

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

In re:)	
)	Chapter 11
VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹)	Case No. 18-10834 (KG)
)	
Debtors.)	(Joint Administration Requested)
)	

**DEBTORS’ MOTION FOR ENTRY OF
AN ORDER AUTHORIZING DEBTORS TO FILE UNDER
SEAL THE FEE LETTERS RELATED TO THE DIP AND EXIT FACILITIES**

VER Technologies HoldCo LLC and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “Debtors”),² respectfully state the following in support of this motion:

Relief Requested

1. The Debtors seek entry of an order (the “Order”), substantially in the form attached hereto as **Exhibit A**, (I) authorizing the Debtors to file under seal (a) the fee letters annexures to (i) the ABL financing commitment letter (such annexure the “ABL Fee Letter”) and (ii) the term loan financing commitment letter (such annexures the “DIP Term Lenders Fee Letter” and “DIP Agent Fee Letter”) and (b) the PRG Work Fee Letter (together with the ABL Fee Letter, the DIP Term Lenders Fee Letter, and the DIP Agent Fee Letter, the “Fee Letters”), the form of each of the Fee Letters is appended to the *Debtors’ Motion for Entry of Interim and*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FFAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

² A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors’ chapter 11 cases, is set forth in greater detail in the *Declaration of Lawrence Young, Chief Restructuring Officer of VER Technologies HoldCo LLC, in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously herewith.



Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final Hearing; and (VI) Granting Related Relief (the “DIP Motion”);³ (II) directing that the Fee Letters shall remain under seal and confidential and not be made available to anyone without the express consent of the Debtors, except to the Court and the United States Trustee for the District of Delaware (the “U.S. Trustee”); and (III) granting related relief.

Jurisdiction and Venue

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.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the DIP Motion.

4. The bases for the relief requested herein are section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “Bankruptcy Code”), Bankruptcy Rule 9018, and Local Rule 9018-1.

Basis for Relief

5. Pursuant to section 107(b) of the Bankruptcy Code, a bankruptcy court must protect entities from potential harm that may result from the disclosure of certain confidential information. 11 U.S.C. § 107(b). Specifically, section 107(b) provides, in relevant part, as follows:

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

Id. Section 105(a) of the Bankruptcy Code, in turn, codifies the inherent equitable powers of bankruptcy courts and empowers them 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).

6. Bankruptcy Rule 9018 sets forth the procedures by which a party may obtain a protective order authorizing the filing of a document under seal. Bankruptcy Rule 9018 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(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. 9018-1(b).

7. If the material sought to be protected satisfies one of the categories identified in section 107(b) of the Bankruptcy Code, “the court is *required* to protect a requesting 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); accord *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75-76 (Bankr. D. Del. 2006) (citing *Orion Pictures*). Stated differently, section 107(b) of the Bankruptcy Code does not require a party seeking its protections to demonstrate “good cause.” *Orion Pictures*, 21 F.3d at 28. “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). Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Orion Pictures*, 21 F.3d at 27. 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.” *Global Crossing*, 295 B.R. at 724.

8. “Commercial information”—“information which would result in ‘an unfair advantage to competitors by providing them information as to the commercial operations of the debtor’”—is one category of information within the scope of section 107(b) of the Bankruptcy Code. *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Orion Pictures*, 21 F.3d at 27-28); see *Global Crossing*, 295 B.R. at 725 (holding 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 need not rise to the level of a trade secret to be protected under section 107(b) of the Bankruptcy Code. See *Orion Pictures*, 21 F.3d at 27-28 (holding 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).

9. Here, the Fee Letters contain sensitive commercial information, thus satisfying one of the categories enumerated in section 107(b) of the Bankruptcy Code. In connection with the DIP Facilities, the Debtors have, as is customary, agreed to pay certain fees and expenses to: (a) the DIP ABL Lenders and DIP ABL Agent in connection with their agreement to provide the DIP ABL Loans, (b) the DIP Term Lenders and DIP Term Agent in connection with their agreement to provide the DIP Term Loans, and (c) the financial lenders who have partnered with PRG. A broad publication of the information in the Fee Letters would be inappropriate and materially harmful to the DIP Lenders’ businesses. In light of the highly competitive nature of the investment banking and finance lending industries, it is of critical importance to the ABL DIP Lenders, ABL DIP Agent, the DIP Term Lenders, the DIP Term Agent, and the financial lenders who have partnered with PRG that the details of the fee structure set forth in the Fee Letters be kept confidential so that their competitors may not use the information contained therein to gain a strategic advantage over the DIP Lenders in the marketplace. This information is not public, and, upon information and belief, disclosure of this commercial information could cause significant injuries to the DIP Lenders.

10. Because the Fee Letters contain highly confidential and sensitive commercial information, the Debtors submit that they should be authorized to file the Fee Letters under seal. The Debtors submit that other parties in interest will not be materially prejudiced because the Fee Letters will be reviewed by the Court and the U.S. Trustee. Further, any party-in-interest can request that the Debtors permit them to review the Fee Letters.

11. Courts in this jurisdiction have previously determined that certain documents entered into in connection with post-petition or exit financing, such as fee or expense letter, 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 Seventy Seven Finance, Inc.*, No. 16-11409 (LSS) (Bankr. D. Del. 2016) (granting request to file exit facility fee letter under seal); *In re Optima Specialty Steel, Inc.*, No. 16-12789 (KJC) (Bankr. D. Del. Dec. 15, 2016) (granting Debtors’ request to file exit financing commitment fee letter under seal); *In re Tuscany Int’l Holdings (U.S.A.) Ltd.*, No. 14-10193 (KG) (Bankr. D. Del. Feb. 4, 2014) (granting motion to seal DIP facility fee letter); *In re OnCure Holdings, Inc.*, No. 13-11540 (KG) (Bankr. D. Del. June 18, 2013) (granting request to seal fee letters included in DIP motion).

Notice

12. The Debtors have provided notice of this motion to: (a) the Office of the United States 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 agent under the Debtors’ asset-based lending debtor-in-possession financing facility; (d) counsel to certain of the lenders under the Debtors’ debtor-in-possession term loan facility; (e) counsel to the agent under the Debtors’ debtor-in-possession term loan facility; (f) counsel to the agent under the Debtors’ prepetition asset-based lending facility; (g) counsel to the agent under the Debtors’ prepetition term loan facility; (h) counsel to the lender under Debtors’ 12.0% subordinated notes; (i) counsel to the indenture trustee for the New FTF Inc. Note; (j) the United States Attorney’s Office for the District of Delaware; (k) the Internal Revenue Service; (l) the office of the attorneys general for the states in which the Debtors operate; (m) the Cash Management Banks; and (n) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this motion is seeking “first day”

relief, within two business days of the hearing on this motion, the Debtors will serve copies of this motion and any order entered in respect to this motion as required by Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given

No Prior Request

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

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WHEREFORE, the Debtors respectfully request that the Court enter the Order attached hereto as **Exhibit A**, granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Dated: April 5, 2018
Wilmington, Delaware

/s/ Domenic E. Pacitti

Domenic E. Pacitti (DE Bar No. 3989)
KLEHR HARRISON HARVEY BRANZBURG LLP
919 North Market Street, Suite 1000
Wilmington, Delaware 19801
Telephone: (302) 426-1189
Facsimile: (302) 426-9193

-and -

Morton Branzburg (*pro hac vice* admission pending)
KLEHR HARRISON HARVEY BRANZBURG LLP
1835 Market Street, Suite 1400
Philadelphia, Pennsylvania 19103
Telephone: (215) 569-2700
Facsimile: (215) 568-6603

-and-

Joshua A. Sussberg, P.C. (*pro hac vice* admission pending)
Cristine Pirro (*pro hac vice* admission pending)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
601 Lexington Avenue
New York, New York 10022
Telephone: (212) 446-4800
Facsimile: (212) 446-4900
Email: joshua.sussberg@kirkland.com
cristine.pirro@kirkland.com

- and -

James H.M. Sprayregen, P.C.
Ryan Blaine Bennett (*pro hac vice* admission pending)
KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP
300 North LaSalle
Chicago, Illinois 60654
Telephone: (312) 862-2000
Facsimile: (312) 862-2200
Email: james.sprayregen@kirkland.com
ryan.bennett@kirkland.com

Proposed Counsel to the Debtors

EXHIBIT A

Proposed Order

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

)	
In re:)	Chapter 11
)	
VER TECHNOLOGIES HOLDCO LLC, <i>et al.</i> , ¹)	Case No. 18-10834 (KG)
)	
Debtors.)	(Joint Administration Requested)
)	
)	Re: Docket No. __

**ORDER AUTHORIZING THE DEBTORS TO FILE UNDER
SEAL THE FEE LETTERS RELATED TO THE DIP AND EXIT FACILITIES**

Upon the motion (the “Motion”) of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (I) authorizing the Debtors to file under seal (a) the fee letters annexures to (i) the ABL financing commitment letter (such annexure the “ABL Fee Letter”) and (ii) the term loan financing commitment letter (such annexures the “DIP Term Lenders Fee Letter” and “DIP Agent Fee Letter”) and (b) the PRG Work Fee Letter (together with the ABL Fee Letter, the DIP Term Lenders Fee Letter, and the DIP Agent Fee Letter, the “Fee Letters”), the form of each of the Fee Letters is appended to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Secured Financing Pursuant to Section 364 of the Bankruptcy Code and (B) Utilize Cash Collateral; (II) Granting Liens and Superpriority Administrative Expense Claims; (III) Granting Adequate Protection; (IV) Modifying the Automatic Stay; (V) Scheduling a Final*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: VER Technologies HoldCo LLC (7239); VER Technologies MidCo LLC (7482); VER Technologies LLC (7501); Full Throttle Films, LLC (0487); FFAST Leasing California, LLC (7857); Revolution Display, LLC (6711); VER Finco, LLC (5625); CPV Europe Investments LLC (2533); and Maxwell Bay Holdings LLC (3433). The location of the Debtors’ service address is: 757 West California Avenue, Building 4, Glendale, California 91203.

Hearing; and (VI) Granting Related Relief (the “DIP Motion”);² (II) directing that the Fee Letters shall remain under seal and confidential and not be made available to anyone without the express consent of the Debtors, except to the Court and the United States Trustee for the District of Delaware (the “U.S. Trustee”); and (III) granting related relief; all as more fully set forth in the DIP Motion; 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 District of Delaware, dated February 29, 2012; 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 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 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 under seal, subject to further order of the Court, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1.

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

3. Except upon further order of the Court, the Fee Letters shall remain under seal, and shall not be made available to anyone without the express consent of the Debtors, except that copies of the Fee Letters shall be provided to the Court and the U.S. Trustee on a confidential basis. Such parties shall be bound by this Order and shall at all times keep the provisions of the Fee Letters strictly confidential and shall not disclose such exhibit or the contents thereof to any party whatsoever.

4. The Debtors and any party authorized to receive copies of the Fee Letters pursuant to this Order shall, subject to Local Rule 9018-1(c) and without further Order of the Court: (a) redact specific references to the contents of the Fee Letters set forth therein from any and all pleadings filed on the public docket maintained in these chapter 11 cases; and (b) not use or refer to the Fee Letters in any hearing unless appropriate safeguards have been put in place to protect the confidentiality of the information.

5. 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.

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

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

Dated: _____, 2018
Wilmington, Delaware

THE HONORABLE KEVIN GROSS
UNITED STATES BANKRUPTCY JUDGE