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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.*¹

Debtors,

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

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

**DEBTORS' EMERGENCY MOTION FOR
ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING DEBTORS
TO (A) PAY PREPETITION WAGES,
SALARIES, AND OTHER
COMPENSATION AND (B) CONTINUE
EMPLOYEE BENEFITS, AND (II)
GRANTING RELATED RELIEF**

Date: April [•], 2023

Time: TBD

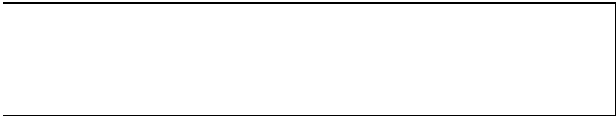
Judge: Hon. Sandra R. Klein

Place: Zoom.Gov – or - Courtroom 1575

¹ 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”)¹ hereby move, on an emergency basis (this “Motion”), to seek entry of an order, substantially in the form attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively): (a) authorizing, but not directing, the Debtors to (i) pay prepetition wages, salaries, reimbursable expenses, and other obligations on account of the Employee Compensation and Benefits Programs (as defined below) and (ii) continue to administer the Employee Compensation and Benefits Programs on a postpetition basis in the ordinary course of business and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within 21 days of the commencement of these chapter 11 cases to consider approval of this Motion on a final basis.

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), 362(d), 363(b), and 507(a) of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and rules 2081-1(a)(6) and 9075-1 of the Local Bankruptcy Rules.

¹ 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 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.

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 Hospital serves a
6 geographic area where half of the population lives under the 200% Federal Poverty Level. With
7 91% of its patients relying on Medicare and Medi-Cal, the Hospital's financial struggles only
8 worsened as the cost of labor, medical supplies and medicine ballooned while government
9 reimbursement rates have stayed the same.

10 On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter
11 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties
12 as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
13 Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural
14 consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule
15 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter
16 11 cases, and no committees have been appointed or designated.

17 **B. The Debtors' Workforce.**

18 As of the Petition Date, the Debtors' workforce consists of approximately 481 full time,
19 79 part time, and 295 per diem employees (collectively, the "Employees"). The Debtors are
20 additionally served by medical staff of approximately 435 physicians, including surgeons, medical
21 directors, on-call doctors, and physicians' assistants.

22 Fulltime and part-time employees are regularly scheduled to work every 14-day pay period;
23 per diem employees, meanwhile, are used on an as-needed basis. Notably, California mandates
24 specific nurse-to-patient ratios; therefore, the Debtors' use of per diem employees helps to ensure
25 that the Debtors comply with those requirements.

C. Employee Compensation and Benefits Programs.

The Debtors maintain the following compensation and benefits programs and pay various administrative fees and premiums in connection therewith (each as defined herein, and together, the “Employee Compensation and Benefits Programs”):

- Employee Compensation;
- Physician Fees;
- Incentive Program Obligations;
- Wage and Benefits Processing Fees;
- Withholding Obligations;
- Unemployment Obligations;
- Reimbursable Expenses;
- PTO Plans;
- Health Plans;
- Health Plan Administration Fees;
- Severance Program;
- Supplemental Retirement Program and Automobile Stipend;
- Other Benefits;
- Retirement Plans; and
- Workers’ Compensation Programs.

The vast majority of Employees rely exclusively or primarily on the Employee Compensation and Benefits Programs to pay their daily living expenses and support themselves or their families. Thus, Employees will face significant financial consequences if the Debtors are not permitted to continue the Employee Compensation and Benefits Programs in the ordinary course of business. The Debtors seek to minimize the personal hardship the Employees would suffer if employee obligations are not paid when due or as expected. Consequently, the relief requested is necessary and appropriate.

By this Motion, the Debtors seek authority, but not direction, to pay the following aggregate prepetition amounts on account of the Employee Compensation and Benefits Programs:

Employee-Related Obligations	Interim Relief	Final Relief
Employee Compensation	\$1,400,000	\$1,400,000
Physician Fees	\$900,000	\$900,000
Incentive Program Obligations	\$10,000	\$20,000
Wage and Benefits Processing Fees	\$17,000	\$17,000
Withholding Obligations	\$750,000	\$750,000
Unemployment Obligations	\$15,000	\$25,000
Reimbursable Expenses	\$10,000	\$10,000
Medical Plans	\$500,000	\$500,000
Prescription Drug Plans	\$83,000	\$83,000
Dental Plans	\$22,000	\$22,000
Vision Plan	\$4,000	\$4,000
Life Insurance Plan	12,000	\$12,000
MERP	\$5,000	\$5,000
Other Health Benefits	\$10,000	\$10,000
Health Plan Administration Fees	\$71,000	\$71,000
Supplemental Retirement Program and Automobile Stipend	\$0	\$4,500
DHCS Retention Program	\$0	\$815,427
Other Benefits	\$12,000	\$12,000
Retirement Plans	\$21,000	\$21,000
Workers' Compensation Programs	\$60,000	\$60,000
Total	\$3,900,000	\$4,739,927

By this Motion, the Debtors further request confirmation of their right to modify, change, and discontinue any of their Employee Compensation and Benefits Programs and to implement new programs, policies, and benefits in the ordinary course of business during these chapter 11 cases, in each instance, in their discretion and without the need for further Court approval, subject to any agreements executed in contemplation of these chapter 11 cases and the requirements of the Bankruptcy Code.

For the avoidance of doubt, the Debtors do not seek authority to pay any amounts in excess of the \$15,150 per Employee limit as set forth in Bankruptcy Code section 507(1)(4) for prepetition priority claims earned within the 180 days prior to the Petition Date.

Pursuant to Local Bankruptcy Rule 2014-1(a), the Debtors intend to serve Notices of Setting/Increasing Insider Compensation with respect to any of their executives who qualify as "insiders" (as defined in section 101(31) of the Bankruptcy Code) ("Insiders"). As part of this Motion, the Debtors seek authority, but not direction, to pay Insiders their unpaid wage or salary obligations that have accrued on their behalf prior to the Petition Date, provided that no objections

1 to the Notices are received within the 15-day time period required in the *Guidelines and*
2 *Requirements for Chapter 11 Debtors in Possession* (the “U.S. Trustee Guidelines”).

3 **D. Employee Compensation.**

4 The Debtors pay Employees’ wages and other compensation (excluding reimbursable
5 expenses, bonuses and paid leave) on a bi-weekly basis (collectively, the “Employee
6 Compensation”). Because the Debtors’ Employees are paid in arrears, Employees will be owed
7 accrued but unpaid Employee Compensation as of the Petition Date. Employee Compensation may
8 also be due and owing as of the Petition Date because of, among other things, potential discrepancies
9 between the amounts paid and the amounts that Employees believe they should have been paid
10 which, upon resolution, may reveal that additional amounts are owed to such Employees. In 2022,
11 the Debtors spent an average of approximately \$3.6 million per month on Employee Compensation.

12 As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid
13 obligations owed to Employees is approximately \$1.4 million on account of Employee
14 Compensation, all of which will come due during the interim period. The Debtors, therefore, seek
15 authority, but not direction, to pay the prepetition Employee Compensation on an interim basis and
16 to continue to honor any such obligations in the ordinary course of the Debtors’ business on a
17 postpetition basis.

18 **E. Physician Fees.**

19 Like in many hospitals, certain medical providers and department directors are contracted
20 with Beverly Hospital—either as a sole proprietor or as part of a medical group. At Beverly, such
21 providers include on-call physicians and other medical professionals, treating patients in a broad
22 range of specialties such as (i) cardiology, (ii) pediatrics, (iii) anesthesia, (iv) orthopedics,
23 (v) urology, (vi) general surgery, and (xii) obstetrics. Meanwhile, the hospital’s medical directors
24 supervise and coordinate physicians and other medical staff in medical departments and programs,
25 including, among others, (i) the Emergency Room, (ii) Pathology, (iii) Cardiology, (iv) Infectious
26 Disease, (v) Obstetrics and Gynecology, (vi) Cardiothoracic Surgery, (vii) Interventional
27 Cardiology, (viii) Gastroenterology, and (ix) Pulmonary Service. Department chairs and medical
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1 directors provide program quality, administrative oversight, and crucial risk management. In 2022,
2 the Debtors spent an average of approximately \$500,000 per month in compensation to physicians.

3 As of the Petition Date, the Debtors owe approximately \$900,000 with respect to physicians
4 serving in these capacities (the “Physician Fees”). The Debtors seek authority, but not direction, to
5 pay the prepetition Physician Fees and to continue to pay Physician Fees in the ordinary course of
6 the Debtors’ business on a postpetition basis.

7 **F. Incentive Program Obligations.**

8 The Debtors historically have provided modest increases to hourly wages of non-insider
9 Employees during Covid surges and staffing shortages (the “Combat Pay Increase”) to encourage
10 Employees to continue to work despite the challenges and risks.

11 As of the Petition Date, the Debtors do not have any amounts that are due and owing for the
12 prepetition period. The Debtors, however, seek authority, but not direction, to continue to offer the
13 Combat Pay Increase in their business judgment in the ordinary course of the Debtors’ business on
14 a postpetition basis.

15 In order to incentivize the Employees to share in the effort to hire nurses, the Debtors have
16 provided to non-insider Employees referral bonuses (“Referral Bonus,” and with the Combat Pay
17 Increase, the “Incentive Program Obligations”). Six months after the hire of an experienced
18 registered nurse, the referring Employee receives the first half of the bonus, \$1,000, and the second
19 half, \$1,000, upon the nurse’s one year of employment. As of the Petition Date, ten Employees are
20 eligible to receive the Referral Bonus.

21 The Debtors seek the authority, not direction, to pay prepetition Referral Bonuses as they
22 come due in the ordinary course and to continue to offer the Referral Bonus to Employees on a
23 postpetition basis. For the avoidance of doubt, the Debtors are seeking to pay the Employees the
24 Referral Bonuses that accrued within the 180 days prior to the Petition Date so long as the total of
25 payments already then made for prepetition Employee Compensation and any other wage-related
26 payments do not exceed the per Employee \$15,150 priority cap set forth in section 507(a)(4) of the
27 Bankruptcy Code.

G. Wage and Benefits Processing Fees.

The Debtors utilize the services of a third-party payroll processor, ADP, to process and disburse the Debtors' payroll. Based on data provided by the Debtors, ADP tallies the amounts necessary to fund payroll (including payroll taxes, withholdings and other deductions), debits the Debtors' account accordingly approximately two to four business days in advance of payroll and disburses the funds to the Employees and third parties, as applicable, by electronic transfers or, on a few occasions by checks. ADP invoices the Debtors for the payment of ADP's fees for processing payroll and related administration, (collectively, the "Payroll Processing Fees"). The average monthly amount of the Payroll Processing Fees is approximately \$11,000, which are paid in arrears.

The Debtors do not believe that there are outstanding Payroll Processing Fees as of the Petition Date. However, in the event the payment of the Payroll Processing Fees has not cleared as of the Petition Date, out an abundance of caution, the Debtors request authority to pay any prepetition Payroll Processing Fees not to exceed \$15,000 and to continue to pay Payroll Processing Fees on a postpetition in the ordinary course of business.

The Debtors also utilize the services of a third-party claims administrator, Igoe, to administer the claims under the Employees' flexible spending accounts and any COBRA claims of former Employees. Igoe charges the Debtors an administration fee (the "Igoe Administration Fees", and together with the Payroll Processing Fees, the "Wage and Benefits Processing Fees") each month. The average monthly amount of the Igoe Administration Fees is approximately \$1,000, which are paid in arrears.

As of the Petition Date, the Debtors estimate that they have \$2,000 in Igoe Administration Fees. The Debtors request authority, not direction, to pay prepetition Igoe Administration Fees and to continue to pay Igoe Administration Fees on a postpetition basis in the ordinary course of business.

H. Withholding Obligations.

During each applicable pay period, federal, state and foreign laws require the Debtors to withhold certain amounts related to federal, state, and local income taxes, Medicare taxes and Social Security (collectively, the "Employee Payroll Taxes") for remittance to the appropriate federal,

1 state, provincial or local taxing authority. The Debtors must then match Employee Payroll Taxes
2 and pay, from their own account, certain amounts for Social Security, Medicare taxes, federal and
3 state unemployment insurance, and certain other taxes (the “Employer Payroll Taxes” and, together
4 with the Employee Payroll Taxes, the “Payroll Taxes”). The majority of Payroll Taxes are processed
5 and forwarded to the appropriate federal, state, or local taxing authority within a few days of when
6 Employees’ payroll checks are disbursed, on a bi-weekly basis—the week after payroll—in
7 accordance with applicable state, provincial, and local taxing authority requirements. The Debtors
8 historical average Payroll Taxes are approximately \$1.7 million per month.

9 In addition, the Debtors routinely deduct certain amounts from Employees’ paychecks,
10 including, without limitation, garnishments, levies, child support and related fees, and pre-tax
11 deductions payable pursuant to certain of the Employee Benefit Programs (as defined below), such
12 as an Employee’s share of healthcare benefits and insurance premiums, 401(a) and 403(b)
13 contributions, legally ordered deductions, and miscellaneous deductions (collectively, the
14 “Deductions” and together with the Payroll Taxes, the “Withholding Obligations”), and forward
15 such amounts to various third-party recipients.

16 As of the Petition Date, the Debtors estimate that the aggregate amount of accrued but
17 unremitted Withholding Obligations is approximately \$750,000, all of which is expected to come
18 due during the Interim Period. By this Motion, the Debtors seek authority to remit or deduct in a
19 manner consistent with historical practice any unpaid, prepetition Withholding Obligations and to
20 continue to honor the Withholding Obligations in the ordinary course of the Debtors’ business on a
21 postpetition basis.

22 **I. Unemployment Obligations.**

23 Beverly Hospital, like other employers in California, provide unemployment benefits to
24 workers who have lost their job and meet the eligibility requirements established by the State of
25 California’s Employment Development Department (“EDD”). The hospital’s share of those
26 obligations historically billed by EDD in arrears and on a quarterly basis; the Debtors’ third party
27 unemployment claims processor, Equifax, additionally invoices the Debtors \$2,000 in processing
28 fees on a monthly basis (collectively, the “Unemployment Obligations”).

1 As of the Petition Date, the Debtors believe they have approximately \$25,000 due and owing
2 on Unemployment Obligations prepetition, and seek authority to pay Unemployment Obligations in
3 the amount of \$15,000 on an interim basis and \$10,000 on a final basis and continue to honor any
4 such obligations in the ordinary course of the Debtors' business on a postpetition basis.

5 **J. Reimbursable Expenses.**

6 The Debtors customarily reimburse certain Employees for certain expenses incurred in the
7 scope of their duties (the "Reimbursable Expenses"). Reimbursable Expenses are typically
8 associated with travel, transportation, lodging, and meals incurred in connection with medical-
9 related education travel, and certain other work-related expenses. It would be inequitable to require
10 the Employees to personally bear these expenses, all of which were incurred on behalf of, and for
11 the benefit of, the Debtors with the expectation of prompt reimbursement. By this Motion, the
12 Debtors seek authority, but not direction, to continue and pay amounts relating to Reimbursable
13 Expenses, including unpaid amounts owed on account of Reimbursable Expenses incurred through
14 Employees' personal funds. It is the policy of the Debtors to reimburse Employees for valid
15 business expenses after submission of appropriate documentation to the Debtors' accounting
16 department and approval thereof. The Debtors pay approximately \$5,000 on a monthly basis on
17 account of the Reimbursable Expenses.

18 It is difficult for the Debtors to determine the exact amounts of Reimbursable Expenses that
19 are due and owing for any particular time period since the expenses incurred by Employees on behalf
20 of the Debtors throughout the year vary on a monthly basis and because there may be some delay
21 between when an Employee incurs an expense and submits the corresponding expense report for
22 processing. As of the Petition Date, based on historical experience and past practice, the Debtors
23 estimate that the amount of accrued but unpaid obligations owed to Employees is approximately
24 \$10,000 on account of Reimbursable Expenses and seek authority, but not direction, to pay amounts
25 as they come due on an interim and final basis, and continue to honor any such obligations in the
26 ordinary course of the Debtors' business on a postpetition basis.

K. Employee Benefit Programs.

31. In the ordinary course of business, the Debtors have established various benefit plans and policies for their full-time Employees (collectively, the “Employee Benefits”). The Employee Benefits include (a) the PTO Plans (as defined below); (b) the Medical Plans, the Prescription Drug Plan, the Dental Plan, the Vision Plan, the Life Insurance Program, the MERP and the Other Health Benefits (each as defined below, and collectively, the “Health Plans”); (c) 401(a) plan benefits, 403(b) plan benefits, and 457(b) plan retirement benefits (collectively the “Retirement Plans”) and (d) workers’ compensation liability insurance (“Workers’ Compensation Program”).

32. Failure to continue these Employee Benefits would severely undermine the Employees’ morale and result in significant hardship to the Employees. To retain the services of the Employees and maintain their morale and loyalty during these Chapter 11 Cases, the Debtors seek authority to honor their obligations concerning their Employee Benefits and continue to provide the Employee Benefits to the Employees after the Petition Date.

i. PTO / Sick Leave Reserve / Paid Sick Leave / Bereavement Leave / Jury Duty.

All of the Debtors’ fulltime and part-time Employees are eligible to accrue paid leave or paid time-off (“PTO”). Approved uses of employee PTO include vacation, sick days or personal days. Accrued and unused PTO is carried forward to the following year, subject to a 300 hour cap per Employee and a 400 hour cap for administrators and directors. Employees earn 0.09231 hours of PTO for each regular hour worked if they have been employed less than five years, 0.11154 PTO hours per hour worked if employed between five to ten years, and 0.13077 PTO hours per hour worked if employed for ten years or more.

In addition to PTO, all of the Debtors’ fulltime and part-time Employees are eligible to accrue paid sick leave reserve (“SLR”) in the amount of 0.02308 hours per regular hour worked, and up to 48 hours a year. Per-diem employees are eligible to accrue paid sick leave (“PSL”) in the amount of 1 hour per 30 hours worked, and up to 24 hours per year. Full-time employees are additionally eligible for five days of paid jury duty. Lastly, the Debtors’ fulltime Employees are eligible for 24 hours of bereavement leave (“Bereavement Leave,” and together with PTO SLR, jury duty, and PSL, the “PTO Plans”) and part-time Employees 14 hours of Bereavement Leave.

1 As of the Petition Date, the Debtors estimate that they carry approximately \$3.6 million on
2 their books for accrued and unused PTO hours. This amount, however, is not a current cash payment
3 obligation.

4 By this Motion, the Debtors seek authority, but not direction, to continue to honor their
5 existing policies for PTO Plans to the extent it permits continuing employees to use their prepetition
6 accrued leave in the ordinary course of business and going forward. The Debtors are not, by this
7 Motion, seeking to cash out any accrued and unused PTO of continuing employees but do seek
8 authority, not direction, to pay the Employees for unused PTO as permitted per Debtors' policy that
9 accrued within the 180 days prior to the Petition Date so long as the total of payments already then
10 made for prepetition Employee Obligations and any other wage-related payments do not exceed the
11 per Employee \$15,150 priority cap imposed by section 507(a)(4) of the Bankruptcy Code.

12 **ii. Medical Plans.**

13 The Debtors offer self-insured medical insurance coverage to their eligible fulltime and part-
14 time Employees and their dependents administered through Anthem Blue Cross (the "Medical
15 Plan"). On average, the Debtors fund approximately 82% of the monthly costs associated with the
16 medical coverage, and employee deductions fund approximately 18% of the monthly costs. The
17 Debtors' monthly costs for the Medical Plan over the last 12 months range as low as \$400,000 to as
18 high as \$1.2 million—prior to stop loss coverage—as the cost fluctuates based on Employees' usage
19 of medical services that month.

20 Based on more recent historical claims trends, the Debtors estimate that approximately
21 \$500,000 remains outstanding as of the Petition Date and the Debtors seek authority in this Motion
22 to pay such amount on an interim and final basis, and to continue to honor any such obligations in
23 the ordinary course of the Debtors' business on a postpetition basis.

24 Fulltime and part-time Employees are also eligible for pharmacy drug coverage through
25 several program options through Keenan Pharmacy Program, Express Scripts, and Sav-On (the
26 "Prescription Drug Plans").

27 As of the Petition Date, the Debtors believe they have approximately \$83,000 accrued on
28 account of prepetition expenses under the Prescription Drug Plans. The Debtors request authority,

1 but not direction, to pay such obligations as they come due on an interim and final basis, and to
2 continue to honor any such obligations in the ordinary course on a postpetition basis.

3 **a. Dental Plans.**

4 Fulltime and part-time Employees are also eligible for dental coverage through two different
5 providers. Employees can elect self-insured dental coverage through Delta Dental. The Debtors
6 historically fund approximately \$32,000 of monthly costs associated with the plan for Delta Dental
7 coverage.

8 Alternatively, Employees can choose a premium-paid HMO provider plan through
9 DeltaCare USA (with the Delta Dental plan, the “Dental Plans”). On average, the Debtors fund
10 approximately \$2,000 of monthly costs associated with DeltaCare coverage. The total cost of the
11 Dental Plans is approximately \$34,000 per month.

12 As of the Petition Date, the Debtors believe they have approximately \$22,000 accrued on
13 account of prepetition expenses on the Dental Plans. The Debtors request authority, but not
14 direction, to pay such obligations on an interim and final basis, and to continue to honor any such
15 obligations in the ordinary course of the Debtors’ business on a postpetition basis.

16 **b. Vision Plan.**

17 The Debtors also offer fulltime and part-time Employees the option of participating in a
18 vision insurance plan administered by VSP (the “Vision Plan”). The total cost of the Vision Plan is
19 approximately \$4,700 per month. As of the Petition Date, the Debtors estimate that they have
20 \$4,000 in accrued and owing amounts on account of the Vision Plan. The Debtors request authority,
21 but not direction, to pay this amount on an interim and final basis, and to continue to honor any such
22 obligations in the ordinary course of the Debtors’ business on a postpetition basis.

23 **c. Life Insurance Plan.**

24 Additionally, the Debtors offer eligible members of the workforce basic group term life
25 insurance and accidental death and dismemberment coverage (collectively, the “Life Insurance
26 Program”). For fulltime Employees, coverage is in an amount equal to that Employee’s annual base
27 salary up to a maximum of \$100,000; the coverage level for medical directors is equal to 1.5 times
28

1 annual base salary up to \$330,000; for hospital executives it is 2 times annual base salary up to
2 \$400,000. The Life Insurance Program is offered at no cost to them through Reliance Standard.

3 The Debtors' average monthly premium over the last twelve-month period for this coverage
4 is approximately \$9,000. As of the Petition Date, the Debtors believe there is approximately
5 \$12,000 in prepetition premiums payable on account of the Life Insurance Program. The Debtors
6 request authority, but not direction, to make these payments on an interim and final basis, and to
7 continue to honor obligations under the Life Insurance Program in the ordinary course of the
8 Debtors' business on a postpetition basis.

9 **d. Medical Expense Reimbursement Plan.**

10 The Debtors offer to their eligible Employees the opportunity to participate in a medical
11 expense reimbursement plan (the "MERP"). Under the MERP, the Debtors reimburse Employees
12 for eligible health care expenses that are incurred under an alternate group health coverage, typically
13 that offered by a spouse's employer. Eligible expenses include copays, deductibles, and coinsurance
14 up to \$7,359 each year for an Employee and \$14,700 for a family. As of the Petition Date, the
15 Debtors believe there is approximately \$5,000 in prepetition expense reimbursements on account of
16 the MERP. The Debtors request authority, but not direction, to make these payments on an interim
17 and final basis, and to continue to honor any such obligations in the ordinary course of the Debtors'
18 business on a postpetition basis.

19 **e. Other Health Benefits.**

20 The Debtors also offer their eligible Employees certain other health benefits, including but
21 not limited to, a flexible savings account, shortterm disability, longterm disability, universal life
22 insurance with long term care, critical illness/cancer coverage, and accident insurance (collectively
23 the "Other Health Benefits").

24 As of the Petition Date, the Debtors do not believe that any amounts are due and owing for
25 the prepetition period on account of Other Health Benefits; however, out of an abundance of caution,
26 they request authority, but not direction, to pay any amounts due and owing, not to exceed \$10,000
27 on an interim and final basis and continue to honor any such obligations in the ordinary course of
28 the Debtors' business on a postpetition basis.

1 **iii. Health Plan Administration Fees.**

2 The Debtors utilize the services of a third-party administrator, Keenan and Associates
3 (“Keenan”), to administer and process claims under the Health Plans. Based on information
4 provided to Keenan by Anthem Blue Cross on medical service usage, Keenan submits a claims
5 invoice each week to the Debtors for reimbursement for medical services rendered through the plan.
6 On a monthly basis, Keenan also invoices the Debtors for the payment of its administration fees and
7 stop loss fees, the latter of which are then remitted to a stop loss insurer (the “Health Plan
8 Administration Fees”). The average monthly amount of the Health Plan Administration Fees is
9 approximately \$87,000, which also includes a monthly fee for providing third party administration
10 of all the Health Plans.

11 The Debtors request authority to pay \$71,000 in accrued prepetition Health Plan
12 Administration Fees and to continue to pay Health Plan Administration Fees on a postpetition in the
13 ordinary course of business.

14 **iv. Supplemental Retirement Program and Automobile Stipend (Final Order**
15 **Only).**

16 The Debtors also maintain a supplemental executive retirement plan and a split-life
17 insurance plan for executives (collectively, the “Supplemental Retirement Program”). As of the
18 Petition Date, only one executive participates in the Supplemental Retirement Program.

19 As of the Petition Date, the Debtors do not believe they owe any amounts on account of
20 Supplemental Retirement Program. By this Motion, the Debtors seek authority to continue to
21 maintain the Supplemental Retirement Program on a postpetition basis in the ordinary course of
22 business and consistent with their prepetition practices on a final basis.

23 Certain salaried Employees, including Insiders, are eligible for a car allowance to offset the
24 expense of commuting to Beverly Hospital (the “Automobile Stipend”). This benefit amounts to
25 \$6,000 a year per eligible Employee, disbursed on a biweekly basis. Approximately nine insider
26 Employees receive the Automobile Stipend.

27 As of the Petition Date, the Debtors owe approximately \$4,500 amount on account of the
28 Automobile Stipend. The Debtors seek the authority, but not direction, to pay the Automobile

1 Stipend, provided that no objections to the Notices are received within the 15-day time period
2 provided by the U.S. Trustee Guidelines.

3 **v. DHCS Retention Payment Program (Final Order Only).**

4 On March 27, 2023, Beverly Hospital received \$815,427 from the California Department of
5 Health Care Services (“DHCS”) as part of DHCS’ Hospital & Skilled Nursing Facility Worker and
6 Physician Retention Payment Program (“DHCS Retention Program”). Approximately 625
7 Employees are eligible to receive bonuses of up to \$1,500. Pursuant to the terms of the DHCS
8 Retention Program, employers who received funds through are required to disburse the funds within
9 60 of receipt, and then must submit an attestation no later than 90 days from receipt.

10 By this Motion, the Debtors seek the authority to distribute up to \$815,427 to eligible
11 Employees per the terms of the DHCS Retention Program upon entry of the Final Order and, in
12 compliance with the DHCS Retention Program, and remit any undistributed funds back to DHCS
13 in compliance with the DHCS Retention Program.

14 **vi. Other Benefits.**

15 The Debtors offer their eligible Employees certain other benefits, including but not limited
16 to tuition reimbursement for job-related educational expenses in the amount of \$3,000 per year for
17 fulltime Employees and \$1,500 for part-time Employees once an Employee has been employed for
18 six months; FlexEd online education reimbursement; a cell phone stipend for eligible Employees;
19 pet insurance, and reimbursement for nurse licensing (collectively the “Other Benefits”).

20 Historically, the Debtors fund approximately \$14,000 a month on Other Benefits for its
21 Employees. Based on this, the Debtors believe there is approximately \$12,000 in prepetition Other
22 Benefits, and the Debtors request authority, but not direction, to make these payments on an interim
23 and final basis, and to continue to honor any such benefits in the ordinary course of the Debtors’
24 business on a postpetition basis.

25 **vii. Retirement Plans.**

26 The Debtors offer Employees the opportunity to participate in various retirement plans,
27 including three defined contributions plans funded by employee pre-tax payroll deferrals: a 401(a)
28 plan, 403(b) plan, and a 457(b) plan (together, the “Retirement Plans”), which are administered

1 though Transamerica Retirement Solutions (“TRS”). Employees participating in these programs
2 may contribute up to the federal statutory cap per year.

3 Each pay period, based on the data provided by the Debtors, TRS deducts specified amounts
4 from certain of the Employees’ gross Wages to pay for the Employee’s contributions into the
5 Retirement Plans. The Debtors provide matching contributions to the 403(b) plan of 25 cents per
6 dollar, and up to 3% of the Employee’s annual salary. The Debtors’ average monthly obligation
7 over the last twelve-month period for the 403(b) plan was \$30,000.

8 Failure to timely forward the Employees’ Retirement Plan deductions may be a violation of
9 the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), resulting in
10 potential personal liability for the Debtors’ officers for such deducted amounts. Further, the Debtors
11 believe that maintaining the Retirement Plans is critical to maintaining Employee morale.
12 Furthermore, certain of these retirement benefits are required by a collective bargaining agreement.

13 As of the Petition Date, the Debtors believe they have \$21,000 in accrued prepetition
14 matching obligations; the debtors request authority, but not direction, to pay such prepetition
15 amounts and to remit prepetition Employee deductions per federal law, and to continue their existing
16 Retirement Plans postpetition in ordinary course of business and consistent with past practice.

17 **L. Workers’ Compensation Program.²**

18 44. The Debtors maintain workers’ compensation liability insurance to provide the
19 Employees with workers’ compensation coverage for claims arising from or related to their
20 Employment (“Workers’ Compensation Obligations”). The Debtors provide workers’
21 compensation benefits to the Employees through a high deductible insurance plan with Safety
22 National Casualty Corporation. The Debtors’ annual premium for the Safety National policy is
23 approximately \$377,610, plus a state surcharge of \$50,350. Premiums are payable in the form of a
24 down payment with subsequent monthly installments and are subject to an annual audit. As of the
25

26
27 ² Concurrently herewith, the Debtors have filed the *Debtors’ Emergency Motion for Entry of Interim and Final*
28 *Orders: (I) Authorizing the Debtors to Maintain, Renew, or Supplement their Insurance Policies and Honor All*
Obligations In Respect Thereof, and (II) Granting Related Relief (the “Insurance Motion”). The Debtors are not
seeking relief related to workers’ compensation programs in the Insurance Motion.

1 Petition Date, the Debtors believe there are eight installment payments remaining for the policy
2 period in an aggregate amount of approximately \$285,000.

3 Workers' compensation claims are administered by Keenan, which charges the Debtors
4 certain administration fees on a monthly or quarterly basis. On average, the annual amount of
5 administration fees paid to Keenan is approximately \$103,000 (the "Workers' Compensation
6 Administration Fee"). The Debtors additionally maintain three trust accounts to fund workers'
7 compensation claims.³

8 As of the Petition Date, the Debtors estimate that the amount of accrued but unpaid
9 obligations owed is approximately \$60,000 on account of Workers' Compensation Obligations and
10 seek authority, but not direction, to pay such amounts on an interim and basis, and continue to honor
11 any such obligations in the ordinary course of the Debtors' business on a postpetition basis.

12 Failure to maintain workers' compensation insurance could result in the institution of
13 administrative or legal proceedings and material fines against the Debtors and their officers and
14 directors. Therefore, out of an abundance of caution, the Debtors seek authority to continue paying
15 and/or contesting in good faith, as appropriate in the Debtors' business judgment, all outstanding
16 amounts related to their Workers' Compensation Obligations that arose prior to the petition date,
17 including without limitation any payments for workers' compensation claims, premiums and fees
18 owed for administrative costs and other amounts required in connection with the Debtors' workers'
19 compensation program, as such amounts become due in the ordinary course of the Debtors'
20 business.

21 IV.

22 BASIS FOR RELIEF

23 A. Sufficient Cause Exists to Authorize the Debtors to Honor the Employee 24 Compensation and Benefits Programs.

25
26
27 ³ A detailed description of these accounts is set forth in the *Debtors' Emergency Motion for Entry of Interim and*
28 *Final Orders (I) Authorizing the Debtors to (A) Continue to Operate Their Cash Management System, (B) Maintain*
Existing Business Forms, and (C) Perform Intercompany Transactions, and (II) Granting Related Relief, filed
concurrently herewith.

**i. Certain Employee Compensation and Benefits Programs Are Entitled to
Priority Treatment.**

Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code entitle certain of the Employee Compensation and Benefits Programs owed to the Employees to priority treatment, to the extent such payments do not exceed \$15,150 for each individual as provided for under sections 507(a)(4) and (5) of the Bankruptcy Code. As priority claims, the Debtors are required to pay these claims in full to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(B) (requiring payment in full of certain allowed unsecured claims for (a) wages, salaries, or commissions, including severance, and sick leave pay earned by an individual, and (b) contributions to an employee benefit plan). Indeed, the Debtors submit that payment of the Employee Compensation and Benefits Programs at this time enhances value for the benefit of all interested parties.

**ii. Payment of Certain Employee Compensation and Benefits Programs Is
Required by Law.**

The Debtors seek authority, but not direction, to pay the Withholding Obligations to the appropriate third-party entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from the Employees' paychecks. Indeed, certain Withholding Obligations are not property of the Debtors' estates because the Debtors have withheld such amounts from the Employees' paychecks on another party's behalf. *See* 11 U.S.C. §§ 541(b)(1), (d). Furthermore, federal, state, and provincial laws require the Debtors to withhold certain tax payments from the Employees' paychecks and to pay such amounts to the appropriate taxing authority. 26 U.S.C. §§ 6672, 7501(a); *see also In re R&T Roofing Structures & Commercial Framing, Inc.*, 887 F.2d 981, 984–85 (9th Cir. 1989) ("It follows that withheld FICA and employee taxes are impressed with a statutory trust for the purposes of section 541."); *City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *In re DuCharmes & Co.*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because the Withholding

Obligations may not be property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Withholding Obligations on account of the Employees to the proper parties in the ordinary course of business. *See In re Dameron*, 155 F.3d 718, 721 (4th Cir. 1998). The Debtors therefore request that the Court recognize that the Withholding Obligations are not property of the Debtors' estates and, regardless of whether the Debtors collected the amounts prior to the Petition Date, authorize the Debtors to transmit such monies to the proper parties in the ordinary course of business.

Similarly, state laws require the Debtors to maintain the Workers' Compensation Program. If the Debtors fail to maintain the Workers' Compensation Program, state and provincial laws may prohibit the Debtors from operating in those states and/or provinces. Payment of all Workers' Compensation Program amounts is therefore crucial to the Debtors' continued operations and the success of the Debtors' restructuring. The Debtors therefore request that the Court authorize the Debtors to maintain the Workers' Compensation Program.

B. Payment of the Employee Compensation and Benefits Programs Is Proper Pursuant to Section 363(b) of the Bankruptcy Code and the Doctrine of Necessity.

The Supreme Court has recognized that it is appropriate to authorize payment of prepetition obligations where necessary to protect and preserve the estate. *See Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017); *see also Bank of Am. Nat'l Trust & Savs. Ass'n v. 203 N. La Salle P'Ship*, 526 U.S. 434, 453 (1999) (stating that the "two recognized policies" of chapter 11 are preserving going concern value and maximizing the value of 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.

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

8 Section 363 of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after
9 notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property
10 of the estate.” 11 U.S.C. § 363(b)(1). Under section 363(b) of the Bankruptcy Code, courts require
11 only that the debtor “show that a sound business purpose” justifies the proposed use of property. *In*
12 *re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999); *see also Comm. of Equity*
13 *Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070–71 (2d Cir. 1983) (requiring
14 a “good business reason” to approve a sale pursuant to section 363(b)); *In re W.A. Mallory Co.*, 214
15 B.R. 834, 836 (Bankr. E.D. Va. 1997) (“This Court follows the ‘sound business purpose’ test when
16 examining § 363(b) sales.”) (citing *In re WBQ P’ship*, 189 B.R. 97, 102 (Bankr. E.D. Va. 1995)).
17 Moreover, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct
18 from a decision made arbitrarily or capriciously), courts will generally not entertain objections to
19 the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986); *see*
20 *also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumptions of the
21 business judgment rule on the merits is a near-Herculean task.”). Thus, if a transaction satisfies the
22 business judgment rule, it should be approved under section 363(b) of the Bankruptcy Code.

