IT IS SO ORDERED.

Dated: March 4, 2025

Guy R. Humphrey
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

In re:	:	
MICHEAL G. LONG JENNIFER L. LONG,	:	Case No. 24-30074 Chapter 13 Judge Humphrey
Debtors.	:	

MEMORANDUM ORDER DENYING DEBTORS' AMENDED MOTION TO FILE UNDER TO SEAL (DOC. 59)

I. Introduction

Before the court is the Debtors' *Amended Ex Parte Motion to File Under Seal Debtors[']s Motion for Approval of Consumer Claim Settlement, Compensation of Special Counsel, and Distribution of Settlement Proceeds* (Doc. 59) (the "Amended Motion to Seal") filed on October 25, 2024 and the United States Trustee's *Objection to Amended Motion to File Under Seal* (Doc. 60) (the "Objection") filed in response on November 13, 2024. Upon review of the Debtors' Amended Motion to Seal and the United States Trustee's Objection, the court concludes that the Debtors have failed to establish a basis under 11 U.S.C. § 107(b) to seal the documents at issue. Therefore, the documents must be made available for public viewing on the court's docket.

II. Factual and Procedural Background

Michael G. Long and Jennifer L. Long (collectively, the "Debtors") filed a Chapter 13 petition on January 15, 2024. Doc. 1. In their schedules, the Debtors disclosed an interest in a cause of action against DebtBlue, LLC and Sky Bridge Financial, LLC (collectively, the "Defendants") under the Fair Credit Reporting Act ("FCRA"), which was pending in the United States District Court for the Southern District of Ohio, No. 23-02926 ("the District Court Litigation"). Doc. 1 at 14. In addition, the Debtors disclosed that the law firm of Luftman, Heck & Associates LLP, assisted by the Law Office of Brian M. Garvine, LLC as co-counsel, would be representing the Debtors in the District Court Litigation as special counsel. *Id.*

On August 9, 2024 the Debtors, through attorney David B. Schultz, sought court permission to employ Mr. Schultz and the law firms of Luftman, Heck & Associates LLP and the Law Office of Brian M. Garvine, LLC to represent Mr. Long and the bankruptcy estate in the District Court Litigation. In their *Application to Employ Special Counsel for Consumer/FCRA Claim* (Doc. 43) ("the Application") (Doc. 43), the Debtors explained, in part:

> 2. Prior to filing of their bankruptcy, the Debtors commenced a lawsuit in the Southern District of Ohio Case Number: 23-02926.
>
> 3. The Debtor claims against the Defendants in the above-referenced case involve violations of the Fair Credit Reporting Act.
>
> * * *
>
> 10. The reason for the selection of Luftman, Heck and Associates and the Law Office of Brian Garvine are their experience in consumer claims involving the Fair Credit Reporting Act violations.

Doc. 43 at 1-2, ¶¶ 2-3, 10. The court granted the Application on September 4, 2024. Doc. 44.

On October 16, 2024, the Debtors filed their *Ex Parte Motion to File Under Seal Debtors['] Motion for Approval of Consumer Claim Settlement, Compensation of Special Counsel, and Distribution of Settlement Proceeds* (Doc. 54) (the "Motion to Seal") and their

Motion for Approval of Consumer Claim Settlement, Compensation of Special Counsel, and Distribution of Settlement Proceeds (Doc. 55) (the "Settlement Motion"). Upon review of those filings, the court found the Motion to Seal to be deficient and entered an order providing, in part:

> On October 16, 2024 the Debtors, through Special Counsel, filed a motion captioned *Ex Parte Motion to File Under Seal Debtors Motion for Approval of Consumer Claim Settlement, Compensation of Special Counsel, and Distribution of Settlement Proceeds* (Doc. 54) (the "Motion to Seal"), which requests to file a Motion for Approval of Settlement under seal and for the court to grant the Motion to Seal ex parte and without notice. The Motion to Seal fails to contain any citation of authority for granting any such relief. In addition, the Motion to Seal fails to certify service on all parties who will be subject to the settlement agreement, including the Debtors, pursuant to Local Bankruptcy Rule 9013-3. The Debtors are not ECF participants and must be served with all papers and filings by either first class mail or hand delivery regardless of whether their counsel of record received electronic service through ECF. Further, from a review of the docket, the court notes that no counsel has appeared in this case on behalf of any party that may be subject to the settlement agreement and, therefore, any such parties must also be served by U.S. Mail.
>
> Upon review of the Motion to Seal, the court finds no basis to grant the requested relief ex parte and without notice to affected parties. Accordingly, the Debtors **shall have until and including October 31, 2024** to file an amended motion to seal which provides proper service and notice pursuant to LBR 9013-1 and LBR 9013-3, and contains an appropriate memorandum in support, specifically addressing whether it is appropriate under 11 U.S.C. § 107 to seal the Debtors' Motion for Approval of Settlement. See *In re Dillahunt*, No. 18-31788, 2022 Bankr. LEXIS 3591 (Bankr. S.D. Ohio Dec. 15, 2022).
>
> In the absence of an appropriate amended motion to seal, the court will deny all relief requested in the Motion to Seal.
>
> Further, the court will take no action with regard to any amended motion filed by the Debtors pursuant to this order until the applicable 21-day response period has expired.

Doc. 57 at 1-2.

The Debtors subsequently filed their Amended Motion to Seal on October 25, 2024 and indicated that Mr. Long filed a complaint against the Defendants in the District Court Litigation on September 11, 2023. Doc. 59 at 2. The District Court Litigation "alleged violations of the Fair Credit Reporting Act and other consumer protections involving improper use of [Mr. Long]'s

private consumer data from his credit report." *Id.* According to the Debtors, the parties have agreed to resolve the District Court Litigation. *Id.*

The Debtors argue that the Settlement Motion and its accompanying settlement agreement contain confidential commercial information that "could rise to the level of a trade secret." *Id.* at 3. Specifically, the Debtors allege that upon review of the settlement agreement, "one would be able to conclude how Defendant, DebtBlue, LLC obtains protected information under the FCRA by using another Defendant as its proxy to that data." *Id.* The Debtors also contend that "the settlement agreement references other companies that were possibly involved in the marketing method but not named defendants in the underlying action." *Id.* Additionally, the Debtors suggest that "[d]isclosure of the settlement agreement through a public court filing would allow their competitors to gain a thorough understanding of Defendants' marketing techniques that would otherwise be unavailable to their competitors." *Id.* The Debtors assert that "[t]his information, the relationships between the entities involved, and their techniques/practices is clearly confidential information, and likely rises to the level of a trade secret[.]" *Id.* Lastly, the Debtors claim that the parties to the settlement agreement have agreed to a confidentiality clause that permits disclosure only to the "Debtors['] bankruptcy counsel, Trustee, and Bankruptcy Judge." *Id.* As such, the Debtors argue that the Settlement Motion and settlement agreement should be sealed pursuant to 11 U.S.C. § 107(b)(1) and Federal Rule of Bankruptcy Procedure 9018. *Id.*

The United States Trustee ("UST") objected to the Debtors' Amended Motion to Seal on November 13, 2024. Doc. 60. According to the UST, the Amended Motion to Seal should be denied for two reasons: "(1) the Debtors have not shown that the limited exceptions to the strong presumption in favor of public access to records apply; and (2) even if an exception does apply,

the relief sought—sealing the entire motion to compromise, which includes a request for compensation—is not sufficiently tailored." *Id.* at 1. First, the UST contends that the Debtors have failed to provide evidence in support of its assertions related to how the settlement agreement would reveal confidential commercial information or marketing techniques pertaining to the Defendants in the District Court Litigation. *Id.* at 4. In the alternative, the UST argues that "even if such information were discernible in the settlement agreement, it is far from clear that it would rise to the level of information that is 'so critical to [Defendants'] operations' or would 'unfairly advantage' Defendants' competitors." *Id.*

