IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
GUE Liquidation Companies, Inc., et al.,[1]	:	Case No. 19-11240 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Objection Deadline: At the Hearing** **Hearing Date: Nov. 20 at 2:00 p.m. (ET)**

MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING FILING UNDER SEAL OF CERTAIN CONFIDENTIAL INFORMATION IN THE REPLY IN SUPPORT OF DEBTORS' SECOND (SUBSTANTIVE) OMNIBUS OBJECTION TO CERTAIN MISCLASSIFIED CLAIMS

GUE Liquidation Companies, Inc. and certain of its direct and indirect domestic subsidiaries, as debtors and debtors in possession (collectively, the "Debtors"), respectfully represent as follows:

Background

1. On June 3, 2019, (the "Petition Date"), each of the Debtors commenced a case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors' chapter 11 cases (collectively, the "Chapter 11 Cases") have been consolidated for procedural purposes only and are being administered jointly pursuant to an order [D.I. 41] entered on June 4, 2019. The Debtors are authorized to continue to operate their businesses and

[1] The Debtors are the following 15 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): GUE Liquidation Companies, Inc. (5852); Bloom That, Inc. (9936); GUE Liquidation Delivery, Inc. (6960); FlowerFarm, Inc. (2852); FSC Denver LLC (7104); FSC Phoenix LLC (7970); GUE Liquidation, Inc. (1271); GUE Liquidation.CA, Inc. (7556); GUE Liquidation.COM, Inc. (4509); GUE Liquidation Group, Inc. (9190); GUE Liquidation Mobile, Inc. (7423); GUE Liquidation Giftco, LLC (5832); Provide Cards, Inc. (3462); GUE Liquidation Commerce LLC (0019); and GUE Liquidation Creations, Inc. (8964). The Debtors' noticing address in these chapter 11 cases is 3113 Woodcreek Drive, Downers Grove, IL 60515.

manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

2. A comprehensive description of the Debtors' businesses and operations, capital structure, and the events leading to the commencement of these Chapter 11 Cases can be found in the *Declaration of Scott D. Levin in Support of First-Day Pleadings* [D.I. 3] (the "First Day Declaration").

3. On June 12, 2019, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed an official committee of unsecured creditors (the "Committee") in these Chapter 11 Cases [D.I. 118].

4. On August 1, 2019, the Court entered an order [D.I. 490] approving the sale of the Debtors' Personal Creations business (the "Personal Creations Sale") to PlanetArt, LLC. The Personal Creations Sale closed on August 1, 2019. *See Notice of Occurrence of Sale of Personal Creations* [D.I. 520], dated August 7, 2019. On August 9, 2019, the Court entered orders [D.I. 552; 553] approving the sale of the Debtors' (a) Shari's Berries/Gourmet Foods businesses to SBGF Acquisition, LLC (the "Gourmet Foods Sale") and (b) legacy FTD business and restructured ProFlowers business to Gateway Mercury Holdings, LLC (the "FTD/ProFlowers Sale" and together with the Personal Creations Sale and the Gourmet Foods Sale, the "Sales"). The Gourmet Foods Sale closed on August 14, 2019, and the FTD/ProFlowers Sale closed on August 23, 2019. *See Notice of Occurrence of Closing of Sale of Gourmet Foods* [D.I. 578], dated August 15, 2019; *Notice of Occurrence of Closing of Sale of the FTD Assets and Restructured ProFlowers Business* [D.I. 603], dated August 23, 2019. As of the closing of the Sales, the Debtors are no longer operating entities.

Jurisdiction and Venue

5. This Court has jurisdiction to consider 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

Relief Requested

6. Pursuant to section 107(b) of the Bankruptcy Code, Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 9018-1(b) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors hereby seek entry of an order in substantially the form attached hereto as **Exhibit A** (the "Proposed Order"): (a) authorizing the Debtors to file under seal the Confidential Information (as defined herein), and directing that this information remain under seal, confidential, and not made available to anyone, except for (a) the Court, (b) the U.S. Trustee, (c) counsel to the Committee, and (d) others upon further order of the Court.

Facts Relevant to This Motion

7. On October 21, 2019, the Debtors filed the *Debtors' Second (Substantive) Omnibus Objection to Certain Misclassified Claims* (the "Objection") [D.I. 801] seeking to reclassify certain claims as general unsecured claims.

8. On November 8, 2019, the Debtors received an informal response to the Objection (the "JM Response") from JM Staffing Solution LLC ("JM"), and on November 11, 2019, XL Pro Consulting Group, LLC ("XL Pro" and together with JM, the "Staffing Agencies") filed the *Response Opposed to Debtors' Second (Substantive) Omnibus Objection to Certain*

Misclassified Claims [D.I. 884] (the "XL Pro Response," and together with the JM Response, the "Responses").

9. Contemporaneously with the filing of this motion (this "Motion to Seal"), the Debtors have filed the *Reply in Support of Debtors' Second (Substantive) Omnibus Objection to Certain Misclassified Claims* (the "Reply")[2] in support of the Objection and addressing each of the Responses. Attached as Exhibit 1 and Exhibit 2 to the Reply are the Staffing Agreements between the Debtors and XL Pro, and the Debtors and JM, respectively (together, the "Confidential Exhibits"). Additionally, included in the Reply is certain confidential information relating to the terms of the Staffing Agreements (together with the Confidential Exhibits, the "Confidential Information").

Argument

10. Section 105(a) of the Bankruptcy Code codifies the Court's inherent equitable powers, and authorizes the Court 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). In addition, section 107(b) provides that "[o]n 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).

11. Bankruptcy Rule 9018 sets forth the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 provides, in relevant part that, "[o]n any motion or its own initiative, with or without notice, the court may make any order which justice requires . . . to protect the estate or any entity in

[2] Capitalized terms not otherwise defined herein have the meanings given to them in the Reply.

respect of a trade secret or other confidential research, development or commercial information . . . . " Fed. R. Bankr. P. 9018.

12. Once the court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in 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. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994). Courts have held that protection under section 107(b) must be granted if the information sought to be protected is commercial information, and significantly, that commercial information need not rise to the level of a trade secret to be entitled to protection. *Id.* at 28 (finding that the use of the disjunctive in section 107(b)(1) "neither equates 'trade secret' with 'commercial information' nor requires the latter to reflect the same level of confidentiality as the former"). Further, in contrast with 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." *Orion Pictures Corp.*, 21 F.3d at 28. Nor does it require a finding of "extraordinary circumstances or compelling need." *Id.* at 27.

13. Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is "confidential" and "commercial" in nature. *Id.* at 27; *see also 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"). Once it is established that the subject information qualifies as "commercial information" under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See Global Crossing*, 295 B.R. at 725.

14. The Court should grant the relief requested herein. The Confidential Information includes commercially sensitive information, which if disclosed, would harm the Staffing Agencies. Specifically, the Confidential Information includes, among other things, pricing and other economic terms agreed to by the Staffing Agencies and the Debtors. Indeed, each of the Staffing Agreements (*i.e.*, the Confidential Exhibits) contains a confidentiality provision that explicitly prohibits disclosure of the terms of the Staffing Agreements, including the Confidential Information contained in the Reply. The Staffing Agencies are not debtors in these proceedings, and the Debtors are contractually obligated to maintain confidentiality of the Staffing Agreements pursuant to the express terms thereof. If the Confidential Information is not filed under seal, confidential information will be disclosed to the detriment of the Staffing Agencies, the Debtors, and the Debtors' estates.

15. Accordingly, based on the foregoing facts and authorities, the Debtors respectfully submit that the relief requested in this Motion to Seal should be granted.

Consent to Jurisdiction

16. 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 the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

Notice

17. Notice of this Motion to Seal shall be provided to (a) the U.S. Trustee; (b) Kelley Drye & Warren LLP and Benesch Friedlander Coplan & Aronoff LLP, as co-counsel to the Committee; (c) Moore & Van Allen PLLC, as counsel to Bank of America, N.A., as administrative agent under the Debtors' prepetition and postpetition secured credit facilities; (d) the claimants (and counsel, if known) whose claims are subject to the Objection; and (e) any other party entitled to notice pursuant to Bankruptcy Rule 2002 or order of the Court.

No Prior Request

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

WHEREFORE, the Debtors respectfully request that the Court enter an order substantially in the form attached hereto as **Exhibit A**, granting: (i) the relief requested herein; and (ii) such other and further relief to the Debtors as the Court may deem proper.

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Dated: November 15, 2019
Wilmington, Delaware

Respectfully submitted,

/s/ Brett M. Haywood

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PROPOSED ATTORNEYS FOR DEBTORS AND DEBTORS IN POSSESSION

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
GUE Liquidation Companies, Inc., et al.,[1]	:	Case No. 19-11240 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Objection Deadline: At the hearing.** **Hearing Date: Nov. 20, 2019 at 2:00 p.m. (ET)**

NOTICE OF MOTION AND HEARING

PLEASE TAKE NOTICE that, on November 15, 2019, GUE Liquidation Companies, Inc. and certain of its direct and indirect domestic subsidiaries, as debtors and debtors in possession (collectively, the "Debtors") filed the *Motion of the Debtors for Entry of an Order Authorizing Filing Under Seal of Certain Confidential Information in Reply in Support of Debtors' Second (Substantive) Omnibus Objection to Certain Misclassified Claims* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that a hearing on the Motion will be held before The Honorable Laurie Selber Silverstein, United States Bankruptcy Judge for the District of Delaware, at the Court, 824 North Market Street, 6th Floor, Courtroom No. 2, Wilmington, Delaware 19801 on **November 20, 2019 at 9:30 a.m. (prevailing Eastern Time)** (the "**Hearing**") and any responses or objections to the Motion may be made at the Hearing.

[1] The Debtors are the following 15 entities (the last four digits of their respective taxpayer identification numbers, if any, follow in parentheses): GUE Liquidation Companies, Inc. (5852); Bloom That, Inc. (9936); GUE Liquidation Delivery, Inc. (6960); FlowerFarm, Inc. (2852); FSC Denver LLC (7104); FSC Phoenix LLC (7970); GUE Liquidation, Inc. (1271); GUE Liquidation.CA, Inc. (7556); GUE Liquidation.COM, Inc. (4509); GUE Liquidation Group, Inc. (9190); GUE Liquidation Mobile, Inc. (7423); GUE Liquidation Giftco, LLC (5832); Provide Cards, Inc. (3462); GUE Liquidation Commerce LLC (0019); and GUE Liquidation Creations, Inc. (8964). The Debtors' noticing address in these chapter 11 cases is 3113 Woodcreek Drive, Downers Grove, IL 60515.

Dated: November 15, 2019
Wilmington, Delaware

Respectfully submitted,

/s/ Brett M. Haywood

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ATTORNEYS FOR DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	:	Chapter 11
GUE Liquidation Companies, Inc., et al.,[1]	:	Case No. 19-11240 (LSS)
Debtors.	:	(Jointly Administered)
	:	**Re: Docket No. __**

ORDER GRANTING MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER AUTHORIZING FILING UNDER SEAL OF CERTAIN CONFIDENTIAL INFORMATION IN THE REPLY IN SUPPORT OF DEBTORS' SECOND (SUBSTANTIVE) OMNIBUS OBJECTION TO CERTAIN MISCLASSIFIED CLAIMS

This matter coming before the Court on the *Motion of the Debtors for Entry of an Order Authorizing Filing Under Seal of Certain Confidential Information in the Reply in Support of Debtors' Second (Substantive) Omnibus Objection to Certain Misclassified Claims* (the "Motion to Seal")[2] filed by the above-captioned debtors and debtors in possession (collectively, the "Debtors"); the Court having reviewed the Motion to Seal and having considered the statements of counsel with respect to the Motion to Seal at a hearing (if any) before the Court (the "Hearing"); the Court having found that (i) 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 as of February 29, 2012, (ii) this

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[2] Capitalized terms not otherwise defined herein shall have the meanings given to them in the Motion to Seal.

is a core proceeding pursuant to 28 U.S.C. § 157(b), (iii) venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409, and (iv) notice of the Motion to Seal and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion to Seal and at the Hearing establish just cause for the relief granted herein;

IT IS HEREBY ORDERED THAT:

1. The Motion to Seal is GRANTED as set forth herein.

2. Pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b), the Debtors are authorized to file the Confidential Information under seal.

3. The Confidential Information shall remain under seal, confidential, and not made available to anyone, except for (a) the Court, (b) the U.S. Trustee, (c) counsel to the Committee, and (d) others upon further order of the Court.

4. This Court shall retain exclusive jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE