

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Hearing Date: May 20, 2013 at 1:30 p.m. (ET)

Objection Deadline: At the Hearing

**EMERGENCY MOTION OF THE DEBTORS FOR AUTHORITY TO FILE UNDER  
SEAL CERTAIN DOCUMENTS CONTAINED IN THE PLAN SUPPLEMENT**

School Specialty, Inc. and its affiliated debtors and debtors-in-possession (each a “Debtor,” and collectively, the “Debtors”) hereby file this motion (the “Motion to Seal”) for entry of an order in substantially the form attached hereto as Exhibit A (the “Proposed Order”), pursuant to sections 105(a) and 107(b) 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(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), authorizing the Debtors to file under seal unredacted versions of that certain administrative agency fee letter with respect to the ABL Exit Facility (the “ABL Fee Letter”), that certain underwriting letter with respect to the ABL Exit Facility (the “ABL Underwriting Letter,” and together with the ABL Fee Letter, the “ABL Exit Financing Letters”), that certain fee letter with respect to the Term Loan Exit Facility (the “Term Loan Fee Letter”), that certain engagement letter with respect to the Term Loan Exit Facility (the “Term Loan Engagement Letter,” and together with the Term Loan Fee Letter, the

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.



“Term Loan Exit Financing Letters,” and collectively with the ABL Exit Financing Letters, the “Exit Financing Letters”) and Annex C to the Commitment Letter (“Annex C”). On May 14 and 15, 2013, the Debtors filed redacted versions of the Exit Financing Letters and Annex C as part of the Plan Supplement (defined below). In support of this Motion to Seal, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. 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. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

2. The statutory predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1(b).

### **RELEVANT BACKGROUND**

3. On January 28, 2013 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code thereby commencing the instant Chapter 11 Cases. The Debtors continue to manage and operate their businesses as debtors-in-possession under sections 1107 and 1108 of the Bankruptcy Code. These Chapter 11 Cases are being jointly administered for procedural purposes only.

4. On February 5, 2013, the United States Trustee for the District of Delaware (the “U.S. Trustee”) appointed an official committee of unsecured creditors [Docket No. 110] (the “Initial Creditors’ Committee”). On February 27, 2013, the U.S. Trustee reconstituted the Initial Creditors’ Committee [Docket No. 330] (the “Creditors’ Committee”).

No trustee or examiner has been appointed in the Chapter 11 Cases.

5. Information regarding the Debtors' businesses, their capital and debt structure, and the events leading to the filing of the Chapter 11 Cases is contained in the *Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Relief* [Docket No 2].

6. On April 23, 2013, the Debtors filed the *Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 862] (the "Plan") and related *Disclosure Statement for Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 864]. On April 24, 2013, the Court entered an Order approving the Disclosure Statement on a conditional basis, and approving certain solicitation and related procedures on a final basis [Docket No. 902] (the "Disclosure Statement Order"). On April 24, 2013, the Debtors filed the solicitation version of the *Disclosure Statement for Debtors' Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code* [Docket No. 931] (the "Disclosure Statement"). A hearing to consider approval of the Disclosure Statement on a final basis and confirmation of the Plan is scheduled to take place on May 20, 2013.

7. On May 9, 2013, the Debtors filed the *Notice of Filing of Supplement to Debtors' Joint Amended Plan Under Chapter 11 of the Bankruptcy Code* [Docket No. 1026] (the "Initial Plan Supplement"). On May 14, 2013, the Debtors filed the *Notice of Filing of First Amendment to Supplement to Debtors' Joint Amended Plan Under Chapter 11 of the Bankruptcy Code* [Docket No. 1044] (the "First Amended Plan Supplement") and on May 15, 2013, the Debtors filed the *Notice of Filing of Second Amendment to Supplement to Debtors' Joint Amended Plan Under Chapter 11 of the Bankruptcy Code* [Docket No. 1056] (the "Second

Amended Plan Supplement,” together with the Initial Plan Supplement and the First Plan Supplement (the “Plan Supplement”).<sup>2</sup>

8. Pursuant to Article VIII.A.4 of the Plan, as a condition to confirmation of the Plan, the Debtors must enter into a binding commitment for exit financing. Also, pursuant to Article V.H.1 of the Plan, as part of the restructuring transactions to be accomplished thereunder, the Debtors must, on or before the Effective Date, close on the Exit Facilities. The Debtors propose to obtain their exit financing from the ABL Exit Facility, which is being provided by Bank of America, N.A., as agent and lender, and certain additional lenders (the “ABL Exit Lenders”) and the Term Loan Exit Facility arranged by Credit Suisse Securities (USA) LLC, together with its affiliates, “Credit Suisse”, (the lenders thereunder, the “Term Loan Exit Lenders,” together with the ABL Exit Lenders, the “Exit Lenders”). As part of the First Amended Plan Supplement, the Debtors filed certain redacted versions of the ABL Exit Financing Letters and Annex C. As part of the Second Amended Plan Supplement, the Debtors filed certain redacted versions of the Term Loan Exit Financing Letters.