Second, the UST alleges that even if the court were to find that the settlement agreement contains confidential commercial information subject to protection, the requested relief is overbroad and contrary to the requirements of the Bankruptcy Code. *Id.* In particular, the UST argues that "[t]he Debtors' request to seal the entire Compromise Motion and its embedded request to approve compensation of special counsel is not narrowly tailored to protect whatever confidential commercial information might exist in the settlement agreement itself." *Id.* The UST asserts that "[c]reditors have a special interest in ensuring that any settlement regarding estate property is fair and equitable and that any compensation to be paid special counsel is reasonable and necessary." *Id.* at 4-5. To that end, the UST suggests that "[i]f the Court finds information subject to protection under § 107(b) exists in the settlement agreement, the Debtors or Defendants could simply redact any of those confidential provisions—while keeping the terms of and basis for the settlement open record." *Id.* at 5.

The court conduct a telephonic hearing on January 15, 2025. Doc. 66. At the oral argument, after a colloquy with counsel, the court ordered that the UST be permitted to review an unredacted copy of the Settlement Motion and the Settlement Agreement. Doc. 70. The UST

was required to keep those documents confidential. *Id.* Absent a settlement, the parties were required to file individual or joint status reports by February 12, 2025. *Id.* The UST filed its status report and indicated after a review of the Settlement Motion and Settlement Agreement that it found none of the information within those documents contains confidential commercial information that would justify sealing those documents under § 107(b) of the Bankruptcy Code. Doc. 80. Further, the UST concluded that there was nothing contained within the Settlement Motion that justified redaction. However, the UST agreed that personal identifiable information as to the Debtor, a partial social security number and partial birth date, could be redacted from the first page of the Settlement Agreement. *Id.* at 3. In addition, the UST agreed with the movants' request to redact the name of one of the legal counsel listed in paragraph 5(a) of the Settlement Agreement. *Id.* The UST also noted that some of the information the movants want redacted has been disclosed in the District Court litigation. *Id.*

The movants also filed a status report indicating that additional time for discussions with the UST would be productive (Doc. 81). The court gave the parties until February 28, 2025 to reach a settlement. The matter was not resolved by that date and the court took the matter under advisement.

Following a thorough review of the Debtors' Amended Motion to Seal and the Settlement Motion, including the settlement agreement between the parties to the District Court Litigation, UST's Objection, the parties' status reports, and consideration of the arguments at the telephonic hearing, this court finds the arguments by the UST to be meritorious. Despite the Debtors' claim that the Settlement Motion and settlement agreement would reveal confidential commercial information rising to the level of a trade secret under 11 U.S.C. § 107(b)(1), the Debtors have

failed to overcome the presumption of public access to the docket pursuant to 11 U.S.C. § 107(a). Therefore, as more fully explained below, the Amended Motion to Seal is denied.

III. Legal Analysis

A. Overview of Bankruptcy Code § 107 and Bankruptcy Rule 9018

With respect to the strong public policy favoring open access to court records, this court has previously recognized:

> The right of public access is rooted in the public's First Amendment right to know about the administration of justice. The public interest in openness of court proceedings is at its zenith when issues concerning the integrity and transparency of bankruptcy court proceedings are involved . . . .

Stone v. Kettering Adventist Healthcare (*In re Stone*), 587 B.R. 678, 681 (Bankr. S.D. Ohio 2018) (quoting *Motors Liquidation Co. Avoidance Action Trust v. JP Morgan Chase Bank, N.A.* (*In re Motors Liquidation Co.*), 561 B.R. 36, 41 (Bankr. S.D.N.Y. 2016)). "In bankruptcy matters, Congress has codified a strong presumption in favor of public access to all papers filed therein[.]" *In re Thomas*, 583 B.R. 385, 390 (Bankr. E.D. Ky. 2018). In general, 11 U.S.C. § 107(a) provides that "a paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." 11 U.S.C. § 107(a). However, § 107(b) carves out two exceptions to the general rule:

> 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; or
> > (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

11 U.S.C. § 107(b)(1). Section 107(c)(1) provides a third exception, under which the bankruptcy court may restrict public access to filings containing personal identifiers and other such 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." 11 U.S.C. § 107(c)(1).

Federal Rule of Bankruptcy Procedure 9018 operates in conjunction with § 107 and provides:

> (a) In General. On motion or on its own, the court may, with or without notice, issue any order that justice requires to:
>
> (1) protect the estate or any entity regarding a trade secret or other confidential research, development, or commercial information;
>
> (2) protect an entity from scandalous or defamatory matter in any document filed in a bankruptcy case; or
>
> (3) protect governmental matters made confidential by statute or regulation.
>
> (b) Motion to Vacate or Modify an Order Issued Without Notice. An entity affected by an order issued under (a) without notice may move to vacate or modify it. After notice and a hearing, the court must rule on the motion.

Fed. R. Bankr. P. 9018.

Section 107 governs public access to bankruptcy court records, thus superseding common law rules. See *In re Dillahunt*, No. 18-31788, 2022 Bankr. LEXIS 3591, at *8 (Bankr. S.D. Ohio Dec. 15, 2022) (citing *Gitto v. Worcester Telegram & Gazette Corp.* (*In re Gitto Global Corp.*), 422 F.3d 1, 8 (1st Cir. 2005)); *Neal v. Kansas City Star* (*In re Neal*), 461 F.3d 1048, 1053 (8th Cir. 2006); *Father M. v. Various Tort Claimants* (*In re Roman Catholic Archbishop*), 661 F.3d 417, 431 (9th Cir. 2011); *Phar-Mor, Inc. v. Defendants Named Under Seal* (*In re Phar-Mor, Inc.*), 191 B.R. 675, 679 (Bankr. N.D. Ohio 1995). "The statutory framework of § 107 has been described as imposing stricter requirements for sealing court records than the fairly rigorous standard applied by the common law." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *9 (citing *Father M.*, 661 F.3d at 430; *Woody Partners v. Maguire* (*In re One Jet, Inc.*), 630 B.R. 761, 763-64 (Bankr. W.D. Pa. 2021)). "Unlike the common law, which permits a court to exercise its

'supervisory power' and seal documents 'when justice so requires,' section 107 *expressly limits* the circumstances under which the Court may restrict public access." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *9-10 (second emphasis added) (quoting *Woody Partners*, 630 B.R. at 764).

B. Applicability of § 107 to the Settlement Motion and Settlement Agreement

Here, the sole issue is whether the Settlement Motion and the accompanying settlement agreement qualify as "commercial information" under § 107(b)(1). As the party seeking protection under § 107(b), the Debtors "ha[ve] the burden of proving that the information should be protected." *Thomas*, 583 B.R. at 391 (quoting *In re Waring*, 406 B.R. 763, 768 (Bankr. N.D. Ohio 2009)). The court further notes that "parties' broad statements regarding their desire for confidentiality is not a basis to seal the records at issue from public view." *Id.*

The Debtors ask the court to seal the Settlement Motion and settlement agreement as the settlement agreement contains information that "would disclose confidential commercial information and could rise to the level of a trade secret." Doc. 59 at 3. In particular, the Debtors allege that a review of the settlement agreement could reveal "how Defendant, DebtBlue, LLC obtains protected information under the FCRA by using another Defendant as its proxy to that data." *Id.* The Debtors argue that this confidential commercial information, the relationships between the entities involved, and their techniques and practices "likely rises to the level of a trade secret[.]" *Id.* As such, the parties specifically included a confidentiality clause in the settlement agreement, carving out an exception for only the Debtors' bankruptcy counsel, the Trustee, and the bankruptcy judge. *Id.*

"'Commercial information' has been defined as information which would cause an unfair advantage to competitors by providing them information as to the commercial operations of the debtor or another party." *Thomas*, 583 B.R. at 391 (cleaned up) (citing *In re Frontier Group,*

L.L.C., 256 B.R. 771, 773 (Bankr. E.D. Tenn. 2000)). *See also Togut v. Deutsche Bank AG* (*In re Anthracite Capital, Inc.*), 492 B.R. 162, 178 (Bankr. S.D.N.Y. 2013) (citing *In re Nw. Airlines Corp.*, 363 B.R. 704, 706 n.4 (Bankr. S.D.N.Y. 2007)) ("Information is not considered 'commercial' merely because it relates to business affairs."). In other words, "commercial information is information that is so critical to an entity's operations that disclosing the information will unfairly benefit that entity's competitors such that its disclosure must reasonably be expected to cause commercial injury." *Thomas*, 583 B.R. at 391 (cleaned up) (quoting *Waring*, 406 B.R. at 768-769).

Although the Amended Motion to Seal suggests that the Settlement Motion and settlement agreement contain the type of confidential information contemplated in *Thomas*, as well as § 107(b) and Rule 9018, the Debtors' arguments fall short. See Doc. 59 at 3. The Debtors have not established that the Settlement Motion and settlement agreement constitute "commercial information" subject to protection under § 107(b). In *Thomas*, the court denied a debtor's request to seal a settlement motion and settlement agreement unaccompanied by any evidence, such as an affidavit or otherwise, demonstrating that the documents at issue were subject to protection under § 107(b) as confidential "commercial information." 583 B.R. at 391. As such, the court in *Thomas* "ha[d] no evidentiary basis whatsoever upon which to conclude that the documents are entitled to protection." *Id.* Most courts agree that evidence is required to support the remedy of sealing. *Id.* at 391-92 (citing *In re Motors Liquidation Co.*, 561 B.R. at 43 ("Evidence—not just argument—is required to support the extraordinary remedy of sealing."); *In re Muma Servs. Inc.*, 279 B.R. 478, 485 (Bankr. D. Del. 2002) (stating that the movant on a motion to seal had "not provided any evidence that filing under seal outweighs the presumption of public access to court records. In the absence of any such evidence, we cannot conclude that

disclosure of the terms of the lease would cause harm."); *In re Found. for New Era Philanthropy*, Case No. 95-13729F, 1995 Bankr. LEXIS 2204, at *15-16, 1995 WL 478841, at *5 (Bankr. E.D. Pa. May 18, 1995) (denying motion to seal and noting that the debtor/movant failed to come forward with evidence to support its argument on a motion to seal that disclosure would cause harm)).

Like in *Thomas*, here the Debtors have not provided the court with any evidence demonstrating a need to restrict public access from the Settlement Motion and settlement agreement. Instead, the Debtors simply insist that a review of the settlement agreement could reveal "how Defendant, DebtBlue, LLC obtains protected information under the FCRA by using another Defendant as its proxy to that data." See Doc. 59 at 3. The court finds the Debtors' argument ambiguous, based on conclusory statements, and unsupported by any facts. Not only do the Debtors fail to substantiate this claim through evidence, but to the extent that the Debtors appear to suggest that any alleged illegal conduct by Defendant DebtBlue, LLC in connection to its access or use of information protected under the FCRA constitutes confidential commercial information or rises to the level of a trade secret, the court disagrees.

Notwithstanding the Debtors' clear burden, the court conducted an independent review of the Settlement Motion, including the accompanying settlement agreement, determining that the Settlement Motion lacks reference any discernable trade secrets, and instead appears to be a somewhat formulaic, garden variety settlement and mutual release. The court notes that "[s]ettlements are entitled to no greater protection than any other requests for relief from bankruptcy courts." *In re Oldco M Corp.*, 466 B.R. 234, 238 (Bankr. S.D.N.Y. 2012). See also *Geltzer v. Andersen Worldwide, S.C.*, 2007 U.S. Dist. LEXIS 6794, at *12-13, 2007 WL 273526, at *4 (S.D.N.Y. Jan. 30, 2007) (Lynch, J.) (noting that arguments that revealing the settlement

amount would disadvantage a party in other settlement negotiations is a "wan excuse for impinging on the public's right of access to judicial documents."). Further, the only companies referenced (excepting law firms involved in the litigation) are the named parties to the District Court Litigation. The court takes judicial notice that the docket for the District Court Litigation has been and continues to be on the public docket. Moreover, the two parties involved in this settlement with the Debtors' estate and the general allegations are also listed in the Debtors' schedules.

Furthermore, the court is not persuaded by the Debtors' argument that the parties desire to keep the settlement agreement confidential through the inclusion of a confidentiality clause. "Courts addressing similar arguments have consistently held that the inclusion of confidentiality terms in a settlement agreement is not in itself a sufficient basis for sealing documents or information under § 107." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *11 (citing *Thomas*, 583 B.R. at 392; *Anthracite Capital, Inc.*, 492 B.R. at 172). Although the court acknowledges that settlement agreements are favored within the Sixth Circuit and that confidentiality clauses are not uncommon, "[t]hese truisms, however, do not supplant the fact that only limited kinds of confidential records are entitled to protection under § 107(b), such as confidential "commercial information" under § 107(b)(1)." *Thomas*, 583 B.R. at 392. "Therefore, litigants may not rely on a mutual agreement to seal documents or confidentiality term when asking a court to seal documents." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *12. Thus, the Amended Motion to Seal is denied.

C. Restricting Public Access to Bankruptcy Settlement Records is Contrary to Bankruptcy Code Requirements

Lastly, the court agrees with the UST's proposition that restricting public access to the Settlement Motion and its embedded request to approve compensation of special counsel is

overbroad and contrary to the requirements of the Bankruptcy Code. Here, the Debtors are seeking to settle Mr. Long's pre-petition claim against the Defendants, which became property of the Debtors' bankruptcy estate. See 11 U.S.C. § 541(a). As a result, the court is required to "determine if the settlement is fair and equitable based on the facts of the case." *Thomas*, 583 B.R. at 387 (citing *In re Equine Oxygen Therapy Res., Inc.*, Case No. 14-51611, 2015 Bankr. LEXIS 900, at *5, 2015 WL 1331540, at *2 (Bankr. E.D. Ky. Mar. 20, 2015)). By extension, "[t]he public has a right to know the basis for the Court's decision" on the Settlement Motion. *Thomas*, 583 B.R. at 387. Similarly, "the need for that information to remain on the public docket continues so that the public may continually have the opportunity to observe the functions of the court." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *16.

And as the UST correctly states, Federal Rule of Bankruptcy Procedure 2002 requires a 21 days' notice to all creditors and parties in interest for a "hearing on approval of a compromise or settlement of a controversy" and for "a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds $1,000." Fed. R. Bankr. P. 2002(a)(3), (a)(6). Even if the Debtors had established that certain information in the Settlement Motion and settlement agreement are subject to sealing pursuant to § 107, "the sealing must be narrowly tailored to restrict from public view only the information appropriate for sealing." *Dillahunt*, 2022 Bankr. LEXIS 3591, at *16 (citing *Anthracite Capital, Inc.*, 492 B.R. at 180). Presently, the Debtors' request to seal the entirety of the Settlement Motion and settlement agreement is excessive and contrary to the requirements of the Bankruptcy Code.

IV. Conclusion

The Amended Motion to Seal does not meet the requirements for sealing court records under § 107. Accordingly, except for the two items to be redacted that are described in this order

and agreed to in the UST's status report (Doc. 80 at 2-3 (¶ 13.c. and d.), the Amended Motion to Seal is **denied,** and the documents must be made available for public viewing on the court's docket. Generally, Federal Rule of Civil Procedure 62, made applicable to bankruptcy matters pursuant to Federal Rule of Bankruptcy Procedure 7062, does not automatically apply in contested matters, such as this one. However, Federal Rule of Bankruptcy Procedure 9014 permits the court, in its discretion, to order that Rule 7062 be applied in a particular matter at any stage in the proceedings. As such, the court orders that execution of this order is stayed for 14 days following the entry of this order.

IT IS SO ORDERED.

Copies to:

Default List, Plus

Pamela Arndt, Office of The United States Trustee, 170 North High Street, Suite 200, Columbus, OH 43215 (Counsel for the United States Trustee)

Nathan Wheatley, Office of The United States Trustee, 170 North High Street, Suite 200, Columbus, OH 43215 (Counsel for the United States Trustee)

Edward H. Cahill, Office of The United States Trustee, 170 North High Street, Suite 200, Columbus, OH 43215 (Assistant United States Trustee)