UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

In re:	Chapter 11
GOLIATH VENTURES INC. (FL), GOLIATH VENTURES INC. (WY),	Case No. 26-13174-RAM Case No. 26-13176-RAM *Jointly Administered*
Debtors. ________________________________/	

THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS' JOINDER IN SUPPORT OF DEBTORS' MOTION FOR ENTRY OF UNIFORM CASE PROTECTIVE ORDERS [ECF NO. 132]

The Committee supports the Debtors' requested relief inasmuch the protective orders that producing parties now routinely insist on are a necessary evil to get document production moving in a case. But let's be frank: These "orders" are almost never compliant with *Fed. R. Civ. P.* 26 and are not intended to streamline the workload for the Court or its staff, the Debtors, the receiver, or any other interested party in these bankruptcy cases. They are also not intended to protect the interests of third parties for whom the objecting financial institutions feign concern. The Committee calls it for what it is: A litigation management tool solely intended to protect the financial institutions in litigation waged against them elsewhere.

At the outset, in nearly 20 pages of legal briefing, the Court will not find a single category of documents the financial institutions assert requires top secret classification or warrants entry of a dizzying sixteen-page protective order with its multiple sections, subparts and meet-and-confer dance. Indeed, on a meet-and-confer call with counsel to the financial institutions, the undersigned posed a series of simple questions about their proposed protective order:

- What particular document or category of documents were the Debtors seeking in their subpoenas that already drew the financial institutions' concern if the Committee or undersigned counsel had access?

- Would the financial institutions insist that the Court jettison undersigned counsel and others – including crime victims – from any Court hearing if the information the institutions labeled confidential under their version of the proposed protective order came up for discussion?

- What exactly were the "discovery tools" that the Committee would need to engage in to get information from the Debtors about discovery provided by the financial institutions?

- Could the undersigned even attend a Rule 2004 deposition of their clients? If yes, would the financial institutions request the undersigned leave the deposition depending on the questions posed?

Notwithstanding all the legal firepower on the call, as to each of these questions, counsel for the financial institutions refused to answer, claiming they were not on the call to confer about "hypotheticals." That position is disingenuous – particularly when the financial institutions criticize the Debtors' meet-and-confer efforts – but hopefully, counsel for the financial institutions will be prepared to answer these questions substantively if the Court poses them. And they are important questions: The financial institutions are asking the Court to enter a form of protective order – at the Rule 2004 stage of this case – that will undoubtedly increase administrative expenses for this estate and impose a judicial burden on this Court.

But let's again be frank: The Committee asserts that the financial institutions will not be able to credibly answer any of the above questions in a way that justifies the secrecy they demand and then balances such secrecy against the Committee's role in this case and the need to minimize unnecessary administrative expenses and judicial burden. Thus, their form of protective order is improper. This is not a trade secrets case or a RICO case in which public disclosure of information

– whether in the form of documents, testimony, or court filings – will cause irreparable business or physical harm to anyone. This is a fraud case where the objecting financial institutions are concerned that information made public in these cases may assist lawyers in other litigation in overcoming the inevitable *Iqbal/Twombly* motion practice the financial institutions will file in those cases. But that concern is **never** grounds for the type of protective order the financial institutions demand the Court enter.

The Court's Pole Star – especially at this procedural point in the case – should be that courtroom proceedings and case files are open to the public:

> The Federal Judiciary has zealously protected the right of all citizens to free, open and public trials. Open judicial proceedings are "rooted in the 'principle that justice cannot survive behind the walls of silence,' and in the 'traditional Anglo-American distrust for secret trials." Under this precedent, judicial documents are presumptively available to the public but may be sealed if the right to access is outweighed by other higher interests favoring non-disclosure. Cases have been closed on rare occasions where, for example, disclosure of certain information would threaten national security or place an individual in grave physical danger. Such rare occasions are not present in the above-styled matter.

Andrews v. Prospect Mortg., LLC, No. 13-CV-21453-JLK, 2013 U.S. Dist. LEXIS 173804, at *2 (S.D. Fla. Dec. 5, 2013) (King, J.) (denying parties' joint request for entry of protective order governing production of documents) (internal citations omitted). The form of protective order sought by the financial institutions is the antithesis of this long-held tradition; it is an iron curtain that stymies the Committee from performing its role in this case, exercising its fiduciary duty to the creditor body at large and places the Court in the position of conducting proceedings in a manner incongruous with deeply rooted practice and procedure. The objection should be overruled and to the extent any protective order is entered in this case, the version of order should be that proposed by the Debtors.[1] The Committee states the following in support:

RESPONSE

A. Applicable Legal Standard

There are four legal principles relevant to this dispute. The **first principle** – public access to court proceedings – is best summarized in a recent blog post by Jones Day, counsel to JP Morgan in this contested matter:

> One of the hallmarks of the U.S. bankruptcy system is ready access to information concerning any entity that files for bankruptcy protection. The integrity of that system is premised upon the presumption that not only creditors and other interested parties in a bankruptcy case, but also the public at large, should have the ability to examine any document filed with the bankruptcy court. Rooted in the common-law right of access to public documents, full disclosure promotes the legitimacy of the bankruptcy court as an institution entrusted with impartially applying the nation's bankruptcy laws and administering debtors' estates for the benefit of all interested parties. Unrestricted access to judicial records also fosters confidence among creditors regarding the fairness of the bankruptcy system.

Public Right to Full Disclosure in Bankruptcy Extends to Rule 2019 Statements available at https://www.jonesday.com/en/insights/2013/05/public-right-to-full-disclosure-in-bankruptcy-extends-to-rule-2019-statements. This principle is well supported in decades of caselaw and the Committee does not spend further time expanding on it; counsel to JP Morgan nailed it.

[1] The Committee reserves the right to request the Court withdraw in its entirety any protective order entered in this case. The Committee has a duty to provide information to non-Committee members pursuant to 11 U.S.C. § 1102(b)(3). Any protective order – and especially the form sought by the financial institutions – creates tension for the Committee and its counsel in performing their role in this case, but also creates tension with the Committee's statutory obligations to unsecured creditors.

The **second principle** – the limited instances when public access may be restricted – is also summarized by counsel to JP Morgan in the firm's blogpost:

> [R]ight of public access is a qualified one—it has exceptions. Thus, a bankruptcy court has the power under the Bankruptcy Code to implement appropriate protective measures where: (i) disclosure of information would result in the revelation of trade secrets or confidential commercial information; (ii) information in a court filing is scandalous or defamatory; or (iii) disclosure of information would create undue risk of identity theft or other unlawful injury to an individual or to his or her property. More generally, "privacy interests" sometimes lead courts to direct that access to certain court documents be restricted (e.g., by filing documents under seal). . . .. ***Absent one of these particular circumstances, however, the deep-rooted policy of full disclosure in bankruptcy is difficult to overcome.***

Id. (emphasis added) (internal citations omitted). The Committee wholeheartedly agrees with opposing counsel, however, the Committee expands on this principle because of its importance.

Federal Rule of Civil Procedure 26(c) provides the framework for protective orders; the subpoenaed financial institutions concede as much in their own version of the case-wide protective order attached to their objections. *See* Objection at **Exhibit E**, Sec. 2.b (citing Rule 26 and *Fed. R. Bankr. P.* 9018) [ECF No. 223]. That section of the rule provides that "the court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense," in several enumerated instances. *Fed. R. Civ. P.* 26(c).

By its plain language, the lynchpin for entry of a protective order is that the movant show "good cause." As the financial institutions' own relied upon authority holds, "[a party seeking the protective order] must specifically identify the potentially embarrassing information and clearly define the serious harm likely to result from public disclosure." *See* Objection at 9 (citing *DGP Prods. v. Antonio (In re Antonio)*, 642 B.R. 337, 340 (Bankr. M.D. Fla. 2022)). Importantly, "the mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records." *Kamakana v. City & Cty. of Honolulu*, 447 F.3d 1172, 1179 (9th Cir. 2006).

Casewide protective orders invite particular scrutiny. By their terms, they turn Rule 26(c)'s good cause standard on its head. There is no determination by the court that a particular document or category of documents must have restrictions; instead, the court must rely on the producing party's good faith determination in designating materials as such. *See United States ex rel. Davis v. Prince*, 753 F. Supp. 2d 561, 567 (E.D. Va. 2010) (rejecting casewide protective order because good cause determination made by the producing party and not court); *AGA Shareholders, LLC v. CSK Auto, Inc.*, No. CV-07-62-PHX-DGC, 2007 WL 4225450, at *1 (D. Ariz. Nov. 28, 2007) (denying stipulated protective order in part because "[t[he parties do not identify any particular document that may be entitled to protection under Rule 26(c)"). Indeed, "[s]tipulated protective orders place the district court in an unusual position. Normally, the court is quick to ratify (and rightly so) any area of agreement between opposing parties. However, under *Fed. R. Civ. P.* 26(c), the district court has the power to issue a protective order only upon a showing of 'good cause.'" *Jepson, Inc. v. Makita Elec. Works*, 30 F.3d 854, 858 (7th Cir. 1994). Thus, "in deciding whether to issue a stipulated protective order, the district court must independently determine if 'good cause' exists." *Id.* No case cited by the financial institutions in their brief holds otherwise.

The **third principle** – the ability of a party to use information obtained in litigation – is that absent entry of a Rule 26(c) protective order, the default rule is that "parties to a lawsuit may disseminate materials obtained during discovery as they see fit." *Id.*; *see also San Jose Mercury*

News, Inc. v. United States, 187 F.3d 1096, 1103 (9th Cir. 1999) ("It is well-established that the fruits of pretrial discovery are, in the absence of a court order to the contrary, presumptively public."); *Public Citizen v. Liggett Group, Inc.*, 858 F.2d 775, 780 (1st Cir. 1988) ("[T]he Supreme Court has noted that parties have general first amendment freedoms with regard to information gained through discovery and that, absent a valid court order to the contrary, they are entitled to disseminate the information as they see fit."). The financial institutions acknowledge as much in their own filing. *See* Objection at 9 ("absent [a protective order], 'a litigant generally may make whatever use it wishes of information obtained through discovery.'") (internal citation omitted).

The **fourth principle** – the role the Committee plays in this bankruptcy case – apparently escapes the financial institutions' attention and is not addressed in any meaningful way in the caselaw they rely on in their filing. Thus, the Committee lays it out here:

> The creditors' committee is not merely a conduit through whom the debtor speaks to and negotiates with creditors generally. On the contrary, it is purposely intended to represent the necessarily different interests and concerns of the creditors it represents. It must necessarily be adversarial in a sense, though its relation with the debtor may be supportive and friendly. There is simply no other entity established by the Code to guard those interests. The committee as the sum of its members is not intended to be merely an arbiter but a partisan which will aid, assist, and monitor the debtor pursuant to its own self-interest.

In re Daig Corp., 17 B.R. 41, 43 (Bankr. D. Minn. 1981). Put simply, "[a]n official committee of creditors plays a ***pivotal role*** in the bankruptcy process." *Pan Am Corp. v. Delta Air Lines*, 175 B.R. 438, 514 (S.D.N.Y. 1994) (emphasis added).

B. The financial institutions' proposed protective order is improper, creates an unnecessary administrative expense burden on the estate and stymies the Committee's oversight function

Based on the above legal framework, the financial institutions' proposed protective order should be rejected. Regardless of the labels used in their brief – "use restriction" or "access restriction" – the bottom line is the cloak of secrecy they seek is unwarranted both from a bankruptcy case and Rule 26 perspective.

The financial institutions are obligated to produce materials responsive to the Debtors' Rule 2004 requests. Under the default rule, as long as the Debtors use such materials for a proper legal basis, there is no justifiable limitation in their use. Here, sharing such materials with the Committee or its professionals is not illegal; to the contrary, it is appropriate and encouraged because "full disclosure promotes the legitimacy of the bankruptcy court as an institution entrusted with impartially applying the nation's bankruptcy laws and administering debtors' estates for the benefit of all interested parties" *Public Right to Full Disclosure in Bankruptcy Extends to Rule 2019 Statements available at* https://www.jonesday.com/en/insights/2013/05/public-right-to-full-disclosure-in-bankruptcy-extends-to-rule-2019-statements.

Thus, to evade the default rule, the financial institutions must establish good cause under Rule 26(c). And on this point, the financial institutions fail. There is no effort in their filing to explain why restrictions they seek to impose on the Debtors should be implemented from the jump or why a particular document or category of documents sought from them warrants heightened protection when they cannot even identify any such material. Absent such showing, there is no basis for the Court to impose the restrictions they demand from the Debtors. To the extent the financial institutions argue that disclosing materials in response to a lawfully issued Rule 2004 subpoena may result in litigation against them by others, that is not good cause. *Kamakana*, 447 F.3d at 1179 ("the mere fact that the production of records may lead to a litigant's embarrassment, incrimination, or exposure to further litigation will not, without more, compel the court to seal its records.").

Notably, no case cited by the financial institutions supports the relief they are seeking in the bankruptcy context. Of particular import, the two Eleventh Circuit decisions relied upon by the financial institutions dealt specifically with district court litigation in which a non-party sought access to discovery materials. *McCarthy v. Barnett Bank of Polk Cty.*, 876 F.2d 89, 91 (11th Cir. 1989) (rejecting local newspaper's request for access to discovery materials); *In re Alexander Grant & Co. Litig.*, 820 F.2d 352, 354 (11th Cir. 1987) (same). A bankruptcy case is procedurally dissimilar from the procedural posture in those two cases. The Committee is no intervenor local newspaper seeking to expand circulation; the Committee serves a critical role in ensuring that the Debtors rightfully pursue third-parties that benefited or facilitated Delgado's fraud, has a right to be heard by the Court and is entitled to information relating to the Debtors' financial affairs. Put simply, the financial institutions cannot overcome "the deep-rooted policy of full disclosure in bankruptcy." *Public Right to Full Disclosure in Bankruptcy Extends to Rule 2019 Statements available at* https://www.jonesday.com/en/insights/2013/05/public-right-to-full-disclosure-in-bankruptcy-extends-to-rule-2019-statements.[2]

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[2] The financial institutions also make much ado about the pending proceeding rule and cite to this Court's decision in *In re Sanomedics, Inc.*, 583 B.R. 796, 799 (Bankr. S.D. Fla. 2018) in support of the form of protective order they seek. The Committee addresses this argument in a footnote

CONCLUSION

Enough with these protective orders. If the excuse is that "courts routinely enter them," then the Committee puts its foot down and says "no more." To the extend any protective order is entered, it should be that proposed by the Debtors.

PHANG & FELDMAN, P.A.
Counsel to the Official Committee Of Unsecured Creditors
2 S. Biscayne Boulevard, Suite 1600
One Biscayne Tower
Miami, Florida 33131
Telephone: (305) 614-1223

By: */s/ Jonathan S. Feldman*
Jonathan S. Feldman (12682)
feldman@katiephang.com
service@katiephang.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 6, 2026, a true and correct copy of the foregoing was served based on the Court docket, by transmission of Notices of Electronic Filing ("NEF") generated by CM/ECF to those parties registered to receive NEF in this case.

By: */s/ Jonathan S. Feldman*
Jonathan S. Feldman (12682)

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because it is so factually dissimilar to the present dispute that it does not warrant meaningful discussion. *First*, *Sanomedics* is not a pending proceeding rule case. *Id.* ("the Court does not find the pending proceeding cases to be on point."). But beyond that, the Debtors are seeking discovery under Rule 2004 regarding their financial affairs, not some Johnny Come Lately creditor trying to take advantage of Rule 2004, thus, the decision is inapposite on this independent basis. And to the extent the Debtors wish to share such information with third-parties such as the Committee, absent good cause forbidding such disclosure – which the financial institutions fail to establish – there is nothing improper with the Debtors' doing so. Put another way, if the chapter 7 trustee in *Sanomedics* wished to voluntarily share with Tilius information relating to ZenCharts, absent a protective order forbidding such disclosure, the trustee was within her rights to do so.

Attorneys

Attorney		Party
Alexander E. Brody Meland Budwick, P.A. 3200 Southeast Financial 200 South Biscayne Boulevard MIAMI, Suite 3200 Miami, FL 33131 abrody@melandbudwick.com *Assigned: 03/19/2026*	representing	**Goliath Ventures Inc.** c/o Michael S. Budwick, Receiver 200 S. Biscayne Blvd., Ste 3200 Miami, FL 33131 *(Debtor)*
Elizabeth R. Brusa 101 E. Kennedy Blvd. - Ste. 2800 Tampa, FL 33602 ebrusa@shumaker.com *Assigned: 04/21/2026*	representing	**Patrick Justin Renwald** c/o Elizabeth R. Brusa, Esq. 101 E. Kennedy Blvd., Ste. 2800 Tampa, FL 33602 *(Creditor)*
Kelly Ann Carrero 250 Vesey Street New York, NY 10281 kacarrero@jonesday.com *Assigned: 06/26/2026*	representing	**JPMorgan Chase Bank N.A** *(Interested Party)*
Taylor Rose Cavaliere Jones 555 California St - Ste 26th Floor San Francisco, CA 94104 tcavaliere@jonesday.com *Assigned: 06/25/2026*	representing	**JPMorgan Chase Bank N.A** *(Interested Party)*
Daniel M Coyle Sequor Law PA 1111 Brickell Avenue Suite 1250 Miami, FL 33131 dcoyle@sequorlaw.com *Assigned: 05/18/2026*	representing	**James Deppoleto** Daniel M. Coyle, Esq. 1111 Brickell Avenue, Suite 1250 Miami, FL 33131 *(Creditor)*
Solomon B Genet 200 S Biscayne Blvd #3200 Miami, FL 33131 sgenet@melandbudwick.com *Assigned: 03/16/2026*	representing	**Goliath Ventures Inc.** c/o Michael S. Budwick, Receiver 200 S. Biscayne Blvd., Ste 3200 Miami, FL 33131 *(Debtor)*

Matthew M Graham 150 W Flagler St # 2200 Miami, FL 33130 MGRAHAM@STEARNSWEAVER.COM *Assigned: 06/09/2026*	representing	**Coinbase Custody Trust Company, LLC** *(Interested Party)*
		Coinbase, Inc. *(Interested Party)*
Michael B Green Gunster, Yoakley & Stewart, P.A. Brickell World Plaza, Suite 3500 600 Brickell Avenue Miami, FL 33131 mgreen@gunster.com *Assigned: 06/23/2026*	representing	**Bank of America, N.A.** *(Interested Party)*
Jason Peter Hernandez 150 West Flagler St - Suite 2200 Miami, FL 33130 jhernandez@stearnsweaver.com *Assigned: 06/12/2026*	representing	**Coinbase Custody Trust Company, LLC** *(Interested Party)*
		Coinbase, Inc. *(Interested Party)*
Kimberly H Israel 301 E. Pine Street - Suite 1150 Orlando, FL 32801 kim.israel@kaufmandolowich.com *Assigned: 05/22/2026*	representing	**Royce McGowan** c/o Kimberly Held Israel, Esq. Kaufman Dolowich 301 E Pine St., Suite 1150 Orlando, Fl 32801 US *(Creditor)*
George S. LeMieux 450 E. Las Olas Blvd., Suite 1400 Ft, Lauderdale, FL 33301 glemieux@gunster.com *Assigned: 06/25/2026*	representing	**Bank of America, N.A.** *(Interested Party)*
William J Levant 910 Harvest Drive 2nd Floor Blue Bell, PA 19422 wlevant@kaplaw.com *Assigned: 06/30/2026*	representing	**Kurt Kozin** 1749 Sue Ellen Drive Havertown, PA 19083 *(Creditor)*

		Wendy Kozin 1749 Sue Ellen Drive Havertown, PA 19083 *(Creditor)*
Eliot Pedrosa, Esq 600 Brickell Avenue - Ste 3300 Miami, FL 33131 epedrosa@jonesday.com *Assigned: 06/25/2026*	representing	**JPMorgan Chase Bank N.A** *(Interested Party)*
Kelly Roberts 2075 Main Street, Ste 23 Sarasota, FL 34237 kelly@kellyrobertslaw.com *Assigned: 05/21/2026*	representing	**Robert R. Wilberding** c/o Kelly Roberts 2075 Main Street, Suite 23 Sarasota, FL 34237 *(Creditor)*
James N Robinson 200 S Biscayne Blvd #4900 Miami, FL 33131 jrobinson@whitecase.com *Assigned: 05/21/2026*	representing	**Alston & Bird LLP** *(Interested Party)*
Noah M. Rosenblum 1111 Brickell Avenue - Suite 1250 Miami, FL 33131 nrosenblum@sequorlaw.com *Assigned: 05/18/2026*	representing	**James Deppoleto** Daniel M. Coyle, Esq. 1111 Brickell Avenue, Suite 1250 Miami, FL 33131 *(Creditor)*
Becky Nicole Saka 600 Brickell Avenue - Ste 3500 Miami, FL 33131 bsaka@gunster.com *Assigned: 06/24/2026*	representing	**Bank of America, N.A.** *(Interested Party)*
Steven D Schneiderman Office of the US Trustee 51 SW 1 Ave #1204 Miami, FL 33130 Steven.D.Schneiderman@usdoj.gov *Assigned: 04/10/2026*	representing	**Office of the US Trustee** 51 S.W. 1st Ave. Suite 1204 Miami, FL 33130 (305) 536-7285 USTPRegion21.MM.ECF@usdoj.gov *(U.S. Trustee)*

Christian Somodevilla 99 N.E. 4th Street - Ste 3rd Floor Miami, FL 33132 305-961-9092 Christian.Somodevilla@usdoj.gov *Assigned: 04/22/2026*	representing	**United States of America - IRS** c/o Christian Somodevilla 99 NE 4th Street, Suite 300 Miami, FL 33132 christian.somodevilla@usdoj.gov *(Creditor)*
Jeffrey R Sonn 19495 Biscayne Blvd., Suite #607 Aventura, FL 33180 305-912-3000 jsonn@sonnlaw.com *Assigned: 04/22/2026*	representing	**John Euliano** c/o Jordan Shaw, Esq. Shaw Lewenz 110 SE 6th Street Suite 2900 Ft Lauderdale, FL 33301 *(Creditor)*
Andrew Joseph Weisberg 1155 21st Street, NW Washington, DC 20581 202-418-5574 aweisberg@cftc.gov *Assigned: 06/22/2026*		