

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

In re:

REVA MEDICAL, INC.,

Debtor.¹

Chapter 11

Case No. 20-10072 (JTD)

**MOTION OF THE DEBTOR FOR THE ENTRY OF AN ORDER AUTHORIZING THE
DEBTOR TO FILE UNDER SEAL PORTIONS OF THE DEBTOR'S
CONSOLIDATED CREDITOR MATRIX CONTAINING
CERTAIN INDIVIDUAL CREDITOR INFORMATION**

REVA Medical, Inc. (“REVA” or the “Debtor”), by and through its proposed counsel, DLA Piper LLP (US), hereby submits this motion (the “Motion”) for entry of an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtor to file under seal portions of the Debtor’s consolidated creditor matrix (the “Matrix”) containing certain individual creditor personally identifiable information. In support of this Motion, the Debtor relies upon, and incorporates by reference, the *Declaration of Jeffrey Anderson in Support of Chapter 11 Filing and First Day Pleadings* (the “First Day Declaration”),² filed contemporaneously with this Motion. In further support of this Motion, the Debtor respectfully states as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over this chapter 11 case, the Debtor, property of the Debtor’s estate and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United*

¹ The last four digits of the Debtor’s tax identification number are (0505). The Debtor’s mailing address is 5751 Copley Drive, Suite B, San Diego, CA 92111.

² Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are sections 105(a) and 107(c) of title 11 of the United States Code (as amended, the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9018-1(d).

BACKGROUND.

5. The Debtor is a leading medical device company based in San Diego, California, focused on the development and commercialization of bioresorbable polymer technologies for three vascular applications – coronary artery disease (“CAD”), peripheral artery disease (“PAD”) and embolization therapy. Generally, scaffolds are inserted into blood vessels in order to expand the vessel and prevent blockage. Similarly, bioresorbable scaffolds are used to restore the flow of blood, support the artery through the healing process and then disappear from the body after a period of time.

6. Given the costs associated with the development and commercialization of its products, which are early in the commercialization stage, the Debtor has incurred significant operating losses since inception and relied on its ability to fund operations primarily through equity

and debt financings. Amid headwinds that have affected developers of bioresorbable scaffolds, REVA began working with its key stakeholders to identify a solution that would deleverage the balance sheet and recapitalize the company in order to position REVA for long-term growth.

7. Over the course of the last few months, REVA entered into arm's-length negotiations with key stakeholders, which negotiations resulted in the entry into a restructuring support agreement among the Debtor, Goldman Sachs International and certain of its affiliates, Senrigan Master Fund and certain affiliates of Elliott Management Corporation, pursuant to which the Debtor would implement the transactions (the "Restructuring") set forth in the *Prepackaged Chapter 11 Plan of REVA Medical, Inc.* (the "Plan"), filed contemporaneously herewith. The Debtor commenced solicitation of Plan on January 13, 2020. On the date hereof (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code to seek confirmation of the Plan and consummation of the Restructuring.

8. The Debtor continues to be in possession of its assets and to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtor's chapter 11 case. No date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

9. Additional factual background regarding the Debtor, including its business operations, capital and debt structures and the events leading to the filing of this chapter 11 case, is set forth in detail in the First Day Declaration, which is fully incorporated into this Motion by reference.

RELIEF REQUESTED

10. By this Motion, the Debtor seeks entry of an order authorizing portions of the Matrix to be filed under seal to protect certain creditors, principally employees and independent contractors, from being exposed to potential identity theft as a result of aggregating and making public certain personally identifiable information required or suggested by the Bankruptcy Code and the Bankruptcy Rules.

BASIS FOR RELIEF

11. Section 105(a) of the Bankruptcy Code codifies this 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).

12. Local Rule 9018-1(d) provides, in relevant part, that “[a]ny party who seeks to file documents under seal must file a motion to that effect.”

13. Section 107(c)(1) of the Bankruptcy Code enables this Court to issue orders that protect parties from the potential harm that could result from disclosing personally identifiable information:

The bankruptcy court, for cause, may protect an individual, with respect to the following types of information to the extent the court finds that disclosure of such information would create undue risk of identity theft or other unlawful injury to the individual or the individual’s property:

- (A) Any means of identification (as defined in section 1028(d) of title 18) contained in a paper filed, or to be filed, in a case under this title.
- (B) Other information contained in a paper described in subparagraph (A).

11 U.S.C. § 107(c)(1).

Further, with regard to the definition of “means of identification”:

The term “means of identification” means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, *including any—*

(A) name, social security number, date of birth, official State or government issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number....

18 U.S.C. § 1028(d)(7) (emphasis added).

14. The proper interpretation of these two statutes is two-fold. First, while transparency is important to the bankruptcy process, through the enactment of section 107(c)(1) of the Bankruptcy Code, Congress provided an exception to transparency and intended to protect innocent individuals from foreseeable injury. Second, the language of both statutes dictates that Congress intended for each statute to keep open channels for protecting additional information not enumerated; both sections set out non-exhaustive lists. Specifically, section 107(c)(1)(B) of the Bankruptcy Code allows for “other information” apart from “means of identification,” as defined in 18 U.S.C. § 1028(d)(7). Further, under such definition, Congress specifically included the phrase “including any” to illustrate the non-exhaustive nature of the list of items that follows. Accordingly, while an individual employee’s home address is not explicitly listed in the definition of “means of identification,” it most certainly is covered by the expansive language of both 11 U.S.C. § 107(c)(1)(B) and 18 U.S.C. § 1028(d)(7), especially when married with other information disclosed in the context of the Matrix and these chapter 11 cases.

15. Courts in this district frequently authorize this relief. Recently, in *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) [D.I. 221] (Bankr. D. Del. Dec. 4, 2018), Chief Judge Sontchi authorized the debtors to seal their employees’ home addresses, noting:

The issue is not one of morale; it is one of protection and protecting the identity of the employees.... [I]t becomes a balancing act: what are we trying to protect versus what are we trying to preserve. And certainly, preserving the transparency of a bankruptcy and the identity of the creditors being revealed is part of that.... [T]he other side of that, the risk to those employees, is quite high.

Transcript of Dec. 4, 2018 Hearing [D.I. 228], at 18:5–7, 19:7–10, 19:14–15.

16. The relief requested herein is regularly granted in this district. *See, e.g., In re Celadon Group, Inc.*, Case No. 19-12606 (KBO) [D.I. 57] (Bankr. D. Del. Dec. 11, 2019) (authorizing debtors to seal personal addresses of employees and independent contractors); *In re THG Holdings LLC*, Case No. 19-11689 (JTD) [D.I. 172] (Bankr. D. Del. Aug. 22, 2019) (authorizing the debtors to seal employee home addresses); *In re Pipeline-Westlake Hospital, LLC d/b/a/ Westlake Hospital*, Case No. 19-11757 (KBO) [D.I. 10] (Bankr. D. Del. Aug. 6, 2019) (same); *In re Acahogen, Inc.*, Case No. 19-10844 (BLS) [D.I. 206] (Bankr. D. Del. May 20, 2019) (same); *In re L.K. Bennett U.S.A, Inc.*, Case No. 19-10760 (KG) [D.I. 46] (Bankr. D. Del. Apr. 9, 2019) (same); *In re Searchmetrics, Inc.*, Case No. 17-11032 (CSS) [D.I. 27] (Bankr. D. Del. May 9, 2017) (authorizing the debtor to seal employee home addresses and customer names and contact information); *In re Triangle USA Petroleum Corp.*, Case No. 16-11566 (MFW) [D.I. 65] (Bankr. D. Del. July 5, 2016) (authorizing the debtor to seal employee home addresses); *In re Delivery Agent, Inc.*, Case No. 16-12051 (LSS) [D.I. 51] (Bankr. D. Del. Sept. 16, 2016) (authorizing the debtors to seal current and former employee home addresses).³

17. While there is a “strong presumption in favor of public access to judicial records and papers...”, *In re Cont’l Airlines*, 150 B.R. 334, 341 (D. Del. 1993), that presumption is substantially outweighed by the risk of identity theft or injury to innocent individual employees. *See also In re Avandia Mktg., Sales Practices & Prods. Liab. Litig.*, 924 F.3d 662, 672 (3d Cir. 2019) (finding that the presumption of access could be rebutted when the movant “show[s] ‘that the material is the kind of information that courts will protect and that disclosure will work a clearly

³ The referenced orders are voluminous in nature and, therefore, are not attached to this Motion; however, in accordance with Local Rule 7007-2, the Debtor’s proposed counsel has copies of each order and will make them available to this Court or to any party that requests them. Additionally, the orders are available on this Court’s CM/ECF PACER site at the cited docket numbers and on the dates specified above.

defined and serious injury to the party seeking closure” (quoting *Miller v. Ind. Hosp.*, 16 F.3d 549, 551 (3d Cir. 1994)); *Goldstein v. Forbes (In re Cendant Corp.)*, 260 F.3d 183 (3d Cir. 2001) (“Although the common law right to public access is a recognized and venerated principle, courts have also recognized the accompanying principle that ‘the right is not absolute.’” (quoting *Littlejohn v. BIC Corp.*, 851 F.2d 673, 678 (3d Cir. 1988))). The benefit of public access to the home addresses of the Debtor’s employees and independent contractors is limited, if existent at all, in the context of a bankruptcy case, when the Debtor’s address is readily available and the claims and noticing agent in these chapter 11 cases will maintain a separate, confidential mailing list for service to the employees and independent contractors at their residences for the benefit of all parties in interest desiring to serve employees and independent contractors with pleadings or notices in these chapter 11 cases. To publicly disclose each individual employee and independent contractor’s home address would create an undue risk of identity theft for those already grappling with working for a company in bankruptcy. Accordingly, despite the presumption in favor of public access, the privacy concerns at issue here tip the scales substantially towards sealing the home addresses of the Debtor’s employees and independent contractors.

18. For the foregoing reasons, the Debtor respectfully requests that this Court permit the Debtor to seal those portions of the Matrix containing the personal home address of current and former employees and independent contractors, with unsealed copies provided only to this Court and the Office of the United States Trustee for the District of Delaware.

NOTICE

19. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the parties included on the Debtor’s list of twenty (20) largest unsecured creditors; (iv) the Internal

Revenue Service; (v) the Securities and Exchange Commission; (ix) counsel to Goldman Sachs International, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Kevin Bostel, Esq.); (x) counsel to Elliott Management Corporation and its affiliates, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022 (Attn: Jasmine Ball, Esq); (xi) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (xii) any other party in interest entitled to notice of this Motion. As this Motion is seeking “first day” relief, notice of this Motion and any order entered in connection with this Motion will be served on all parties 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 Debtor respectfully submits that no further notice of this Motion is required.

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WHEREFORE, the Debtor respectfully requests that this Court (i) enter an order, substantially in the form attached hereto as **Exhibit A**, granting the relief requested in this Motion, and (ii) grant such other and further relief as this Court may deem just and proper.

Dated: January 14, 2020
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

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Proposed Counsel to the Debtor

EXHIBIT A

(Proposed Order)

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

In re:

REVA MEDICAL, INC.,

Debtor.¹

Chapter 11

Case No. 20-10072 (JTD)

Re D.I.:

**ORDER AUTHORIZING THE DEBTOR TO FILE UNDER SEAL PORTIONS OF THE
DEBTOR'S CONSOLIDATED CREDITOR MATRIX CONTAINING
CERTAIN INDIVIDUAL CREDITOR INFORMATION**

This matter coming before the court upon the *Motion of the Debtor for the Entry of an Order Authorizing the Debtor to File Under Seal Portions of the Debtor's Consolidated Creditor Matrix Containing Certain Individual Creditor Information* (the "Motion"),² filed by the above-captioned debtor (the "Debtor") for entry of an order (this "Order"), (i) authorizing the Debtor to file under seal portions of the Matrix containing certain personally identifiable individual creditor information and (ii) granting related relief; all as further described in the Motion; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and this Court having found that (i) this Court has jurisdiction over the Debtor, its estate, property of its estate and to consider the Motion and the relief requested therein under 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, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no

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² Capitalized terms used but not defined in this Order shall have the meanings ascribed to them in the Motion.

further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court (the "Hearing"); and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth in this Order.
2. Pursuant to sections 105(a) and 107(c) of the Bankruptcy Code and Local Rule 9018-1(d), the Debtor is authorized to seal that portion of the Matrix that contains the home addresses of all current and former employees and independent contractors of the Debtor.
3. The Matrix shall remain under seal and not made available to anyone, except that copies shall be provided to this Court, the Office of the United States Trustee for the District of Delaware, and others upon further Court order.
4. This Court will, and each other party receiving an unsealed copy of the Matrix shall, keep such information confidential.
5. To the extent any party provided with an unsealed copy of the Matrix files any responsive pleadings, such party shall redact from its pleadings any confidential or personally identifying information.
6. The claims and noticing agent in these chapter 11 cases shall maintain a separate, confidential mailing list for service to the Debtor's employees and independent contractors at their

respective residences for the benefit of all parties in interest desiring to serve the Debtor's employees and independent contractors with pleadings or notices in these chapter 11 cases.

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

8. The Debtor is hereby authorized to take all actions necessary to effectuate the relief granted in this Order.

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