

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

In re:

SPORTCO HOLDINGS, INC., *et al.*,¹

Debtors.

Chapter 11

Case No. 19-11299 (LSS)

(Jointly Administered)

STIPULATED CONFIDENTIALITY AND PROTECTIVE ORDER

This Stipulation (the “Stipulation” or “Protective Order”) is entered into by and between the undersigned counsel, acting for and on behalf of their respective clients: (a) Wellspring Capital Management LLC, Wellspring Capital Partners IV, L.P., WCM GenPar IV, L.P., WCM GenPar IV GP, LLC, Alexander E. Carles, William F. Dawson, Jr., and John E. Morningstar (together, “Wellspring”), (b) the Official Committee of Unsecured Creditors in these chapter 11 cases (the “Committee”), (c) Bonitz Brothers, Inc., Ellett Brothers, LLC, Evans Sports, Inc., Jerry’s Sports, Inc., Outdoor Sports Headquarters, Inc., Quality Boxes, Inc., Simmons Guns Specialties, Inc., SportCo Holdings, Inc., and United Sporting Companies, Inc. (together, the “Debtors” and each a “Debtor”); and (d) Prospect Capital Corp. (“Prospect”); and Wellspring together with the Committee, the Debtors, and Prospect, the “Parties” and each a “Party.”

WHEREAS, on June 10, 2019, the Debtors commenced a voluntary case (the “SportCo Bankruptcy”) under chapter 11 of title 11 of the United States Code as amended in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court” or “Court”);

¹ The Debtors, together with the last four digits of each Debtor’s federal tax identification number are: Bonitz Brothers, Inc. (4441); Ellett Brothers, LLC (7069); Evans Sports, Inc. (2654); Jerry’s Sports, Inc. (4289); Outdoor Sports Headquarters, Inc. (4548); Quality Boxes, Inc. (0287); Simmons Guns Specialties, Inc. (4364); SportCo Holdings, Inc. (0355), and United Sporting Companies, Inc. (5758). The location of the Debtors’ corporate headquarters and the service address for all Debtors is 267 Columbia Ave., Chapin, SC 29036.

WHEREAS, some of the Parties have served or will serve other Parties with discovery requests seeking information in connection with confirmation of the Debtors' First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation filed on September 10, 2019 (Doc. 367) ("Plan Confirmation"), and any other filed plan of liquidation or reorganization subsequent to the Debtors' First Amended Combined Disclosure Statement and Joint Chapter 11 Plan of Liquidation ("Discovery Materials" are all documents and information provided by one or more Parties pursuant to such requests);

WHEREAS, the Parties have agreed that certain Discovery Materials be subject to a protective order, pursuant to Federal Rule of Bankruptcy Procedure 7026, Federal Rule of Civil Procedure 26 incorporated therein, and Rule 7026-1, 7026-2, and 7026-3 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, to protect the confidentiality of sensitive information; and

WHEREAS, the Parties have entered into this Stipulation and agreed to be bound by its terms;

NOW THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND UPON COURT APPROVAL HEREOF, IT IS ORDERED THAT:

1. Confidential Information. Any Party or third-party producing documents (the "Producing Party") to any Party (the "Receiving Party") pursuant to a document request or subpoena may designate as "Confidential" that portion of the Discovery Materials that it in good faith believes meets any of the criteria below, provided that Confidential information shall not include: information that is publicly available in substantially the same form in which it was provided; information that was, is or becomes public knowledge, not in violation of this Protective Order; information that is voluntarily de-designated by the Producing Party;

information rightfully acquired from an independent source without restrictions as to use; or information that is at any time independently developed by a Party without use of or reliance upon any Discovery Materials. Subject to these conditions and limitations, any Producing Party may designate as “Confidential” any information that the Producing Party reasonably believes in good faith contains or constitutes non-public personal, confidential or commercially sensitive information that requires the protections provided in this Stipulation, including, but not limited to, non-public information about employee compensation, tax data, or personal financial information; information constituting confidential research or business development; information kept confidential pursuant to law or regulation; information reasonably likely to cause undue harm to the reputation of, or embarrassment to, any individual; or financial, technical, or commercial information (all information designated as such, including the document itself as well as the information therein, the “Confidential Discovery Material”).

2. Highly Confidential Information. Any Producing Party may designate as “Highly Confidential” that portion of the Discovery Materials that it in good faith believes meets any of the criteria below, provided that “Highly Confidential” information shall not include: information that is publicly available in substantially the same form in which it was provided; information that was, is or becomes public knowledge, not in violation of this Protective Order; information that is voluntarily de-designated by the Producing Party; information rightfully acquired from an independent source without restrictions as to use; or information that is at any time independently developed by a Party without use of or reliance upon any Discovery Materials. Subject to these conditions and limitations, any Producing Party may designate as “Highly Confidential” any information that the Producing Party reasonably believes in good faith contains or constitutes (a) non-public proprietary information about a Party, (b) non-public

proprietary information about clients or customers of the Producing Party, including the banking activity of such clients or customers (c) any information protected from public disclosure pursuant to the Gramm-Leach-Bliley Act, 15 U.S.C. § 6801 et seq., or any other similar state or federal law regarding the protection of private customer information, and (d) any trade secret (all information designated as such, including the document itself as well as the information therein, the “Highly Confidential Discovery Material”).

3. Designation of Documents. A Producing Party may designate Discovery Materials as Confidential Discovery Material by applying the legend “Confidential” to each page containing any Confidential Discovery Material. A Producing Party may designate Discovery Materials as Highly Confidential Discovery Material by applying the legend “Highly Confidential” to each page containing any Highly Confidential Discovery Material. In the case of electronically stored information, the “Confidential” or “Highly Confidential” legend, if any, shall be printed on the cover or container of the disk, tape, or other medium in which the electronic form data is stored, and the “Confidential” or “Highly Confidential” legend shall be applied, by electronic means to each electronic document or other electronically stored information containing any Confidential or Highly Confidential Discovery Materials. The failure to designate a document as “Confidential” or “Highly Confidential” does not constitute a waiver of such claim, and a Producing Party may so designate a document after such document has been produced in accordance with paragraph 11 with the effect that such document is subject thereafter to the protections of this Stipulation. In the case of deposition transcripts, all transcripts will be treated in the same manner as Highly Confidential Discovery Material for a period of 5 days following the deposition. Within that 5-day period, the Party who defended the deposition or otherwise controls the confidentiality of the testimony (the “Defending Party”) will

send the other Parties a letter designating the portions of the transcript that are Highly Confidential or Confidential or stating that the entirety of the transcript is non-confidential (a “Designation Letter”). If the Defending Party fails to send a Designation Letter within the 5-day period following the deposition, anytime thereafter a Party may notify the Defending Party in writing that it failed to send a Designation Letter. The Defending Party shall have 1 business day, or alternatively, a mutually agreed upon date in excess of 1 business day, upon receipt of such written notice (the “Cure Period”) to send a Designation Letter to the other Parties. The transcript will be treated as Highly Confidential from the date of the deposition until receipt of the Designation Letter or expiration of the Cure Period, whichever occurs first. If the Defending Party fails to send a Designation Letter prior to the expiration of the Cure Period, the transcript will be treated as non-confidential pursuant to the terms of this Stipulation. The failure to designate a portion of a transcript as “Confidential” or “Highly Confidential” does not constitute a waiver of such claim, and a Defending Party may so designate testimony at a later date, with the effect that such testimony is subject thereafter to the protections of this Stipulation.

4. Treatment of Highly Confidential Information. Any information designated as “Highly Confidential Discovery Material” shall be maintained in confidence by any Receiving Party and shall be stored under the direct control of counsel of record who shall be responsible for preventing any disclosure not in accordance with this Stipulation. Provided that disclosure is not otherwise prohibited by this Stipulation, Highly Confidential Discovery Material shall only be disclosed to

- (a) Current employees, officers, or directors of the Party designating the information as Highly Confidential Discovery Material;
- (b) Outside counsel for the Parties, regardless of whether such outside

counsel has appeared as counsel of record;

(c) In-house counsel of a Party;

(d) Legal assistants, secretaries, staff or agents and consultants working with or for counsel referenced in (c) or (d) in connection with these chapter 11 cases;

(e) Litigation support services, including outside copying services;

(f) Persons expected to be deponents and hearing witnesses during Plan Confirmation and counsel to such persons, provided that counsel has a good-faith basis for believing that such witnesses had access to or knowledge of the Highly Confidential Discovery Material prior to receipt thereof, and provided that counsel ascertain as soon as practicable whether such witnesses had such access or knowledge, and provided that upon the first indication that such witnesses did not have such access or knowledge, counsel must immediately refrain from any further disclosure to such witnesses;

(g) Any person identified as an author of a document, or any person to whom a copy of such document was sent prior to its production in connection with Plan Confirmation;

(h) Court officials involved in Plan Confirmation;

(i) Court reporting personnel involved in taking or transcribing testimony in connection with Plan Confirmation;

(j) Any mediator or arbitrator engaged by the Parties in connection with Plan Confirmation, or appointed by the Court; and

(k) Outside consultants, financial advisors, or experts retained for the

purpose of assisting outside counsel of record who has appeared in the SportCo Bankruptcy on behalf of a Party.

5. Treatment of Confidential Information. Any information designated as “Confidential Discovery Material” shall be maintained in confidence by any Receiving Party and shall be stored under the direct control of counsel of record who shall be responsible for preventing any disclosure not in accordance with this Stipulation. Provided that disclosure is not otherwise prohibited by this Stipulation, Confidential Discovery Material shall only be disclosed to

(a) Parties or persons to whom Highly Confidential Discovery Material may be disclosed as set forth in paragraph 4;

(b) Current and former employees, officers, or directors of the Parties, any party that joins or is joined to the SportCo Bankruptcy that has satisfied the requirements of paragraph 13, provided that disclosure is reasonably necessary to the Plan Confirmation; and

(c) persons expected to be deponents and hearing witnesses at Plan Confirmation and counsel to such persons.

6. Inadvertently-Produced Material. In accordance with Fed. R. Civ. P.26(b)(5)(B) and Fed. R. Evid. 502(b), any inadvertent disclosure of document(s) shall not be deemed a waiver of, or prejudice to, any privilege or immunity with respect to such information or document(s) or of any work product doctrine or other immunity that may attach thereto, including without limitation the attorney-client privilege and the work product doctrine, provided that the Producing Party notifies the Receiving Party in writing promptly after discovery of such inadvertent production. All copies of such document(s) shall be returned to the Producing Party

or destroyed within three days of such notice. Also within three days of such notice, the Producing Party shall serve a privilege log for the document(s). The Producing Party shall maintain the referenced document(s) until the parties resolve any dispute concerning the privileged nature of the document(s) or the Court rules on any motion to compel the document(s). No Party shall use or refer to any information contained within the document(s) at issue unless and until the producing Party agrees or a motion to compel is granted by the Court.

7. Permitted Purposes. All Discovery Materials disclosed in connection with Plan Confirmation (except such materials publicly available in substantially the same form), whether or not containing Confidential or Highly Confidential Discovery Materials, shall be used solely in connection with the SportCo Bankruptcy (including appeals, retrials, counterclaims, or crossclaims), and not in connection with any other litigation, judicial, or regulatory proceeding or for any business, commercial, competitive, personal, or other purpose. Any summary, compilation, notes, memoranda, analysis, or copy containing Confidential or Highly Confidential Discovery Material, and any electronic image or database containing Confidential or Highly Confidential Discovery Material shall be subject to the terms of the Protective Order to the same extent as the material or information from which such summary, compilation, notes, memoranda, analysis, copy, electronic image, or database is derived. No Confidential or Highly Confidential Discovery Material shall be used for any other purpose, including business, governmental, commercial, administrative, or judicial proceedings. Nothing in this Stipulation will prevent the Parties from agreeing to deem any Discovery Materials produced in this case as produced in other litigations or proceedings or, absent such agreement, from seeking the production of such materials in other litigations or proceedings including, for example, by issuing a subpoena to the Producing Party and/or moving to compel the production of such materials, provided however

that each Producing Party reserves the right to object to producing any Discovery Material in any such other litigation or proceeding and/or to object to the adequacy of the confidentiality protection to be accorded the Producing Party's Discovery Material in such other litigation or proceeding.

8. Court Filings. No Confidential or Highly Confidential Discovery Material shall be filed in the public record absent the consent of the Producing Party or an order of the Court so permitting. In the event that a Receiving Party wants to file with the Court any Confidential or Highly Confidential Discovery Material and the Producing Party does not consent to such material being filed in the public record, the Receiving Party shall make an application to the Court, on no less than three (3) business days' notice to the Producing Party, for (i) leave under 11 U.S.C. § 107(b), or other relevant rule, to file such material under seal, or (ii) a determination that such material should not be treated confidentially.

9. Use of Confidential Discovery Material in Court. Subject to Paragraph 9(a) below, any documents designated as "Confidential" or "Highly Confidential" may be used, if otherwise permissible, as evidence at any hearing or any trial in the SportCo Bankruptcy, before the trial court or on appeal, without violation of this Order, provided that the proponent of the evidence advises the Court and the Producing Party in advance that it intends to offer Confidential or Highly Confidential Discovery Material. Nothing in this Order, however, shall preclude a Party or Producing Party from seeking an appropriate protective order from the Court, should that Party or Producing Party seek to maintain the confidentiality of Confidential Discovery Material used in open court.

(a) Limitations on Use of Designated Discovery Material in Court. If any person uses or discloses Confidential or Highly Confidential Discovery Material during any proceeding

before the Court, the portion of the transcript, record, computer disk, or any other recording method thereof that refers to such information shall be deemed subject to the provisions of this Order.

(b) Admissibility. Nothing herein shall be construed to affect in any manner the admissibility at trial of any document, testimony, or other evidence.

10. Compelled Disclosure. Notwithstanding the foregoing, solely in the event that a Receiving Party is requested or required (through discovery, subpoena, civil investigative demand, or other similar legal or investigative process) to disclose any of the Confidential or Highly Confidential Discovery Material, the Receiving Party shall provide the Producing Party with prompt written notice of any such request or requirement so that the Producing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of this Stipulation in respect of such request or requirement. If, in the absence of a protective order or other remedy or the receipt of a waiver by the Producing Party, a Receiving Party is nonetheless, in the opinion of its counsel, legally compelled to disclose such Confidential or Highly Confidential Discovery Material or else stand liable for contempt or suffer other censure or significant penalty, the Receiving Party may, without liability under this Stipulation, disclose only that portion of the Confidential or Highly Confidential Discovery Material which its counsel advises it is legally required to be disclosed, provided that the Receiving Party exercises its commercially reasonable efforts to preserve the confidentiality of the Confidential or Highly Confidential Discovery Material, including, without limitation, by taking commercially reasonable measures to cooperate with the Producing Party to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the Confidential or Highly Confidential Discovery Material by the party to whom such material will be produced,

and then only with as much prior written notice to the Producing Party as is practical under the circumstances. In no event will a Receiving Party oppose action by a Producing Party to obtain a protective order or other relief to prevent the disclosure of the Confidential or Highly Confidential Discovery Material or to obtain reliable assurance that confidential treatment will be afforded the Confidential or Highly Confidential Discovery Material.

11. No Waiver. Neither this Stipulation nor disclosure of any Confidential or Highly Confidential Discovery Material by a Producing Party shall be deemed by implication or otherwise to vest in the Receiving Party rights in or to such Confidential or Highly Confidential Discovery Material other than the right to use such Confidential or Highly Confidential Discovery Material solely in accordance with this Stipulation. It is understood and agreed by the Parties that no failure or delay by a Producing Party in exercising any right, power, or privilege pursuant to this Stipulation shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power, or privilege pursuant to this Stipulation. If at any time a Producing Party determines or realizes that certain testimony or some portion(s) of Discovery Materials that it previously produced should be designated as “Confidential” or “Highly Confidential,” the Producing Party may apprise the Parties in writing, and such designated testimony or portion(s) of Discovery Materials will thereafter be treated as Confidential or Highly Confidential Discovery Materials under the terms of this Stipulation, provided, however, that the Producing Party shall, at its cost, provide the Receiving Party with substitute copies, bearing the legend “Confidential” or “Highly Confidential,” of any such Discovery Materials at which time the Receiving Party shall promptly return to the Producing Party the copies of such substituted Discovery Materials or certify destruction of same. Entry into this Stipulation and/or producing Confidential or Highly

Confidential Discovery Material pursuant hereto shall not prejudice in any way a Producing Party's rights to object to the authenticity or admissibility into evidence of any testimony or other evidence subject hereto. Furthermore, the Parties expressly reserve their rights to seek additional protection for any Discovery Material a Party determines in good faith warrants additional confidentiality protection beyond that which is provided to Confidential Discovery Material and Highly Confidential Discovery Material under this Protective Order. The Parties reserve their right to object to any such additional protection.

12. Objections to Designation. In the event a Receiving Party objects to any designation of testimony or Discovery Materials as "Confidential" or "Highly Confidential," the Receiving Party shall so inform the Producing Party, stating the grounds of the objection, and they shall have three (3) business days to attempt to resolve the objection, at the end of which the Receiving Party may seek a ruling from the Court, on no less than three (3) business days' notice to the Producing Party, that such information should not be treated as Confidential or Highly Confidential Discovery Material, provided that no Confidential or Highly Confidential Discovery Material shall be filed in the public record prior to such a determination by the Court, and provided further that the burden shall be on the Producing Party to justify the claim that disputed material has been properly designated. Notwithstanding a Producing Party's designation of Discovery Materials as "Confidential" or "Highly Confidential," nothing in this Stipulation shall limit any third party's right to challenge such designation in the Court or any other court of competent jurisdiction.

13. Additional Parties. No additional party shall have access to Confidential or Highly Confidential Discovery Material unless and until (i) the existing Parties hereto have consented in

writing and (ii) such party has itself, or by its counsel, executed and filed with the Court its agreement to be fully bound by this Stipulation.

14. Third-Party Beneficiaries. Third parties that produce documents pursuant to a subpoena or otherwise respond to discovery requests in connection with Plan Confirmation are intended third-party beneficiaries of this Stipulation and have the right to enforce the terms of this Stipulation, as necessary to, inter alia, protect the confidentiality of the Confidential or Highly Confidential Discovery Materials they produce.

15. Enforcement Pending Entry. The Parties agree to be bound by the terms of this Stipulation pending the entry of this Stipulation by the Court, and any violation of its terms shall be subject to the same sanctions and penalties as if this Stipulation has been entered by the Court. The provisions of this Stipulation shall, absent written permission of the Producing Party or further order of the Court, continue to be binding throughout and after the conclusion of the SportCo Bankruptcy, including without limitation any appeals therefrom.

16. Disposition of Confidential and Highly Confidential Discovery Material. Within sixty (60) days after receiving notice of the entry of an order, judgment, or decree finally disposing of or resolving all proceedings among the Parties hereto arising out of or relating to the SportCo Bankruptcy, including the exhaustion of all possible appeals and other review, all persons having received Confidential or Highly Confidential Discovery Material shall either return such material and all copies thereof (including summaries and excerpts) to the Producing Parties or destroy all such Confidential or Highly Confidential Discovery Material and certify that fact to the Producing Parties. Documents that have been received electronically and that cannot be returned or destroyed must be electronically deleted and deleted from “trash” files.

This paragraph 16 applies to Confidential or Highly Confidential Discovery Material only, and does not require that counsel for the Parties destroy work product or correspondence.

17. Amendment of Stipulated Discovery Confidentiality Order. This order, and the protections, processes, procedures, and requirements contained herein, shall supersede and amend in full the Stipulated Discovery Confidentiality Order entered on September 13, 2019 (Doc. 389). All Discovery Material produced by Wellspring prior to the entry of this Protective Order shall be deemed subject to, and protected by, the provisions contained herein.

/s/ Jacqueline P. Rubin

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SO ORDERED:



**LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE**