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Debtors in Possession

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

In re:

BEVERLY COMMUNITY HOSPITAL  
ASSOCIATION, dba BEVERLY HOSPITAL  
(A NONPROFIT PUBLIC BENEFIT  
CORPORATION), *et al.*<sup>1</sup>

Debtors,

- ☒ Affects all Debtors
- ☐ Affects Beverly Community  
Hospital Association
- ☐ Montebello Community Health  
Services, Inc.
- ☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

**DEBTORS' EMERGENCY MOTION FOR  
AN ORDER (I) AUTHORIZING THE  
DEBTORS TO MAINTAIN, MODIFY,  
AND RENEW THEIR REFUND  
PROGRAMS AND HONOR  
OBLIGATIONS RELATED THERETO,  
AND (II) GRANTING RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: Hon. Sandra R. Klein

Place: Zoom.Gov – or - Courtroom 1575  
255 E. Temple St.  
Los Angeles, CA 90012

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.



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I.

**RELIEF REQUESTED**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)<sup>1</sup> hereby move, on an emergency basis (this “Motion”), to seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing the Debtors to (i) issue, pay and allow offsets under the Refund Programs (defined herein) in the ordinary course of business, including refunds for overpayments and credit balances made prepetition or resulting from prepetition services, and (ii) continue to administer, modify, and renew their Refund Programs and honor obligations related thereto on a postpetition basis in the ordinary course; and (b) granting related relief.

II.

**JURISDICTION AND VENUE**

The United States Bankruptcy Court for the Central District of California (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order No. 13-05* (C.D. Cal. Jul. 1, 2013), and Rule 5011-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court Central District of California (the “Local Bankruptcy Rules”). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The bases for the relief requested herein are sections 105(a), 363, 503(b)(1), 507(a), 1107(a), and 1108 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Rules 2081-1(a)(12) and 9075-1(a) of the Local Bankruptcy Rules.

---

<sup>1</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Alice Cheng in Support of the Debtors’ First Day Emergency Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on the date hereof (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion have the meanings given to them in the First Day Declaration or elsewhere in this Motion.

1 III.

2 STATEMENT OF FACTS

3 A. The Debtors' Background.

4 Beverly Hospital is a nonprofit, 202-bed hospital in Montebello that serves low-income  
5 patients in the nearby Los Angeles area. As a safety net hospital, Beverly serves a geographic area  
6 where half of the population lives under the 200% Federal Poverty Level. Beverly has been  
7 historically underfunded and, in the post-Covid economy, became increasingly cash-strapped. With  
8 91% of its patients relying on Medicare and Medi-Cal, the Hospital's financial struggles only  
9 worsened as the cost of labor, medical supplies and medicine ballooned while government  
10 reimbursement rates have stayed the same.

11 On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter  
12 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties  
13 as debtors-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request  
14 for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no  
15 committees have been appointed or designated.

16 B. The Debtors' Refund Program.

17 In the ordinary course of business, the Debtors participate in payment arrangements with  
18 third-party payors for healthcare services that often result in overpayments or credit balances. These  
19 payors include healthcare insurers, managed care organizations, workers' compensation programs,  
20 contract management services, private pay sources, Medicare and Medi-Cal (collectively, the  
21 "Third-Party Payors"). As a result, the Debtors routinely issue refunds or payments, or are subject  
22 to offsets or recoupments for reimbursement of overpayments or credit balances, on behalf of  
23 patients to the various Third-Party Payors upon reconciliation by the Debtors' billing process,  
24 patient medical insurance deductibles and third-party receipts (the "Refund Programs").

25 There is typically a significant lag between when the patient is treated, when the  
26 overpayment or credit balance is recognized or determined, and when the overpayment is reviewed  
27 in the Debtors' billing system. After the overpayment amount or credit balance is determined, the  
28

1 Debtors either issue a check or other form of remittance to the patient or Third-Party Payor, or the  
2 Third-Party Payor will offset future payments in the amount of the overpayment.

3 At any given time, it is difficult to determine the amount of potential overpayments or  
4 pending credit balances that will require the issuance of a refund or result in an offset. Moreover,  
5 some of these reconciling payments to patients or Third-Party Payors before the Petition Date may  
6 not have been presented for payment or may not have cleared the Debtors' banking system or  
7 accounting system and, accordingly, have not been honored and paid as of the Petition Date.  
8 Moreover, the Debtors are required, under various state and federal laws, to reimburse patients or  
9 Third-Party Payors as overpayments are identified. In such cases, the failure to remit overpayments  
10 can result in state or federal agencies denying further participation in the Refund Programs, which  
11 would have a severe detrimental impact to the Debtors' patient care reimbursement process.

12 Pursuant to this Motion, the Debtors therefore request that this Court allow the Debtors to  
13 continue to issue, pay and allow offsets for the Refund Programs postpetition, including  
14 overpayments made prepetition or resulting from prepetition medical services in the ordinary course  
15 of business.

#### 16 IV.

#### 17 BASIS FOR RELIEF

#### 18 A. Payment of Refund Program Obligations Is Warranted Under Sections 363(b) and 19 105(a) of the Bankruptcy Code.

20 The Debtors seek to maintain their Refund Programs by honoring certain critical prepetition  
21 claims to their patients and the Third-Party Payors. The Supreme Court has recognized that it is  
22 appropriate to authorize payment of prepetition obligations where necessary to protect and preserve  
23 the estate. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017); *see also Bank of Am.*  
24 *Nat'l Trust & Savs. Ass'n v. 203 N. La Salle P'Ship*, 526 U.S. 434, 453 (1999) (stating that the "two  
25 recognized policies" of chapter 11 are preserving going concern value and maximizing the value of  
26 property available to satisfy creditors).

Moreover, the Ninth Circuit has acknowledged the importance of paying certain prepetition claims in a reorganization case, even when the claimants are provided an advantage over other creditors:

[A] “fundamental tenet” – rehabilitation of debtors . . . may supersede the policy of equal treatment. Cases have permitted unequal treatment of pre-petition debts when necessary for rehabilitation, in such contexts as (i) pre-petition wages to key employees; (ii) hospital malpractice premiums incurred prior to filing; (iii) debts to providers of unique and irreplaceable supplies; and (iv) peripheral benefits under labor contracts.

*Burchinal v. Central Washington Bank (In re Adams Apple, Inc.)*, 829 F.2d 1484, 1490 (9th Cir. 1987) (citation omitted); *see also Weinstein, Eisen & Weiss, LLP v. Gill (In re Cooper Commons, LLC)*, 424 F.3d 963, 969 (9th Cir. 2005) (citing *In re Adams Apple, Inc.* for its rejection of the fundamental tenet of bankruptcy law that like creditors must always be treated alike). The Ninth Circuit has further acknowledged that the sections 363(b) and 105(a) of the Bankruptcy Code empower courts to authorize the such payment of prepetition claims. *See In re Adams Apple*, 829 F.2d at 1490–91.

Accordingly, the Court may grant the relief requested herein pursuant to section 363 of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). Under this section, a court may authorize a debtor to pay certain prepetition claims when a sound business purpose exists for doing so. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (citations omitted) (requiring only that the debtor “show that a sound business purpose” justifies the proposed use of property); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987) (requiring “good business reason” for use of property under section 363(b) of the Bankruptcy Code); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (discussing prior order authorizing payment of prepetition wage claims pursuant to section 363(b) of the Bankruptcy Code). Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see also In re Tower Air, Inc.*, 416 F.3d



229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the business judgment rule on the merits is a near-Herculean task.”).

The Court may also authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the equitable powers of the bankruptcy court, empowers the court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Under section 105(a) of the Bankruptcy Code, courts may permit payments of prepetition obligations prior to confirmation of a plan and emergence from chapter 11 when essential to the continued operation of a debtor’s business. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the “necessity of payment” rule (also referred to as the “doctrine of necessity”).

Courts within the Ninth Circuit, and across the country, have routinely granted requests for relief in similar refund motions. *See, e.g., In re Verity Health System of California, Inc.*, No. 2:18-bk-20151-ER (Bankr. C.D. Cal. Dec. 7, 2018) [Docket No. 1004] (authorizing debtors to refund prepetition patient deposits and overpayments); *In re G-Star Raw Retail Inc.*, No. 2:20-bk-16040-WB (Bankr. C.D. Cal. July 9, 2020) [Docket No. 23] (approving continuation of customer programs); *Shasta Lake Resorts, LP*, No. 11-37211 (Bankr. E.D. Cal. Sept. 7, 2011) [Docket No. 117] (authorizing payment of prepetition refunds to consumers to preserve going concern value); *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (Bankr. D. Del. Nov. 6, 2018) (authorizing continuance of patient and third-party payor refund program); *In re Mariner Health Central, Inc.*, No. 22-10877-LSS (Bankr. D. Del. Oct. 24, 2022) [Docket No. 150] (authorizing debtors to refund prepetition patient deposits and overpayments); *In re Gulf Coast Health Care, LLC*, No. 21-11336-KBO (Bankr. D. Del. Nov. 10, 2021) [Docket No. 221] (authorizing continuance of patient and third-party payor refund program); *In re MTPC, LLC*, No. 3:20-bk-05438 (RSM) (Bankr. M.D. Tenn. Jan. 14, 2021) [Docket No. 172] (authorizing continuance of patient and third-party payor refund program); *In re 21st Century Oncology Holdings, Inc.*, No. 17-22770-RDD (Bankr. S.D.N.Y.

1 June 20, 2017) [Docket No. 128] (authorizing debtors to maintain refund programs in the ordinary  
2 course of business).<sup>2</sup>

3 The necessity of the Refund Programs in the medical services industry cannot be overstated.  
4 Continuing to administer the Refund Programs without interruption during the pendency of these  
5 chapter 11 cases will help preserve the Debtors' valuable customer relationships and goodwill,  
6 which will inure to the benefit of all of the Debtors' creditors and stakeholders. Failure to honor the  
7 Refund Program obligations would likely cause the Debtors to lose a significant number of payors  
8 and patients, which, among other things, would damage their reputation for reliability, thereby  
9 resulting in a long-term decline in business.

10 Additionally, if the Debtors fail to honor obligations stemming from the Refund Programs,  
11 they may face legal sanctions or be liable for fines in the jurisdictions in which they operate. Thus,  
12 the Refund Programs are necessary for the Debtors to remain competitive and maintain their patient  
13 base at this critical juncture. Such actions are necessary to maximize the value of the Debtors'  
14 estates.

15 Furthermore, no party in interest will be prejudiced by the payment of prepetition claims  
16 arising under the Refund Programs (the "Refund Claims"). If the Debtors fail to make payments on  
17 account of the Refund Claims, they are subject to offsets or recoupments from Third-Party Payors,  
18 or worse, denial of any reimbursements for patient care going forward under certain Refund  
19 Programs. Thus, the relief requested herein ultimately goes to maximizing the value of the Debtors'  
20 operations and its ability to continue to provide patient care.

21 Accordingly, the Debtors submit that the substantial benefit conferred on the Debtors'  
22 estates by the Refund Programs warrants the authority to honor the Refund Programs and any  
23 obligations relating thereto, whether arising prepetition or postpetition, and respectfully request the  
24 authority to continue their Refund Programs and honor such prepetition commitments.

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28 <sup>2</sup> Because of the voluminous nature of the orders cited herein, such order have not been attached to this Motion.  
Copies of these orders are available upon request to the Debtors' proposed counsel.

V.

**PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE  
AUTHORIZED**

The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations. In addition, under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Insurance Policies. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

VI.

**EMERGENCY CONSIDERATION**

Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the petition date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. Additionally, Local Bankruptcy Rule 2081-1(a)(12) allows a movant to request the type of relief herein for emergency consideration. For the reasons discussed above, (a) authorizing the Debtors to maintain, administer, modify, and renew their refund programs and practices and honor obligations related thereto, and (b) granting related relief as requested herein is integral to the Debtors' ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors' operations at this critical juncture. The relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors' operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

**VII.**

**WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)**

To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

**VIII.**

**WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES**

The Debtors also respectfully request that this Court treat this Motion as a written memorandum of points and authorities or waive any requirement that this Motion be accompanied by a written memorandum of points and authorities as described in Local Bankruptcy Rule 9013-1(c).

**IX.**

**NOTICE**

The Debtors will provide notice of this Motion via first class mail, facsimile or email (where available) to: (a) the Office of the U.S. Trustee Region 16; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) U.S. Bank, N.A. and counsel thereto; (d) Hanmi Bank and counsel thereto; (e) the Internal Revenue Service; (f) the Office of the Attorney General of the State of California; (g) the National Association of Attorneys General; and (h) all other parties who have filed a request for special notice and service of papers with the clerk of this Court.

No prior request for the relief sought in this Motion has been made by the Debtors to this Court or any other court.

1 WHEREFORE, the Debtors respectfully request that the Court grant this Motion and enter  
2 an order in the form attached hereto as **Exhibit A**, granting the relief requested herein and granting  
3 such other relief as is just and proper.

4 Dated: April 19, 2023

5 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

6  
7 By /s/ Jennifer L. Nassiri  
8 Jennifer L. Nassiri

9 JUSTIN R. BERNBROCK  
10 JENNIFER L. NASSIRI  
11 CATHERINE JUN  
12 ROBERT B. McLELLARN  
13 ALEXANDRIA G. LATTNER

14 Proposed Counsel to Debtors and  
15 Debtors in Possession  
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**Exhibit A**

**Proposed Order**

EXHIBIT A

[Proposed Order]

UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:

BEVERLY COMMUNITY HOSPITAL  
ASSOCIATION, dba BEVERLY HOSPITAL  
(A NONPROFIT PUBLIC BENEFIT  
CORPORATION), *et al*,<sup>4</sup>

Debtors,

- ☒ Affects all Debtors
- ☐ Affects Beverly Community  
Hospital Association
- ☐ Montebello Community Health  
Services, Inc.
- ☐ Beverly Hospital Foundation

Lead Case No.: 2:23-bk-12359

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

**[PROPOSED] ORDER (I) AUTHORIZING  
THE DEBTORS TO MAINTAIN,  
ADMINISTER, MODIFY, AND RENEW  
THEIR REFUND PROGRAMS AND  
PRACTICES AND HONOR  
OBLIGATIONS RELATED THERETO,  
AND (II) GRANTING RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: [TBD]

Place: Zoom.Gov – or - Courtroom 1575  
255 E. Temple St.  
Los Angeles, CA 90012

Upon the *Debtors' Emergency Motion for Entry of an Order (I) Authorizing the Debtors to Maintain, Administer, Modify, and Renew Their Refund Programs and Practices and Honor Obligations Related Thereto, and (II) Granting Related Relief* (the "Motion")<sup>5</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed on April 19, 2023; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to

<sup>4</sup> The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

<sup>5</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

1 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C.  
2 § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of  
3 the United States Constitution; and this Court having found that venue of this proceeding and the  
4 Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having  
5 found that the relief requested in the Motion is in the best interests of the Debtors' estates, their  
6 creditors, and other parties in interest; and this Court having found that the Debtors' notice of the  
7 Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and  
8 no other notice need be provided; and this Court having reviewed the Motion and having heard the  
9 statements in support of the relief requested therein at a hearing before this Court on April [ ],  
10 2023 at [ ].m; and this Court having determined that the legal and factual bases set forth in the  
11 Motion and at the Hearing establish just cause for the relief granted herein and is necessary to avoid  
12 immediate and irreparable harm pursuant to Bankruptcy Rule 6003; and after due deliberation and  
13 sufficient cause appearing therefor,

14 **IT IS HEREBY ORDERED THAT:**

- 15 1. The Motion is GRANTED as set forth in this Order.
- 16 2. The Debtors are authorized, but not directed, to maintain, administer, modify, and  
17 renew the Refund Program and to pay or otherwise honor any Refund Program Obligation in the  
18 ordinary course of business, without further order of the Court.
- 19 3. The banks and financial institutions on which checks were drawn or electronic  
20 payment requests made in payment of the prepetition obligations approved herein are authorized to  
21 receive, process, honor, and pay all such checks and electronic payment requests when presented  
22 for payment, and all such banks and financial institutions are authorized to rely on the Debtors'  
23 designation of any particular check or electronic payment request as approved by this Order.
- 24 4. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund  
25 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a  
26 consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with  
27 the relief granted herein.
- 28



1           5.       The requirement under Local Bankruptcy Rule 9013-1(c) to file a memorandum of  
2 points and authorities in connection with the Motion is waived.

3           6.       Notice of the Motion as provided therein shall be deemed good and sufficient notice  
4 of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules  
5 are satisfied by such notice.

6           7.       Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order  
7 are immediately effective and enforceable upon its entry.

8           8.       The Debtors are authorized to take all actions necessary to effectuate the relief  
9 granted in this Order.

10          9.       This Court retains exclusive jurisdiction with respect to all matters arising from or  
11 related to the implementation, interpretation, and enforcement of this Order.

12                               # # #  
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