

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (BLS)

(Jointly Administered)

Hearing Date: July 9, 2024 at 11:00 a.m. (ET)

Objection deadline: At the hearing

Re: Docket Nos. 21 & 166

**DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) SEALING CERTAIN CONFIDENTIAL INFORMATION, AND
(II) GRANTING RELATED RELIEF**

By this Motion (the "Motion to Seal"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") in the above-captioned jointly administered chapter 11 cases (these "Chapter 11 Cases"), by and through their undersigned counsel, hereby request entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), authorizing the Debtors to seal certain employee-related confidential information (the "Confidential Information"), contained in the Stalking Horse APA schedules (the "Schedules") attached to Exhibit A to Exhibit 1 of the Notices (as defined below) pursuant to sections 105 and 107 of title 11 of the United States Code (the "Bankruptcy Code"), rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and rule 9018-1 of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"). In support of their Motion to Seal, the Debtors respectfully state as follows:

¹ The Debtors in these chapter 11 proceedings, together with the last four digits of each Debtor's federal tax identification number, are: Supply Source Enterprises, Inc. (0842); SSE Intermediate, Inc. (1772); SSE Buyer, Inc. (5901); Impact Products, LLC (7450); and The Safety Zone, LLC (4597). The Debtors' headquarters are located at 385 Long Hill Road, Guilford, Connecticut 06437.



JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these Chapter 11 Cases, the Debtors, property of the Debtors’ estates, and these matters under 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 is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested herein are sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1.

BACKGROUND

5. On May 21, 2024 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief pursuant to chapter 11 of the Bankruptcy Code. These Chapter 11 Cases are jointly administered for procedural purposes only pursuant to Bankruptcy Rule 1015(b). *See* Docket No. 45. The Debtors are operating their business and managing their properties, as debtors in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made. On June 3, 2024, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed the official committee

of unsecured creditors (the “Committee”). See Docket No. 82. No other committees have been appointed in these Chapter 11 Cases.

6. Additional factual background regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the filing of these Chapter 11 Cases is set forth in the *Declaration of Thomas Studebaker in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 3] (the “First Day Declaration”), which is incorporated herein by reference.

7. The Debtors filed the *Notice Of Filing Of Exhibit A To Exhibit 1 To Debtors’ Motion For Entry Of Orders (I)(A) Approving Bidding Procedures For The Sale Of Substantially All Of The Debtors’ Assets, (B) Designating The Stalking Horse Bidder, (C) Scheduling An Auction And Approving The Form And Manner Of Notice Thereof, (D) Approving Assumption And Assignment Procedures, (E) Scheduling A Sale Hearing And Approving The Form And Manner Of Notice Thereof, And (F) Granting Related Relief; And (II)(A) Approving The Sale Of The Debtors’ Assets Free And Clear Of Liens, Claims, Interests, And Encumbrances, (B) Approving The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (C) Granting Related Relief* [Docket No. 21] on May 22, 2024, and the *Notice Of Filing Of Revised Order (A) Approving Bidding Procedures For The Sale Of Substantially All Of The Debtors’ Assets, (B) Designating The Stalking Horse Bidder, (C) Scheduling An Auction And Approving The Form And Manner Of Notice Thereof, (D) Approving Assumption And Assignment Procedures, (E) Scheduling A Sale Hearing And Approving The Form And Manner Of Notice Thereof, And (F) Granting Related Relief* [Docket No. 166] (collectively, the “Notices”)² on June 19, 2024.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to them in the *Order (A) Approving Bidding Procedures For The Sale Of Substantially All Of The Debtors’ Assets, (B) Designating The*

8. The Notices contain a draft of the Stalking Horse APA and the Schedules thereto. The Schedules contain Confidential Information pertaining to the Debtors' employees and commercial operations. If such Confidential Information were publicly available, it may result in harm to the Debtors and their employees.

9. The Debtors' Claims Agent has removed the Notices from the case website and the Clerk of Court has temporarily restricted public access to the Notices until resolution of this Motion to Seal.

10. The Debtors intend to file a revised Stalking Horse APA (without the Schedules) in connection with the Sale Hearing to be held on July 9, 2024.

RELIEF REQUESTED

11. By this Motion to Seal, the Debtors respectfully request that the Court enter the Proposed Order (i) sealing the Schedules, and (ii) granting related relief.

BASIS FOR RELIEF REQUESTED

12. Section 107(b) of the Bankruptcy Code provides this Court with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain information. The section provides, in relevant part: "On request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information" 11 U.S.C. § 107(b)(1).

13. 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 protection thereunder to demonstrate "good cause." *See, e.g., Video Software Dealers Ass'n v. Orion Pictures Corp. (In re*

Stalking Horse Bidder, (C) Scheduling An Auction And Approving The Form And Manner Of Notice Thereof, (D) Approving Assumption And Assignment Procedures, (E) Scheduling A Sale Hearing And Approving The Form And Manner Of Notice Thereof, And (F) Granting Related Relief [Docket No. 173] or the First Day Declaration.

