

Douglas Mannal
Stephen M. Wolpert
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036
Phone: (212) 698-3500
Facsimile: (212) 698-3599
Email: douglas.mannal@dechert.com
stephen.wolpert@dechert.com

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re

BENITAGO INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-11394 (SHL)

(Jointly Administered)

***EX PARTE* MOTION TO FILE UNDER SEAL THE LIMITED OBJECTION AND
RESERVATION OF RIGHTS OF THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE
THEIR CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK
ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED
THERETO, (C) MAINTAIN EXISTING BANK ACCOUNTS AND UTILIZE EXISTING
BUSINESS FORMS, AND (D) CONTINUE TO PERFORM INTERCOMPANY
TRANSACTIONS, SUBJECT TO THE POSTPETITION ESCROW PROCEDURES; (II)
EXTENDING THE TIME TO COMPLY WITH, OR SEEK WAIVER OF 11 U.S.C.
SECTION 345(B), AND (III) GRANTING RELATED RELIEF**

The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the cases
(the "**Chapter 11 Cases**" or "**Cases**") in the United States Bankruptcy Court for the Southern

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's tax identification number, are: Benitago, Inc. (4084); Acrux LLC (9391); Aludra Limited (4147); Algedi LLC (3835); Biham LLC (4095); Canopus LLC (8124); Denebola LLC (5430); Errai LLC (7652); Felis LLC (4176); Ginan LLC (2439); Hamal LLC (1775); Izar LLC (6010); Jabbah LLC (0658); Kamuy LLC (8461); Lich LLC (2892); Maasym LLC (9332); Nusakan LLC (1861); Okab LLC (6499); Phact LLC (3663); Chechia LLC (N/A); Dalim LLC (4741); Segin LLC (8849); Taiyi LLC (N/A); Veritate LLC (6416); Wazn LLC (7193); Yildun LLC (3017); Bharani LLC (1732); Alhena LLC (7613); and Revati LLC (0170). The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

District of New York (the “**Court**”) of the above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), by and through the undersigned counsel, hereby submits this motion (the “**Sealing Motion**”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, 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 Procedures (the “**Bankruptcy Rules**”) and Rule 9018-1 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), granting leave to redact and file under seal certain commercially sensitive information (“**Redacted Information**”) included in the *Limited Objection and Reservation of Rights of the Official Committee of Unsecured Creditors to Debtors’ Motion for Entry of Interim and Final Orders (i) Authorizing the Debtors to (a) Continue to Operate Their Cash Management System, Including Existing Bank Accounts, (b) Honor Certain Prepetition Obligations Related Thereto, (c) Maintain Existing Bank Accounts and Utilize Existing Business Forms, and (d) Continue To Perform Intercompany Transactions, Subject to the Postpetition Escrow Procedures; (ii) Extending the Time to Comply With, or Seek Waiver of 11 U.S.C. § 345(B), and (iii) Granting Related Relief* [Dkt. No. 74] (the “**Limited Objection**”). The Committee has filed a redacted version of the Limited Objection pending the Court’s review of the Sealing Motion and has provided unredacted copies of the Limited Objection to this Court and counsel to the Debtors contemporaneously with this filing. In support of this Sealing Motion, the Committee respectfully states as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper pursuant to

28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a) and 107(b) of the Bankruptcy Code, Bankruptcy Rule 9018, and Local Rules 9018-1.

BACKGROUND

2. On August 30, 2023, each of the Debtors filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code in this Court. No trustee or examiner has been appointed in these Chapter 11 Cases.

3. On September 15, 2023, the Office of the United States Trustee for the Southern District of New York (the “**U.S. Trustee**”) appointed the Committee pursuant to section 1102(a) of the Bankruptcy Code [Dkt. No. 50].

4. In order to facilitate the production of confidential information and discovery materials, the Debtors, the Committee and other parties in interest are in the final stages of entering into a confidentiality agreement and protective order (the “**Proposed Protective Order**”), which will set forth procedures for designating discovery materials as either “Confidential” or “Highly Confidential” and limiting the use of such materials. The Proposed Protective Order will also govern the disclosure of Confidential and Highly Confidential materials in any pleadings and other filings made with the Court.

5. During the first week following its appointment, the Committee has agreed on an informal basis to receive from the Debtors certain materials that would be deemed either Confidential or Highly Confidential under the Proposed Protective Order. Pursuant to the informal agreement soon to be memorialized in the Proposed Protective Order, the Committee has filed a redacted version of the Limited Objection in the interest of maintaining the confidentiality of certain sensitive information contained therein.

BASIS FOR RELIEF

6. Under section 107(b)(1) of the Bankruptcy Code, a bankruptcy court may direct documents filed in connection with a motion to be filed under seal. Section 107(b)(1) provides, in relevant part, that “[o]n request of a party in interest, the bankruptcy court shall . . . protect an entity with respect to a trade secret or confidential research, development, or commercial information” 11 U.S.C. § 107(b)(1). Bankruptcy Rule 9018 and Local Rule 9018-1 further provide the procedures by which a party may seek relief pursuant to section 107(b)(1). Bankruptcy Rule 9018 states in relevant part: “On motion or on its own initiative, with or without notice, the court may make any order . . . 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. Given the broad language of section 107(b)(1), the “types of information that can be protected” are “unlimited” and not confined to the itemized list in section 107(b)(1). 2 COLLIER ON BANKRUPTCY ¶ 107.04[1] (2023). The Second Circuit has recognized that a party moving to seal certain information pursuant to section 107(b)(1) only has to show that such information is “confidential and commercial in nature,” and is not required to show “good cause” for the relief sought. *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994) (internal quotation marks omitted).

8. Here, the Redacted Information falls within the scope of commercial information subject to the protection described in section 107(b)(1) and Bankruptcy Rule 9018. Specifically, the Redacted Information contains sensitive commercial information about the Debtors’ budget and expenses. Courts have granted motions to seal commercial information of a kind that would have a “chilling effect on [business] negotiations, ultimately affecting the viability of Debtors.” *See, e.g., In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (alteration in original).

Publicly disclosing information about the Debtors' budget and expenses could cause "an unfair advantage to competitors by providing them information as to the commercial operations" of the Debtors, *In re Orion Pictures Corp.*, 21 F.3d at 28, and thereby harm the Debtors' ongoing sale and marketing process, which is crucial to the Debtors' successful restructuring.

9. Further, the Redacted Information is derived from materials that the Committee had received on a confidential basis pursuant to its informal agreement with the Debtors pending the finalization of the Proposed Protective Order in the coming days. The Committee is effectively bound by the Proposed Protective Order to file the Redacted Information under seal.

10. Based on the foregoing reasons, the Committee's request to file the Limited Objection under seal should be granted, as the Redacted Information contained therein constitutes commercial information within the meaning of section 107(b)(1) and requires protection.

NOTICE

11. Notice of this Sealing Motion shall be given to (i) counsel to the Debtors; (ii) counsel to SellersFunding International Portfolio Ltd.; (iii) counsel to CoVenture – Bento Credit Opportunities GP, LLC and CoVenture – Bento Credit Opportunities SPV, LP; (iv) the U.S. Trustee, and (v) any party that has requested notice pursuant to Bankruptcy Rule 2002.

NO PRIOR REQUEST

12. No prior request for the relief sought herein has been made by the Committee to this or any other court.

WHEREFORE, the Committee requests that the Court enter an order, substantially in the proposed form attached hereto, granting the relief requested herein and granting such other relief as is just and proper.

Dated: October 3, 2023
New York, New York

Respectfully submitted,

/s/ Douglas Mannal

Douglas Mannal
Stephen M. Wolpert
DECHERT LLP
1095 Avenue of the Americas
New York, NY 10036
Phone: (212) 698-3500
Facsimile: (212) 698-3599
Email: douglas.mannal@dechert.com
stephen.wolpert@dechert.com

*Proposed Counsel for the Official Committee of
Unsecured Creditors*

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In re:

BENITAGO INC., *et al.*,²

Debtors.

Chapter 11

Case No. 23-11394 (SHL)

Jointly Administered

ORDER AUTHORIZING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO FILE UNDER SEAL THE LIMITED OBJECTION AND RESERVATION OF RIGHTS TO DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING THE DEBTORS TO (A) CONTINUE TO OPERATE THEIR CASH MANAGEMENT SYSTEM, INCLUDING EXISTING BANK ACCOUNTS, (B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED THERETO, (C) MAINTAIN EXISTING BANK ACCOUNTS AND UTILIZE EXISTING BUSINESS FORMS, AND (D) CONTINUE TO PERFORM INTERCOMPANY TRANSACTIONS, SUBJECT TO THE POSTPETITION ESCROW PROCEDURES; (II) EXTENDING THE TIME TO COMPLY WITH, OR SEEK WAIVER OF 11 U.S.C. SECTION 345(B), AND (III) GRANTING RELATED RELIEF

Upon consideration of the *Ex Parte Motion to File Under Seal the Limited Objection and Reservation of Rights* (the "**Sealing Motion**") of the Official Committee of Unsecured Creditors (the "**Committee**");³ and this 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 Sealing 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 the Court having found that notice of the Sealing Motion was reasonable and sufficient under the circumstances, and the Court

² The last four digits of Benitago Inc.'s tax identification number are 4084. Due to the large number of debtors in these chapter 11 cases, a complete list of the debtor entities and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors' claims and noticing agent at <https://cases.stretto.com/benitago>. The location of the Debtors' service address for purposes of these chapter 11 cases is: 1 Liberty Street, Ste. 320, New York, New York 10006.

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

having determined that the legal and factual bases set forth in the Sealing Motion establish just cause for the relief granted herein; it is HEREBY ORDERED that:

1. The Sealing Motion is GRANTED.
2. The Committee is authorized to file the Limited Objection under seal.
3. The Redacted Information contained in the Limited Objection shall remain under seal until further order of this Court. The unredacted version of the Limited Objection shall not be made available to any party without the consent of the Committee and the Debtors.
4. This Order is without prejudice to the rights of any party in interest, or the U.S. Trustee, to seek to unseal the Limited Objection or any part thereof.
5. The Committee shall submit an unredacted copy of the Limited Objection to the Clerk of the Court under seal in an envelope, marked to indicate that the same has been filed under seal by order of this Court.
6. Upon the passing of forty-five (45) days after the final disposition of these Chapter 11 Cases, the Committee shall reclaim all documents filed under seal or, alternatively, the Office of the Clerk of the Court shall be authorized to destroy the documents in a manner consistent with the need to preserve confidentiality.
7. The Committee is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.
8. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation of this Order.

Dated: _____, 2023
New York, New York

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE