

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

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In re:	:	Chapter 15
	:	
GOLI NUTRITION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 24-10438 (LSS)
	:	
Debtors in a Foreign Proceeding.	:	Joint Administration Requested
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**MOTION OF PETITIONER FOR ENTRY OF AN ORDER (A) AUTHORIZING THE PETITIONER TO FILE THAT CERTAIN SUBSCRIPTION AGREEMENT AND AGENCY AGREEMENT UNDER SEAL AND (B) GRANTING RELATED RELIEF**

Deloitte Restructuring Inc., in its capacity as the court-appointed monitor and duly authorized foreign representative (in such capacity, the “Petitioner”), as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”), of Goli Nutrition Inc., a company incorporated in Quèbec, Canada (“Goli Canada”) and Goli Nutrition Inc., a company incorporated in Delaware (“Goli US,” together with Goli Canada, the “Debtors”), through its United States co-counsel, Landis Rath & Cobb LLP and Norton Rose Fulbright US LLP, respectfully submits this motion (this “Motion”)<sup>2</sup> for entry of an order, substantially in the form attached hereto as Exhibit A (the “Order”), pursuant to section 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure

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<sup>1</sup> The Debtors in these Chapter 15 cases, are: Goli Nutrition, Inc., a company incorporated in Québec, Canada and the last 4 digits of its Canadian business number is 0002; and Goli Nutrition Inc., a company incorporated in Delaware and the last 4 digits of its federal tax identification number is 2655. The Debtors are collectively managed from their corporate headquarters which are located at 2205 Boul. De la Côte-Vertu, suite 200, Montreal, Québec, Canada.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in either the *Petitioner’s Verified Petition under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief* or the *Declaration of [Noah Zucker] in Support of (A) Petitioner’s Verified Petition under Chapter 15 for Recognition of the Canadian Proceedings and Request for Related Relief, (B) Motion for Provisional Relief, and (C) Motion for Order Enforcing CCAA Vesting Orders or Petitioners’ Motion for Entry of an Order (I) Recognizing and Enforcing the RVO and the Atos Sale Order, (II) Approving the Sale Transactions Free and Clear of Liens, Claims, and Encumbrances, and (III) Granting Related Relief*, as applicable.

of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), (a) authorizing the Petitioner to file under seal (i) that certain Subscription Agreement (the “Subscription Agreement”) entered into by Goli Canada and an entity affiliated with a group that includes Group KPS (a healthcare company), Bastion Capital (an investment management firm), and one of the Debtors’ founders, and (ii) that certain Agency Agreement (the “Agency Agreement”) and together with the Subscription Agreement, the “Agreements”) entered into by the Debtors with Gordon Brothers Commercial & Industrial, LLC, on behalf of its contractual joint venture with Onyx Asset Advisors, LLC and Branford Auctions, LLC, containing commercially sensitive information (the “Confidential Information”) and (b) granting related relief. In support of the Motion, the Petitioner respectfully states as follows:

**JURISDICTION AND VENUE**

1. On March 19, 2024, the Petitioner commenced these chapter 15 cases as ancillary proceedings to the Canadian Proceedings pursuant to sections 1504, 1509 and 1515 of the Bankruptcy Code.

2. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334, 11 U.S.C. §§ 109 and 1501, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012.

3. Recognition of a foreign proceeding and other matters under chapter 15 of the Bankruptcy Code are core matters under 28 U.S.C. § 157(b)(2)(P).

4. The statutory bases for the relief requested herein are sections 107(b) of the Bankruptcy Code, rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9018-1(b) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

5. The Petitioner confirms its consent, pursuant to Bankruptcy Rule 7008 and Local Rule 9013-1(f) to the entry of final orders or judgments by the Court to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

6. Venue in this district is proper under 28 U.S.C. § 1410.

### **BACKGROUND**

7. A complete description of the Debtors and the events leading to the filing of the Canadian Proceedings (defined below) are set forth in the Petition.

8. On March 15, 2024, the Debtors filed an application (the “CCAA Initial Application”) with the Superior Court of Québec, sitting in the Commercial Division for the district of Montréal (the “Canadian Court”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) seeking the entry of an initial order (the “Initial Order”), a copy of which is annexed to the Petition as Exhibit E (the “Canadian Proceedings”). Pursuant to the Initial Order, which was issued by the Canadian Court on March 18, 2024, the Petitioner was appointed as monitor in the Canadian Proceedings and was authorized to apply to act as the “foreign representative” of the Debtors in connection with seeking cross-border approval of the Canadian Proceedings pursuant to Chapter 15 of the Bankruptcy Code.

9. The Debtors commenced the Canadian Proceedings in order to implement a restructuring centered around the transfer of the Debtors’ business and assets, which is to be effectuated through two transactions. In particular, following a sale investment solicitation process (a “SISP”) that took place prior to the commencement of the Canadian Proceedings, Goli Canada entered into the Subscription Agreement with an entity affiliated with a group that includes Group KPS (a healthcare company), Bastion Capital (an investment management firm), and one of the Debtors’ founders (collectively, the “Purchaser”) pursuant to which the Purchaser will subscribe

for new shares in Goli Canada (the “Subscribed Shares”) and effectively acquire 100% of the equity interest in Goli Canada in accordance with the terms and conditions of the Subscription Agreement. This transaction is intended to be approved and implemented under the CCAA pursuant to a reverse vesting order (the “RVO”). Pursuant to the RVO, certain excluded assets, contracts, and liabilities will be transferred or “vested” out of Goli Canada and transferred to a newly created “Residual Co.” that will replace Goli Canada as a debtor in the Canadian Proceedings. Accordingly, Residual Co. will replace Goli Canada as a debtor in the Chapter 15 case upon the closing of the Principal Transaction.

10. In addition, the Debtors have negotiated and finalized the terms of a second and separate transaction to implement the liquidation of the Atos Equipment. Specifically, the Debtors have entered into an Agency Agreement (as defined below), wherein the Agent has agreed to sell and auction the Atos Equipment (the “Atos Sale,” together with the Principal Transaction, the “Sale Transactions”) on behalf of the Debtors.

11. By the CCAA Initial Application, the Debtors requested entry of the RVO approving the sale of the Subscribed Shares pursuant to the Subscription Agreement. In addition, pursuant to the CCAA Initial Application, the Debtors requested entry of the Atos Sale Order approving the Agency Agreement, pursuant to which the Agent will sell the Atos Equipment.

12. The Initial Order provides for a broad stay of proceedings against the Debtors. In particular, for an initial ten-day period through and including March 27, 2024 (the “Stay Period”), “no proceeding or enforcement process in any court or tribunal (each, a “Proceeding”) shall be commenced or continued against or in respect of the [Debtors], or affecting the [Debtors’] business operations and activities (the “Business”) or the Property ... except with leave of this Court.”

13. The Canadian Court has scheduled a hearing for March 27, 2024 (the “Comeback Hearing”) to consider the Debtors’ request for an extension of the Stay Period and entry of an

amended and restated Initial Order. The Petitioner anticipates that the Canadian Court will also shortly schedule a hearing to consider approval of the Sale Transactions and entry of the CCAA Vesting Orders.

14. On March 19, 2024 (the “Petition Date”), the Petitioner commenced these chapter 15 cases under sections 1504, 1509, and 1515 of the Bankruptcy Code by the filing of a petition for recognition of the Canadian Proceedings under section 1515 of the Bankruptcy Code. On the same date, the Petitioner filed the *Petitioners’ Motion for Entry of an Order (I) Recognizing and Enforcing the RVO and the Atos Sale Order, (II) Approving the Sale Transactions Free and Clear of Liens, Claims, and Encumbrances, and (III) Granting Related Relief* (the “Sale Motion”). By the Sale Motion, the Petitioner seeks an order recognizing and enforcing the RVO and Atos Sale Order in the U.S. and granting related relief pursuant to section 363 of the Bankruptcy Code.

**RELIEF REQUESTED**

15. By this Motion, the Petitioner requests entry of the Order, substantially in the form attached hereto as Exhibit A, (a) authorizing the Petition to file the Agreements containing the Confidential Information under seal and (b) granting related relief.

**BASIS FOR RELIEF REQUESTED**

16. Bankruptcy Code section 107(b) authorizes the issuance of orders that protect parties from the potential harm resulting from the disclosure of confidential information. Specifically, section 107(b) states that “[o]n request of a party in interest, the bankruptcy court shall . . . (1) protect an entity with respect to a trade secret or other confidential research, development, or commercial information . . . .” Similarly, Bankruptcy Rule 9018 and Local Rule 9018-1 authorize the filing under seal of documents containing confidential information.

17. The Petitioner respectfully submits that the Confidential Information in the Agreements that it seeks to seal pursuant to this Motion is of a sensitive, confidential and

proprietary nature, and thus, is confidential commercial information as contemplated by section 107 of the Bankruptcy Code. “Commercial information” has been defined as “information which would result in an ‘unfair advantage to competitors by providing them with information as to the commercial operations of the debtor.’” *In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (quoting *Video Software Dealers Ass’n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Unlike its counterpart in rule 26(c) of the Federal Rules of Civil Procedure, section 107(b) of the Bankruptcy Code does not require an entity seeking such protection to demonstrate “good cause.” *In re Orion Pictures Corp.*, 21 F.3d at 28. If an interested party is requesting to seal information covered by section 107(b) of the Bankruptcy Code, “the court is required to protect a requesting party and has no discretion to deny the application.” *Id.* at 27. Moreover, the resulting order should be broad, that is “any order which justice requires.” FED. R. BANKR. P. 9018; *In re Global Crossing, Ltd.*, 295 B.R. 720, 724 (Bankr. S.D.N.Y. 2003). Courts are required to provide such protections, “generally where open inspection may be used as a vehicle for improper purposes.” *In re Orion Pictures Corp.*, 21 F.3d at 27. Indeed, the “authority goes not just to the protection of confidential documents, but to other confidentiality restrictions that are warranted in the interests of justice.” *In re Global Crossing, Ltd.*, 295 B.R. at 724.

18. In sale proceedings implemented under the CCAA, it is common practice that the underlying sale agreements are filed under seal pending closing of the transaction to protect sensitive, confidential information. *See* Zucker Declaration at ¶ 35. Generally speaking, Canadian courts find adequate notice is provided to creditors in an initial application’s summary of key terms seeking approval of the underlying sale or vesting order, and the monitor’s report filed in support thereof. *Id.* Consistent with these typical protocols, the initial application filed in the Canadian Proceedings provided a summary of key terms of the Sale Transactions and the Petitioner will be submitting a Monitor’s Report that contains a more detailed summary of the Sale Transactions.

19. The Canadian Court has deemed the Agreements worthy of protection from the public eye and has permitted the Debtors to seal the Agreements in the Canadian Proceedings. Indeed, as set forth in the Initial Order, a copy of which is attached to the Verified Petition at Exhibit D, the Canadian Court has held that the Agreements “contain sensitive information regarding the valuation of the Assets which are commercially sensitive and risk impacting the closing of the [Sale] Transaction[s].” *See* Initial Order at ¶ 85.

20. As the Canadian Court confirmed, if the Agreements were made public, it could disrupt the Debtors’ sale process, depress the value of the Debtors’ business to the ultimate detriment of the Debtors and their stakeholders and harm the purchasers’ businesses and operations.

21. The Petitioner submits that other parties-in-interest will not be prejudiced by the Confidential Information being redacted from the public record because such information has been sealed in the Canadian Proceedings and shall be disclosed in their entirety to the Court and the U.S. Trustee. Accordingly, the relief requested by this Motion to seal the Confidential Information is appropriate under section 107(b) of the Bankruptcy Code.

22. This Court has authorized parties in interest in other chapter 11 cases to file under seal confidential information in connection with other sale transactions. *See, e.g., In re FTX Trading Ltd., et al.*, Case No. 22-11068 (JTD) (Bankr. D. Del. Aug. 18, 2023) [D.I. 2205] (authorizing debtors to file certain schedules to settlement and stock exchange agreement under seal); *In re Mallinckrodt PLC, et al.*, Case No. 20-12522 (JTD) (Bankr. D. Del. Oct. 22, 2021) [D.I. 4930] (authorizing debtors to file purchase agreement and related information under seal); *In re Carbonlite Holdings LLC, et al.*, Case No. 21-10527 (JTD) (Bankr. D. Del. Jun. 22, 2021) [D.I. 650] (authorizing sealing of certain schedules to purchase agreement).

23. Therefore, the Petitioner submits for the reasons set forth herein that cause exists under section 107(b) of the Bankruptcy Code and Bankruptcy Rule 9018 for the Petitioner to file the Agreements containing the Confidential Information under seal, subject to disclosure to the Court and the U.S. Trustee.

**NOTICE AND NO PRIOR REQUEST**

24. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) all secured creditors of the Debtors in these cases; (c) all other known creditors of the Debtors in these cases; (d) the United States Food and Drug Administration; (e) the Debtors; and (f) all other parties that have requested notice in these cases pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, the Petitioner submits that no other or further notice need be provided.

25. No previous request for the relief sought herein has been made by the Petitioner to this or any other court.

**CONCLUSION**

WHEREFORE, for the reasons set forth herein, the Petitioner respectfully requests that the Court (a) enter the Order, substantially in the form attached hereto as Exhibit A, and (b) grant such other and further relief as is just and proper.

Dated: March 19, 2024  
Wilmington, Delaware

**LANDIS RATH & COBB LLP**

*/s/ Matthew R. Pierce*

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**Exhibit A**

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

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In re:	:	Chapter 15
	:	
GOLI NUTRITION INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 24-10438 (LSS)
	:	
Debtors in a Foreign Proceeding.	:	(Jointly Administered)
	:	
-----	X	Ref. No. ____

**ORDER (A) AUTHORIZING THE PETITIONER TO FILE THAT CERTAIN  
SUBSCRIPTION AGREEMENT AND AGENCY AGREEMENT UNDER SEAL AND  
(B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of Deloitte Restructuring Inc., in its capacity as the court-appointed monitor and duly authorized foreign representative (in such capacity, the “Petitioner”), as defined by section 101(24) of title 11 of the United States Code (the “Bankruptcy Code”), of Goli Nutrition Inc., a company incorporated in Québec, Canada, and Goli Nutrition Inc., a company incorporated in Delaware, (collectively, the “Debtors”), for entry of an order (this “Order”) authorizing the Petitioner to file the Agreements under seal; and this Court having jurisdiction to consider the Motion pursuant to 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; and this Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of these Chapter 15 Cases and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the

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<sup>1</sup> The Debtors in these Chapter 15 cases, are: Goli Nutrition, Inc., a company incorporated in Québec, Canada and the last 4 digits of its Canadian business number is 0002; and Goli Nutrition Inc., a company incorporated in Delaware and the last 4 digits of its federal tax identification number is 2655. The Debtors are collectively managed from their corporate headquarters which are located at 2205 Boul. De la Côte-Vertu, suite 200, Montreal, Québec, Canada.

<sup>2</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Bankruptcy Rules and the Local Rules, and that, except as otherwise ordered herein, no other or further notice is necessary; and objections (if any) to relief on the Motion having been withdrawn, resolved or overruled on the merits; and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and 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 THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Petitioner is authorized to file the Agreements containing the Confidential Information in Docket No. [\_\_\_\_\_] under seal.
3. Absent further order of the Court, the Agreements shall remain under seal and not be made available to anyone except for the Court and the U.S. Trustee.
4. The Petitioner may rely on this Order as needed in connection with the filing of the Agreements with respect to any other documents in connection with the Sale Transactions.
5. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.
6. The Petitioner is authorized and empowered to execute and deliver such documents, and to take and perform all actions necessary to implement and effectuate the relief granted in this Order.

7. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Motion or the interpretation or implementation of this Order.

Dated: \_\_\_\_\_, 2024  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge