IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
VIP CINEMA HOLDINGS, INC., *et al.*,[1]	Case No. 20-10345 (MFW)
Debtors.	(Jointly Administered)
	Objection Deadline: March 23, 2020, 12:00 PM (ET) (extended for VIP Cinema Holdings, Inc.)
	Hearing Date: March 26, 2020, 10:30 AM (ET)
	Re: D.I. 21, 22, 23, 90, 92, 147

OBJECTION OF REGAL CINEMAS, INC. TO CONFIRMATION OF JOINT PREPACKAGED PLAN OF REORGANIZATION OF VIP CINEMA HOLDINGS, INC. AND ITS DEBTOR AFFILIATES PURSUANT TO CHAPTER 11 OF THE BANKRUPTCY CODE

Comes now Regal Cinemas, Inc. ("Regal"), by and through counsel, and hereby objects to confirmation of the Joint Prepackaged Plan of Reorganization of VIP Cinema Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code or any amendments thereto (the "Plan"). In support of this Objection, Regal states the following:

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The Debtors comprise a manufacturer of luxury seating products for movie theaters. The Debtors also offer services to movie theaters relating to seating products.

[1] The Debtors in these jointly administered Chapter 11 cases, along with the last four digits of their federal tax identification numbers, are as follows: VIP Cinema Holdings, Inc. (2049); HIG Cinema Intermediate Holdings, Inc. (4710); VIP Components, LLC (4648); VIP Cinema, LLC (7167); and VIP Property Management II, LLC (1421).

4. Regal is a subsidiary of the world's second largest cinema group, which operates over 9,500 screens in 790 theatres in 10 countries. Regal itself operates one of the largest and most geographically diverse theatre circuits in the United States, consisting of 7,210 screens in 550 theatres in 43 states along with American Samoa, the District of Columbia, Guam and Saipan.

5. Regal purchased from VIP Cinema, LLC ("VIP") approximately 676,000 recliners and attendant accessories totaling approximately $40,000,000.00. VIP knew Regal's particular purpose for these products. VIP made representations regarding the durability of the recliners and accessories, thus, inducing Regal to purchase from VIP. Despite VIP's warranties, there were significant defects in the VIP products, and VIP knew of these defects at the time it made representations to VIP. VIP's conduct, thus, constitutes fraud in the inducement and negligent representations. Regal brought these defects to VIP's attention, and VIP's CEO promised to repair or replace the defective recliners and attendant accessories. Unfortunately, VIP later refused to live up to its CEO's agreement.

6. Due to the recent and unfortunate outbreak of a novel coronavirus and resulting spread of COVID-19, many movie theaters have gone dark. While Regal hopes circumstances will return to normal in the very near future, the fact remains that our nation is under a declared emergency with no definite end date.

7. The Plan is premised upon expected loans and equity investments that, pursuant to the Restructuring Support Agreement, are not required to be made except upon certain conditions. Those conditions include that there have been no events causing material adverse effects to the Debtors and that the Debtors have at least $1,500,000 of available, unrestricted cash. The current economic and public health conditions very likely have a material adverse

effect on the Debtors. Unknown is whether the Debtors have at least $1,500,000 of available, unrestricted cash and whether the Debtors have complied with all other provisions of the Restructuring Support Agreement. Additionally, a signed copy of Restructuring Support Agreement is not attached to the Disclosure Statement. The Plan is not feasible.

8. The Debtors must establish that confirmation is not likely to be followed by the liquidation, or the need for further financial reorganization, of the Debtors or any successor. See 11 U.S.C. § 1129(a)(11); In re Paragon Offshore PLC, No. 16-10386 (CSS), 2016 WL 6699318 at *16 (Bankr. D. Del. Nov. 15, 2016). There is no reasonable likelihood that the reorganization proposed by the Plan will be successful. The Plan was drafted and filed before the current economic and public health crisis developed. The Disclosure Statement outlines the economic and business risks, many of which likely and unfortunately have come to fruition. (See Disclosure Statement at 60-62.) The Debtors admit that their financial projections are based on "anticipated future performance of the Debtors; industry performance; general business and economic conditions; and other matters, many of which are beyond the control of the Debtors and some or all of which may not materialize." (Id. at 60.) On February 18, 2020, the day the Debtors filed their Plan and Disclosure Statement, the Dow Jones Industrial Average was at 29,232.19, coronavirus seemed like a supply problem in China and hardly anyone had heard of "social distancing." Times have certainly changed. The Debtors admit that if they do "not achieve their business plan and financial restructuring strategy . . . [they] may be unable to restructure their funded debt or be forced to sell all or parts of their business, develop and implement further restructuring plans not contemplated in this Disclosure Statement, or become subject to further insolvency proceedings." (Id.) Under the circumstances that have developed

since the Plan and Disclosure Statement were filed, the Debtors cannot meet their burden of proof, and the Court must deny confirmation.

9. The Court cannot confirm the Plan because it does not comply with all applicable provisions of Title 11 of the United States Code (the "Bankruptcy Code") and, thus, violates Section 1129(a)(1) of the Bankruptcy Code.

10. Regal initiated litigation against VIP to recover based on VIP's wrongful conduct. VIP has not filed an answer in the litigation initiated by Regal nor has VIP asserted any counterclaim. Debtors have not filed bankruptcy schedules or a statement of financial affairs in these jointly administered cases. Regal does not know of any claims that VIP may assert against it, as VIP has neither asserted any claims against Regal in the pending litigation nor scheduled any claims against Regal in these bankruptcy cases.

11. Consistent with its contractual rights and Section 553 of the Bankruptcy Code, Regal is entitled, at a minimum, to set off its pre-petition claims against VIP against any pre-petition claims VIP may assert against Regal. Additionally, Regal has recoupment rights for its claims against VIP to offset any claims VIP may assert against Regal.

12. Certain provisions of the Plan could be construed as eliminating Regal's setoff and recoupment rights. Regal objects to the Plan, at a minimum, to ensure its setoff and recoupment rights are not prejudiced. Regal further objects to any discharge of the debt owed to it by VIP.

13. Section 553(a) of the Bankruptcy Code preserves Regal's setoff rights:

> Except as otherwise provided in this section and in sections 362 and 363 of this title, this title does not affect any right of a creditor to offset a mutual debt owing by such creditor to the debtor that arose before the commencement of the case under this title against a claim of such creditor against the debtor that arose before the commencement of the case . . .

14. As a general rule, "any right of setoff that a creditor possessed prior to the debtor's filing for bankruptcy is not affected by the Bankruptcy Code." Citizens Bank of Maryland v. Strumpf, 516 U.S. 16, 20 (1995); In re Commc'n Dynamics, Inc., 382 B.R. 219, 227 (Bankr. D. Del. 2008) ("a creditor's right of setoff may be denied only if there is some basis in equity to do so").

15. The Debtors have not disputed that Regal has pre-petition claims in these bankruptcy proceedings. If VIP asserts pre-petition claims against Regal, Regal can setoff such claims with Regal's pre-petition claims against VIP.

16. Additionally, Regal also has rights of recoupment for its claims against VIP which arise out of the same transaction or occurrence as any claims VIP may assert against Regal. See Lee v. Schweiker, 739 F.2d 870, 875 (3d Cir. 1984) (finding recoupment an available defense to a creditor in bankruptcy to extinguish certain mutual claims that could not be "setoff" under section 553 of the Bankruptcy Code) (citing In re Monongahela Rye Liquors, 141 F.2d 864 (3d Cir. 1944)).

17. Confirmation of a plan of reorganization does not extinguish setoff and recoupment rights when those rights are timely asserted. See In re Continental Airlines, 134 F.3d 536, 541-42 (3d Cir. 1998). Here, the Debtors have not disclosed any purported claims against Regal nor has VIP filed a counterclaim against Regal in the litigation. The Debtors have indicated that they will reject any contract with Regal. See Commc'n Dynamics, 382 B.R. at 228-29 (Bankr. D. Del. 2008) (holding a rejection damages claim can be setoff against a pre-petition debt owed a debtor). Regal, therefore, has had no reason to exercise its setoff and recoupment rights to this point in the bankruptcy case.

18. By this Objection, Regal makes clear its intention to exercise setoff and recoupment rights if VIP asserts claims against it Moreover, Regal intends to continue with its claims against VIP unless those claims are otherwise discharged or the Court otherwise enjoins Regal.

19. Although the Debtors preserve their own rights of setoff and recoupment (see Plan at § 9.6(a)), the Plan appears drafted to circumvent the setoff and recoupment rights of Regal. The Plan provides that in no event shall the holder of a claim be allowed to setoff of recoup against a claim of any of the Debtors unless the holder of the claim has filed a proof of claim preserving the right of setoff or recoupment. (See Plan at § 9.6(b).) The Plan defines "Cause of Action" to include all rights to setoff and recoupment, (see Plan at § 1.1(15)), and the Plan provides that the holders of claims release all Causes of Action against the Debtors, (see Plan at § 9.3(b). The Plan also purports to permanently enjoin Regal exercising its rights of setoff and recoupment. (See Plan at § 9.5.)

20. Bankruptcy Code Section 1129(a)(1) prohibits confirmation of a Plan that fails to comply with the provisions of the Bankruptcy Code. Setoff and recoupment rights are preserved in bankruptcy, and since the Plan eliminates Regal's setoff and recoupment rights, the Court must deny confirmation. See, e.g., In re Lund, 136 B.R. 237, 241 (Bankr. D.N.D. 1990) (Chapter 12 plan that failed to preserve creditor's right of setoff as a secured claim could not be confirmed). At best, the Plan is unclear whether setoff and recoupment rights are preserved.

21. Similarly, the Plan's attempt to eliminate Regal's setoff and recoupment rights of contravenes section 1129(a)(7) of the Bankruptcy Code. Section 1129(a)(7) requires the debtor to prove, as a requirement of confirmation, that "each holder" of a claim in an impaired class will receive as much through the plan as it would receive in a hypothetical chapter 7 case. See In re

W.R. Grace & Co., 475 B.R. 34, 142 n.106 (D. Del. 2012) (class vote "may not waive an individual creditor's right to this protection under [section 1129(a)(7) of] the Code."). The Plan purports to eliminate Regal's setoff and recoupment rights, so Regal will not receive equal or better recovery under the Plan than they would receive in a Chapter 7 liquidation. The Plan provides for no distribution to Regal. (See Plan at 26.) By contrast, in a Chapter 7 liquidation, Regal could, at a minimum, offset 100% of its claims against VIP against any claims a trustee asserted against Regal. Moreover, in a Chapter 7 liquidation, Regal would retain its causes of action against VIP.

22. In addition, the Plan provides for the rejection of all executory contracts between Regal and the Debtors, yet the Debtors' purported claims against Regal are based on those executory contracts. The Debtors cannot assert claims against Regal that are based on executory contracts that the Debtors have rejected.

23. Regal objects to any discharge of the obligations of any of the Debtors to Regal. The Plan does not meet the requirements of Section 1141 of the Bankruptcy Code governing the terms under which the Debtors may be granted a discharge of obligations to Regal.

24. The Plan classifies Regal's claim in Class 5 but provides disparate treatment of Regal's claim compared to other claims within Class 5. Class 5 claims receive no distribution under the Plan. However, Class 5 claims – other than Regal's claim – may opt-in to a distribution by releasing claims against the Debtors.

25. The Court cannot confirm the Plan because it has not been proposed in good faith and/or not by any means forbidden by law and, thus, violates Section 1129(a)(2) of the Bankruptcy Code.

26. With respect to each impaired class of claims or interests, each holder of a claim or interest of such class has not accepted the Plan and/or will not receive or retain under the Plan on account of such claim or interest property of a value, as of the effective date of the Plan, that is not less than the amount that such holder would so receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy Code on such date, and, thus, violates Section 1129(a)(7) of the Bankruptcy Code.

27. With respect to each class of claims or interests, such class has not accepted the Plan and/or such class is impaired under the Plan, and, thus, violates Section 1129(a)(8) of the Bankruptcy Code.

28. One or more classes of claims are impaired under the Plan, but at least one class of claims that is impaired under the Plan has not accepted the Plan, determined without including any acceptance of the Plan by any insider, and, thus, the Plan violates Section 1129(a)(10) of the Bankruptcy Code.

29. The Plan discriminates unfairly and is not fair and equitable with respect to each class of claims or interests that are impaired under and have not accepted the Plan, and, thus, violates Section 1129(b)(1) of the Bankruptcy Code.

30. With respect to a class of unsecured claims, the Plan does not provide that the holders of such claims receive or retain on account of such claims property of a value, as of the effective date of the plan, equal to the allowed amount of such claim, or the holder of any claim or interest that is junior to the claims of such class will receive or retain under the Plan on account of such junior claim or interest property, and, thus, violates Section 1129(b)(2)(B) of the Bankruptcy Code. The Plan allows equity interests of a Debtor owned by another Debtor to be retained. The Plan, thus, violates the absolute priority rule.

31. Regal reserves the right to amend this objection.

WHEREFORE, Regal Cinemas, Inc. respectfully requests that this Court deny confirmation of the Plan and grant Regal such other relief as is just and appropriate.

DATED: March 23, 2020

Respectfully submitted,

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