

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	§	
	§	Chapter 11
	§	
SPEEDCAST INTERNATIONAL LIMITED, <i>et al.</i> ,	§	
	§	Case No. 20-32243 (MI)
	§	
Debtors. <sup>1</sup>	§	(Joint Administration Requested)
	§	(Emergency Hearing Requested)

**EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING DEBTORS TO FILE DIP FACILITY FEE LETTER UNDER SEAL**

**EMERGENCY RELIEF HAS BEEN REQUESTED. A VIDEO/TELEPHONIC HEARING WILL BE CONDUCTED ON THIS MATTER ON APRIL 23, 2020 AT 3:00 PM (PREVAILING CENTRAL TIME). PARTIES WISHING TO PARTICIPATE TELEPHONICALLY MUST DIAL IN USING THE COURT’S TELECONFERENCE SYSTEM AT 1-832-917-1510 AND ENTERING CONFERENCE CODE 954554. PARTIES WHO ALSO WISH TO PARTICIPATE BY VIDEOCONFERENCE MAY DO SO BY USE OF AN INTERNET CONNECTION, USING THE WEBSITE WWW.JOIN.ME, SELECTING “JOIN A MEETING,” AND ENTERING MEETING CODE “JudgeIsgur.”**

**IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST EITHER APPEAR AT THE HEARING OR FILE A WRITTEN RESPONSE PRIOR TO THE HEARING. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

**RELIEF IS REQUESTED NOT LATER THAN APRIL 23, 2020.**

SpeedCast International Limited and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):

<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.



## Background

1. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

2. The Debtors, combined with their non-debtor affiliates (collectively, “**Speedcast**” or the “**Company**”), are the largest provider of remote and offshore satellite communications and information technology services in the world. Speedcast’s fully-managed service is delivered to more than 2,000 customers in 140 countries via a leading global, multi-access technology, multi-band and multi-orbit network of 80+ satellites and an interconnecting global terrestrial network, bolstered by on-the-ground local support from 40+ countries. Speedcast services customers in sectors such as Commercial Maritime, Cruise, Energy, Mining, Government, NGOs, Enterprise, and Media.<sup>2</sup> Additional information regarding the Debtors’ business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Michael Healy in Support of the Debtors’ Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the “**Healy Declaration**”),<sup>3</sup>

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<sup>2</sup> None of the Speedcast entities associated with the Company’s Government business are Debtors in these chapter 11 cases.

<sup>3</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Healy Declaration. All dollar (\$) references in this Motion are to the U.S. dollar, unless stated otherwise.

which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

3. As described in more detail in the *Emergency Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* (the “**DIP Motion**”), filed contemporaneously herewith, the Debtors seek approval of debtor in possession financing consisting of senior secured, superpriority term loans in an aggregate principal amount of up to \$180 million, consisting of: (i) a new money term loan facility in the aggregate principal amount of \$90 million, and (ii) a two-stage roll-up to a second-out position term loan in the principal amount of \$90 million (the “**DIP Facility**”). The DIP Motion seeks authority to, among other things, pay certain fees set forth in the letter agreement (the “**DIP Facility Fee Letter**”) among SpeedCast Communications, Inc., as borrower, SpeedCast International Limited, as parent guarantor, and Credit Suisse AG, Cayman Islands Branch, as administrative agent, collateral agent, and security trustee (in such capacity, the “**DIP Agent**”). In connection with the filing of the DIP Motion, the Debtors seek authorization to file the DIP Facility Fee Letter under seal. The DIP Facility Fee Letter contains sensitive confidential and commercial information regarding the structure and amount of the fees relating to the DIP Facility. Because the disclosure of this information could harm the Debtors and the DIP Agent, the Debtors seek authorization for the DIP Facility Fee Letter to be filed under seal.

**Jurisdiction**

4. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

**Relief Requested**

5. By this Motion, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Rule 9037-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (as amended, the “**Local Rules**”), the Debtors request (i) authority to file under seal the DIP Facility Fee Letter, filed contemporaneously herewith, (ii) direction that the DIP Facility Fee Letter remain under seal and not be made available to anyone without the prior written consent of the Debtors and the DIP Agent, and (iii) related relief. The Debtors propose providing copies of the DIP Facility Fee Letter to (a) this Court, (b) the Office of the United States Trustee for the Southern District of Texas (the “**U.S. Trustee**”) on a strictly confidential basis, and (c) on a strictly confidential, “professionals only” basis to any advisors to any statutory committee appointed in these chapter 11 cases. In support of this Motion the Debtors have contemporaneously filed herewith the *Declaration of Adam Waldman in Support of Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing and (VI) Granting Related Relief* (the “**Waldman Declaration**”), which is incorporated by reference herein.

6. A proposed form of order granting the relief requested herein is annexed hereto (the “**Proposed Order**”).

**Relief Requested Should Be Granted**

7. Section 105(a) of the Bankruptcy Code codifies the Court’s inherent equitable powers and empowers it to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). Moreover, pursuant to section 107(b)(1) of the Bankruptcy Code, the Court may authorize the Debtors to file the DIP Facility Fee Letter under seal by permitting the issuance of an order that protects entities from potential harm that may result from the disclosure of certain confidential information. *See* 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, that:

On request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may — (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b); *In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995) (“The court has authority to seal court records, in order to protect trade secrets or confidential research, development, or confidential information, or to protect a person with regard to a scandalous or defamatory matter.”).

8. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part, that “[o]n motion, or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Fed. R. Bankr. P. 9018. *See also* Local Rule 9037-1 (“[A] motion, reply or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”).

9. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), the court is required to protect a requesting party and has no discretion to deny the application. *See In re 50-OffStores, Inc.*, 213 B.R. 646, 655—56 (Bankr. W.D. Tex. 1997) (“The statute, on its face, states that the bankruptcy court is *required* to protect such an entity on request of a party in interest.”) (emphasis in original).

10. The Debtors submit that the DIP Facility Fee Letter falls within the scope of commercial information that may be protected by the Court pursuant to section 107(b)(1) of the Bankruptcy Code and Bankruptcy Rule 9018. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.” *In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *See In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D. Tex. 2004) (“A bankruptcy court is required to seal documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.”). Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *In re*

*Orion Pictures Corp.*, 21 F.3d at 27—28. Once a court determines that a party in interest is seeking to protect “commercial information,” the court “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27.

11. Fees paid by a borrower in connection with financing would not, typically, be something that the DIP Agent or any other similarly situated lender, agent, or arranger would disclose. Given the totality of the circumstances, however, including the Debtors’ recognition of the importance of the Court’s review of the DIP Facility Fee Letter and that a certain degree of transparency and public scrutiny is a necessary part of the bankruptcy process, and balancing these interests with the need to protect confidential and proprietary commercial information, the Debtors propose to file copies of the DIP Facility Fee Letter with the Court under seal and to share copies of the DIP Facility Fee Letter with (i) the U.S. Trustee on a strictly confidential basis and (ii) advisors to any statutory committee appointed in the chapter 11 cases on a strictly confidential, “professionals only” basis.

12. The terms of the DIP Facility Fee Letter are the product of extensive good faith, arms’ length negotiations, and the Debtors have agreed to keep such terms confidential. The DIP Agent has advised the Debtors that the DIP Facility Fee Letter contains closely-guarded, proprietary, and commercial information that is highly sensitive to the DIP Agent. Disclosure of the terms of the DIP Facility Fee Letter would cause substantial harm to the DIP Agent, creating an unfair advantage to its competitors and would violate the Debtors’ agreement to maintain the DIP Facility Fee Letter’s confidentiality.

13. The fees provided in the DIP Facility Fee Letter are intended to compensate the DIP Agent for the large, sophisticated team of credit, financial, marketing, legal, and other experts necessary to assist with structuring, syndicating, marketing, and administering the DIP

Facility. The DIP Facility Fee Letter contains proprietary information describing the fees to be paid in connection with the foregoing, which information is customarily considered by the DIP Agent, specifically, and the commercial lending industry, in general, to be highly sensitive and confidential information not typically disclosed to the public or made available to other competing financial institutions. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of the DIP Facility Fee Letter be kept confidential so that competitors may not use the information contained in it to gain a strategic advantage in the marketplace. Moreover, a broad publication of the DIP Facility Fee Letter would not facilitate evaluation of the financing and would be materially harmful to the business of the DIP Agent. Accordingly, the Debtors respectfully submit that cause exists to file the DIP Facility Fee Letter under seal.

14. In addition, it is common practice for financial institutions and borrowers to execute fee letters such as the DIP Facility Fee Letter on a confidential basis. Courts in this district have authorized the filing of similar confidential financing documents under seal in other chapter 11 cases. *See, e.g., In re Am. Com. Lines Inc.*, Case No. 20-30982 (MI) (Bankr. S.D. Tex. Mar. 19, 2020), [D.I. 242] (authorizing chapter 11 debtor to file a fee letter under seal in connection with the debtors' motion for approval of postpetition financing); *In re EP Energy Corp.*, Case No. 19-35654 (MI) (Bankr. S.D. Tex. Nov. 20, 2019), [D.I. 447] (same); *In re Halcón Res. Corp.*, Case No. 19-34446 (DRJ) (Bankr. S.D. Tex. Aug. 8, 2019), [D.I. 75] (same); *In re EXCO Res., Inc.*, Case No. 18-30155 (MI) (Bankr. S.D. Tex. May 9, 2019) [D.I. 1937] (same); *In re Parker Drilling Co.*, Case No. 18-36958 (Bankr. S.D. Tex. Dec. 13, 2018) [D.I. 165] (same); *In re iHeartMedia, Inc.*, Case No. 18-31274 (Bankr. S.D. Tex. June 7, 2018) [D.I. 744] (same).



**Notice**

15. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Southern District of Texas; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) (A) Davis Polk & Wardwell LLP, 450 Lexington Avenue, New York, NY 10017 (Attn: Damian S. Schaible, Esq., David Schiff, Esq., and Jonah A. Peppiatt, Esq.) and (B) Rapp & Krock, PC, 1980 Post Oak Blvd, Suite 1200, Houston, TX 77056 (Attn: Henry Flores, Esq.), counsel to the Ad Hoc Group of Secured Lenders; (iv) Skadden, Arps, Slate, Meagher & Flom LLP, One Manhattan West, New York, NY 10001 (Attn: Steven Messina, Esq. And George Howard, Esq.) and 155 N. Wacker Drive, Chicago, IL 60606 (Attn: David M. Wagener, Esq.), counsel to Credit Suisse AG, Cayman Islands Branch, as administrative agent under the Syndicated Facility Agreement and the DIP Agent; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Southern District of Texas; (vii) the Securities and Exchange Commission; (viii) the Banks; (ix) all parties known by the Debtors to hold or assert a valid, perfected, and enforceable lien on any asset of the Debtors; (x) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xi) any other party entitled to notice pursuant to Local Rule 9013-1(d).

**No Previous Request**

16. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: April 23, 2020  
Houston, Texas

Respectfully submitted,

/s/ Alfredo R. Pérez

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*Proposed Attorneys for Debtors  
and Debtors in Possession*

**Certificate of Service**

I hereby certify that on April 23, 2020, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas, and will be served as set forth in the Affidavit of Service to be filed by the Debtors' proposed claims, noticing, and solicitation agent.

/s/ Alfredo R. Pérez  
Alfredo R. Pérez

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>	§	
	§	<b>Chapter 11</b>
	§	
<b>SPEEDCAST INTERNATIONAL LIMITED, et al.,</b>	§	
	§	<b>Case No. 20-32243 (MI)</b>
	§	
<b>Debtors.<sup>1</sup></b>	§	<b>(Jointly Administered)</b>
	§	<b>Re: Docket No. __</b>

**ORDER AUTHORIZING THE FILING OF  
DIP FACILITY FEE LETTER UNDER SEAL**

Upon the motion, dated April 23, 2020 (the “**Motion**”)<sup>2</sup> of Speedcast International Limited and its affiliated debtors in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an order pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9037-1 (i) authorizing the Debtors to file under seal the DIP Facility Fee Letter, filed contemporaneously with the Motion and (ii) directing that the DIP Facility Fee Letter remain under seal and not be made available to anyone without the prior written consent of the Debtors and the DIP Agent, all as more fully set forth in the Motion; and upon consideration of the Waldman Declaration; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and it appearing that venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice

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<sup>1</sup> A complete list of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kccllc.net/speedcast>. The Debtors’ service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; 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 it appearing that the relief requested in the Motion is in the best interests of the Debtors and their respective estates and creditors; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT**

1. The Debtors are authorized, but not directed, pursuant to section sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9037-1, to file the DIP Facility Fee Letter under seal.

2. The DIP Facility Fee Letter is confidential and shall remain under seal, and shall not be made available to anyone, except that copies of the DIP Facility Fee Letter shall be provided to the Court, the Clerk of the Court, the U.S. Trustee, and advisors to any statutory committee appointed in the chapter 11 cases (the “**Committee Professionals**”). The U.S. Trustee shall keep the DIP Facility Fee Letter and the terms thereof strictly confidential, and the Committee Professionals shall keep the DIP Facility Fee Letter and the terms thereof strictly confidential and maintained on a “professionals only” basis.

3. Any party who receives the DIP Facility Fee Letter in accordance with this Order shall not disclose or otherwise disseminate such DIP Facility Fee Letter, or the information contained therein, to any other person or entity without the prior written consent of the Debtors and the DIP Agent.

4. Notwithstanding the provisions of Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: \_\_\_\_\_, 2020  
Houston, Texas

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MARVIN ISGUR  
UNITED STATES BANKRUPTCY JUDGE