

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

EXTRACTION OIL & GAS, INC. *et al.*,¹

Debtors.

)

) Chapter 11

)

) Case No. 20-11548 (CSS)

)

) (Jointly Administered)

)

) Obj. Deadline: Jan. 19, 2021 at 4:00 p.m. (ET)

) Hearing Date: TBD

)

) Re: Docket No. 1573

DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) FILE UNDER SEAL NOTICE OF FILING OF
REVISED EXHIBIT C TO DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) APPROVING THE SETTLEMENT BY AND AMONG THE DEBTORS AND
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC, (II)
AUTHORIZING THE DEBTORS TO ENTER INTO NEW TRANSPORTATION
SERVICES AGREEMENTS WITH PLATTE RIVER MIDSTREAM, LLC AND DJ
SOUTH GATHERING, LLC, AND (III) GRANTING RELATED RELIEF AND (III)
GRANTING RELATED RELIEF

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

Relief Requested

1. The Debtors seek entry of an order (the "Order"), substantially in the form attached hereto as **Exhibit A**: (a) authorizing the Debtors to file under seal the *Notice of Revised Exhibit C to Debtors' Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors and Platte River Midstream, LLC and DJ South Gathering, LLC, (II) Authorizing the Debtors to*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

Enter into New Transportation Services Agreements with Platte River Midstream, LLC and DJ South Gathering, LLC, and (III) Granting Related Relief (the “Revised Term Sheet Notice”), filed contemporaneously herewith, along with the exhibits thereto, which replaces Exhibit C, the Term Sheet, attached to the *Debtors’ Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors and Platte River Midstream, LLC and DJ South Gathering, LLC, (II) Authorizing the Debtors to Enter into New Transportation Services Agreements with Platte River Midstream, LLC and DJ South Gathering, LLC, and (III) Granting Related Relief* [Docket No. 1536] (the “9019 Motion”)², and (b) directing that the sealed revised Term Sheet and the blackline comparison attached to the Revised Term Sheet Notice shall remain under seal and confidential, and not be made available to anyone without the consent of the Debtors or further order from the Court.

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 “Amended Standing Order”). 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 “Bankruptcy Local Rules”), to the entry of a final order by the Court in connection with this Motion to Seal 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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the 9019 Motion or the Revised Term Notice, as applicable.

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 chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), Bankruptcy Rule 9018, and Bankruptcy Local Rule 9018-1.

5. On June 14, 2020 (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. A detailed description surrounding the facts and circumstances of these chapter 11 cases is set forth in the *Declaration of Matthew R. Owens, Co-Founder, President and Chief Executive Officer of the Debtors, in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 18] (the “First Day Declaration”), incorporated by reference herein.

6. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. These chapter 11 cases have been consolidated for procedural purposes only and are jointly administered pursuant to Bankruptcy Rule 1015(b) [Docket No. 79]. On June 30, 2020, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code (the “Committee”) [Docket No. 155].

The Revised Term Sheet and New TSAs

7. Extraction is party to the Original TSAs, pursuant to which, Extraction agreed to tender for transportation, or otherwise to pay for the transportation of, certain committed volumes of crude petroleum, and each PRM Party agreed to, among other things, transport such tendered crude oil to certain acreage owned by Extraction in certain areas in the state of Colorado via a gathering system and pipeline.

8. On August 11, 2020, the Debtors filed the *Debtors’ Second Omnibus Motion for*

Entry of an Order (I) Authorizing Rejection of Unexpired Leases of Nonresidential Real Property and Executory Contracts Effective as of the Dates Specified Herein and (II) Granting Related Relief [Docket No. 412] (the “Second Rejection Motion”), seeking authorization to reject, among others, the Original TSAs pursuant to section 365 of the Bankruptcy Code. The PRM Parties objected to the Second Rejection Motion [Docket Nos. 655 and 801] (the “Rejection Objection”), arguing that the Original TSAs created covenants “running with the land,” and, therefore, could not be rejected; furthermore, the Court’s resolution of the foregoing issue could only be properly decided in an adversary proceeding, the PRM Parties argued. In response to the Rejection Objection and those of other midstream counterparties contesting the Debtors’ proposed rejection of their midstream contracts, the Debtors filed the Debtors’ Rejection Reply.

9. In parallel with the Adversary Proceeding, the PRM Parties and the Debtors prepared to litigate the Debtors’ determination to reject the Original TSAs in the chapter 11 cases. In addition to the Rejection Objection, the Debtors and the PRM Parties, among other midstream counterparties whose contracts were subject to rejection by the Debtors, engaged in extensive briefing in advance of what was a four-day trial involving various fact witnesses and multi-part discovery, spanning October 7 to November 2, 2020 (the “Rejection Trial”). On November 2, 2020, the Court granted the Rejection Motions, authorizing the Debtors to reject the Original TSAs [Docket No. 942] (the “Rejection Ruling”), and, on November 10, 2020, entered the Rejection Order, granting the Rejection Motions as to the Original TSAs. On November 19, 2020, the PRM Parties filed the Motion to Stay Pending Appeal in the District Court to stay the Rejection Order [Civ. Docket No. 4]. On December 7, 2020, the District Court entered an order denying the Motion to Stay Pending Appeal.

10. On top of the Rejection Trial and the Adversary Proceeding, the Debtors faced

objections from the PRM Parties related to approval of the Disclosure Statement and, most recently, confirmation of the Plan (the “Confirmation Objection”) [Docket Nos. 953 and 1344].

11. In light of the foregoing and in an effort to resolve their disputed rejection-related issues, the Debtors and the PRM Parties engaged in extensive, good faith, and arm’s-length negotiations, including numerous telephonic conferences and the exchange of multiple rounds of drafts of the Revised Term Sheet over the course of several weeks. As a result of those discussions, the Parties agreed to enter into the Revised Term Sheet and the New TSAs to address the concerns raised by the Debtors in their determination to proceed with the rejection of the Original TSAs.

12. The Revised Term Sheet contains certain highly sensitive commercial information concerning payment terms and the terms of the New TSAs. Due to the highly confidential and commercially sensitive nature of the Revised Term Sheet, the Debtors and the PRM Parties have agreed to keep the terms of the Revised Term Sheet confidential. Accordingly, 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 advisors to the Committee pursuant to section 107 of the Bankruptcy Code.

Basis for Relief

13. The Bankruptcy Code and the Bankruptcy Rules allow the Court to limit the disclosure of certain confidential information to protect entities from potential harm. The Bankruptcy Code 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).

14. Bankruptcy Rule 9018 sets forth the procedure 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, Bankruptcy Local Rule 9018-1(b) provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.” Del. Bankr. L.R. 9019-1(b). The Court has broad authority to issue a protective order under Bankruptcy Rule 9018. *See 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.”).

15. 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.”). “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).

16. 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)).

17. 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).

18. Here, the Revised Term Sheet contains sensitive commercial 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 materially harmful to the Debtors. In fact, it is of critical importance to the Debtors that details of the Revised Term Sheet be kept confidential so that their competitors and other actors in the industry may not use such information to gain a strategic advantage over the Debtors in the context of the negotiations of other comparable agreements. This information is not public and disclosure of this commercial information could cause significant injuries to the Debtors. In light of the foregoing, the Debtors and the PRM Parties have agreed to keep the terms of the Settlement Agreement confidential.

19. Because the Revised Term Sheet contains highly confidential and sensitive commercial information, the Debtors submit that sufficient cause exists to grant the relief request in this Motion to Seal and that they should be authorized file the Revised Term Sheet under seal. The Debtors submit that other parties in interest will not be materially prejudiced because the Revised Term Sheet will be reviewed by the Court and any party in interest can request that the Debtors permit them to review the Revised Term Sheet or file a motion to unseal the document.

Compliance with Bankruptcy Local Rule 9018-1(d)

20. In accordance with Bankruptcy Local Rule 9018-1(d), Debtors certify that they have conferred with the PRM Parties, who are the Holders of Confidentiality Rights (as defined in Bankruptcy Local Rule 9018-1(d)). The PRM Parties and the Debtors have agreed on the information contained in the Revised Term Sheet must remain sealed from public view.

21. Contemporaneously herewith, the Debtors have filed a *Notice of Proposed Redacted Version of the Revised Term Sheet Notice*.

Notice

22. Notice of the hearing on the relief requested in this Motion to Seal will be provided by the Debtors in accordance and compliance with Bankruptcy Rules 4001 and 9014, as well as the Bankruptcy Local Rules, and is sufficient under the circumstances. Without limiting the foregoing, due notice will be afforded, whether by facsimile, electronic mail, overnight courier or hand delivery, to parties in-interest, including: (a) the U.S. Trustee for the District of Delaware; (b) counsel to the Committee; (c) counsel to the PRM Parties; (d) the administrative agent under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (e) the lenders under the Debtors' prepetition senior credit facility or, in lieu thereof, counsel thereto; (f) the indenture trustee for the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto;

(g) the holders of the Debtors' prepetition senior notes or, in lieu thereof, counsel thereto; (h) the ad hoc group of holders of the Debtors' preferred equity or, in lieu thereof, counsel thereto; (i) the United States Attorney's Office for the District of Delaware; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; and (m) 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

23. No prior motion for the relief requested herein has been made to this or any other court.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion to Seal and granting such other and further relief as is appropriate under the circumstances.

Dated: January 4, 2021
Wilmington, Delaware

/s/ Stephen B. Gerald

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

In re:

EXTRACTION OIL & GAS, INC. *et al.*,¹

Debtors.

