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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
RUNWAY LIQUIDATION HOLDINGS, LLC,)	Case No. 17-10466 (SCC)
<i>et al.</i> , ¹)	
)	
Debtors.)	(Jointly Administered)
)	

**EX PARTE MOTION OF PLAN ADMINISTRATOR FOR AN ORDER
AUTHORIZING THE FILING OF SETTLEMENT AGREEMENT UNDER SEAL**

David MacGreevey, as plan administrator (the “Plan Administrator”) appointed pursuant to the terms of the chapter 11 plan confirmed in the above-captioned cases, on behalf of BCBG Max Azria Global Holdings, LLC (n/k/a Runway Liquidation Holdings, LLC) and its affiliated post-effective date debtors (collectively, the “Post-Effective Date Debtors”), files this motion (the “Motion to Seal”) seeking entry of an order substantially in the form annexed hereto as **Exhibit A** (the “Order”), pursuant to sections 105(a) and 107(b) of title 11 of the United States Code, 11

¹ The Post-Effective Date Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: Runway Liquidation Holdings, LLC (6857); Runway Liquidation, LLC (5942); Runway Liquidation Intermediate Holdings, LLC (3673); MR Liquidation, LLC (9200); and MMH Liquidation, LLC (3854).

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, authorizing the Plan Administrator to file under seal that certain Settlement Agreement (the “Settlement Agreement”) attached as Exhibit C to the *Plan Administrator’s Objection to Proof of Claim Number 598 Filed by David Jehan* (the “Objection”) filed concurrently herewith. In support of this Motion to Seal, the Plan Administrator respectfully states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this proceeding pursuant to the provisions of 28 U.S.C. §§ 1334(a) and (b).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. This proceeding is a core proceeding as described and defined under and pursuant to the provisions of 28 U.S.C. §§ 157(b)(2)(A) and (M).

Relief Requested

4. By this Motion to Seal, the Plan Administrator seeks entry of an order substantially in the form annexed hereto as **Exhibit A**, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, (i) authorizing the Plan Administrator to file under seal Exhibit C to the Objection, and (ii) granting such other and further relief as the Court otherwise deems necessary or appropriate.

Basis for Relief

5. The Bankruptcy Code, Bankruptcy Rules, and Local Rules authorize the Court to limit the disclosure of certain confidential information to protect entities from potential harm. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows:

On request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1). 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).

6. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b), providing 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.

7. Further, Local Rule 9018-1 provides, in relevant part, that “[a] redacted copy of the documents sought to be sealed with only those redactions necessary to preserve confidentiality, made in good faith.” Local Rule 9018-1(5). Here, due to the confidentiality clause of the Settlement Agreement, the entire Settlement Agreement is redacted.

8. Section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *See, e.g., Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (holding that a license agreement authorizing a licensee “to reproduce, manufacture, distribute, and sell videocassettes” of three films contained confidential commercial information). Rather, if the material sought to be protected satisfies one of the categories identified in section 107(b), “the court is required to protect a requesting party and has no discretion to deny the application.” *Orion Pictures*, 21 F.3d at 27. Moreover, the resulting order should be broad (*i.e.*, “any order which justice requires”). *In re Global Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003); Fed. R.

Bankr. P. 9018. 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.

9. Courts have also found that such relief should be granted if the information sought to be protected is “commercial information,” which is defined as “information 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). However, commercial information does not have to 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 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).

10. Here, the Settlement Agreement attached as Exhibit C to the Objection contains a provision requiring that the agreement remain confidential. Accordingly, pursuant to his contractual obligation under the Settlement Agreement and to prevent public disclosure of the terms of the agreement absent Mr. Jehan’s consent, the Plan Administrator requests that he be permitted to file it under seal.

11. The Plan Administrator has or will share unredacted versions with the Court and the Office of the United States Trustee for the Southern District of New York (the “U.S. Trustee”).

Notice

12. Notice of this Motion to Seal is being provided to: (a) the U.S. Trustee; (b) Mr. Jehan and his counsel; (c) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (d) any Affected Entity (as each is defined in the *Order (I) Establishing Certain Notice, Case Management, and Administrative Procedures and (II) Granting Related Relief* [Docket No. 90]). The Plan Administrator submits 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.

Conclusion

WHEREFORE, for the reasons set forth herein, the Plan Administrator respectfully requests that the Court enter an order, substantially in the form attached hereto as **Exhibit A**.

Dated: August 10, 2018

PACHULSKI STANG ZIEHL & JONES LLP

/s/ Maria A. Bove

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Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	:	
	:	
In re	:	Chapter 11
	:	
RUNWAY LIQUIDATION	:	Case No. 17-10466 (SCC)
HOLDINGS, LLC, et al.,¹	:	
	:	Jointly Administered
Debtors.	:	
-----X		

**ORDER AUTHORIZING THE PLAN ADMINISTRATOR
TO FILE SETTLEMENT AGREEMENT UNDER SEAL**

Upon the *Ex Parte Motion of the Plan Administrator for an Order Authorizing the Filing of Settlement Agreement Under Seal* (the “Motion”);² and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein 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 the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that

1. The relief requested in the Motion is hereby GRANTED.
2. Pursuant to 11 U.S.C. §§ 105(a) and 107(b) and Fed. R. Bankr. P. 9018,

the Plan Administrator is authorized to file an unredacted copy of the Settlement Agreement attached as Exhibit C to the Objection under seal.

¹ A list of the Post-Effective Date Debtors in these chapter 11 cases, along with the last four digits of each Post-Effective Date Debtor’s federal tax identification number include: Runway Liquidation Holdings, LLC (6857); Runway Liquidation, LLC (5942); Runway Liquidation Intermediate Holdings, LLC (3673); MR Liquidation, LLC (9200); and MMH Liquidation, LLC (3854).

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

3. Exhibit C to the Objection shall not be disseminated to anyone other than:
(a) the Court; (b) Mr. Jehan and his counsel; and (c) the U.S. Trustee, without either: (i) the express consent of Mr. Jehan and/or his counsel; or (ii) further order of the Court, which order shall not be granted without notice and an opportunity to object being provided to the Plan Administrator and Mr. Jehan and/or his counsel. Such parties shall be bound by this Order and shall keep all confidential information in the Settlement Agreement strictly confidential and shall not disclose such contents thereof to any party whatsoever.

4. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. The Plan Administrator is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

6. The Court shall retain jurisdiction to resolve any dispute regarding the terms of this Order.

New York, New York

Dated: _____, 2018

THE HONORABLE SHELLEY C. CHAPMAN
UNITED STATES BANKRUPTCY JUDGE