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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC, <i>et al.</i> , ¹)	Case No. 19-11608 (___)
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER (I) AUTHORIZING THE
DEBTORS TO FILE EXIT BACKSTOP COMMITMENT LETTER AND FEE LETTERS
UNDER SEAL AND (II) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

Relief Requested

1. By this motion, the Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A**, (a) authorizing the Debtors to file under seal the Exit Backstop

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors’ service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

Commitment Letter,² the Fee Letter, and the fee letters attached as Exhibit D and Exhibit E to the *Debtors' Motion for Entry of Interim and Final Orders (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Authorizing the Debtors to Use Cash Collateral, (C) Granting Liens and Providing Superpriority Administrative Expense Status, (D) Granting Adequate Protection to the Prepetition Lenders, (E) Modifying the Automatic Stay, (F) Scheduling A Final Hearing, and (G) Granting Related Relief* (and, together with the Fee Letter, the "Fee Letters"), and (b) granting related relief.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of New York (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 Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), Bankruptcy Rules 6003 and 6004, and Rules 9013-1(a) and 9018-1 of the Local Bankruptcy Rules for the Southern District of New York (the "Local Rules").

² Capitalized terms used but not otherwise defined herein shall have the meaning given to them in the *Debtors' Motion for Entry of an Order (A) Authorizing the Debtors to Enter Into Exit Backstop Commitment Letter and Fee Letter and (B) Granting Related Relief*, filed contemporaneously herewith.

Background

5. Hollander Sleep Products is the largest pillow and mattress pad manufacturer in North America. The Debtors also manufacture comforters and other basic bedding products. The Debtors have their own brands, including Great Sleep®, I AM®, LC®, PCF®, and Restful Nights®, and also manufacture and sell licensed brands, including Simmons®, Ralph Lauren®, CHAPS®, Calvin Klein®, Therapedic®, Nautica®, 37.5®, and Dr. Maas®. The Debtors are headquartered in Boca Raton, Florida, operate a main showroom in New York City, and have thirteen manufacturing facilities throughout the United States and Canada. The Debtors generated approximately \$527 million in net revenue in fiscal year 2018 and currently employ more than 2,300 people across the United States and Canada. As of the date hereof, the Debtors have approximately \$233 million in funded debt.

6. On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have concurrently filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

Basis for Relief

7. The Bankruptcy Code provides strong support for sealing the Fee Letters and the Exit Backstop Commitment Letter. Section 107(b) of the Bankruptcy Code authorizes courts to issue orders that will protect entities from the potential harm that may result from disclosing certain confidential information. This section provides, in relevant part:

- (b) 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)(1).

8. Bankruptcy Rule 9018 further defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides, in part:

On motion or 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.

9. Once a court determines that a party in interest is seeking to protect information that falls within the ambit of section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting interested party and has no discretion to deny the application.” *Video Software Dealers Ass’n v. Orion Pictures Corp.*, 21 F.3d 24, 27 (2d Cir. 1994).

10. The Second Circuit in *Video Software Dealers Ass’n v. Orion Pictures* affirmed the bankruptcy court’s order to seal a licensing agreement given that releasing any information regarding the agreement’s overall structure (or terms and conditions thereof) would have adversely affected the debtor’s ability to negotiate favorable promotional agreements, thereby providing an unfair advantage to the debtor’s competitors. *Id.* at 28. The Second Circuit further noted that section 107(b)(1) of the Bankruptcy Code creates an exception to the general rule that court records are open to examination by the public. *Id.* at 27. Thus, under this exception, an interested party has to show only that the information it wishes to seal is “‘confidential’ and ‘commercial’ in nature.” *Id.* Commercial information, however, need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. *Id.* at 28.

11. Courts have further held that the resulting sealing order should be broad (i.e., “any order which justice requires”). *See, e.g., In re Glob. Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003) (citing Fed. R. Bankr. P. 9018). “Courts have supervisory powers over their records and files and may deny access to those records and files to prevent them from being used for an improper purpose.” *In re Kaiser Aluminum Corp.*, 327 B.R. 554, 560 (D. Del. 2005). Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *In re Glob. Crossing, Ltd.*, 295 B.R. at 724. Moreover, section 105(a) of the Bankruptcy Code codifies the bankruptcy 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).

12. In granting motions to seal “commercial information,” courts have defined this term as “information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006); *In re Glob. Crossing, Ltd.*, 295 B.R. at 725 (finding 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”). 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.*, 21 F.3d at 28 (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). As such, in *In re Northwest Airlines Corp.*, the court implemented the protection afforded by section 107(b) of the Bankruptcy Code to authorize a chapter 11 debtor to file a fee letter under seal in connection with the debtor’s motion

for approval of an exit financing facility. No. 05-17930 (ALG) (Bankr. S.D.N.Y. May 2, 2007) [Docket No. 6511]; *see also In re Calpine Corp.*, No. 05-60200 (BRL) (Bankr. S.D.N.Y. Jan. 29, June 21, and Dec. 14, 2007) [Docket Nos. 3494, 5028, and 7118] (authorizing debtors to file under seal fee letter with respect to debtors' refinancing effort and exit financing); *In re Adelphia Commc'ns Corp.*, No. 02-41729 (REG) (Bankr. S.D.N.Y. Jan. 25, 2007) [Docket No. 13092] (authorizing debtor to file under seal documentation of fee structure for underwriting agreement).

13. Here, the Fee Letters and the Exit Backstop Commitment Letter contain commercially sensitive information, thus satisfying one of the categories enumerated in section 107(b) of the Bankruptcy Code for sealing documents. The Fee Letters and the Exit Backstop Commitment Letter contain closely-guarded proprietary and commercial information that is highly sensitive to the Debtors and the lenders under the Exit Term Loan Facility and the Debtors' proposed debtor-in-possession financing facilities (the "DIP Facilities"). Because of the sensitivity of these materials, the Debtors have agreed to keep the specific information relating to the fees confidential and ask that the Court authorize it to file those materials under seal for that same reason.

14. The terms of the Fee Letters and the Exit Backstop Commitment Letter are the product of arm's-length, extensive, and good-faith negotiations. The disclosure of the terms of the Fee Letters and the Exit Backstop Commitment Letter would likely cause substantial harm to the Debtors and the lenders under the Exit Term Loan Facility and the DIP Facilities and violate the Debtors' agreement with the lenders to keep the terms of the Fee Letters and the Exit Term Loan Facility confidential. Indeed, the Fee Letters reflect detailed proprietary information describing fees to be paid in connection with the Exit Term Loan Facility and the DIP Facilities, which lenders, such as those under the Exit Term Loan Facility and the DIP Facilities, consider to be

highly-sensitive and confidential information not typically disclosed to the public. This is consistent with customs in the finance lending industry. In particular, it is of the utmost importance that the details of the fee structures set forth in Fee Letters be kept confidential so that competitors cannot use the information contained therein to gain a strategic advantage in the marketplace, given the highly competitive nature of the investment banking and lending industries.

15. Therefore, the Debtors submit that good cause exists to authorize it to file the Fee Letters and the Exit Backstop Commitment Letter under seal because of the harm that would ensue if the sensitive and confidential commercial information contained in the Fee Letters and the Exit Backstop Commitment Letter became public information.

Motion Practice

16. This motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this motion. Accordingly, the Debtors submit that this motion satisfies Local Rule 9013-1(a).

Notice

17. The Debtors will provide notice of this motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 50 largest unsecured claims against the Debtors (on a consolidated basis); (c) the administrative agent for the Debtors' term loan facility and counsel thereto; (d) the administrative agent for the Debtors' asset-based loan credit facility and counsel thereto; (e) the administrative agent for the Debtors' proposed debtor in possession term loan financing facility and counsel thereto; (f) the administrative agent for the Debtors' proposed debtor in possession asset-based loan credit facility and counsel thereto; (g) the United States Attorney's Office for the Southern District of New York; (h) the Internal Revenue Service; (i) the attorneys general for the states in which the Debtors operate; and (j) any

party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

18. No prior request for the relief sought in this motion has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting such other relief as is just and proper.

New York, New York
Dated: May 19, 2019

/s/ Joshua A. Sussberg
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Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
HOLLANDER SLEEP PRODUCTS, LLC., <i>et al.</i> , ¹)	Case No. 19-11608 (___)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. ___

**ORDER (I) AUTHORIZING THE DEBTORS TO FILE EXIT BACKSTOP
COMMITMENT LETTER AND FEE LETTERS UNDER SEAL AND (II) GRANTING
RELATED RELIEF**

Upon the motion (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order") (a) authorizing the Debtors to (file under seal the Exit Backstop Commitment Letter and the Fee Letters and (b) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having 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 Southern District of New York*, dated January 31, 2012; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Dream II Holdings, LLC (7915); Hollander Home Fashions Holdings, LLC (2063); Hollander Sleep Products, LLC (2143); Pacific Coast Feather, LLC (1445); Hollander Sleep Products Kentucky, LLC (4119); Pacific Coast Feather Cushion, LLC (3119); and Hollander Sleep Products Canada Limited (3477). The location of the Debtors' service address is: 901 Yamato Road, Suite 250, Boca Raton, Florida 33431.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the motion.

before this Court (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; 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 Motion is granted as set forth herein.
2. The Debtors are authorized to file the Fee Letters and the Exit Backstop Commitment Letter under seal, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Bankruptcy Rule 9018-1.
3. Except upon further order of the Court after notice to Debtors, the Exit Facility Lenders, and the lenders under the DIP Facilities, as applicable, the commercially sensitive terms contained in the Fee Letters and the Exit Backstop Commitment Letter are confidential, shall remain under seal, and shall not be made available to anyone without the consent of the Debtors and the parties to the Fee Letters and the Exit Backstop Commitment Letter, as applicable, *provided* that the Fee Letters and the Exit Backstop Commitment Letter shall be provided to (a) the Court, (b) the U.S. Trustee, (c) counsel and financial advisors to any official statutory committee of unsecured creditors appointed in the chapter 11 cases (on a confidential and “professional eyes only” basis), and (d) any other party as may be ordered by the Court or agreed to by the Debtors, the Exit Financing Lenders, and the lenders under the DIP Facilities, as applicable, under appropriate confidentiality agreements satisfactory to the Debtors, the Exit Financing Lenders, and the lenders under the DIP Facilities, as applicable, that preserve the confidentiality of the Fee Letters and the Exit Backstop Commitment Letter (and any information derived therefrom). Each party to whom disclosure is made shall keep the unsealed Fee Letters and/or the Exit Backstop

Commitment Letter and the terms and substance thereof confidential in accordance with the terms of the Fee Letters and Exit Backstop Commitment Letter.

4. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

5. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

New York, New York

Dated: _____, 2019

UNITED STATES BANKRUPTCY JUDGE