)
) Chapter 11
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) Case No. 20-11548 (CSS)
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) (Jointly Administered)
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) Obj. Deadline: January 19, 2021 at 4:00 p.m. (ET)
) Hearing: TBD
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) Re: Docket No. 1573
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**NOTICE OF DEBTORS' MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS TO (I) FILE UNDER SEAL NOTICE OF FILING OF
REVISED EXHIBIT C TO DEBTORS' MOTION FOR ENTRY OF AN ORDER
(I) APPROVING THE SETTLEMENT BY AND AMONG THE DEBTORS AND
PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC, (II)
AUTHORIZING THE DEBTORS TO ENTER INTO NEW TRANSPORTATION
SERVICES AGREEMENTS WITH PLATTE RIVER MIDSTREAM, LLC AND DJ
SOUTH GATHERING, LLC, AND (III) GRANTING RELATED RELIEF AND (II)
GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, on January 4, 2021, the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the *Debtors' Motion for Entry of an Order Authorizing the Debtors to (I) File Under Seal Notice of Filing of Revised Exhibit C to Debtors' Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors and Platte River Midstream, LLC and DJ South Gathering, LLC, (II) Authorizing the Debtors to Enter Into New Transportation Services Agreements with Platte River Midstream, LLC and DJ South Gathering, LLC, and (III) Granting Related Relief and (II) Granting Related Relief*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

(the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any responses or objections to the relief requested in the Motion, if any, must be in writing and filed with the Clerk of the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 Market Street, Wilmington, Delaware, 19801, on or before **January 19, 2021 at 4:00 p.m. (prevailing Eastern Time)**.

PLEASE TAKE FURTHER NOTICE that if any objections to the Motion are received, the Motion and such objections shall be considered at a hearing to be scheduled before The Honorable Christopher S. Sontchi, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 Market Street, 5th Floor, Courtroom No. 6, Wilmington, Delaware, 19801.

PLEASE TAKE FURTHER NOTICE THAT IF NO OBJECTIONS TO THE MOTION ARE TIMELY FILED IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR HEARING.

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Dated: January 4, 2021
Wilmington, Delaware

/s/ Stephen B. Gerald

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² Whiteford, Taylor & Preston LLC operates as Whiteford Taylor & Preston L.L.P. in jurisdictions outside of Delaware.

Exhibit A

Proposed Order

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

In re:

EXTRACTION OIL & GAS, INC. *et al.*,¹

Debtors.

)
) Chapter 11
)

) Case No. 20-11548 (CSS)
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) (Jointly Administered)
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) Re: Docket Nos. 1573 and _____
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**ORDER AUTHORIZING THE DEBTORS TO (I) FILE UNDER SEAL
NOTICE OF FILING OF REVISED EXHIBIT C TO DEBTORS' MOTION FOR ENTRY
OF AN ORDER (I) APPROVING THE SETTLEMENT BY AND AMONG THE
DEBTORS AND PLATTE RIVER MIDSTREAM, LLC AND DJ SOUTH GATHERING,
LLC, (II) AUTHORIZING THE DEBTORS TO ENTER INTO NEW
TRANSPORTATION SERVICES AGREEMENTS WITH PLATTE RIVER
MIDSTREAM, LLC AND DJ SOUTH GATHERING, LLC, AND (III) GRANTING
RELATED RELIEF AND (II) GRANTING RELATED RELIEF**

Upon the motion (the "Motion to Seal")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 *Notice of Filing of Revised Exhibit C to Debtors' Motion for Entry of an Order (I) Approving the Settlement By and Among the Debtors and Platte River Midstream, LLC and DJ South Gathering, LLC, (II) Authorizing the Debtors to Enter into New Transportation Services Agreements with Platte River Midstream, LLC and DJ South Gathering, LLC, and (III) Granting Related Relief* (the "Revised Term Sheet"), filed contemporaneously herewith, and (b) directing that the sealed Revised Term Sheet shall remain under seal and confidential, and not

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Extraction Oil & Gas, Inc. (3923); 7N, LLC (4912); 8 North, LLC (0904); Axis Exploration, LLC (8170); Extraction Finance Corp. (7117); Mountaintop Minerals, LLC (7256); Northwest Corridor Holdings, LLC (9353); Table Mountain Resources, LLC (5070); XOG Services, LLC (6915); and XTR Midstream, LLC (5624). The location of the Debtors' principal place of business is 370 17th Street, Suite 5300, Denver, Colorado 80202.

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

be made available to anyone without the consent of the Debtors or further order from the Court, all as more fully set forth in the Motion to Seal; 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 to Seal 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 to Seal 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 to Seal and opportunity for a hearing on the Motion to Seal were appropriate and no other notice need be provided; and this Court having reviewed the Motion to Seal 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 to Seal 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 to Seal is granted as set forth herein.
2. The Debtors are authorized to file an unredacted version of the Revised Term Sheet and the exhibits thereto under seal pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Bankruptcy Local Rule 9018-1. The Revised Term Sheet shall remain strictly confidential and under seal, and shall not be made available to anyone without the prior written consent of the Debtors or further order of the Court. Use of the sealed Revised Term Sheet shall be subject to Bankruptcy Local Rule 9018-1(e).
3. Any Bankruptcy Rule (including Bankruptcy Rule 6004(h)) or Bankruptcy 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 to Seal.

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