

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

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL
ORDERS AUTHORIZING PROCEDURES TO MAINTAIN AND
PROTECT CONFIDENTIAL RESIDENT INFORMATION**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move this Court (the “**Motion**”) for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”), substantially in the forms attached hereto as Exhibit A and Exhibit B, pursuant to sections 105(a), 107, and 521(a)(1) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), and Rules 1007, 9018, and 9037 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), authorizing the implementation of procedures to protect confidential information of current and former residents of the Debtors (collectively, the “**Residents**”), and granting certain related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of Todd Topliff, President of Debtors, in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”) filed with the Court

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number are: American Eagle Delaware Holding Company LLC (4248), American Eagle Palmer Park LLC (d/b/a Lark Springs) (5908), American Eagle Tuskawilla LLC (d/b/a Palmetto Landing) (9489), American Eagle Leesburg AL LLC (d/b/a Vista Lake) (6258), American Eagle Brandon LLC (d/b/a Aldea Green) (6168), American Eagle Leesburg MC LLC (d/b/a Vista Lake) (7577), American Eagle Venice Island LLC (d/b/a Maris Pointe) (1695), American Eagle Titusville LLC (d/b/a Crescent Wood) (7210), American Eagle Island Lake LLC (d/b/a Cascade Heights) (1975), American Eagle Eau Gallie LLC (d/b/a Greenwood Place) (1483), American Eagle Owatonna AL LLC (d/b/a Timberdale Trace) (0555), American Eagle Hanceville LLC (d/b/a Monarch Place) (8173), American Eagle Ravenna LLC (d/b/a Vista Veranda) (9216), American Eagle Newark LLC (d/b/a Hearth Brook) (7125), American Eagle Kingston LLC (d/b/a Sycamore Springs) (4882), American Eagle Hendersonville LLC (d/b/a Red Cedar Glen) (3669), and American Eagle Pleasant Prairie LLC (d/b/a Robin Way) (9483). The Debtors’ mailing address is American Eagle Delaware Holding Company LLC, c/o American Eagle Lifecare Corporation, 3819 Hawk Crest Rd., Ann Arbor, MI 48103.

contemporaneously herewith. In further support of this Motion, the Debtors, by and through their undersigned counsel, respectfully represent as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion 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 as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). In accordance with Local Rule 9013-1(f), the Debtors consent to entry of a final order if it is determined that the Court lacks Article III jurisdiction to enter such final order or judgment absent consent of the parties. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 107, and 521(a)(1), and Bankruptcy Rules 1007, 9018, and 9037.

BACKGROUND

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Cases**”).

4. The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Chapter 11 Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

5. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Cases and no committees have yet been appointed.

RELIEF REQUESTED

6. By this Motion, the Debtors respectfully request entry of the Interim Order and Final Order authorizing the disclosure of “protected health information” and the implementation of procedures to protect such information of the Residents, as defined and required by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and its implementing regulations.

THE PROPOSED RESIDENT PRIVACY PROCEDURES

7. The Debtors are in the business of operating independent living, assisted living, and memory care facilities that provide, among other things, senior living services to individuals. Through their business, the Debtors have access to and receive “protected health information” and data relating to Residents, which the Debtors are required to confidentially maintain pursuant to HIPAA. Under Bankruptcy Code section 521(a), the Debtors have a duty to list all creditors, including Residents, on the Debtors’ mailing matrices and bankruptcy schedules.

8. In an effort to comply with both federal statutes, the Debtors propose the following procedures to maintain confidentiality during the pendency of the Chapter 11 Cases (the “**Privacy Procedures**”):

- a. The Debtors shall omit any reference to current or former Residents from the consolidated list of creditors and from any certificate of service, subject to section (d) below;
- b. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain (i) a separate creditor matrix of the Residents (the “**Resident Matrix**”), and (ii) separate schedules of claims that may be asserted by and against the Residents (the “**Resident Schedules**”) and shall make the confidential Resident Matrix and Resident Schedules, or any portion thereof, available to any party in interest only after this Court has entered an order, after notice and a hearing, authorizing the Debtors to do so;
- c. The Debtors are not required to file the Resident Matrix and the Resident Schedules in the format as required by the Local Rules for the United States Bankruptcy Court for the District of Delaware, but are permitted to file a

redacted version of the Resident Schedules that redacts the names and addresses of the Residents and assigns a unique identification number to each of the Residents, provided, however, that the Resident Matrix and the Resident Schedules may be reviewed by (i) this Court, (ii) the Office of the United States Trustee, and (iii) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Resident Matrix and Resident Schedules to such party;

- d. If the Debtors' proposed noticing and claims agent, Epiq Corporate Restructuring, LLC (the "**Claims Agent**"), serves any document upon any person listed on the Resident Matrix, the Claims Agent is authorized to note in the certificate of service that the parties served include individuals listed on the Resident Matrix;
- e. To the extent any Resident discloses his or her own health information in any pleading, proof of claim, notice, or other publicly available document, the Debtors and their professionals shall, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule, or court order, include protected health information about the Resident in any subsequent pleading, notice, document, list, or other public disclosure made in connection with this Chapter 11 Case, and such disclosure shall not be deemed to be an "impermissible disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

BASIS FOR RELIEF REQUESTED

A. The Privacy Procedures Will Allow the Debtors to Protect Resident Information While Still Complying with the Requirements of the Bankruptcy Code

9. HIPAA and its implementing regulations (the "**HIPAA Rules**") impose stringent standards on health care providers and establish significant penalties for any HIPAA covered health care provider that impermissibly uses or discloses protected health information. *See* 42 U.S.C. § 1302d, *et. seq.* and 45 C.F.R. § 164.502.

10. In the event the Debtors qualify as health care providers that transmit health information in connection with a covered transaction, they are considered to be "covered entities" under 45 C.F.R. § 160.103. The HIPAA Rules prohibit the Debtors from using or disclosing, except in limited circumstances, protected health information. 45 C.F.R. § 164.502. The HIPAA Rules define "protected health information" as "individually identifiable health information"

transmitted or maintained by HIPAA covered entities. 45 C.F.R. § 160.103. Further, the HIPAA Rules define “individually identifiable information” as any information relating to the individual’s “past, present or future physical or mental health or condition, the provision of health care to the individual, or the past, present or future payment for the provision of health care to the individual” that also “identifies the individual or for which there is a reasonable basis to believe that the information can be used to identify the individual.” 42 U.S.C. § 1302d(6) and 45 C.F.R. § 160.103.

11. The Debtors could be subjected to significant monetary penalties for the unauthorized or impermissible use or disclosure of protected health information. 45 C.F.R. § 160.402.² Such penalties can be imposed even if a person “did not know and, by exercising reasonable diligence, would not have known” that a violation occurred. 45 C.F.R. § 160.404(b)(2)(i).

12. Under the HIPAA Rules, the Debtors must obtain the authorization of the individuals who are the subject of any protected health information or a court order to disclose information under the Bankruptcy Code, specifically with regard to the duty to file a list of all creditors under Bankruptcy Code section 521(a)(1)(A) and the duty to file schedules of all assets and liabilities under Bankruptcy Code section 521(a)(1)(B)(i). The Debtors therefore respectfully request that such protected health information be protected through the proposed Privacy Procedures herein pursuant to Bankruptcy Code section 107(c), which allows a bankruptcy court, for cause, to protect an individual if disclosure would create an undue risk of unlawful injury. 11 U.S.C. § 107(c); *see also* Bankruptcy Rule 9018 (allowing a bankruptcy court to protect governmental matters that are made confidential by statute or regulation).

² Under 45 C.F.R. § 160.404, monetary penalties of up to \$50,000.00 could be imposed for each violation, up to an aggregate of \$1,500,000 for identical violations occurring during a calendar year. 45 C.F.R. § 160.404(b)(2)(i)(A)-(B).

13. This Court may also approve the proposed Privacy Procedures under Bankruptcy Code section 105(a), which authorizes a court 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).

14. The Debtors believe that the relief requested herein appropriately balances the need to maintain confidential information under HIPAA with the need for adequate disclosure under the Bankruptcy Code. Given the nature of any information that may reveal even the identity of Residents, confidentiality in this context is of paramount importance. Moreover, bankruptcy courts in this jurisdiction and other jurisdictions have granted similar relief to protect confidential information. *See, e.g., In re Gulf Coast Health Care, LLC*, Case No. 21-11336 (KBO) Bankr. D. Del. Nov. 10, 2021) [Doc. No. 219]; *In re Promise Healthcare Group, LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Nov. 6, 2018) [Doc. No. 47]; *In re EBH TOPCO, LLC*, Case No. 18-11212 (BLS) (Bankr. D. Del. May 24, 2018) [Doc. No. 40]; *see also In re The Prospect-Woodward Home*, Case No. 21-10523 (BAH) (Bankr. D.NH Sept. 3, 2021) [Doc. No. 107]; *In re Amsterdam House Continuing Care Retirement Community, Inc.*, Case No. 21-71095 (AST) (Bankr. E.D.N.Y. June 17, 2021) [Doc. No. 42]; *In re 4 West Holdings, Inc., et al.*, Case No. 18-30777 (HDH) (Bankr. N.D. Tex. Mar. 9, 2018) [Doc. No. 55]; *In re ADPT DFW Holdings LLC*, Case No. 17-31432 (SGJ) (Bankr. N.D. Tex. May 19, 2017) [Doc. No. 212]; *In re Forest Park Medical Center at Southlake, LLC*, Case No. 16-40273 (RFN) (Bankr. N.D. Tex. Jan. 25, 2016) [Doc. No. 37].

NOTICE

15. Notice of this Motion has been or will be provided to: (a) the United States Trustee for the District of Delaware; (b) the holders of the thirty (30) largest unsecured claims on a consolidated basis against the Debtors; (c) counsel to the Bond Trustee and Master Trustee; (d) the Internal Revenue Service; (e) the United States Securities and Exchange Commission; (f) the Office of the United States Attorney for the District of Delaware; (g) the United States Centers for

Medicare & Medicaid Services; and (h) all parties entitled to notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

NO PRIOR REQUEST

16. No prior request for the relief sought herein has been made to this Court or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim Order and the Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, granting the relief requested herein and granting such other relief as is just and proper.

Dated: January 14, 2022
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona

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*Proposed Counsel to the Debtors and
Debtors in Possession*

Exhibit A

Interim Order

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

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

Re: Docket No. ____

**INTERIM ORDER AUTHORIZING PROCEDURES TO MAINTAIN AND
PROTECT CONFIDENTIAL RESIDENT INFORMATION**

Upon the motion (the “**Motion**”) of the Debtors for entry of an interim order (this “**Interim Order**”) authorizing the implementation of procedures to protect confidential information of current and former residents of the Debtors (collectively, the “**Residents**”), and granting certain related relief, all as further described in the Motion; the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. 157 and §§ 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having

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determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. All objections to the entry of this Interim Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors shall omit any reference to current or former Residents from the consolidated list of creditors and from any certificate of service, subject to section 6 of this Interim Order.
4. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain the Resident Matrix² and the Resident Schedules and shall make the confidential Resident Matrix and Resident Schedules, or any portion thereof, available to any party in interest only after this Court has entered an order, after notice and a hearing, authorizing the Debtors to do so.
5. The Debtors are not required to file the Resident Matrix and the Resident Schedules in the format as required by the Local Rules for the United States Bankruptcy Court for the District of Delaware, but are permitted to file a redacted version of the Resident Schedules that redacts the names and addresses of the Resident and assigns a unique identification number to each of the Residents, provided, however, that the Resident Matrix and the Resident Schedules may be

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

reviewed by (a) this Court, (b) the Office of the United States Trustee, and (c) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Resident Matrix and Resident Schedules to such party.

6. If the Debtors' proposed Claims Agent serves any document upon any person listed on the Resident Matrix, the Claims Agent is authorized to note in the certificate of service that the parties served include individuals listed on the Resident Matrix.

7. To the extent any Resident discloses his or her health information in any pleading, proof of claim, notice or other publicly available document, the Debtors and their professionals shall, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule or court order, include protected health information about the Resident in any subsequent pleading, notice, document, list or other public disclosure made in connection with these Chapter 11 Cases, and such use or disclosure shall not be deemed to be an "impermissible disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

8. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on, no later than seven (7) days prior to the commencement of the final hearing, (a) the Debtors, c/o American Eagle Delaware Holding Company LLC, 3819 Hawk Crest Rd, Ann Arbor, MI 48103; (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) counsel to Bond Trustee and Master Trustee, Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., 666 3rd Avenue, New York, NY 10017, Attn: Nathan F. Coco (nfcoco@mintz.com) and Megan M. Preusker (mpreusker@mintz.com); (d) counsel to the official committee of unsecured creditors, if one is appointed; and (e) the United States Trustee for the

District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov).

9. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

10. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Bankruptcy Rule of the District of Delaware that might otherwise delay the effectiveness of this Interim Order, the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

11. The final hearing (the “**Final Hearing**”) to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, 2022, at ____:____.m. Prevailing Eastern Time.

12. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Interim Order.

Dated: _____, 2022
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Final Order

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

In re:

American Eagle Delaware Holding Company
LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 22-____ (____)

(Jointly Administered)

Re: Docket Nos. __

**FINAL ORDER AUTHORIZING PROCEDURES TO MAINTAIN AND
PROTECT CONFIDENTIAL RESIDENT INFORMATION**

Upon the motion (the “**Motion**”) of the Debtors for entry of a final order (this “**Final Order**”) authorizing the implementation of procedures to protect confidential information of current and former residents of the Debtors (collectively, the “**Residents**”), and granting certain related relief, all as further described in the Motion; the Court having reviewed the Motion and the First Day Declaration, and the Interim Order dated _____, 2022; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. 157 and §§ 1334(b); and the Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C.

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§§ 1408 and 1409; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors shall omit any reference to current or former Residents from the consolidated list of creditors and from any certificate of service, subject to section 6 of this Final Order.
4. The Debtors, with the assistance of their professionals, are authorized to prepare and maintain the Resident Matrix² and the Resident Schedules and shall make the confidential Resident Matrix and Resident Schedules, or any portion thereof, available to any party in interest only after this Court has entered an order, after notice and a hearing, authorizing the Debtors to do so.
5. The Debtors are not required to file the Resident Matrix and the Resident Schedules in the format as required by the Local Rules for the United States Bankruptcy Court for the District of Delaware, but are permitted to file a redacted version of the Resident Schedules that redacts the names and addresses of the Resident and assigns a unique identification number to each of the Residents, provided, however, that the Resident Matrix and the Resident Schedules may be

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reviewed by (a) this Court, (b) the Office of the United States Trustee, and (c) any other party in interest that obtains, after notice and a hearing, an order directing the Debtors to disclose the Resident Matrix and Resident Schedules to such party.

6. If the Debtors' proposed Claims Agent serves any document upon any person listed on the Resident Matrix, the Claims Agent is authorized to note in the certificate of service that the parties served include individuals listed on the Resident Matrix.

7. To the extent any Resident discloses his or her health information in any pleading, proof of claim, notice or other publicly available document, the Debtors and their professionals shall, and to the extent required by the Bankruptcy Code, the Bankruptcy Rules, or any other applicable law, rule or court order, include protected health information about the Resident in any subsequent pleading, notice, document, list or other public disclosure made in connection with these Chapter 11 Cases, and such use or disclosure shall not be deemed to be an "impermissible disclosure" within the meaning of HIPAA or any regulation promulgated thereunder.

8. The Debtors are authorized to take all actions they deem necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

9. Notwithstanding any Bankruptcy Rule (including, but not limited to, Bankruptcy Rule 6004(h)) or Local Bankruptcy Rule of the District of Delaware that might otherwise delay the effectiveness of this Final Order, the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

10. This Court shall retain jurisdiction over any and all matters arising from the interpretation, implementation, or enforcement of this Final Order.

Dated: _____, 2022
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE