

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION  
[www.flsb.uscourts.gov](http://www.flsb.uscourts.gov)

In re:  
TOUSA, INC., *et al.*,

Debtors.

OFFICIAL COMMITTEE OF UNSECURED  
CREDITORS OF TOUSA, INC., *et al.*

Plaintiff,

vs.

FALCONE/TEP HOLDINGS, LLC f/k/a  
FALCONE/RITCHIE LLC; INDEPENDENCE  
LAND DEVELOPMENT 23, LLC; LIVE OAK  
LANDBANK 2, LLC; NICKMATDAN  
LANDBANK, LLC; OAK CREEK LANDBANK  
LLC; WESTWOOD BERKSHIRE LANDBANK,  
LLC; WI 825 PARTNERS, LLC; KENDALL  
LAND DEVELOPMENT, LLC, AND VIZCAYA  
IN KENDALL COMMUNITY DEVELOPMENT  
DISTRICT,

Defendants.

Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 10-02125-JKO

**THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' EX PARTE MOTION  
TO FILE SECOND AMENDED ADVERSARY COMPLAINT UNDER SEAL**

The Official Committee of Unsecured Creditors of TOUSA, Inc., *et al.* (the “Committee”) hereby seeks, on an *ex parte* basis, entry of an Order, in substantially the form annexed hereto as Exhibit A, authorizing the Committee to (i) file the Committee’s Second Amended Adversary Complaint in the above-captioned adversary proceeding (the “Second

Amended Complaint”) under seal, and (ii) to file a redacted version of the Second Amended Complaint on the Court’s public docket. In support of this motion, the Committee respectfully represents and states as follows:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(a) and 1334.
2. Venue is proper in this Court pursuant to 28 U.S.C. § 1408.
3. The bases for the relief requested herein are section 107(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rule 9018 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 5003-1(D)(2) of the Local Rules of the United States Bankruptcy Court for the Southern District of Florida.

**Basis for Relief Requested**

4. A bankruptcy court may, upon request, “protect an entity with respect to a trade secret or confidential research, development, or commercial information,” 11 U.S.C. §107(b)(1).

Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b), providing that “[o]n motion or on its own initiative, with or without notice, the court may make any order which justice requires... 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.

5. Certain parties in interest in the chapter 11 cases have agreed to be bound by a Stipulated Protective Order entered by this Court on August 12, 2008 (Adv. Pro. # 08-10928- JKO D.E. #1591) (the “Protective Order”). The Protective Order permits producing parties to designate as “Confidential” or “Highly Confidential” materials that they consider confidential, proprietary or highly sensitive.

6. The Committee seeks to refer in the Second Amended Complaint to the information contained in documents designated by certain producing parties as Confidential or Highly Confidential. Accordingly, the Committee is obligated pursuant to the Protective Order to file the Second Amended Complaint under seal.

7. This court granted the Committee's motion to file the original Complaint in this action under seal on January 21, 2010 (Adv. Pro. # 08-10928-JKO D.E. #4410).

8. This court granted the Committee's motion to file the First Amended Adversary Complaint in this action under seal on July 7, 2010 (Adv. Pro. # 10-02125 -JKO D.E. #78).

9. Pursuant to this court's instruction on September 29, 2010, the Committee's Second Amended Complaint is due on October 13, 2010.

WHEREFORE for all of the reasons set forth above, the Committee respectfully requests entry of an Order, substantially in the form annexed hereto as Exhibit A, authorizing it to file the Second Amended Complaint under seal and granting further relief as the Court deems appropriate.

\* \* \*



## **Exhibit A**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
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OFFICIAL COMMITTEE OF UNSECURED  
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LLC; WI 825 PARTNERS, LLC; KENDALL  
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IN KENDALL COMMUNITY DEVELOPMENT  
DISTRICT,

Defendants.

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Chapter 11 Cases

Case No. 08-10928-JKO

Jointly Administered

Adv. Pro. No. 10-02125-JKO

**ORDER GRANTING THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS'**  
**EX PARTE MOTION TO FILE SECOND AMENDED ADVERSARY COMPLAINT**  
**UNDER SEAL**

Upon consideration of the motion dated October 11, 2010, by the Official Committee of Unsecured Creditors of TOUSA, Inc. et al. (the "Committee") for entry of an Order authorizing the Committee to file its Second Amended Adversary Complaint<sup>1</sup> under seal (the "Motion"), and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. §§1408 and 1409; and it appearing that the relief requested in the Motion is necessary pursuant to the Stipulated Protective Order entered by this Court on August 12, 2008 (Adv. Pro. # 08-10928-JKO D.E. #1591), under which the producing parties have designated certain information as confidential and sensitive commercial information; and due and proper notice of the motion having been provided and it appearing that no other or further notice need be provided; and after due deliberation and sufficient cause appearing therefore, it is **ORDERED** that:

1. The relief requested in the Committee's Motion is **GRANTED**.
2. The Committee is authorized to file the Second Amended Complaint with the Court under seal, and to file a redacted version of the Second Amended Complaint on the Court's public docket.

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Motion (as defined below).

3. The Committee shall provide complete and unredacted versions of the Second Amended Complaint to the United States Trustee, the Clerk of the Court, counsel to the Debtors, and counsel to the agents for the Debtors' first and second lien facilities.
4. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

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**Submitted by:**

**AKIN GUMP STRAUSS HAUER & FELD LLP**

Stephen M. Baldini (New York Bar No. 2428381)  
Daniel H. Golden (New York Bar No. 1133859)  
Philip C. Dublin (New York Bar No. 2959344)  
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*Co-Counsel to the Official Committee of Unsecured Creditors of TOUSA, Inc., et al.*

Copies to:

Jessica S. Budoff

*(Attorney Budoff shall upon receipt serve a copy of this Order upon all interested parties and file a certificate of service.)*