

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re

OPEN ROAD FILMS, LLC, a Delaware
limited liability company, *et al.*,¹

Debtors.

Chapter 11

Case No.: 18-12012 (LSS)

(Jointly Administered)

Proposed Hrg. Date:

November 20, 2018 at 10:00 a.m. (ET)

Proposed Obj. Deadline:

At the commencement of the Hearing

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING THE
DEBTORS TO FILE UNDER SEAL CERTAIN EXHIBITS TO THE DECLARATION
OF AMIR AGAM IN SUPPORT OF THE DEBTORS' OMNIBUS SALE REPLY**

Open Road Films, LLC and its affiliated debtors and debtors in possession (the "Debtors") in the above-captioned chapter 11 cases (the "Cases") hereby move the court (this "Motion"), for entry of an order, substantially in the form attached hereto as Exhibit A (the "Order"), pursuant to 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 Rule 9018-1(d) of the Local Rules of Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), authorizing the Debtors to file under seal certain exhibits, specifically Exhibits 1 and 6, (the "Confidential Exhibits")² to the declaration of Amir Agam (the "Agam Declaration") in support of the *Debtors' Omnibus Reply in Support of Motion to (I) Approve the Sale of Substantially All of the*

¹ The Debtors and the last four digits of their respective federal taxpayer identification numbers are as follows: Open Road Films, LLC (4435-Del.); Open Road Releasing, LLC (4736-Del.); OR Productions LLC (5873-Del.); Briarcliff LLC (7304-Del.); Open Road International LLC (4109-Del.); and Empire Productions LLC (9375-Del.). The Debtors' address is 2049 Century Park East, 4th Floor, Los Angeles, CA 90067.

² The Debtors' note that a small amount of text contained in Exhibit 4 to the Agam Declaration is redacted. This text was redacted in the version of the document the Debtors received. The Debtors do not believe this information is confidential, but have not yet obtained an unredacted copy of Exhibit 4. To the extent anyone requests, the Debtors will file an unredacted version of Exhibit 4 once they receive it.

Debtors' Assets, (II) Authorize the Assumption, Assignment, and Sale of Certain Executory Contracts and Unexpired Leases, and (III) Grant Related Relief (the "Sale Reply"). In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over these Cases and the Motion 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. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue of these Cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to the Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. The statutory and legal 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(d).

RELEVANT BACKGROUND

4. On the Petition Date, the Debtors filed the *Debtors' Motion for Orders: (A)(I) Establishing Bid and Sale Procedures Relating to the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into an Asset Purchase Agreement with Stalking Horse Bidder, (III) Establishing and Approving Procedures Relating to the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, Including Notice of Proposed Cure Amounts and (IV) Scheduling a Hearing to Consider the Proposed Sale and*

(B)(I) *Approving the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Assumption, Assignment and Sale of Certain Executory Contracts and Unexpired Leases, and (III) Granting Certain Related Relief* [D.I. 9] (the "Sale Motion").³

5. On October 9, 2018, the Court entered an order [D.I. 160] (the "Bid Procedures Order") granting certain of the relief requested in the Sale Motion, specifically: (a) scheduling an auction (the "Auction") for the sale of substantially all of the Debtors' assets (the "Sale") and a hearing to approve the Sale (the "Sale Hearing"); (b) approving procedures (the "Bid Procedures") for submitting competing bids for substantially all of the Debtors' assets; (c) approving the form and manner of the notice of the Auction and the Sale Hearing; and (d) approving procedures for the assumption, assignment and sale of Contracts to any purchaser(s) of the Debtors' assets, and/or to resolve any objections thereto. Pursuant to the Bid Procedures Order, the Auction was scheduled for November 7, 2018 at 10:00 a.m. (Pacific Time) and the Sale Hearing was scheduled for November 9, 2018 at 10:00 a.m. (Eastern Time).⁴ In addition, objections to the Sale ("Sale Objections") were required to be filed and served by November 2, 2018 at 4:00 p.m. (ET) (the "Sale Objection Deadline"), except that the Committee's Sale Objection, if any, is due at 8:30 a.m. on the day of the Sale Hearing.

6. On October 12, 2018, the Debtors filed their *Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases* [D.I. 172] identifying certain Contracts for potential assumption and assignment in connection with the Sale. Objections to the assumption, assignment, and sale of any Contract, including to the Debtors' proposed cure amounts (collectively with the Sale Objections, the "Objections"), were due by the Sale

³ Capitalized terms used but not otherwise described herein shall have the meanings ascribed to such terms in the Sale Motion.

⁴ The Sale Hearing was adjourned to November 20, 2018 at 10:00 a.m. (ET).

Objection Deadline, provided that any adequate assurance objections were due by November 7, 2018 at 4:00 p.m.

7. On October 23, 2018, the Debtors filed the *Debtors' Motion for Entry of an Order Authorizing and Approving Certain Bidding Protections and Amendments to Bid Procedures Order, and Granting Related Relief* [D.I. 217] (the "Bid Protections Motion"), requesting that the Court: (i) authorize and approve the Debtors entry into that certain Asset Purchase Agreement, dated as of October 23, 2018 (the "Stalking Horse Agreement"), between the Debtors and OR Acquisition Co, LLC (the "Stalking Horse Bidder"), for the sale of substantially all of the Debtors' assets (the "Purchased Assets") (subject to final approval at the Sale Hearing); (ii) approve certain bidding protections in connection with the Stalking Horse Agreement; and (iii) approve certain amendments to the Bid Procedures. On October 26, 2018, the Court entered an order [D.I. 239] approving the relief requested in the Bid Protections Motion.

8. On November 5, 2018, the Debtors filed that certain *Notice of Cancellation of Auction* [D.I. 314] stating that the Debtors had not received any Qualified Bids other than the Qualified Bid of the Stalking Horse Bidder prior to the Bid Deadline and, as such, the Auction was cancelled and the Debtors would seek approval of the sale of the Purchased Assets pursuant to the Stalking Horse Agreement at the Sale Hearing.

9. The Debtors received numerous Objections prior to the Sale Objection Deadline.

RELIEF REQUESTED

10. By this Motion, the Debtors request entry of the Order authorizing the Debtors to file the Confidential Exhibits under seal. In addition, the Debtors request that the Confidential Exhibits not be made available to anyone, except to the Court, the U.S. Trustee, counsel to the Committee, and other parties as otherwise ordered or required by the Court.

BASIS FOR RELIEF REQUESTED

11. 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 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—
(1) protect an entity with respect to a trade secret or confidential research, development, or commercial information

11 U.S.C. § 107(b)(1). In addition, under section 105(a) of the Bankruptcy Code, the 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).

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, “On 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(d) also provides, in relevant part, that, “Any party who seeks to file documents under seal must file a motion to that effect.” DEL. BANKR. L.R. 9018-1(d).

13. Unlike its counterpart in Rule 26(c) of the Federal Rules of Civil Procedure, 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); *Phar-Mor, Inc. v. Defendants Named Under Seal (In re Phar-Mor, Inc.)*, 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). 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.” *In*

re Orion Pictures Corp., 21 F.3d at 27. Courts are required to provide such protections “generally where open inspection may be used as a vehicle for improper purposes.” *Id.*

14. The Debtors respectfully submit that sealing the Confidential Exhibits is warranted. First, the Confidential Exhibits contain commercially sensitive information, the disclosure of which could have negative repercussions on the Debtors’ business. Given the impending sale of that business, the Debtors cannot afford to jeopardize, in any way, the assets they are trying to sell. Second, disclosure of the confidential information could potentially implicate confidentiality provisions with either the counterparties to those agreements or the Stalking Horse Bidder. Third, and possibly most significant, the redacted information is not pertinent to the Sale Objections or the Court’s consideration of the Sale Reply.

15. The relief requested is thus necessary to ensure that the Debtors’ efforts to maximize the value of their assets is not hindered. *See, e.g., In re Global Crossing, Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (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”). Furthermore, sealing the Confidential Exhibits is consistent with the policy underlying section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, which “must be viewed from the practical perspective of damage to the estate or its creditors, and squarely includes information that could prejudice either of them[.]” *Id.* at 725; *see also In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2013) (noting that sealing commercial information under section 107(b)(1) of the Bankruptcy Code “includes situations where a bankruptcy court may reasonably determine that allowing such disclosure would have a chilling effect on [business] negotiations, ultimately affecting the viability of Debtors.”)

(citations and quotations omitted). As such, protecting the information set forth in the Confidential Exhibits furthers the purposes of section 107(b).

16. The Debtors submit that filing the Confidential Exhibits under seal will not cause undue prejudice to any parties in interest. Although, as set forth above, the Debtors do not believe the sealed information is pertinent, to ensure that the key constituencies in the Cases receive adequate disclosure, the Debtors have provided copies of the Confidential Exhibits to the Court and the U.S. Trustee, counsel to the Committee, and will provide copies of the Confidential Exhibits to such other parties as may be ordered or required by the Court. The Debtors submit that the foregoing provides sufficient safeguards to ensure that the relief requested in this Motion will not adversely affect the interests of parties to these chapter 11 proceedings while protecting the Debtors' legitimate interest in keeping sensitive business information from the public's view.

17. For the reasons set forth above, the Debtors submit that good cause exists for the Court to grant the relief requested herein and that approval of this Motion is necessary and appropriate.

NOTICE

18. The Debtors have provided notice of this Motion to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) the Agent; and (iv) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers 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.

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CONCLUSION

WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court (i) enter the Order authorizing the Debtors to file the Confidential Exhibits under seal and (ii) grant the Debtors such other and further relief as is just.

Dated: November 19, 2018

/s/ Ian J. Bambrick

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