

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

In re

VIOLIN MEMORY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12782 (LSS)

Hearing Date: May 15, 2017 at 10:00 a.m. (ET)

Obj. Deadline: May 3, 2017 at 4:00 p.m. (ET)

**MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER PURSUANT
TO BANKRUPTCY RULE 9019 APPROVING A SETTLEMENT
OF PREPETITION CLAIMS ASSERTED BY CORY J. SINDELAR**

The above-captioned debtor and debtor-in-possession (“**Violin**” or the “**Debtor**”) hereby submits this motion (the “**Motion**”) for entry of an order, pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), approving a settlement of the prepetition claims asserted by Cory J. Sindelar, the Chief Financial Officer of the Debtor, as set forth in the settlement agreement attached hereto as **Exhibit A** (the “**Settlement**”). In support of this Motion, the Debtor respectfully states as follows:

JURISDICTION, VENUE AND PREDICATE

1. 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. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of this proceeding is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. The predicate for the relief requested herein is Bankruptcy Rule 9019.

¹ The Debtor’s tax identification number is 20-3940944 and its business address is 4555 Great America Parkway, Suite #510, Santa Clara, CA 95054.

BACKGROUND

2. On December 14, 2016, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has continued to manage its assets and operate its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner. An official committee of unsecured creditors was appointed on December 27, 2016.

3. Information regarding Violin's history and business operations, capital structure and primary indebtedness, and the events leading to the commencement of this case is more fully set forth in the *Declaration of Cory J. Sindelar in Support of the Debtor's Chapter 11 Petition and Requests for First Day Relief* [D.I. 10], which was filed on the Petition Date and is incorporated herein by reference. As set forth therein, Mr. Sindelar is the Chief Financial Officer of the Debtor and has been a member of the Debtor's management team since December 2011.

4. On February 24, 2017, the Court entered an order establishing the general bar date to file proofs of claim as 21 days after service of a notice thereof [D.I. 283]. The Debtor subsequently served such notice establishing the general bar date as March 21, 2017 [D.I. 285, 306].

5. On March 8, 2016, the Debtor filed the *Second Amended Plan of Reorganization for Violin Memory, Inc.* [D.I. 313] (the "**Plan**"²). As set forth therein, the Plan proposes, among other things, to establish a Distribution Trust to resolve and make distributions on outstanding claims against the Debtor. *See, e.g.*, Plan §§ 6.2(b), Art. VIII.

² Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Plan.

In addition, the Plan proposes that Mr. Sindelar serve as one of the two initial trustees of the Distribution Trust. *See* Plan § 6.2(d).

6. Under the Plan, the Plan Sponsor or its affiliates will acquire all equity in the Reorganized Debtor and will designate a new board of directors and may replace existing officers. *See, e.g.*, Plan §§ 4.3(a), 6.3(b). As set forth in the disclosures of the Proponents pursuant to section 1129(a)(5) of the Bankruptcy Code, Mr. Sindelar will not be employed by the Reorganized Debtor after the Effective Date. [D.I. 381, 406].

7. On April 18, 2017, the Court entered an order confirming the Plan [D.I. 420].

8. On March 16, 2017, Mr. Sindelar timely filed proof of claim no. 65 (“**Claim 65**”) asserting (i) contingent and liquidated unsecured claims for wages and health benefits arising under a prepetition change of control and severance agreement (the “**Contractual Claims**”), a copy of which agreement is attached to Claim 65, and (ii) contingent and unliquidated unsecured claims for indemnification and advancement arising under various contracts or applicable law (the “**Indemnification Claims**”). In addition, Mr. Sindelar has also been scheduled with an unsecured priority claim pursuant to section 507(a)(4) of the Bankruptcy Code. [D.I. 98].

9. As the Plan provides for the establishment of the Distribution Trust on the Effective Date to resolve filed claims and make distributions thereon, and provides for Mr. Sindelar to serve as one of the two initial trustees of the Distribution Trust, the Debtor and Mr. Sindelar seek to resolve Mr. Sindelar’s claims immediately.

10. Richard Nottenburg, the chairman of the Debtor’s board of directors, was appointed as the Debtor’s estate representative for purposes of the Claim 65 review.

11. The Debtor, under the direction of Mr. Nottenburg, has conducted a review of Mr. Sindelar's claims and of its books and records. Such review was conducted independently of Mr. Sindelar and the results are documented in the Settlement.

RELIEF REQUESTED AND BASIS THEREFOR

12. By this Motion, the Debtor requests entry of an order, substantially in the form attached hereto as **Exhibit B**, approving the Settlement pursuant to Bankruptcy Rule 9019. In relevant part, Bankruptcy Rule 9019(a) provides that "after notice and a hearing, the court may approve a compromise or settlement." Fed. R. Bankr. P. 9019(a). Settlements and compromises are "a normal part of the process of reorganization." *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 428 (1968). "To minimize litigation and expedite the administration of a bankruptcy estate, compromises are favored in bankruptcy." *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996) (internal marks and citation omitted).

13. Approval of a settlement is within the sound discretion of a bankruptcy court, which rests on a determination whether the compromise is fair, reasonable and in the best interest of the estate. *In re Key3Media Group, Inc.*, 336 B.R. 87, 92 (Bankr. D. Del. 2005) (citations omitted). In making this determination, the court should consider: "(1) the probability of success in litigation; (2) the likely difficulties in collection; (3) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and (4) the paramount interest of the creditors." *Martin*, 91 F.3d at 393. This does not require a "mini-trial on the merits" of the claims at issue but rather

an evaluation of whether the proposed settlement is within the range of reasonableness. *Key3Media*, 336 B.R. at 92 (citations omitted).

14. Approval of the Settlement is warranted under these criteria. Having reviewed its books and records as well as the Severance Agreement and Mr. Sindelar's filed proof of claim, in a process independent of Mr. Sindelar's involvement and overseen by an independent member of the Debtor's board of directors, the Debtor has determined that the Contractual Claims asserted by Mr. Sindelar are valid and should be Allowed in such amounts as General Unsecured Claims in Class 4, and that the Debtor does not have valid defenses to such claims. Further, the Settlement leaves the Indemnification Claims to be addressed either (i) in accordance with the Plan as and when incurred and being satisfied, to the extent valid, solely from the Runoff Policy and not from any other Distribution Trust Assets, or (ii) in the event that the Plan is confirmed, pursuant to further proceedings with respect to Claim 65. The resolutions of the Contractual Claims and the Indemnification Claims as set forth in the Settlement is in the best interest of the estate as the Settlement resolves pending claims and avoids incurring unnecessary litigation and costs. Accordingly, the terms of the Settlement are reasonable and should be approved.

NOTICE

15. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel: (a) the Office of the United States Trustee for the District of Delaware; (b) the Committee; and (c) those parties requesting notice pursuant to Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtor respectfully requests that the Court grant this Motion and enter an order approving the Settlement substantially in the form of the proposed order filed herewith.

Dated: April 19, 2017
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser

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Gregory J. Flasser (No. 6154)
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Counsel for the Debtor and Debtor-in-Possession

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

In re

VIOLIN MEMORY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12782 (LSS)

Hearing Date: May 15, 2017 at 10:00 a.m. (ET)

Obj. Deadline: May 3, 2017 at 4:00 p.m. (ET)

**NOTICE OF MOTION OF THE DEBTOR FOR ENTRY OF AN ORDER
PURSUANT TO BANKRUPTCY RULE 9019 APPROVING SETTLEMENT OF
PREPETITION CLAIMS ASSERTED BY CORY J. SINDELAR**

PLEASE TAKE NOTICE that on April 19, 2017, the above-captioned debtor and debtor in possession (the “**Debtor**”), filed the *Motion of the Debtor for Entry of an Order Pursuant to Bankruptcy Rule 9019 Approving Settlement of Prepetition Claims Asserted By Cory J. Sindelar* (the “**Motion**”).

PLEASE TAKE FURTHER NOTICE that you are required to file a response or objection, if any, to the Motion on or before **May 3, 2017 at 4:00 p.m. (ET)** (the “**Objection Deadline**”) with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the response upon the undersigned counsel so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE that if an objection is timely filed, served, and received and such objection is not otherwise timely resolved, a hearing on the Motion will be held on **May 15, 2017 at 10:00 a.m. (ET)** before the Honorable Laurie S. Silverstein at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801.

¹ The Debtor’s tax identification number is 20-3940944 and its business address is 4555 Great America Parkway, Suite #510, Santa Clara, CA 95054.

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO PROPERLY FILE AND SERVE A RESPONSE ON OR BEFORE THE OBJECTION DEADLINE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: April 19, 2017
Wilmington, Delaware

BAYARD, P.A.

/s/ Gregory J. Flasser

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Counsel for the Debtor and Debtor-in-Possession

EXHIBIT A

Settlement Agreement

SETTLEMENT AGREEMENT

This Settlement Agreement (“**Agreement**”) is made as of April 18, 2017 by and between Violin Memory, Inc. (“**Violin**”) and Cory J. Sindelar (together with Violin, the “**Parties**”).

WHEREAS, on December 14, 2016, Violin commenced a voluntary case under title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) administered under case number 16-12782 (LSS) (the “**Bankruptcy Case**”);

WHEREAS, on January 11, 2017, Violin filed its schedules of assets and liabilities [Docket No. 98] identifying a claim for Mr. Sindelar for salary accrued and owing in the ordinary course of business in the amount of \$10,227.27 and entitled to priority under section 507(a)(4) of the Bankruptcy Code (the “**Scheduled Claim**”);

WHEREAS, Violin has satisfied the Scheduled Claim in the course of the Bankruptcy Case pursuant to the Bankruptcy Court’s interim and final orders authorizing Violin to satisfy certain prepetition employee-related obligations [Docket Nos. 22, 91];

WHEREAS, on March 8, 2017, Violin filed the *Second Amended Plan of Reorganization for Violin Memory, Inc.* [Docket No. 313] (the “**Plan**”);¹

WHEREAS, on March 16, 2017, Mr. Sindelar timely filed proof of claim number 65 (“**Claim 65**”) in the Bankruptcy Case, asserting (i) certain contingent and liquidated prepetition claims arising under a change of control and severance agreement entered into prior to the Petition Date (such agreement, the “**Severance Agreement**,” and such claims, the “**Contractual Claims**”); and (ii) certain contingent and unliquidated claims for indemnification and

¹ Capitalized terms used but not defined herein have the meaning ascribed to such terms in the Plan.

advancement (the “**Indemnification Claims**,” and together with the Contractual Claims and the Scheduled Claim, the “**Sindelar Claims**”);

WHEREAS, Mr. Sindelar is currently employed by Violin as its Chief Financial Officer but will no longer be employed by Violin or the Reorganized Debtor as of the Effective Date;

WHEREAS, pursuant to Section 6.2 of the Plan, a Distribution Trust will be established on the Effective Date to resolve and make distributions on prepetition claims against the Debtor, among other things, and Mr. Sindelar has been designated to be appointed as one of the two trustees of the Distribution Trust on the Effective Date;

WHEREAS, pursuant to section 9.5 of the Plan, Violin’s indemnification and indemnification obligations to directors, officers or employees employed after the Petition Date and prior to the Effective Date will be assigned to the Distribution Trust to be satisfied solely from and to the extent of certain insurance policies being transferred to the Distribution Trust;

WHEREAS, Violin has conducted a review, under the supervision of Richard N. Nottenburg, the chairman of the board of directors of Violin, of its books and records, the Severance Agreement and the Contractual Claims; and

WHEREAS, subject to the Bankruptcy Court’s approval, the Parties desire to consensually resolve the Sindelar Claims on the terms set forth herein.

NOW THEREFORE, in consideration of the foregoing recitals, which are incorporated into this Agreement, and the covenants and conditions contained herein, the Parties hereby agree as follows:

1. In full and final satisfaction of the Sindelar Claims: (i) Claim 65 is Allowed as a General Unsecured Claim in the amount of \$242,880.84 on account of the Contractual Claims; and (ii) subject to the Plan becoming effective, the Indemnification Claims shall be satisfied in

accordance with section 9.5 of the Plan. For the avoidance of doubt, in the event that the Plan does not become effective, nothing herein shall be construed to impair Mr. Sindelar's assertion of the Indemnification Claims pursuant to Claim 65.

2. Mr. Sindelar represents and warrants that he (i) is the owner and holder of the Sindelar Claims, (ii) has not sold, assigned or otherwise transferred any of the Sindelar Claims to any third party, and (iii) has full authority to enter into this Agreement.

3. This Agreement contains, and is, the entire agreement by and between the Parties with respect to the subject matter hereof, and all prior understandings or agreements, if any, are merged into this Agreement.

4. This Agreement shall be construed and interpreted in accordance with the laws of the State of Delaware, without regard to its choice of law principles. For the purposes of construing this Agreement, neither of the Parties shall be deemed as the drafter of the Agreement.

5. Facsimile or other electronic copies of signatures on this Agreement are acceptable, and a facsimile or other electronic copy of a signature on this Agreement is deemed an original.

6. This Agreement may be executed in counterparts, each of which is deemed an original, but when taken together construe one and the same document.

7. The Bankruptcy Court shall retain jurisdiction to hear any matters or disputes arising from or relating to this Agreement.

8. This Agreement will be effective upon approval by the Bankruptcy Court.

WHEREFORE, the Parties have caused this agreement to be duly entered into as of the date first set forth above.

VIOLIN MEMORY, INC.

/s/ Richard N. Nottenburg

Name: Richard N. Nottenburg

Title: Chairman, Board of Directors

CORY J. SINDELAR

WHEREFORE, the Parties have caused this agreement to be duly entered into as of the date first set forth above.

VIOLIN MEMORY, INC.

Name: _____

Title: _____

CORY J. SINDELAR

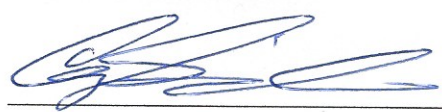


EXHIBIT B

Proposed Order

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

In re

VIOLIN MEMORY, INC.,¹

Debtor.

Chapter 11

Case No. 16-12782 (LSS)

Related D.I.: ____

**ORDER GRANTING THE MOTION OF THE DEBTOR FOR
ENTRY OF AN ORDER PURSUANT TO BANKRUPTCY RULE
9019 APPROVING A SETTLEMENT OF PREPETITION
CLAIMS ASSERTED BY CORY J. SINDELAR**

Upon consideration of the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of an order approving a compromise and settlement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedures (the “**Bankruptcy Rules**”); and this Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and it appearing that no other or further notice need be provided; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

¹ The Debtor’s tax identification number is 20-3940944 and its business address is 4555 Great America Parkway, Suite #510, Santa Clara, CA 95054.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. Pursuant to Bankruptcy Rule 9019, the Settlement is approved.
2. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Dated: April ___, 2017
Wilmington, Delaware

The Honorable Laurie S. Silverstein
United States Bankruptcy Judge