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

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	:	
IN RE:	:	Chapter 11
	:	
ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
	:	
Debtors.	:	Jointly Administered
	:	
-----X	:	

**DEBTORS’ EX PARTE MOTION FOR ORDER AUTHORIZING
THE DEBTORS TO FILE STIPULATION AND AGREED ORDER FOR
TEMPORARY ALLOWANCE OF CLAIMS SOLELY FOR PURPOSES OF
VOTING ON THE DEBTORS’ JOINT CHAPTER 11 PLAN UNDER SEAL**

Arcapita Bank B.S.C.(c) (“*Arcapita*”) and certain of its affiliates (each, a “*Debtor*” and collectively, the “*Debtors*”) in the above-captioned chapter 11 cases (the “*Chapter 11 Cases*”), submit this motion (the “*Motion*”), on an *ex parte* basis, for an order pursuant to section 107(b) of title 11 of the United States Code (the “*Bankruptcy Code*”)¹ and Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”) authorizing the Debtors to (a) file redacted versions of the Stipulation and Agreed Order (the “*Stipulation*”) by and between the Debtors and certain claimants in the Chapter 11 Cases (collectively, the “*Claimants*”); and

¹ All statutory references are to the Bankruptcy Code unless otherwise specified.

(b) file unredacted copies of the Stipulation with the Court under seal. In support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

BACKGROUND

A. General Background

2. On March 19, 2012 (the “**Petition Date**”), Arcapita and five of its affiliates commenced cases under chapter 11 of the Bankruptcy Code. On April 30, 2012, Falcon Gas Storage Co., Inc. commenced a case under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

3. On April 5, 2012, the United States Trustee for Region 2 (the “**U.S. Trustee**”) appointed the official committee of unsecured creditors (the “**Committee**”) (Dkt. No. 60) pursuant to sections 1102(a) and (b) of the Bankruptcy Code.

4. On January 18, 2013, the Court entered its *Order Granting Debtors’ Motion for Entry of an Order pursuant to 11 U.S.C. § 105(a) and Fed. R. Bankr. P. 3007 Approving Claim Objection Procedures* (Dkt. No. 785) (the “**Claims Procedure Order**”).

5. On April 25, 2013, the Debtors filed the *Second Amended Joint Plan of Reorganization of Arcapita Bank B.S.C.(c) and Related Debtors Under Chapter 11 of the Bankruptcy Code* (Dkt. No. 1036) (as may be further amended or supplemented, the “**Amended Plan**”). The related disclosure statement (Dkt. No. 1038) was approved by the order entered by

this Court on April 26, 2013 (Dkt. No. 1045). The Debtors subsequently began soliciting votes for the Amended Plan pursuant to the procedures set forth in that order.

6. On April 26, 2013, the Debtors filed the *Debtors' Omnibus Objections to Claims* (Dkt. Nos. 1049-53) (the "***Omnibus Objections***"). Certain proofs of claim filed by the Claimants (the "***Filed Claims***") were subject to the Omnibus Objections.

B. The Stipulation

7. Through the Stipulation, the Debtors seek authority under Rule 3018(a) of the Federal Rules of Bankruptcy Procedure to enter into an agreement with the Claimants whereby the Filed Claims shall be temporarily allowed in reduced amounts against the applicable Debtor, solely for purposes of voting on the Amended Plan. The Claimants' temporarily allowed claims for voting purposes only and the amounts of such temporarily allowed claims (the "***Voting Claims***") are set forth on Schedule B to the Stipulation.

8. The Stipulation, by its terms, does not seek to prejudice either the Debtors' or the Claimants' rights and obligations under and pursuant to the Amended Plan, applicable bankruptcy and non-bankruptcy law and equitable principles as to the allowance or disallowance of the Filed Claims based on their merits.

RELIEF REQUESTED

9. By this Motion, the Debtors seek entry of an order pursuant to section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018, substantially in the form annexed hereto as ***Exhibit A***, authorizing the Debtors to: (a) file redacted versions of the Stipulation publicly with the Court; and (b) file unredacted versions of the Stipulation with the Court under seal.

10. This Motion seeks to protect a very limited set of information, namely the amounts of the Claimants' Voting Claims, listed on Schedule B to the Stipulation. Other relevant information in the Stipulation, including the nature and terms of the agreement reached between the Debtors and the Claimants, is described in full detail in the Stipulation and will not be redacted.

BASIS FOR RELIEF REQUESTED

11. Section 107(b) of the Bankruptcy Code provides, in relevant part, as follows: "On 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).

12. Bankruptcy Rule 9018 provides, in relevant part, as follows:

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 (emphasis added).

13. The Second Circuit has held that section 107(b) and Bankruptcy Rule 9018 do "not require that commercial information be the equivalent of a trade secret before protecting such information." *Video Software Dealers Assoc. v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 28 (2d Cir. 1994). In addition, the Second Circuit has held that a party seeking the sealing of information is only required to show that the information is confidential and commercial. No showing of "good cause" is necessary, although as set forth below, the Debtors here have demonstrated that good cause does exist. *Id.*

14. The amounts of the Voting Claims were determined partly by reference to the Claimants' relative economic interests in the claim against the Debtors common to all

Claimants. The relative economic interest of each Claimant is “confidential” and “commercial” in nature, and filing the Stipulation unredacted would publicly reveal such information to the detriment of the Claimants. That alone justifies sealing the amounts of the Voting Claims.

15. Lastly, upon information and belief, the Claimants are unwilling to enter into the Stipulation if the amounts of the Voting Claims (and thereby their relative economic interests with respect to the claim underlying the Filed Claims) are to be filed unredacted on the public docket. The Stipulation allows for a greater number of creditors to vote on the Amended Plan, and therefore advances their interests in the Chapter 11 Cases. It is in the best interest of the Debtors, the Debtors’ estates, and the Committee to file the Stipulation under seal in order to protect the amounts of the Voting Claims and enable the Stipulation to take effect.

16. Notwithstanding the filing of a redacted version of the Stipulation on the public docket, the Debtors will provide, if requested, the unredacted Stipulation to the Committee and the U.S. Trustee.

C. Conclusion

17. The Stipulation only affects the rights of the Claimants to vote on the Amended Plan. It does not impact the size or nature of the Debtors’ estate, the Filed Claims or ultimate recoveries on the Filed Claims, nor does it implicate the interests of any third parties. Accordingly, public disclosure of the amounts of each of the Voting Claims is not necessary to protect the interests of the Debtors’ creditors or the general public.

NO PRIOR REQUEST

18. No previous motion for the relief sought herein has been made to this or any other Court.

NOTICE

19. Advance notice of this Motion has not been given. Pursuant to Bankruptcy Rule 9018, the Court may “[o]n motion or on its own initiative, **with or without notice**” make any order which is required to protect trade secrets or confidential commercial information. (Emphasis added). Furthermore, due to the nature of the relief requested in this Motion, cause for *ex parte* relief has been shown pursuant to Rule 9077-1 of the Local Bankruptcy Rules for the Southern District of New York.

CONCLUSION

WHEREFORE, the Debtors respectfully request that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: New York, New York
May 20, 2013

Respectfully submitted,

/s/ Michael A. Rosenthal

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ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

EXHIBIT A

PROPOSED ORDER

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

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	:	
IN RE:	:	Chapter 11
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ARCAPITA BANK B.S.C.(c), et al.,	:	Case No. 12-11076 (SHL)
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**EX PARTE ORDER AUTHORIZING
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AGREED ORDER FOR TEMPORARY ALLOWANCE OF
CLAIMS SOLELY FOR PURPOSES OF VOTING ON
THE DEBTORS' JOINT CHAPTER 11 PLAN UNDER SEAL**

Upon consideration of the motion (the "*Motion*")¹ of Arcapita Bank B.S.C.(c) ("*Arcapita*") and certain of its subsidiaries and affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 Cases (collectively, the "*Debtors*" and each, a "*Debtor*"), for entry of an order pursuant to Bankruptcy Code section 107 and Bankruptcy Rule 9018, authorizing them to file the Stipulation under seal; it appearing that the relief requested in the Motion is appropriate in the context of the Chapter 11 Cases and in the best interests of the Debtors and their respective estates; the Court having reviewed the Motion and having considered the statements in support of the relief requested therein; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED:

1. The Motion is approved to the extent set forth herein.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

2. Pursuant to section 107(b) of the Bankruptcy Code, the Debtors are authorized to file redacted copies of the Stipulation, and to serve the redacted Stipulation on those parties entitled to notice under the Bankruptcy Code, Bankruptcy Rules or any other applicable order.

3. The clerk of the Bankruptcy Court shall accept for filing under seal unredacted copies of the Stipulation.

4. The unredacted Stipulation shall be available to the Court, but otherwise shall be kept under seal and may not be unsealed until and unless permitted by further order of the Court.

5. Notwithstanding any other provision of this Order, the Debtors shall be authorized to serve the unredacted Stipulation upon the Committee and the U.S. Trustee.

6. Any party who receives the unredacted Stipulation in accordance with this Order shall not disclose or otherwise disseminate such unredacted Stipulation, or any of the amounts of the Voting Claims set forth therein, to any other person or entity and shall keep the amounts of the Voting Claims confidential.

7. The unredacted Stipulation shall not be disclosed or further disseminated by the Clerk or any other party except upon further order of this Court.

8. Any pleadings filed in these Chapter 11 Cases that disclose the amounts of the Claimants' Voting Claims shall be filed with such information redacted, and the Clerk of the Bankruptcy Court shall be authorized to accept such filings, provided that unredacted copies of such pleadings shall be filed under seal and served as specifically authorized in this Order and redacted copies of such pleadings shall be served on those parties entitled to notice under the Bankruptcy Code, Bankruptcy Rules or any other applicable order.

9. This Order shall be immediately effective and enforceable upon its entry.

Dated: New York, New York
_____, 2013

THE HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

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