Warner again fails to specify which Debtor entities this allegation refers to. Regardless, as detailed above,

neither the Debtor Transferors nor the DR SPEs were insolvent at the time of the Assignments and the Pledge. *See supra* ¶¶ 52–56.

- "Whether the transfer occurred shortly before or shortly after a substantial debt was incurred." UFTA 1304(b)(10); UVTA 3439.04(b)(10). Warner alleges that "[t]he Matrix Arbitration award, which is in excess of $100 million, occurred shortly before the Transfers and Pledge took place." Prop. Compl. ¶ 71(vii). As detailed above, the Assignments and the Pledge occurred over five months after the original arbitration award was issued and were a result of factors unrelated to the Matrix Arbitration.

59. Finally, "the court may also consider the implications of ***the absence of certain badges of fraud or badges of intent to hinder or delay in the circumstances surrounding the transfer and/or evidence of a legitimate purpose for the transfer***." *In re Bernier*, 282 B.R. 773, 781-82 (Bankr. D. Del. 2002) (emphasis added); *In re Trib. Co. Fraudulent Conv. Litig.*, No. 12-cv-2652 (RJS), 2017 WL 82391, at *13 (S.D.N.Y. Jan. 6, 2017) (the "flip side of these badges of fraud is that their absence . . . would constitute evidence that there was no intent to defraud") (quotations and citations omitted). "Indeed, the absence of several very significant badges of wrongful intent may disprove actual intent to hinder, delay or defraud." *Bernier*, 282 B.R. at 782.

60. Here, the Debtors' intent in completing the Transfers was to (i) implement the transaction contemplated years prior that would provide the structure necessary to facilitate the Debtors' participation in new derivative works; and (ii) receive $17.4 million of additional capital from the Senior Secured Noteholders through entrance into the Fourth A&R NPA. Warner provides no support for the claim that the Debtors' intent was to hinder, delay, or defraud Warner's collection of its Matrix Claim, and the Warner Bros. Reserve provides prima facie evidence to the contrary.

**ii. Count III: Warner Cannot Seek to Recover the Value of the Transfers.**

61. Warner's claim for recovery of the value of the Transfers is not colorable as it relies on the viability of a fraudulent transfer action—Counts I or II. Through this cause of action, Warner seeks to "recover damages from the Defendants on behalf of the Debtors' estates" that resulted from "fraudulent" transfers. *See* Prop. Compl., ¶¶ 76-77. As set forth above, the Transfers did not harm the Debtor Transferors or their creditors and thus no damage amount could be sought or recovered.

**iii. Count IV: Warner Cannot Void the Senior Secured Noteholders' Liens.**

62. Warner's claim to void the Senior Secured Noteholders' liens pursuant to Section 544(a) of the Bankruptcy Code is without color or merit. Under the Delaware Uniform Commercial Code, a security interest is generally perfected through the filing of a financing statement. *See* Del. Code Ann. tit. 6 § 9-310. The filing and recording of the UCC Financing Statements provide uncontestable evidence that the Senior Secured Noteholders' liens on all assets of the DR SPEs are properly perfected. While Warner asserts that it investigated the Alleged Claims, such investigation could not have been thorough—indeed, Warner never even asked the Debtors to provide copies of the UCC Financing Statements (which are publicly available) or otherwise requested documents evidencing perfection of the Senior Secured Noteholders' liens.

**iv. Count V: Warner Provides no Basis to Support a Declaratory Judgment.**

63. Warner seeks a declaratory judgment that (i) the Senior Secured Noteholders have no valid and enforceable lien or security interest in the Derivative Rights, and (ii) Warner reserves its rights to litigate the Reserved Matters. *See* Prop. Compl., ¶ 87. The first prong is not colorable in light of the duly recorded UCC Financing Statements. The second prong should similarly not be considered. Warner provides no legal basis for the assertion that it should be

granted ***derivative standing*** in order to obtain a declaratory judgment indefinitely preserving ***Warner's right*** to pursue ***Warner's direct claims***.

64. Warner further seeks to establish a *de facto* extension of the Challenge Period via the Reserved Matters.[21] This gambit should likewise be rejected. The DIP Order does not contemplate an extension to the Challenge Period simply because Warner has not uncovered any colorable claims related to the Reserved Matters by the expiration of its Challenge Period. Warner's claims as to the Reserved Matters should have been brought, if at all, in the Standing Motion.

**v. Count VI: Warner's Equitable Subordination Claim Is Not Colorable.**

65. To state a claim for equitable subordination under section 510(c) of the Bankruptcy Code, a plaintiff must show (1) the claimant must have engaged in some type of inequitable conduct, (2) the misconduct must have resulted in injury to the creditors or conferred an unfair advantage on the claimant, and (3) equitable subordination of the claim must not be inconsistent with the provisions of the Bankruptcy Code. *Cohen v. KB Mezzanine Fund II, LP (In re SubMicron Sys. Corp.)*, 432 F.3d 448, 452 (3d Cir. 2006) (citations omitted); *see also Va. Broadband, LLC v. Manuel*, 538 B.R. 253, 263 (W.D. Va. 2015) (equitable subordination is an

[21] Pursuant to the Standing Motion, the "Reserved Matters" include "all related claims and causes of action, whether direct or derivative, to the extent relating to the Matrix Arbitration or the Transfers: (a) the allowance of any interest (or default rate interest) paid or accrued under the Prepetition Senior Secured Notes Credit Documents; (b) the accuracy of the calculation of the amount of any principal, interest, fees, costs or charges paid or accrued under the Prepetition Senior Secured Notes Credit Documents; (c) the reasonableness pursuant to section 506(b) of the Bankruptcy Code of the amounts of any fees, costs or charges to the extent provided for under the Prepetition Senior Secured Notes Credit Documents, and (d) any adequate protection or diminution claim that may be asserted by the Prepetition Senior Secured Notes Parties or any individual noteholder against the Debtors' estates." Standing Mot. ¶ 33. Warner also states that it "continues to investigate and reserves any and all rights, claims, defenses, or causes of action, including without limitation, claims for aiding and abetting breach of fiduciary duty and other commercial tort claims and rights to seek recharacterization, that may be asserted against any of the Prepetition Senior Secured Notes Parties, the Debtors, and each of their respective directors, officers, employees, subsidiaries, affiliates, attorneys, financial advisors, investment bankers, agents, representatives, successors and assigns, relating to, or arising out of, the Transfers, or the breach of any agreements or contracts between the applicable Debtors and Warner Bros." *Id.*

"extraordinary remedy, which should be applied sparingly"). Where the creditor is an insider, the party seeking subordination must show "some unfair conduct, and a degree of culpability, on the part of the insider." *See Matson v. Alpert (In re LandAmerica Fin. Grp., Inc.)*, 470 B.R. 759, 806 (Bankr. E.D. Va. 2012) (quoting *In re Dornier Aviation (N. Am.) Inc.*, 2005 WL 4781236, at *16–17)).

66. As a threshold matter, Warner's equitable subordination claim fails because Warner has not plausibly alleged the second *SubMicron* factor, *i.e.*, that the Senior Secured Noteholders' alleged conduct resulted in injury to the creditors or conferred an unfair advantage on the claimant. Indeed, as described above, Warner does not plead any actual, non-speculative injury to creditors because it cannot. Warner relies solely on alleged damages that are at best contingent, highly speculative, and not reasonably likely to have any impact on estate distributions. That is not the type of injury that equitable subordination is designed to remedy. *See In re John Varvatos Enters., Inc.*, No. 20-11043 (MFW), 2021 WL 4133656, at *6 (D. Del. Sept. 10, 2021) (affirming 12(b)(6) dismissal of a complaint seeking to equitably subordinate secured claim to claim of judgment creditor allegedly harmed by secured creditor's involvement in a purportedly discriminatory clothing policy because "Appellant's alleged damages from the purportedly discriminatory clothing policy were unrelated to the distribution of the bankruptcy estate and, therefore, not the type of damages meant to be remedied by equitable subordination."), *aff'd*, No. 21-2766, 2022 WL 2256017 (3d Cir. June 23, 2022).

67. In addition, regardless of whether the Senior Secured Noteholders are viewed as insiders, Warner's allegations of supposed misconduct do not rise to the level necessary to state a claim for equitable subordination.

**vi. Count VII: Warner Lacks Any Basis to Object to the Senior Secured Noteholder's Liens.**

68. Finally, Warner argues that it has a claim for disallowance of the Senior Secured Noteholder's liens because the Transfers were fraudulent; the Senior Secured Noteholders did not pay the Debtors for the Transfers; and the Senior Secured Noteholders' liens have not been properly perfected. *See* Prop. Compl., ¶¶ 92-94. As set forth above, this reasoning is not colorable where: the Transfers were not constructively or actually fraudulent; the Senior Secured Noteholders provided $17.4 million to the Debtors through the Fourth A&R NPA as consideration for the Transfers; and the UCC Financing Statements provide clear cut evidence of perfected liens.

**D. Warner's Request for Sole Authority to Propose Settlement of the Alleged Claims Has No Basis in the Governing Law.**

69. Even if the Court were to grant Warner standing to pursue any of the Alleged Claims, the Court should reject Warner's extraordinary request for sole authority to settle any of the Alleged Claims and instead recognize the Debtors' clear statutory authority to settle causes of action.

70. The Debtors are vested with exclusive power to pursue and settle claims on behalf of their estates. *See, e.g., Torch Liquidating Tr. ex rel. Bridge Assocs. L.L.C. v. Stockstill*, 561 F.3d 377, 387 (5th Cir. 2009) ("A chapter 11 plan of reorganization or liquidation then settles the estate's causes of action or retains those causes of action for enforcement by the debtor, the trustee, or a representative of the estate appointed for the purpose of enforcing the retained claims."); *Rossco Holdings, Inc. v. McConnell*, 613 F. App'x 302, 306 (5th Cir. 2015) (per curiam) ("Before confirmation of a [c]hapter 11 plan, the debtor-in-possession generally has the power to pursue these causes of action on behalf of the estate as if it were a trustee.") (citation omitted). "A grant of derivative standing does not strip a debtor of ownership of the Claims and,

accordingly, the Debtors continue to have the right, subject to Court approval, to settle the Claims." *In re Centaur,* 2010 WL 4624910, at *7; *In re Adelphia Commc'ns Corp.*, 371 B.R. 660, 670-71 (S.D.N.Y. 2007) ("[A] debtor-in-possession may assert control over an adversary proceeding notwithstanding a committee's derivative standing, where that standing was granted for reasons other than debtor misconduct."). The debtor's exclusive power to pursue and settle claims on behalf of their estates exists even when a Court grants a creditor standing to pursue claims based on a debtors' unjustifiable refusal to pursue those claims. *See, e.g., In re Centaur*, 2010 WL 4624910, at *7 (granting Committee's standing motion in part to authorize Committee to prosecute certain claims, but denying standing motion to the extent it sought exclusive authority to settle the claims).

71. By requesting exclusive authority to settlement estate claims, Warner seeks to override important provisions of the Bankruptcy Code and the Bankruptcy Rules. First, Bankruptcy Rule 9019 permits only a debtor or trustee to propose a settlement or compromise. Bankruptcy Rule 9019(a) provides, in pertinent part, that "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a) (emphasis added). And the Supreme Court has held that authority granted by the Bankruptcy Code solely to a trustee is limited, by its terms, to a trustee or a debtor in possession. *See Hartford Underwriters Ins. Co. v. Union Planters Bank N.A.*, 530 U.S. 1, 6-7 (2000) (holding that individual creditors cannot employ the power of "the trustee" to surcharge a secured creditor under section 506(c) of the Bankruptcy Code). Accordingly, the trustee or debtor in possession has the express—and exclusive—right to settle claims in a chapter 11 case. Second, granting Warner authority to settle claims would also undermine many aspects of the Debtors' restructuring, including their exclusive right to propose and solicit votes for the Plan,

which already addresses the Alleged Claims through the Committee Settlement. *See Smart World Techs.*, 423 F.3d at 175 (finding that "the debtor's duty to wisely manage the estate's legal claims is implicit in the debtor's role as the estate's only fiduciary"). This result is fundamentally inconsistent with the Bankruptcy Code, and Warner identifies no reason for it—indeed, the Standing Motion does not identify any legal basis for its request for standing, and it should be denied.

## IV. CONCLUSION

72. For the reasons set forth above, the Debtors respectfully request that the Court deny the Standing Motion in its entirety and allow these chapter 11 cases to proceed toward confirmation.

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Dated: November 19, 2025
Wilmington, Delaware

*/s/ Joseph M. Mulvihill*

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