

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

In re:

SECURE HOME HOLDINGS LLC, *et al.*,
Debtors.¹

Chapter 11

Case No. 21-10745 (xxx)

(Joint Administration Pending)

**DEBTORS' MOTION FOR ENTRY OF AN ORDER AUTHORIZING
THE FILING UNDER SEAL OF THE PROPOSED
DEBTOR IN POSSESSION FINANCING FEE LETTER**

Secure Home Holdings LLC and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**,” or the “**Company**”), hereby move (this “**Motion**”) this Court for entry of an order, substantially in the form attached hereto as **Exhibit A** (the “**Proposed Order**”), granting the relief described below. In support of this Motion, the Debtors rely upon the *Declaration of Amy V. Kothari in Support of Chapter 11 Petitions and First Day Papers* (the “**First Day Declaration**”),² and respectfully represent as follows:

RELIEF REQUESTED

1. By this Motion, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, the Debtors request entry of an order (a) authorizing the Debtors to file under seal and to redact certain portions of the Fee Letter (as defined below) and (b) directing that the Fee Letter shall remain under seal and confidential and not be

¹ The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Secure Home Holdings LLC (1583); ACA Security Systems GP, LLC (5674); ACA Security Systems LP (3613); Hawk Creation, LLC (3525); and My Alarm Center, LLC (0273). The address of the Debtors' corporate headquarters is 3803 West Chester Pike, Suite 100, Newtown Square, Pennsylvania 19073.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration or the DIP Motion (*as defined below*), as applicable.

made available to any person without the consent of the Debtors and the DIP Agents, unless otherwise provided by such order.

JURISDICTION AND VENUE

2. This Court has jurisdiction to consider 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 February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

3. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

BACKGROUND

4. On April 25, 2021 (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”).

5. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed a creditors’ committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

7. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rule 1015-1 of the Local Rules of

Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

8. Additional factual background regarding the Company’s business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the First Day Declaration, filed contemporaneously with this Motion and incorporated herein by reference.

9. Contemporaneously herewith, the Debtors filed the *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(2), 364(c)(3), 364(d) and 364(e), (B) Granting Senior Liens and Superpriority Administrative Expense Status; (II) Scheduling Final Hearing; and (III) Granting Related Relief* (the “**DIP Motion**”) seeking authorization to obtain postpetition financing (the “**DIP Financing**”) and approval of their entry into a superpriority senior secured debtor in possession credit facility in an aggregate principal amount of approximately \$45 million (the “**DIP Facility**”), provided by certain of the Debtors’ prepetition secured lenders (the “**DIP Lenders**”) and agented by Seaport Loan Products LLC and Acquiom Agency Services LLC as co-administrative agents (the “**DIP Co-Administrative Agents**”) and Acquiom Agency Services LLC as collateral agent (the “**DIP Collateral Agent**” and, together with the DIP Co-Administrative Agents, the “**DIP Agents**”).

10. In connection with the proposed DIP Facility, the Debtors will enter into that certain *Fee Letter*, by and between Debtors and the DIP Agents (the “**Fee Letter**”), annexed as Exhibit 1 to the Notice of Filing of Sealed Version of the Debtor in Possession Financing Fee Letter filed on April 26, 2021.

11. Due to the sensitive and confidential nature of the commercial information contained in the Fee Letter—including those portions of the Fee Letter that set forth certain fee

amounts and information about certain methodologies for calculating fees with respect to the proposed DIP Facility (the “**Commercial Information**”)—the Fee Letter obligates the Debtors to file a copy of the Fee Letter in a redacted manner in form and substance reasonably satisfactory to the DIP Agent.

BASIS FOR RELIEF

12. Pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, the Court may authorize the Debtors to file the Fee Letter under seal. Section 107(b) of the Bankruptcy Code is a codified exception to the general rule of access and protects entities from potential harm caused by the disclosure of confidential information. Specifically, section 107(b) provides, in relevant part:

- (b) 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).

13. Bankruptcy Rule 9018 and Local Rule 9018-1 establish the procedure by which a party in interest may obtain a protective order authorizing the filing of a document under seal pursuant to section 107(b) of the Bankruptcy Code. Bankruptcy Rule 9018 provides, in relevant part:

On any motion or its own initiative, with or without notice, the court may make any order which justice requires . . . 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; *accord* Del. Bankr. L.R. 9018-1(b).

14. Once a court determines that a party in interest is seeking protection of information that falls within one of the categories enumerated in section 107(b) of the Bankruptcy Code, “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).

15. Courts have held that protection under section 107(b) must be granted if the information sought to be protected is “commercial information,” which need not rise to the level of a trade secret to be entitled to protection. *See, e.g., Orion Pictures*, 21 F.3d at 28 (finding that the use of the disjunctive in section 107(b)(1) “neither equates ‘trade secret’ with ‘commercial information’ nor requires the latter to reflect the same level of confidentiality as the former”). Furthermore, in contrast with 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.” *Id.* Nor does section 107(b) of the Bankruptcy Code require a finding of “extraordinary circumstances or compelling need.” *Id.* at 27.

16. Rather, a party seeking the protection of section 107(b) need only demonstrate that the information is “confidential” and “commercial” in nature. *Id.* at 27; *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) (recognizing 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”). Once it is established that the subject information qualifies as “commercial information” under section 107(b)(1), the Bankruptcy Code mandates that this information be protected from disclosure. *See id.*

RELIEF SHOULD BE GRANTED

17. Cause exists to redact the Commercial Information, including fees and certain other commercial information contained in the Fee Letter, because such information constitutes “commercial information” within the meaning of section 107(b) of the Bankruptcy Code, insofar

as it concerns the terms of a private, confidential commercial contract between the Debtors and the DIP Agents that contains sensitive information relating to pricing. Indeed, by its own terms, the Fee Letter is confidential in nature. Further, in accordance with industry-wide customs, the DIP Agents treat information such as the Commercial Information as highly sensitive and generally do not make such Commercial Information available to competitor financial institutions, much less to the public.

18. If the Commercial Information were disclosed, such disclosure would cause harm to the Debtors and the DIP Agents. In fact, given the intense competition in the investment banking and lending industries, disclosure of the Commercial Information could heavily constrain the ability of the DIP Agents and its affiliates to negotiate their fees in future transactions, putting them at a strategic disadvantage relative to their competitors and causing commercial injury. Because debtor in possession financing is only a small fraction of all syndicated financings arranged by the DIP Agents, requiring them to disclose the Commercial Information in this context but not in others could have a “chilling effect” in this and future cases by discouraging the DIP Agents and other competitor institutions from agenting debtor in possession facilities on terms favorable to debtors. In that regard, the DIP Agents’ ability to maintain the confidentiality of their pricing methodology is paramount to its ability to provide postpetition financing to these and other chapter 11 debtors.

19. Based on the foregoing, absent protection of the Commercial Information, the DIP Agents would be placed at a competitive disadvantage, and the Debtors’ ability to obtain postpetition financing from the DIP Agents and the DIP Lenders could be undermined. Accordingly, maintaining the confidentiality of the Commercial Information set forth in the Fee

Letter enables the DIP Agents to remain competitive and willing to arrange and extend postpetition financing to these and other chapter 11 debtors.

20. To balance the need for confidentiality with disclosure, the Debtors' proposed redactions are limited in scope. The Debtors propose to redact only those terms and conditions that constitute the highly sensitive, commercial information regarding the specific terms and conditions that could reveal the DIP Agents' fees or its methodologies for calculating fees.

21. Courts in this district have granted similar requests to seal or redact portions of postpetition or exit financing documents—such as fees letters in connection with debtor in possession financing—and the commercial information contained therein. *See, e.g., In re Bumble Bee Parent, Inc.*, No. 19-12502 (LSS) (Bankr. D. Del. Nov. 25, 2019) [D.I. 71] (authorizing debtors to file under seal debtor-in-possession financing fee letters); *In re Hexion Holdings LLC*, No. 19-10684 (KG) (Bankr. D. Del. Apr. 29, 2019) [D.I. 227] (same); *In re CTI Foods, LLC*, No. 19-10497 (CSS) (Bankr. D. Del. Mar. 12, 2019) [D.I. 68] (same); *In re Checkout Holding Corp.*, No. 18-12794 (KG) (Bankr. D. Del. Jan. 17, 2019) [D.I. 221] (same); *In re ATD Corp.*, No. 18-12221 (KJC) (Bankr. D. Del. Oct. 9, 2018) [D.I. 136] (same); *In re Velocity Holding Co., Inc.*, No. 17-12442 (KJC) (Bankr. D. Del. Nov. 30, 2017) [D.I. 116] (same); *In re GST Autoleather, Inc.*, No. 17-12100 (LSS), (Bankr. D. Del. Oct. 5, 2017) [D.I. 72] (authorizing debtors to file under seal DIP financing commitment and fee letters).

22. Accordingly, the Debtors submit that good cause exists for the Court to grant them leave to file under seal and to redact those portions of the Fee Letter containing the Commercial Information.

23. The Debtors will provide an unredacted version of the Fee Letter to the Court pursuant to Local Rule 9018-1 and will provide an unredacted version of the Fee Letter, on a

confidential, professionals' eyes-only basis, to (a) the Office of the U.S. Trustee and (b) counsel to the official committee of unsecured creditors, if any, appointed in these Chapter 11 Cases (collectively, the "**Receiving Parties**"). In addition, consistent with Local Rule 9018-(d), a redacted version of the Fee Letter was separately filed on the Court's docket under a "Notice of Filing."

COMPLIANCE WITH LOCAL RULE 9018-1(d)

24. To the best of the knowledge, information, and belief of the undersigned proposed counsel to the Debtors, the Fee Letter contains commercial information subject to the Confidentiality Rights (as defined in Local Rule 9018-1(d)(iii)) of the DIP Agents. The undersigned proposed counsel to the Debtors and counsel to the DIP Agents have conferred in good faith and reached an agreement concerning what information contained in the Fee Letter must remain sealed.

NOTICE

25. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Internal Revenue Service; (c) the Securities and Exchange Commission; (d) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (e) the Office of the United States Attorney for the District of Delaware; and (f) counsel to the First Lien Agents and the DIP Agents (collectively, the "**Notice Parties**"). As this Motion is seeking "first day" relief, notice of this Motion and any order entered in connection with the Motion will be served on all parties as required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief in it, the Debtors respectfully submit that no further notice of this Motion is required.

NO PRIOR REQUEST

26. No previous request for the relief sought therein has been made to this Court or any other court.

CONCLUSION

WHEREFORE, the Debtors respectfully request that this Court enter the Proposed Order, substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: April 26, 2021
Wilmington, Delaware

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*Proposed Counsel for the Debtors and
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EXHIBIT A

Proposed Order

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

In re:

SECURE HOME HOLDINGS LLC, *et al.*,
Debtors.¹

Chapter 11

Case No. 21-10745 (xxx)

(Joint Administration Pending)

Related Docket No. _____

**ORDER PURSUANT TO 11 U.S.C. §§ 105 AND 107, FED. R. BANKR. P. 9018, AND
DEL. BANKR. L.R. 9017-1 AUTHORIZING THE DEBTORS TO FILE UNDER SEAL
OF THE PROPOSED DEBTOR IN POSSESSION FINANCING FEE LETTER**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an order, pursuant to sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, authorizing the Debtors to file under seal and to redact certain portions of the Fee Letter, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion 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 February 29, 2012; and consideration of the Motion 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 having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion; and this Court having held a hearing to consider the relief requested in the Motion;

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and upon the First Day Declaration and the record of the hearing; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Debtors are authorized, but not directed, pursuant to sections 105 and 107 of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rule 9018-1, to file those certain portions of the Fee Letter containing Commercial Information under seal and to redact such Commercial Information in the Fee Letter. The Commercial Information shall be filed under seal, shall remain confidential, and shall not be made available to anyone, other than as provided in Paragraph 4 of this Order, without further order of this Court.

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

3. In accordance with Local Rule 9018-1, the Debtors shall provide an unredacted version of the Fee Letter to the Court and shall provide an unredacted version of the Fee Letter to the Receiving Parties on a confidential, “professionals’ eyes only” basis.

4. Any party authorized, pursuant to this Order, to receive a copy of the unredacted Fee Letter, other than the Court or the Office of the United States Trustee for the District of Delaware, (a) shall confirm to the Debtors (which confirmation may be made via electronic email), prior to receiving a copy of the unredacted Fee Letter, that such party is bound by the terms of this Order and shall at all times keep the Commercial Information strictly confidential and shall not disclose the unredacted Fee Letter or the Commercial Information (or the contents thereof) to any

party whatsoever or (b) in the alternative, shall abide by any applicable nondisclosure or confidentiality agreement.

5. The Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

6. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.