9. The unredacted copies of the Exit Financing Letters detail the various fees and expenses to be paid to the Exit Lenders, to Bank of America in its capacity as Agent with respect to the ABL Exit Facility and to Credit Suisse in its capacity as Agent and arranger of the Term Loan Exit Facility. While the various individual fees have been redacted in the versions of the Exit Financing Letters filed as part of the Plan Supplement, the Debtors hereby disclose that the aggregate fees to be paid with respect to the ABL Exit Facility and the Term Loan Exit Facility are approximately \$7,293,750.<sup>3</sup> Further, Annex C sets forth the Debtors’

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<sup>2</sup> All capitalized terms not defined herein shall have the meanings ascribed to them in the Plan Supplement or the Plan, as applicable.

<sup>3</sup> Pursuant to this Court’s “Order Authorizing the Debtors to Enter Into Expense Letters (A) To Provide Expense Deposits to Reimburse Costs in Connection with Exit Financing, and (B) Provide Related Indemnities

current trade terms for its top suppliers, information which is confidential and commercially sensitive.

**RELIEF REQUESTED**

10. Pursuant to the ABL Commitment Letter and the Term Loan Exit Engagement Letter, the Debtors agreed to keep the specific terms of the Exit Financing Letters confidential. The Debtors respectfully request that the Court enter an order authorizing the Debtors to file the unredacted versions of the Exit Financing Letters and Annex C under seal and directing that they remain under seal, confidential and not be made available to anyone, except that the Debtors have provided unredacted versions of the Exit Financing Letters and Annex C to the U.S. Trustee, the advisors for the Creditors' Committee, counsel to the agent for the ABL DIP Facility, and counsel to the agent for the Ad Hoc DIP Facility, in each case, on a confidential and "professionals' eyes only" basis.

**BASIS FOR THE RELIEF REQUESTED**

11. Section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code." 11 U.S.C. § 105(a). Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the authority to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. This section provides in relevant part that:

On request of a party in interest, the bankruptcy court *shall*, and on the bankruptcy court's own motion, the bankruptcy court may --

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Thereunder" [Docket No. 785] (the "April 10 Order"), the Debtors were previously authorized to enter into an "expense deposit letter" and pay certain expenses of and provide indemnification to the Exit Lenders, including under circumstances where such exit financing facility is not entered into or funded. The amounts set forth in the Exit Financing Letters are in addition to the amounts previously authorized to be paid pursuant to the April 10 Order and those certain Expense Letters entered into with the Exit Lenders.

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information . . . .

11 U.S.C. § 107(b) (emphasis added). Importantly, once a court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in Bankruptcy Code section 107(b), 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 are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” Id. Further, commercial information need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. Orion Pictures, 21 F.3d at 28. A party seeking the sealing of information is required to show only that the information is confidential and commercial, and need not show “good cause.” Id.

12. Bankruptcy Rule 9018 sets forth the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code, and provides, in 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. Local Rule 9018-1(b) additionally 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. 9018-1(b).

13. The Debtors submit that the information contained in the Exit Financing Letters falls well within the scope of confidential information that may be protected pursuant to section 107(b)(1) of the Bankruptcy Code. Specifically, the descriptions of fees set forth in the Exit Financing Letters constitute detailed proprietary information not typically disclosed to the

public or to competing financial institutions. In light of the highly competitive nature of the investment banking and finance lending industries, it is of critical importance to the Exit Financing Lenders that the details of the fee structures set forth in the Exit Financing Letters be kept confidential so that their competitors may not use the information contained therein to gain a strategic advantage over the lenders in the marketplace. Public disclosure of fees of this sort could chill the market for financial institutions to provide exit financing to chapter 11 debtors. The ABL Exit Financing Letters specifically contain the terms under which the lenders may ‘flex’ certain provisions of the proposed financing, the disclosure of which would adversely impact the lenders’ ability to successfully syndicate the facilities and result in significant costs to the Debtors. Thus, in accordance with the terms of the Exit Financing Letters, the Debtors respectfully request that the Court enter an order to prevent the contents of the Exit Financing Letters from becoming publicly available.

14. Additionally, the Debtors submit that the information contained in Annex C falls within the scope of confidential information that may be protected pursuant to section 107(b)(1) of the Bankruptcy Code. The Debtors do not wish the confidential trade terms contained in Annex C to be made public, as the information may be used unfairly by their competitors.

15. “Commercial information is information which would give a competitor an unfair advantage.” In re Handy Andy Home Improvement Centers, Inc., 199 B.R. 376, 382 (Bankr. N.D. Ill. 1996). See also Diamond State Ins. Co. v. Rebel Oil Co., Inc., 157 F.R.D. 691, 697 (D. Nev. 1994) (“Confidential commercial information is information which, if disclosed, would cause substantial economic harm to the competitive position of the entity from whom the information was obtained.”). Courts in this jurisdiction have previously determined that certain

documents entered into in connection with post-petition and/or exit financing, such as fee or expense letters, qualify as “confidential commercial information” within the meaning of section 107(b) of the Bankruptcy Code and have authorized the filing of such documents under seal. See, e.g., In re Tribune Co., Case No. 08-13141 (KJC) (Bankr. D. Del. Nov. 6, 2012) (authorizing debtors to file under seal exit financing fee letter); In re Real Mex Restaurants, Inc., Case No. 11-13123 (BLS) (Bankr. D. Del. Oct. 6, 2011) (authorizing debtors to file under seal DIP financing fee letter); In re NewPage Corporation, Case No. 11-12804 (KG) (Bank. D. Del. Sept. 8, 2011) (same); In re Neenah Enterprises, Inc., Case No. 10-10360 (MFW) (Bankr. D. Del. Jul. 6, 2010) (authorizing debtors to file under seal exit financing fee letter); In re Xerium Technologies, Inc., Ch. 11 Case No. 10-11031 (KJC) (Bankr. D. Del. Mar. 31, 2010) (authorizing debtors to file under seal DIP financing fee letter); In re Rath Gibson, Inc., Ch. 11 Case No. 09-12452 (CSS) (Bankr. D. Del. Aug. 11, 2009) (same).

16. The Debtors submit that the factual and legal predicates for filing the unredacted versions of the Exit Financing Letters and Annex C under seal have been satisfied. See 11 U.S.C. § 107(b).

17. To ensure that the key constituencies in these cases receive adequate disclosure, however, the Debtors have provided unreacted copies of the Exit Financing Letters and Annex C to the U.S. Trustee, the advisors for the Creditors’ Committee, counsel to the agent for the ABL DIP Facility, and counsel to the agent for the Ad Hoc DIP Facility, in each case, on a confidential and “professionals’ eyes only” basis. Further, as set forth above, the Debtors have disclosed the aggregate fees to be paid with respect to the Exit Financing Letters. The Debtors submit that such disclosure will provide sufficient safeguards to ensure that the relief requested



in this Motion to Seal will not adversely affect the interests of parties to these chapter 11 proceedings.

**NOTICE**

18. Notice of this Motion to Seal has been or will be provided to: (i) the United States Trustee; (ii) counsel to the ABL DIP Agent; (iii) counsel to the agent under the Debtors' Prepetition Term Loan Agreement; (iv) counsel to the Ad Hoc DIP Agent; (v) the indenture trustee for the Debtors' convertible debentures; (vi) counsel for the *ad hoc* group of convertible debenture holders; (vii) counsel to the Creditors' Committee; (viii) counsel to the ABL Exit Lenders; (ix) counsel to the Term Loan Exit Lenders, and (x) all parties that have filed a notice of appearance 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.

WHEREFORE, the Debtors respectfully request that this Court enter the Proposed Order authorizing the Debtors to file unredacted versions of the Exit Financing Letters and Annex C under seal and grant such other and further relief as is just and proper.

Dated: May 17, 2012  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Hearing Date: May 20, 2013 at 1:30 p.m. (ET)

Objection Deadline: At the Hearing

**NOTICE OF MOTION**

TO: (I) THE UNITED STATES TRUSTEE; (II) COUNSEL TO THE ABL DIP AGENT; (III) COUNSEL TO THE AGENT UNDER THE DEBTORS' PREPETITION TERM LOAN AGREEMENT; (IV) COUNSEL TO THE AD HOC DIP AGENT; (V) THE INDENTURE TRUSTEE FOR THE DEBTORS' CONVERTIBLE DEBENTURES; (VI) COUNSEL FOR THE *AD HOC* GROUP OF CONVERTIBLE DEBENTURE HOLDERS; (VII) COUNSEL TO THE CREDITORS' COMMITTEE; (VIII) COUNSEL TO THE ABL EXIT LENDERS; (IX) COUNSEL TO THE TERM LOAN EXIT LENDERS, AND (X) ALL PARTIES THAT HAVE FILED A NOTICE OF APPEARANCE IN THESE CHAPTER 11 CASES PURSUANT TO BANKRUPTCY RULE 2002.

PLEASE TAKE NOTICE that the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") have filed the attached **Emergency Motion of the Debtors for Authority to File Under Seal Certain Documents Contained in the Plan Supplement** (the "Seal Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that the Debtors have also filed the **Motion of Debtors for Entry of an Order Shortening Notice and Objection Periods With Respect to the Emergency Motion of the Debtors for Authority to File Under Seal Certain Documents Contained in the Plan Supplement** (the "Motion to Shorten") with the Court.

PLEASE TAKE FURTHER NOTICE THAT, PURSUANT TO THE MOTION TO SHORTEN, THE DEBTORS ARE REQUESTING THAT A HEARING ON THE SEAL MOTION BE HELD ON **MAY 20, 2013 AT 1:30 P.M. (ET)**, BEFORE THE HONORABLE KEVIN J. CAREY AT THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 NORTH MARKET STREET, 5TH FLOOR, COURTROOM #5, WILMINGTON, DELAWARE 19801.

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS ARE ALSO REQUESTING THAT OBJECTIONS, IF ANY, TO THE RELIEF REQUESTED IN THE SEAL MOTION, BE HEARD AT THE HEARING SCHEDULED FOR MAY 20, 2013 AT 1:30 P.M. (ET).

PLEASE TAKE FURTHER NOTICE THAT IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED BY THE SEAL MOTION WITHOUT FURTHER NOTICE OR HEARING.

Dated: May 17, 2013  
Wilmington, Delaware

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**EXHIBIT A**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

SCHOOL SPECIALTY, INC., *et al.*,<sup>1</sup>  
Debtors.

Chapter 11

Case No. 13-10125 (KJC)

Jointly Administered

Re: Docket No. \_\_\_\_

**ORDER AUTHORIZING DEBTORS TO FILE UNDER SEAL CERTAIN DOCUMENTS  
CONTAINED IN THE PLAN SUPPLEMENT**

Upon the motion (the “Motion to Seal”)<sup>2</sup> of School Specialty, Inc. and its affiliated debtors and debtors-in-possession in the above-captioned cases (collectively, the “Debtors”), for entry of an order pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(b) authorizing the Debtors to file, under seal, unredacted versions of the Exit Financing Letters and Annex C contained in the First and Second Amended Plan Supplement; and the Court having jurisdiction to consider the Motion to Seal and the relief requested therein 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; and consideration of the Motion to Seal and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion to Seal having been provided under the circumstances; and the Court having reviewed the Motion to Seal and determined that the legal and factual bases set forth in the Motion to Seal establish just cause for

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors’ corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.

<sup>2</sup> Unless otherwise defined herein, all capitalized terms shall have the meanings ascribed to them in the Motion to Seal.

the relief granted herein; and it appearing that the relief requested in the Motion to Seal is in the best interests of the Debtors and their estates and creditors; and after due deliberation, and good 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 Debtors are hereby authorized to file unredacted versions of the Exit Financing Letters and Annex C under seal pursuant to section 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018 and Local Rule 9018-1(b).
3. The unredacted versions of the Exit Financing Letters and Annex C are confidential and shall remain under seal, and shall not be made available to anyone, except that copies shall be provided to the U.S. Trustee, the advisors for the Creditors' Committee, counsel to the agent for the ABL DIP Facility, and counsel to the agent for the Ad Hoc DIP Facility, in each case, on a confidential and "professionals' eyes only" basis.
4. The U.S. Trustee, the advisors for the Creditors' Committee, counsel to the agent for the ABL DIP Facility, and counsel to the agent for the Ad Hoc DIP Facility are directed to maintain the strict confidentiality of the Exit Financing Letters, Annex C and the information contained therein.
5. This Court shall retain jurisdiction over any and all matters arising from or related to the implementation or interpretation of this Order.

Dated: Wilmington, Delaware  
May \_\_, 2012

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THE HONORABLE KEVIN J. CAREY  
UNITED STATES BANKRUPTCY JUDGE