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

In re:	)	Chapter 11 Case
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	)	Case No. 09-50026 (REG)
Debtors.	)	(Jointly Administered)
MOTORS LIQUIDATION COMPANY	)	
AVOIDANCE ACTION TRUST, by and through	)	Adversary Proceeding
Wilmington Trust Company, solely in its capacity as	)	Case No. 09-00504 (REG)
Trust Administrator and Trustee,	)	
Plaintiff,	)	
vs.	)	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,	)	
Defendants.	)	

**MOTION OF CERTAIN TERM LOAN LENDERS PURSUANT TO SECTION 107(b) OF  
THE BANKRUPTCY CODE AND BANKRUPTCY RULE 9018 FOR LEAVE TO FILE  
CORPORATE OWNERSHIP STATEMENTS UNDER SEAL**

TO: THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE

Avery Point CLO, Limited; Chatham Light II CLO, Limited; Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Central Fund; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 1; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 2; FIAM Floating Rate High Income Commingled Pool (f/k/a Pyramis Floating Rate High Income Commingled Pool); FIAM High Yield Bond Commingled Pool (f/k/a Pyramis High Yield Bond Commingled Pool); FIAM High Yield Fund, LLC (f/k/a Pyramis High Yield Fund, LLC); Katonah III, Ltd.; Katonah IV Ltd.; Napier Park Distressed Debt Opportunity Master Fund Ltd. (f/k/a CAI Distressed Debt Opportunity Master Fund Ltd.); Nash Point CLO; Race Point II CLO, Limited; Race Point III CLO, Limited; Race Point IV CLO, Ltd.; and Sankaty High Yield Partners III Grantor Trust as successor in interest to Sankaty High Yield Partners III, L.P. (the "Moving Term Loan Lenders"), by and through their undersigned counsel, hereby submit this motion (the "Motion") pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the "Bankruptcy Code"), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") for leave to (1) redact the names of the business entities that own 10% or more of the equity interests in the Moving Term Loan Lenders, which constitute the Moving Term Loan Lenders' customers (the "Investors") or otherwise reveal the composition of the Moving Term Loan Lenders' owner base, in the corporate ownership statements required by Bankruptcy Rule 7007.1 and Local Bankruptcy Rule 7007.1-1 (the "Corporate Ownership Statements") filed publicly with the Court, and (2) file unredacted copies of such Corporate Ownership Statements with the Court

under seal in accordance with the procedures outlined in this Court's General Order 399. In support of the Motion, the Moving Term Loan Lenders respectfully state as follows:

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This proceeding is statutorily "core" under 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**BACKGROUND**

2. On July 31, 2009, the Official Committee of Unsecured Creditors of Motors Liquidation Company f/k/a General Motors Corporation (the "Committee") filed an *Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* [Adv. Dkt. No. 1].

3. On March 29, 2011, the Court entered an order confirming the Debtors' Second Amended Joint Chapter 11 Plan [Bankr. Dkt. No. 9941], at which time the Motors Liquidation Company Avoidance Action Trust (the "AAT") succeeded to the Committee's avoidance action claims.

4. On May 20, 2015, the AAT filed its *First Amended Adversary Complaint for (1) Avoidance of Unperfected Lien, (2) Avoidance and Recovery of Postpetition Transfers, (3) Avoidance and Recovery of Preferential Payments, and (4) Disallowance of Claims by Defendants* (the "Amended Complaint") [Adv. Dkt. No. 91].

5. On November 16, 2015, the Term Loan Lenders, including the Moving Term Loan Lenders, answered the Amended Complaint [Adv. Dkt. No. 241].

6. On November 18, 2015, the Court entered an order granting each Defendant thirty (30) days following the date of its initial response to the Amended Complaint to file its Corporate Ownership Statement [Adv. Dkt. No. 259].

7. The Court again extended Defendants' time to file Corporate Ownership Statements on December 28, 2015, setting January 20, 2016 as the deadline for doing so [Adv. Dkt. No. 338].

### **RELIEF REQUESTED**

8. By this Motion, the Moving Term Loan Lenders request that this Court enter an order, substantially in the form attached hereto as Exhibit A, pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, granting the Moving Term Loan Lenders leave to (1) redact the names of the business entities that own 10% or more of the equity interests in the Moving Term Loan Lenders in the Corporate Ownership Statements filed publicly with the Court, and (2) file unredacted copies of such Corporate Ownership Statements with the Court under seal.

### **BASIS FOR RELIEF REQUESTED**

9. Section 107(b) of the Bankruptcy Code provides that, upon the request of a party in interest, "the bankruptcy court shall . . . protect an entity with respect to," among other things, "confidential . . . commercial information" by permitting such information to be filed under seal. 11 U.S.C. § 107(b). Bankruptcy Rule 9018 implements the protection provided by section 107(b) by permitting the Court to "make any order which justice requires" to protect any entity "in respect of . . . confidential . . . commercial information." Fed. R. Bankr. P. 9018(1); *see also In re Global Crossing Ltd.*, 295 B.R. 720, 725 (Bankr. S.D.N.Y. 2003) ("The whole

point of [Rule 9018(1)] is to protect business entities from disclosure of information that could reasonably be expected to cause the entity commercial injury.”).

10. As the Second Circuit has observed, section 107(b) contains “no requirement to show ‘good cause’ as a condition to sealing confidential commercial information.” *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). That is because “if the information fits any of the specified categories [in § 107(b)], the court is *required* to protect a requesting interested party and has no discretion to deny the application.” *Id.*

11. The Moving Term Loan Lenders are thus entitled to file under seal information that is confidential and commercial in nature. *See id.*, 21 F.3d at 27.

12. The Moving Term Loan Lenders are investment entities that, together with an associated management company, are engaged in the business of investment management. The Moving Term Loan Lenders’ customers, such as the Investors, retain the services of the Moving Term Loan Lenders by purchasing, either directly or indirectly, interests in investment vehicles, such as the Moving Term Loan Lenders.

13. By this motion, the Moving Term Loan Lenders seek to limit access to a narrow type of confidential commercial information: the names of the business entities that own 10% or more of the equity interests in the Moving Term Loan Lenders. The Moving Term Loan Lenders’ business assumes and depends on maintaining the confidentiality of the makeup of their owner base.

14. The Moving Term Loan Lenders’ relationships and contacts with their customers, including the Investors, are among their most important assets. Disclosure of the Investors’ identities could expose them to solicitation by the Moving Term Loan Lenders’

competitors. Moreover, given the nonpublic nature of these investments and the privacy expectations of the Moving Term Loan Lenders' customers, disclosure of such sensitive, proprietary information could discourage the Investors (and other potential customers) from retaining the services of the Moving Term Loan Lenders and their affiliates. A customer's name, when intended to remain confidential, thus qualifies as commercial information, as its disclosure "would cause 'an unfair advantage to competitors by providing them information as to the commercial operations of the [party in interest].'" *Id.* (quoting *Ad Hoc Protective Comm. for 10 ½% Debenture Holders v. Itel Corp. (In re Itel Corp.)*, 17 B.R. 942, 944 (B.A.P. 9th Cir. 1982)).

15. Courts have recognized the imperative of protecting the identities of customers as commercially sensitive information.<sup>1</sup> Indeed, this Court has recently permitted interested parties to file their corporate ownership statements under seal for that very purpose, *see, e.g., Wilmington Trust, N.A. v. JPMorgan Chase Bank, N.A.*, 7:14-ap-08248, Dkt. No. 47 (Bankr. S.D.N.Y. 2014); *BOKF, NA v. JPMorgan Chase, Bank, N.A.*, 7:14-ap-08247, Dkt. No.

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<sup>1</sup> *See, e.g., In re A.G. Fin. Serv. Ctr., Inc.*, 395 F.3d 410, 415-16 (7th Cir. 2005) (affirming the bankruptcy court's refusal to order the debtor to turn over its customer list, which constituted confidential commercial information); *Hal Wagner Studios, Inc. v. Elliott*, No. 09-CV-0031, 2009 WL 854676, at \*4 (S.D. Ill. Mar 30, 2009) (granting a protective order covering, among other things, customer lists, which "obviously constitute confidential commercial information"); *Wyndham Vacations Resorts, Inc. v. Faucett (In re Faucett)*, 438 B.R. 564, 568 (Bankr. W.D. Tex. 2010) ("The screen shots thus contain information regarding specific Wyndham customers that could be of use to Wyndham competitors, to wit, information disclosing the identity of Wyndham customers. They thus ought to enjoy protections similar to those accorded customer lists, because they contain the kind of information that justifies protecting such lists."); *In re Meyrowitz*, No. 06-31660, 2006 WL 6544093, at \*3 (Bankr. N.D. Tex. 2006) ("[T]he names of potential [customers] constitute confidential commercial information entitled to protection from public disclosure under [section 107(b) of the Bankruptcy Code]."); *In re Northstar Energy, Inc.*, 315 B.R. 425, 430-31 (Bankr. E.D. Tex. 2004) (holding that a list of investors in the debtor's business qualified as confidential commercial information); *In re Frontier Grp., L.L.C.*, 256 B.R. 771, 774 (Bankr. E.D. Tenn. 2000) (sealing a physician list of a debtor that assigned doctors to temporary positions); *In re Nunn*, 49 B.R. 963, 964 (Bankr. E.D. Va. 1985) (restricting access to a creditor's customer list, which was considered confidential commercial information).

45 (Bankr. S.D.N.Y. 2014), as has the District Court in the analogous context of corporate ownership statements required under Federal Rule of Civil Procedure 7.1, *see, e.g., Cantona v. N.Y. Cosmos LLC*, 1:15-cv-03852, Dkt. No. 19 (S.D.N.Y. 2015).

16. Like customers' identities, courts have recognized the need to protect an organization's business strategies from disclosure. Indeed, in a competitive market like the investment management industry, "an entity's commercial information, its strategies, techniques, goals and plans can be its life blood." *Duracell Inc. v. SW Consultants, Inc.*, 126 F.R.D. 576, 578 (N.D. Ga. 1989). Here, disclosing the identify of investors in the Moving Term Loan Lenders—whether the investor is a customer or an affiliated entity—could reveal confidential information regarding those investors' and/or the Moving Term Loan Lenders' investment strategies. *See New York v. Actavis, PLC*, No. 14 Civ. 7473, 2014 WL 5353774, at \*3 (S.D.N.Y. Oct. 21, 2014) (stating that documents containing non-public strategies constitute confidential commercial information). Disclosure of such strategies risks subjecting the Moving Term Loan Lenders, their customers, and their affiliates to the sort of "commercial injury" that section 107(b) and Bankruptcy Rule 9018 were designed to prevent. *In re Global Crossing*, 295 B.R. at 725; *see also Washington v. Carco Grp., Inc.*, No. 1:15-cv-02127, Dkt. Nos. 9, 12 (S.D.N.Y. 2015) (permitting the defendant to file its corporate ownership statement under seal in part to keep confidential the identities of its affiliates).<sup>2</sup>

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<sup>2</sup> An entity need not be a party in interest to qualify for the protection afforded by section 107(b) and Bankruptcy Rule 9018. See 11 U.S.C. § 107(b)(1) ("On request of a party in interest, the bankruptcy court shall . . . protect *an entity* with respect to . . . commercial information.") (emphasis added); Fed. R. Bankr. P. 9018 ("[T]he court may make any order which justice requires . . . to protect the estate *or any entity* in respect of . . . commercial information . . .") (emphasis added); *see also In re EPIC Assocs. V*, 54 B.R. 445, 450 (Bankr. E.D. Va. 1985) (sealing information that, if disclosed, would harm not just the debtor's creditors but also non-connected financial institutions and the public, including depositors and taxpayers).

17. Finally, granting this Motion will not prejudice any of the parties to this proceeding. That is because the salient purpose of filing corporate ownership statements “is to place judges on notice of the financial affiliations of a nongovernmental corporate party that appears before them,” *Ha v. Deutsche Bank N.J. Servs., Inc.*, No. 03Civ.8180, 2005 WL 589408, at \*2 (S.D.N.Y. Mar. 11, 2005), thereby allowing them “to make an informed decision whether to disqualify by reason of having a financial interest in one of the parties to the adversary proceeding,” 10-7007.1 *Collier on Bankruptcy* ¶ 7007.1.01 (15th ed. 2015). Thus, by filing unredacted Corporate Ownership Statements under seal, the Moving Term Loan Lenders will satisfy the reason Bankruptcy Rule 7007.1 was enacted—namely, “to give the Judges of this Court information by which they can determine whether or not they need to recuse themselves.” S.D.N.Y. LBR 7007.1-1, comment; *accord Am. Produce, LLC v. Rivera (In re Rivera)*, Adv. No. 12-1327, 2013 WL 595538, at \*1 (Bankr. D. Colo. Feb. 15, 2013) (“[Rule] 7007.1 was instituted . . . to allow judges to determine whether they ha[ve] conflicts of interest requiring disqualification.”). And by filing redacted versions of the Corporate Ownership Statements on the public docket, the Moving Term Loan Lenders will comply with this Court’s preferred practice. *See In re Borders Grp., Inc.*, 462 B.R. 42, 47 (Bankr. S.D.N.Y. 2011) (“Redacting documents to remove only protectable information is preferable to wholesale sealing.”).

#### **NO PRIOR REQUESTS**

18. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Moving Term Loan Lenders respectfully request that the Court enter an order substantially in the form attached hereto as Exhibit A, authorizing the Moving Term Loan Lenders to (1) redact the names of the business entities that own 10% or



more of the equity interests in the Moving Term Loan Lenders in the Corporate Ownership Statements filed publicly with the Court, and (2) file unredacted copies of such Corporate Ownership Statements with the Court under seal; and granting such other and further relief as the Court deems just and proper.

Dated: January 20, 2016

Respectfully submitted,

/s/ Bruce Bennett

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*Attorneys for Term Loan Lenders as listed in  
Appendix A to the Answer [Dkt. No. 241]*

**EXHIBIT A**

**Proposed Order**

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

_____	)	
In re:	)	Chapter 11 Case
	)	
MOTORS LIQUIDATION COMPANY, <i>et al.</i> ,	)	Case No. 09-50026 (REG)
	)	
Debtors.	)	(Jointly Administered)
_____	)	
MOTORS LIQUIDATION COMPANY	)	
AVOIDANCE ACTION TRUST, by and through	)	Adversary Proceeding
Wilmington Trust Company, solely in its capacity as	)	
Trust Administrator and Trustee,	)	Case No. 09-00504 (REG)
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
JPMORGAN CHASE BANK, N.A., <i>et al.</i> ,	)	
	)	
Defendants.	)	
_____	)	

**ORDER GRANTING MOTION PURSUANT TO SECTION 107(b) OF THE  
BANKRUPTCY CODE AND BANKRUPTCY RULE 9018 FOR LEAVE TO FILE  
CORPORATE OWNERSHIP STATEMENTS UNDER SEAL**

Upon the motion dated January 20, 2016 (the “Motion”) of Avery Point CLO, Limited; Chatham Light II CLO, Limited; Fidelity Central Investment Portfolios LLC: Fidelity Floating Rate Central Fund; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 1; Fidelity Central Investment Portfolios LLC: Fidelity High Income Central Fund 2; FIAM Floating Rate High Income Commingled Pool (f/k/a Pyramis Floating Rate High Income Commingled Pool); FIAM High Yield Bond Commingled Pool (f/k/a Pyramis High Yield Bond Commingled Pool); FIAM High Yield Fund, LLC (f/k/a Pyramis High Yield Fund, LLC); Katonah III, Ltd.; Katonah IV Ltd.; Napier Park Distressed Debt Opportunity Master

Fund Ltd. (f/k/a CAI Distressed Debt Opportunity Master Fund Ltd.); Nash Point CLO; Race Point II CLO, Limited; Race Point III CLO, Limited; Race Point IV CLO, Ltd.; and Sankaty High Yield Partners III Grantor Trust as successor in interest to Sankaty High Yield Partners III, L.P. (the “Moving Term Loan Lenders”) pursuant to section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) for leave (1) to file the corporate ownership statements required by Bankruptcy Rule 7007.1 and Local Bankruptcy Rule 7007.1-1 (the “Corporate Ownership Statements”) in a partially redacted form, and (2) to file unredacted copies of such Corporate Ownership Statements with the Court under seal; and it appearing that the relief requested in the Motion is necessary to protect confidential commercial information of the Moving Term Loan Lenders; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED that the Motion is granted; and it is further

ORDERED that the Moving Term Loan Lenders are authorized to publicly file the Corporate Ownership Statements with the investors’ identities redacted; and it is further

ORDERED that the Moving Defendants are authorized to file unredacted copies of the Corporate Ownership Statements with the Court under seal pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, and such unredacted copies shall not be made available to anyone; and it is further

ORDERED that the terms and conditions of this Order shall be immediately effective and enforceable upon its entry; and it is further

ORDERED that the Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Order; and it is further

ORDERED that this Order is without prejudice to the rights of any party in interest, or to the Office of the United States Trustee, to seek to unseal the Corporate Ownership Statements of any part of them; and it is further

ORDERED that the Moving Term Loan Lenders shall unseal or dispose of any confidential information at the conclusion of this matter.

Dated: January \_\_\_\_, 2016

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THE HONORABLE MARTIN GLENN  
UNITED STATES BANKRUPTCY JUDGE