

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:)
ALEX AND ANI, LLC, et al.,1)
Debtors.) (Chapter 11
) Case No. 21-10918 ()
) (Joint Administration Requested)
)

DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) REDACT CERTAIN
COMMERCIALY SENSITIVE INFORMATION IN CONNECTION WITH
THE SETTLEMENT AGREEMENT AND (II) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors")2
respectfully state the following in support of this motion (this "Motion"):

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as
Exhibit A, (a) authorizing the Debtors to redact and file under seal certain confidential information
contained in the Settlement Agreement, attached as Exhibit 6 to the Restructuring Term Sheet,
which is attached to Exhibit A to the First Day Declaration,3 (b) directing that the sealed Settlement

1 The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors' respective federal
tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939);
Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215);
Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477);
and Alex and Ani South Seas, LLC (8592). The Debtors' headquarters and mailing address is: 10 Briggs Drive,
East Greenwich, RI 02818.

2 A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this Motion
and the Debtors' chapter 11 cases, are set forth in greater detail in the Declaration of Robert Trabucco, Chief
Restructuring Officer of Alex and Ani, LLC, in Support of the Debtors' Chapter 11 Petitions and First Day Motion
(the "First Day Declaration"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under
chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), on June 9,
2021 (the "Petition Date"). Capitalized terms used but not otherwise defined in this Motion shall have the
meanings given to them in the First Day Declaration or the Cash Collateral Orders, as applicable.

3 Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Day
Declaration.



Agreement shall remain under seal and confidential, and not be made available to anyone other than the Court, the U.S. Trustee, and the proposed advisors to the committee (if appointed) without the consent of the Debtors or further order from the Court, and (c) granting related relief.

Jurisdiction

2. The United States Bankruptcy Court for the District of Delaware (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. The Debtors confirm their consent, pursuant to Rule 7008 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local 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”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Local Rule 9018-1.

Background

5. Information about the Debtors’ business and the events leading to the commencement of these chapter 11 cases can be found in the First Day Declaration, which is incorporated herein by reference.

The Settlement Agreement

6. As described more fully in the First Day Declaration, on June 9, 2021, the Company, certain of its lenders, certain of its equity owners, and the Purchaser entered into that certain settlement agreement (the “Settlement Agreement”), pursuant to which (i) (a) Purchaser will acquire 35 percent of the first lien obligations under the First and Third Lien Credit Agreement and (b) 35 percent of the obligations under the Second Lien Credit Agreement, (ii) certain of the settlement parties will resolve certain outstanding pending litigation, and (iii) the settlement parties will provide mutual releases of all other potential claims and causes of action.

7. The Settlement Agreement contains certain economic terms, which are highly confidential and commercially sensitive for the settlement parties. The Debtors respectfully submit that the Court should authorize the Debtors to restrict access to this confidential information to the Court, the U.S. Trustee, and the proposed advisors to the committee (if appointed) pursuant to section 107 of the Bankruptcy Code.

Basis for Relief

8. The Bankruptcy Code and the Bankruptcy Rules give the Court specific authority to grant the Debtors’ request to file under seal commercially sensitive information contained in the Settlement Agreement. Section 107(b) of the Bankruptcy Code provides bankruptcy courts with authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section 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)(1). Moreover, 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).

9. Bankruptcy Rule 9018 sets forth the procedures by which a party in interest may move for relief under section 107(b). The rule 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. Further, Local Rule 9018-1(d) provides, in relevant part, that “any entity seeking to file a document . . . under seal must file a motion requesting such relief” Del. Bankr. L.R. 9018-1(d). The Court has broad authority to issue a protective order under Bankruptcy Rule 9018. *See, e.g., In re Glob. Crossing Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003) (“When the requirements of Rule 9018 are satisfied, the authority to issue the resulting order is broad — ‘any order which justice requires.’ The Court notes that the authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.”).

10. Unlike its counterpart in Federal Rule of Civil Procedure 26(c), section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (“When congress addressed the secrecy problem in § 107(b) of the Bankruptcy Code it imposed no requirement to show ‘good cause’ as a condition to sealing confidential commercial information.”). Further, “[c]ourts 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).

11. If the material sought to be protected falls within one of section 107(b)'s enumerated categories, "the court is *required* to protect a requesting party and has no discretion to deny the application." *Orion Pictures*, 21 F.3d at 27; 11 U.S.C. § 107(b) ("On request of a party in interest, the bankruptcy court *shall . . . protect* an entity with respect to . . . confidential . . . commercial information" (emphasis added)).

12. Section 107(b)(1)'s protections extend to "commercial information," the disclosure of 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) (citing *Orion Pictures*, 21 F.3d at 27–28); *see also Glob. Crossing*, 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"). "Commercial information" in this context need not rise to the level of a trade secret in order to warrant protection. *See Orion Pictures*, 21 F.3d at 27–28 (finding that section 107(b)(1) creates an exception to the general rule that court records are open to examination by the public and, under this exception, an interested party has to show only that the information it wishes to seal is "confidential" and "commercial" in nature).

13. Here, the Settlement Agreement contains certain economic terms, which are highly confidential and commercially sensitive information, thus satisfying one of the categories enumerated in section 107(b) of the Bankruptcy Code. A broad publication of this information would be inappropriate and could be materially harmful to the Debtors and the other settlement parties. Accordingly, the Debtors respectfully submit that cause exists under section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 for the Debtors to file the Settlement Agreement under seal.

14. The Debtors further submit that other parties in interest will not be materially prejudiced because the Settlement Agreement will be reviewed by the Court and any party in interest can request that the Debtors permit them to review the Settlement Agreement or file a motion to unseal those documents.

Certification Pursuant to Local Rule 9018-1(d)

15. Counsel certifies that (a), to the best of their knowledge, information, and belief, the Settlement Agreement does not contain information subject to Confidentiality Rights of another Holder of Confidentiality Rights (each as defined in the Local Rules) and (b) counsel believes that the entire Settlement Agreement should be filed under seal, such that no proposed redacted Settlement Agreement can be publicly filed.

Notice

16. The Debtors will provide notice of this Motion to: (a) the Office of the U.S. Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (c) counsel to the Consenting Sponsor; (d) counsel to the agent under the Debtors' secured credit facilities; (e) all parties asserting liens against the Debtors' assets; (f) the United States Attorney's Office for the District of Delaware; (g) the Internal Revenue Service; (h) the United States Securities and Exchange Commission; (i) the state attorneys general for all states in which the Debtors conduct business or have conducted business; and (j) any party that requests service pursuant to Bankruptcy Rule 2002. As the Motion is seeking "first day" relief, within two business days after the hearing on the Motion, the Debtors will serve copies of the Motion and any order entered respecting the Motion as required by Local Rule 9013-1(m)(iv). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

No Prior Request

17. No prior motion for the relief requested herein has been made to this 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 the relief requested in this Motion and granting such other and further relief as is appropriate under the circumstances.

Dated: June 9, 2021
Wilmington, Delaware

/s/ Domenic E. Pacitti

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Order

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

In re:)	
)	Chapter 11
ALEX AND ANI, LLC, <i>et al.</i> , ¹)	Case No. 21-10918 (___)
)	
Debtors.)	(Jointly Administered)
)	

**ORDER (I) AUTHORIZING THE DEBTORS TO FILE UNDER
SEAL THE SETTLEMENT AGREEMENT 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”), authorizing the Debtors to file the Settlement Agreement under seal and (b) directing that the sealed Settlement Agreement shall remain under seal and confidential, and not be made available to anyone other than the Court, the U.S. Trustee, and the proposed advisors to the committee (if appointed), without the consent of the Debtors or further order from the Court, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order*; and that this Court may enter a final order consistent with Article III of the United States Constitution; 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 relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: Alex and Ani, LLC (8360); A and A Shareholding, Co., LLC (7939); Alex and Ani International, LLC (2247); Alex and Ani Retail, LLC (1227); Alex and Ani Assembly, LLC (3215); Alex and Ani California, LLC (6368); Alex and Ani Canada, LLC (3317); Alex and Ani Puerto Rico, LLC (1477); and Alex and Ani South Seas, LLC (8592). The Debtors’ headquarters and mailing address is: 10 Briggs Drive, East Greenwich, RI 02818.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion and the First Day Declaration, as applicable.

opportunity for a hearing on the Motion were appropriate 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 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 redact and file under seal certain confidential information contained in the Settlement Agreement pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1. The Debtors shall provide the Settlement Agreement to the U.S. Trustee and the proposed advisors to the committee (if appointed). The Settlement Agreement shall remain strictly confidential and under seal, and shall not be made available to anyone other than the foregoing without the prior written consent of the Debtors or further order of the Court. Use of the sealed Settlement Agreement shall be subject to Local Rule 9018-1.
3. Any Bankruptcy Rule or Local Rule that might otherwise delay the effectiveness of this Order is hereby waived, and the terms and conditions of this Order shall be effective and enforceable immediately upon its entry.
4. This Order is without prejudice to the rights of any party in interest to seek to unseal and make public any portion of the material filed under seal.
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.