Orion Pictures Corp.), 21 F.3d 24, 28 (2d Cir. 1994); *In re ACandS, Inc.*, 462 B.R. 88, 101 n.22 (Bankr. D. Del. 2011). Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is “confidential” and “commercial” in nature. *Orion Pictures*, 21 F.3d at 27-28; *In re Motions Seeking Access to 2019 Statements*, 585 B.R. 733, 757 (D. Del. 2018) (holding that section 107(b) applies to information that is a “trade secret,” “confidential commercial information,” or information that is “scandalous or defamatory”).

14. Delaware courts have defined “commercial information” as “information which would result in an ‘unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *In re Orion Pictures Corp.*, 21 F.3d at 27–28); *see also In re Mum Servs., Inc.*, 279 B.R. 478, 484 (Bankr. D. Del. 2002) (noting that section 107(b) “was intended to avoid affording an unfair advantage to competitors by providing them information as to the commercial operations of the debtor”).

15. 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).

16. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b), and provides, in relevant part, that “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; *In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing that the purpose of Bankruptcy Rule 9018 is to “protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury”). Local Rule 9018-1(d) requires that

a party seeking to file documents under seal file a motion requesting such relief. Del. Bankr. L.R. 9018-1(d).

17. As discussed above, the Schedules contain Confidential Information, such as employees' salaries, that the Debtors have concluded should be sealed. If the Confidential Information in the Schedules is publicly available, competitors in the Debtors' industry could potentially use such information to lure the Debtors' employees away by offering them enhanced compensation and benefits resulting in a detriment to the Debtors, their stakeholders, and creditors in these Chapter 11 Cases. Further, the Confidential Information could be used to harass, embarrass, or otherwise harm the Debtors' employees and create acrimony across the Debtors' workforce.

18. No party in interest will be harmed by granting the relief requested herein. The Schedules, and the confidential information contained therein was made available to parties that executed NDAs in connection with the sale process and is known to the parties to the Stalking Horse APA. It has also been made available to the Office of the United States Trustee for the District of Delaware and the Committee's professionals, who are also bound by confidentiality. The Debtors submit that no other party is entitled to this information.

LOCAL RULE 9018-1(d) CERTIFICATION

19. To the best of the knowledge, information, and belief of the undersigned proposed counsel for the Debtors, the Confidential Information that the Debtors are requesting to seal does not contain information that is subject to the Confidentiality Rights of another Holder of Confidentiality Rights (each as defined in Local Rule 9018-1(d)(iii)). Del. Bankr. L.R. 9018-1(d)(iv)(e).

20.

NOTICE

21. Notice of this Motion to Seal has been provided to the following parties or their respective counsel where known: (a) the U.S. Trustee; (b) the Committee; (c) counsel for the DIP Lender; (d) counsel for the Prepetition Secured Parties, and (e) all parties that, as of the filing of this Motion, have requested notice in these Chapter 11 Cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

22. No previous request for the relief requested herein has been made to this or any other court.

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CONCLUSION

WHEREFORE, for the reasons set forth above, the Debtors respectfully requests that the Court enter the Proposed Order, granting the relief requested herein and awarding such other and further relief as the Court deems just and proper.

Dated: July 5, 2024
Wilmington, Delaware

Respectfully submitted,

/s/ R. Stephen McNeill

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*Proposed Counsel to the Debtors and
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EXHIBIT A

Proposed Order

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

In re:

Supply Source Enterprises, Inc., *et al.*,¹

Debtors.

Chapter 11

Case No. 24-11054 (BLS)

(Jointly Administered)

Re: Docket Nos. 21, 166, &__

**ORDER (I) SEALING CERTAIN CONFIDENTIAL INFORMATION,
AND (II) GRANTING RELATED RELIEF**

Upon consideration of the Debtors' Motion to Seal seeking entry of an order (this "Order")² (i) sealing the Schedules, and (ii) granting related relief pursuant to sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1; and upon consideration of the Motion to Seal, and all pleadings related thereto, including the Notices; and having determined that no other or further notice of the Motion to Seal is required under the circumstances; and having determined that the Court has jurisdiction to consider the Motion to Seal in accordance with 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; and having determined that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and having determined that venue of this proceeding and the Motion to Seal is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and having determined that the relief requested in the Motion to Seal and provided for herein is in the

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² All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion to Seal.

best interest of the Debtors, their estates, and their creditors; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion to Seal is **GRANTED** as set forth herein.
2. The Clerk of Court shall seal the Schedules that were attached to the Notices previously filed at Docket Numbers 21 and 166.
3. The Debtors shall contact and inform all third parties that may have previously acquired and/or currently possess unredacted copies of the Notices or the Schedules that such documents are now under seal and that such third parties treat the Confidential Information as such.
4. The Court shall retain jurisdiction with respect to all matters arising from or related to this Order.