23 Furthermore, section 105(a) of the Bankruptcy Code further provides that a court “may issue
24 any order, process, or judgment that is necessary or appropriate to carry out the provisions of” the
25 Bankruptcy Code, pursuant to the “doctrine of necessity.” 11 U.S.C. § 105(a). The “doctrine of
26 necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise
27 its equitable power to allow payment of critical prepetition claims not explicitly authorized by the
28 Bankruptcy Code and further supports the relief requested herein. *See In re Lehigh & New Eng.*

1 Ry., 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition
2 claims if such payment is essential to debtor's continued operation); *see also In re United Am., Inc.*,
3 327 B.R. 776, 781 (Bankr. E.D. Va. 2005) (acknowledging the doctrine of necessity "is a necessary
4 deviation because otherwise there will be no reorganization and no creditor will have an opportunity
5 to recoup any part of its pre-petition claim"); *In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del.
6 1999) (holding that section 105(a) of the Bankruptcy Code "provides a statutory basis for payment
7 of pre-petition claims" under the doctrine of necessity).

8 Courts in this district have further recognized that section 105(a), in conjunction with Local
9 Bankruptcy Rule 2081-1(a)(6), provides a legal basis for the "immediate payment of claims, often
10 on first day motions, based on the recognition of the critical need to pay prepetition wage and
11 commission claims to employees and specified independent contractors." *In re EcoSmart, Inc.*,
12 2015 WL 9274245, at *4 (Bankr. C.D. Cal. Dec. 18, 2015) (citing Local Bankruptcy Rule 2081-
13 1(a)(6) and 2 March, Ahart and Shapiro, California Practice Guide: Bankruptcy, ¶ 11:386, at 11–45
14 (2014) ("Most courts allow payment of prepetition employee wages up to the priority amount under
15 the '*necessity of payment*' doctrine, which permits immediate payment of creditors who will not
16 supply services or material essential to the conduct of the business until their prereorganization
17 claims are paid.") (emphasis in original)).

18 Payment of the Employee Compensation and Benefits Programs is warranted under this
19 authority and the facts of these chapter 11 cases. Employees will be exposed to significant financial
20 difficulties if the Debtors are not permitted to honor obligations for unpaid Employee Compensation
21 and Benefits Programs. Additionally, continuing ordinary course benefits will help maintain
22 Employee morale and minimize the adverse effect of the commencement of these chapter 11 cases
23 on the Debtors' ongoing business operations.

24 Moreover, Employees provide the Debtors with services necessary to conduct the Debtors'
25 business, and the Debtors believe that absent the payment of the Employee Compensation and
26 Benefits Programs owed to the Employees, the Debtors may experience Employee turnover and
27 instability at this critical time in these chapter 11 cases. The Debtors believe that without these
28 payments, the Employees may become demoralized and unproductive because of the potential

1 significant financial strain and other hardships the Employees may face. Such Employees may then
2 elect to seek alternative employment opportunities. Additionally, a significant portion of the value
3 of the Debtors' business is tied to their workforce, which cannot be replaced without significant
4 efforts—which efforts may not be successful given the overhang of these chapter 11 cases.
5 Enterprise value may be materially impaired to the detriment of all stakeholders in such a scenario.
6 The Debtors therefore believe that payment of the prepetition obligations with respect to the
7 Employee Compensation and Benefits Programs is a necessary and critical element of the Debtors'
8 efforts to preserve value and will give the Debtors the greatest likelihood of retention of their
9 Employees as the Debtors seek to operate their business in these chapter 11 cases.

10 Courts in this and other districts have granted similar relief to that requested in this Motion
11 in previous chapter 11 cases. *See, e.g., In re Verity Health System of California*, No. 18-20151-ER,
12 Docket No. 75 (Bankr. C.D. Cal. Sept. 5, 2018) (authorizing the debtors to pay prepetition wages
13 and salaries and employment benefits and continue such on a postpetition basis); *In re Gardens*
14 *Reg'l Hosp. & Med. Ctr., Inc.*, Case No. 16-17463-ER, Docket No. 68 (Bankr. C.D. Cal. June 10,
15 2016) (same); *In re Gordian Med., Inc.*, Case No. 12- 12399-MW, Docket No. 57 (Bankr. C.D. Cal.
16 March 5, 2012) (same); *In re Victor Valley Cmty. Hosp.*, Case No. 10-39537-CB, Docket No. 30
17 (Bankr. C.D. Cal. Sept. 17, 2010) (same); *In re Downey Reg'l Med. Ctr.-Hosp., Inc.*, Case No. 09-
18 34714-BB, Docket No. 37 (Bankr. C.D. Cal. Sept. 17, 2009) (same); *In re Pleasant Care Corp.*,
19 Case No. 07-12312-EC, Docket No. 47 (Bankr. C.D. Cal. Mar. 27, 2007) (same). Accordingly, the
20 Debtors respectfully request that the Court authorize the Debtors to pay and continue the Employee
21 Compensation and Benefits Programs in the ordinary course of business and consistent with past
22 practice.

23 **C. The Debtors Satisfy the Elements of Local Bankruptcy Rule 2081-1(a)(6) to Grant the**
24 **Relief Requested.**

25 Local Bankruptcy Rule 2081-1(a)(6) sets forth specific requirements that a debtor must meet
26 in order to receive emergency relief to pay prepetition payroll and to honor prepetition employment
27 practices. Specifically, the motion must be supported by evidence that establishes that (i) the
28 employees are still employed; (ii) the necessity for payment; (iii) the benefit of the practices; (iv) the

1 prospect of reorganization; (v) whether the employees are insiders; (vi) whether the employees'
2 claims are within the limits established by 11 U.S.C. § 507; and (vii) the payment will not render
3 the estate administratively insolvent. 2081-1(a)(6)(A).

4 *The Employees are still employed by the Debtors.* The Employee Compensation and that
5 the Debtors propose to pay are for Employees who are still employed by the Debtors.

6 *The proposed payments to Employees are unequivocally necessary.* During this critical
7 process, it is essential for the Debtors to retain their Employees to operate the Hospital. Not only
8 are the Employees essential to patient care, many have been long time stewards of this medical
9 institution. The Debtors are justifiably concerned that a failure to honor their payroll obligations
10 will result in Employees leaving their jobs, which would exacerbate their staffing challenges and
11 make the provision of essential medical services to patients difficult. Without the Employees'
12 steadfast support, the Debtors' operations could be severely impaired, if not irreversibly harmed.

13 *The payments under the Employee Compensation and Benefits Programs benefit the*
14 *Debtors' estates.* The Debtors seek only to honor the Employee Compensation and Benefits
15 Programs which would constitute priority claims pursuant to § 507. Such claims would otherwise
16 be required to be paid prior to general unsecured claims in any subsequent distribution of assets.
17 However, if the Debtors do not honor such Employee Obligations now, the Debtors run a serious
18 risk of losing Employees, and the loss of Employees would be severely detrimental to the Debtors'
19 operations.

20 *The relief herein, if granted, increases the Debtors' prospect of reorganization.* In order to
21 accomplish the Debtors' goals in these chapter 11 cases—namely, an expedited sale of Beverly
22 Hospital—it is crucial that the Debtors minimize any adverse impact of the chapter 11 filing on the
23 Debtors' workforce, as that could have a direct negative impact to patient care. A disruption to
24 payment of the payroll, or to the continuing of employee programs in the Debtors' discretion, could
25 cause Employees to terminate their employment, be distracted from their work duties, and could
26 affect Employee morale at a particularly critical time for the Debtors.

27 *The Debtors do not seek to pay any prepetition claims of insiders on an interim basis.* As set
28 forth above, the Debtors seek authority to pay wages, salaries, the Supplemental Retirement

1 Program, and the Automobile Stipend to Insiders only upon satisfying Local Bankruptcy Rule 2014-
2 1(a).

3 *The Employees' claims are within the limits established by § 507 of the Bankruptcy Code.*

4 By this Motion, the Debtors only seek authority to: (i) pay and/or honor prepetition Employee
5 Compensation; (ii) honor the Referral Bonus, and (iii) cash out accrued and unused PTO so long as
6 total payments do not exceed the per Employee \$15,150 priority cap set forth in section 507(a)(4)
7 of the Bankruptcy Code.

8 *The proposed payments will not render the Estates administratively insolvent.* The source
9 of the funds to be used to pay and/or honor the prepetition Employee Obligations will be the DIP
10 Facility. The Debtors believe that the DIP Facility is sufficient to pay the Employee Compensation
11 without rendering their estates administratively insolvent.

12 **D. A Limited Waiver of the Automatic Stay for Workers' Compensation Claims Is**
13 **Appropriate Here.**

14 Section 362(a) of the Bankruptcy Code operates to stay "the commencement or continuation,
15 including the issuance or employment of process, of a judicial, administrative, or other action or
16 proceeding against the debtor that was or could have been commenced before the commencement
17 of the case under this title, or to recover a claim against the debtor that arose before the
18 commencement of the case under this title" 11 U.S.C. § 362(a)(1).

19 Section 362 of the Bankruptcy Code, however, permits a debtor or other parties in interest
20 to request a modification or termination of the automatic stay for "cause." *Id.* at § 362(d)(1). Cause
21 exists here to modify the automatic stay to permit the Employees to proceed with workers'
22 compensation claims in the appropriate judicial or administrative forum. Staying the workers'
23 compensation claims could have a detrimental effect on the financial well-being and morale of the
24 Employees.

25 **E. Processing of Checks and Electronic Fund Transfers Should be Authorized.**

26 The Debtors have sufficient funds to pay any amounts described in this Motion in the
27 ordinary course of business by virtue of expected cash flows from ongoing business operations and
28 anticipated access to cash collateral. In addition, under the Debtors' existing cash management

1 system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized
2 payment in respect of the Insurance Policies. Accordingly, the Debtors believe there is minimal risk
3 that checks or wire transfer requests that the Court has not authorized will be inadvertently made.
4 Therefore, the Debtors respectfully request that the Court authorize all applicable financial
5 institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks
6 or wire transfer requests in respect of the relief requested in this Motion.

7 **V.**

8 **EMERGENCY CONSIDERATION**

9 Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the
10 petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed.
11 R. Bankr. P. 6003. Additionally, Local Bankruptcy Rule 2081-1(a)(6) allows a movant to request
12 the type of relief requested in this Motion for emergency consideration. For the reasons discussed
13 above, (a) authorizing, but not directing, the Debtors to (i) pay all prepetition wages, salaries,
14 reimbursable expenses, and other obligations on account of the Employee Compensation and
15 Benefits Programss and (ii) continue to administer the Employee Compensation and Benefits
16 Programs in the ordinary course of business and (b) granting related relief as requested herein is
17 integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to
18 receive such authorization and other relief during the first 21 days of these chapter 11 cases would
19 severely disrupt the Debtors’ operations at this critical juncture. The relief requested is necessary
20 in order for the Debtors to operate their business in the ordinary course and preserve the ongoing
21 value of the Debtors’ operations and maximize the value of their estates for the benefit of all
22 stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and
23 irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief
24 requested in this Motion on an emergency basis.

1 **VI.**

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

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

6 **VII.**

7 **WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES**

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

12 **VIII.**

13 **NOTICE**

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

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

1 WHEREFORE, the Debtors respectfully request that the Court grant this Motion on an
2 interim basis and enter an order in the form attached hereto as **Exhibit A**, granting the relief
3 requested herein and granting such other relief as is just and proper. Such relief is requested first
4 on an interim basis with final relief to be provided at a hearing set by the Court within 21 days of
5 the Petition Date.

6 Dated: April 20, 2023

7 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

8
9 By /s/ Jennifer L. Nassiri
10 Jennifer L. Nassiri

11 JUSTIN R. BERNBROCK
12 JENNIFER L. NASSIRI
13 CATHERINE JUN
14 ROBERT B. McCELLARN
15 ALEXANDRIA G. LATTNER

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17 Proposed Counsel to Debtors and
18 Debtors in Possession
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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*,¹

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] INTERIM ORDER
APPROVING DEBTORS' EMERGENCY
MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, AND
OTHER COMPENSATION, AND (B)
CONTINUE EMPLOYEE BENEFITS
PROGRAMS, 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

Upon the *Debtors' Emergency Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the "Motion") of the above-captioned debtors and debtor-in-possession (collectively, the "Debtors")

¹ 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.

1 filed on April 19, 2023; and upon the First Day Declaration; and this Court having jurisdiction over
2 this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that it may enter a
3 final order consistent with Article III of the United States Constitution; and this Court having found
4 that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408
5 and 1409; and this Court having found that the relief requested in the Motion is in the best interests
6 of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that
7 the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate
8 under the circumstances and that no other notice need be provided; and this Court having reviewed
9 the Motion and having heard the statements in support of the relief requested therein at a hearing
10 before this Court on April [__,] 2023 at [___.m.] (the "Hearing"); and this Court having
11 determined that the legal and factual bases set forth in the Motion and at the Hearing establish just
12 cause for the relief granted herein; and upon all of the proceedings had before this Court; and after
13 due deliberation and sufficient cause appearing therefor,

14 **IT IS HEREBY ORDERED THAT:**

- 15 1. The Motion is GRANTED on an interim basis as set forth in this Interim Order.
- 16 2. The final hearing (the "Final Hearing") on the Motion shall be held on _____,
17 2023, at __:__.m., prevailing Pacific Standard Time. Any objections or responses to entry of a
18 final order on the Motion shall be filed on or before 4:00 p.m., prevailing Pacific Standard Time on
19 _____, 2023, and served in accordance with the Motion to Limit Notice on the Notice Parties.
20 In the event no objections to entry of a final order on the Motion are timely received, this Court may
21 enter such final order without need for the Final Hearing.
- 22 3. The Debtors are authorized, but not directed, to: (a) continue and discontinue the
23 Employee Compensation and Benefits Programs in the ordinary course of business during these
24 chapter 11 cases and without the need for further Court approval, subject to applicable law; and
25 (b) pay and honor prepetition amounts outstanding under or related to the Employee Compensation
26 and Benefits Programs in the ordinary course of business.
- 27 4. Notwithstanding anything to the contrary herein, pending entry of the Final Order,
28 the Debtors are authorized, but not directed, in their sole discretion, to pay, remit, or reimburse, as

applicable, the following accrued prepetition amounts that may become due and owing prior to entry of the Final Order:

Employee-Related Obligations	Interim Amount
Employee Compensation	\$1,400,000
Physician Fees	\$900,000
Incentive Program Obligations	\$10,000
Wage and Benefits Processing Fees	\$17,000
Withholding Obligations	\$750,000
Unemployment Obligations	\$15,000
Reimbursable Expenses	\$10,000
Medical Plans	\$500,000
Prescription Drug Plans	\$83,000
Dental Plans	\$22,000
Vision Plan	\$4,000
Life Insurance Plan	\$12,000
MERP	\$5,000
Other Health Benefits	\$10,000
Health Plan Administration Fees	\$71,000
Other Benefits	\$12,000
Retirement Plans	\$21,000
Workers' Compensation Programs	\$60,000
Total	\$3,900,000

5. The Debtors are authorized, but not directed, to honor their existing policies for PTO Plans to the extent it permits continuing employees to use their prepetition accrued leave in the ordinary course of business and going forward.

6. The Debtors are also authorized, but not directed, to pay the Employees for unused PTO as permitted per Debtors' policy that accrued within the 180 days prior to the Petition Date so long as the total of payments already then made for prepetition Employee Obligations and any other wage-related payments do not exceed the per Employee \$15,150 priority cap imposed by section 507(a)(4) of the Bankruptcy Code.

7. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

1 8. Nothing contained herein is intended or should be construed to create an
2 administrative priority claim on account of any obligations owed under any Employee
3 Compensation and Benefits Program.

4 9. The banks and financial institutions on which checks were drawn or electronic
5 payment requests made in payment of the prepetition obligations approved herein are authorized to
6 receive, process, honor, and pay all such checks and electronic payment requests when presented
7 for payment, and all such banks and financial institutions are authorized to rely on the Debtors'
8 designation of any particular check or electronic payment request as approved by this Interim Order.

9 10. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund
10 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a
11 consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with
12 the relief granted herein.

13 11. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

14 12. The requirement under Local Bankruptcy Rule 9013-1(c)(3)(B) to file a
15 memorandum of law in connection with the Motion is waived.

16 13. Notice of the Motion as provided therein shall be deemed good and sufficient notice
17 of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules
18 are satisfied by such notice.

19 14. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim
20 Order are immediately effective and enforceable upon its entry.

21 15. The Debtors are authorized to take all actions necessary to effectuate the relief
22 granted in this Interim Order.

23 16. This Court retains exclusive jurisdiction with respect to all matters arising from or
24 related to the implementation, interpretation, and enforcement of this Interim Order.

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EXHIBIT B

[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.*¹

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] FINAL ORDER
APPROVING DEBTORS' EMERGENCY
MOTION FOR ENTRY OF INTERIM
AND FINAL ORDERS (I) AUTHORIZING
THE DEBTORS TO (A) PAY
PREPETITION WAGES, SALARIES, AND
OTHER COMPENSATION, AND (B)
CONTINUE EMPLOYEE BENEFITS
PROGRAMS, AND (II) GRANTING
RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: Sandra R. Klein

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

Upon the *Debtors' Emergency Motion For Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the "Motion") of the above-captioned debtors and debtor-in-possession (collectively, the "Debtors")

¹ 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.

1 filed on April 19, 2023; and upon the First Day Declaration; and this Court having jurisdiction over
2 this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that: (w) it may
3 enter a final order consistent with Article III of the United States Constitution, (x) venue of this
4 proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409, (y) the
5 relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other
6 parties in interest, and (z) the Debtors' notice of the Motion and opportunity for a hearing on the
7 Motion were appropriate under the circumstances and that no other notice need be provided; and
8 this Court having reviewed the Motion and having heard the statements in support of the relief
9 requested therein at a hearing before this Court on [__,] 2023 at [___.m.] (the "Hearing"); and this
10 Court having determined that the legal and factual bases set forth in the Motion and at the Hearing
11 establish just cause for the relief granted herein; and upon all of the proceedings had before this
12 Court; and after due deliberation and sufficient cause appearing therefor,

13 **IT IS HEREBY ORDERED THAT:**

14 The Motion is GRANTED on a final basis as set forth in this Final Order. Capitalized terms not
15 defined in this Final Order have the meanings given to them in the Motion.

16 1. The Debtors are authorized, but not directed, to: (a) continue and discontinue the
17 Employee Compensation and Benefits Programs in the ordinary course of business during these
18 chapter 11 cases and without the need for further Court approval, subject to applicable law; and (b)
19 pay and honor prepetition amounts outstanding under or related to the Employee Compensation and
20 Benefits Programs in the ordinary course of business.

21 2. Notwithstanding anything to the contrary herein, the Debtors are authorized, but not
22 directed, in their sole discretion, to honor, pay, remit, or reimburse, as applicable, not more than the
23 following prepetition amounts:

Employee-Related Obligations	Final Relief
Employee Compensation	\$1,400,000
Physician Fees	\$900,000
Incentive Program Obligations	\$20,000
Wage and Benefits Processing Fees	\$17,000
Withholding Obligations	\$750,000
Unemployment Obligations	\$25,000
Reimbursable Expenses	\$10,000
Medical Plans	\$500,000

Employee-Related Obligations	Final Relief
Prescription Drug Plans	\$83,000
Dental Plans	\$22,000
Vision Plans	\$4,000
Life Insurance	\$12,000
MERP	\$5,000
Other Health Benefits	\$10,000
Health Plan Administration Fees	\$71,000
Supplemental Retirement Program and Automobile Stipend	\$4,500
DHCS Retention Program	\$815,427
Other Benefits	\$12,000
Retirement Plans	\$21,000
Workers' Compensation Programs	\$60,000
Total	\$4,739,927

3. The Debtors are authorized, but not directed, to honor their existing policies for PTO Plans to the extent it permits continuing employees to use their prepetition accrued leave in the ordinary course of business and going forward.

4. The Debtors are also authorized, but not directed, to pay the Employees for unused PTO as permitted per Debtors' policy that accrued within the 180 days prior to the Petition Date so long as the total of payments already then made for prepetition Employee Obligations and any other wage-related payments do not exceed the per Employee \$15,150 priority cap imposed by section 507(a)(4) of the Bankruptcy Code.

5. Pursuant to section 362(d) of the Bankruptcy Code, Employees are authorized to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum and the Debtors are authorized to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business. This modification of the automatic stay pertains solely to claims under the Workers' Compensation Program.

6. Nothing herein shall be deemed to authorize the payment of any amounts which violates or implicates section 503(c) of the Bankruptcy Code; provided, that nothing herein shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

1 7. Nothing contained herein is intended or should be construed to create an
2 administrative priority claim on account of any obligations owed under any Employee
3 Compensation and Benefits Program.

4 8. The banks and financial institutions on which checks were drawn or electronic
5 payment requests made in payment of the prepetition obligations approved herein are authorized to
6 receive, process, honor, and pay all such checks and electronic payment requests when presented
7 for payment, and all such banks and financial institutions are authorized to rely on the Debtors'
8 designation of any particular check or electronic payment request as approved by this Final Order.

9 9. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund
10 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a
11 consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with
12 the relief granted herein.

13 10. The requirement under Local Bankruptcy Rule 9013-1(c)(3)(B) to file a
14 memorandum of law in connection with the Motion is waived.

15 11. Notice of the Motion as provided therein shall be deemed good and sufficient notice
16 of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules
17 are satisfied by such notice.

18 12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final
19 Order are immediately effective and enforceable upon its entry.

20 13. The Debtors are authorized to take all actions necessary to effectuate the relief
21 granted in this Final Order.

22 14. This Court retains exclusive jurisdiction with respect to all matters arising from or
23 related to the implementation, interpretation, and enforcement of this Final Order.

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