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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-SK

Jointly administered with:

CASE NO: 2:23-bk-12360-SK

CASE NO: 2:23-bk-12361-SK

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 ORDER (I) APPROVING DEBTORS'
USE OF CASH COLLATERAL, AND (II)
SETTING A FINAL HEARING ON THE
USE OF CASH COLLATERAL**

Date: April 21, 2023

Time: 2:00 p.m.

Judge: Hon. Sandra R. Klein

Place: Zoom.Gov

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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COLLATERAL

I.

RELIEF REQUESTED

The above-captioned debtors and debtors in possession (collectively, the “Debtors” or “Beverly”) 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) approving the Debtors’ proposed use of cash collateral of the Indenture Trustee (as defined below) for the approximately three weeks until the Court can conduct a final hearing (such period, the “Interim Period”) on the use of cash collateral; (b) finding that the Indenture Trustee is adequately protected during the Interim Period; (c) scheduling a final hearing at which time it will authorize the use of Cash Collateral for at least an additional 10 weeks; and (d) granting such additional related relief as the Court deems appropriate under the exigent circumstances of these cases and this Motion.

II.

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Central District of California 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) and 363 of the Bankruptcy Code, Bankruptcy Rule of Procedure 4001(b), and Rule 4001-2 of the Local Bankruptcy Rules. Pursuant to Local Rule 4001-2, the Debtors have completed the Statement Regarding Cash Collateral or Debtor in Possession Financing [FRBP 4001; LBR 4001-2] (the “Local Rule Statement”) and are filing the same contemporaneously with the Motion.

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III.

STATEMENT OF FACTS

A. Background²

The Beverly Community Hospital is a nonprofit, 202-bed hospital in Montebello (the “Hospital”) that serves low-income patients in the nearby Los Angeles area. In operating a safety net hospital, historically Beverly has been underfunded and, in the post-Covid economy, has become increasingly cash strapped. With 91% of its patients relying on Medicare and Medi-Cal, the Hospital’s financial struggles only worsened as the cost of labor, medical supplies and medicine ballooned while government reimbursement rates have stayed the same.

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

The use of the Cash Collateral (as defined in this Motion) is essential to Beverly’s ability to continue to operate the Hospital because it is necessary to fund payroll, to pay critical and necessary vendors and to maximize value for the Indenture Trustee (the obligations to which also are secured by a deed of trust on the Hospital) and all creditors so the Hospital can be sold as a going concern. Moreover, it is essential to the community that the Hospital continue to provide the services to patients that simply would be unavailable to many if not most.

² A detailed description of the Debtors and their business, and the facts and circumstances supporting 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”) [Docket No.09], filed contemporaneously with the Debtors’ voluntary chapter 11 petitions on April 19, 2023 (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion shall have the meanings given to them in the First Day Declaration or in the Declaration of Alyssa Lozynski in Support of the DIP Motion [Docket No. __] (the “Lozynski Declaration”).

B. The Lender – The Indenture Trustee

U.S. Bank National Association is the indenture trustee pursuant to the existing funded indebtedness facilities described below.

The California Statewide Communities Development Authority (the “Authority”) issued California Statewide Communities Development Authority Revenue Bonds (Beverly Community Hospital Association), Series 2015 in the aggregate principal amount of \$39,725,000 (the “2015 Bonds”) for the benefit of Borrower pursuant to a Bond Indenture, dated as of December 1, 2015 (the “2015 Bond Indenture”), between the Authority and U.S. Bank National Association, as trustee thereunder, and the proceeds of the 2015 Bonds were lent by the Authority to Borrower pursuant to a Loan Agreement, dated as of December 1, 2015.

The Authority issued California Statewide Communities Development Authority Revenue Bonds (Beverly Community Hospital Association), Series 2017 in the aggregate principal amount of \$19,840,000 (the “2017 Bonds”) for the benefit of the borrower pursuant to a Bond Indenture, dated as of May 1, 2017 (the “2017 Bond Indenture”, and together with the 2015 Bond Indenture, the Indentures”), between the Authority and U.S. Bank National Association, as trustee thereunder, and the proceeds of the 2017 Bonds were lent by the Authority to Borrower pursuant to a Loan Agreement, dated as of May 1, 2017 (the “2017 Loan Agreement”).

Each of the two foregoing facilities were issued and secured pursuant to a Master Trust Indenture dated as of December 1, 2015 among the Debtors and U.S. Bank National Association as Master Trustee. U.S. Bank National Association in its capacity as indenture trustee under the 2015 Bond Indenture, the 2017 Bond Indenture and the Master Trust Indenture (collectively, the “Indenture”) is referred to herein collectively as the Indenture Trustee.³

The collateral granted by the Debtors pursuant to the Indenture consists of (i) the real property that constitutes the Hospital; and (ii) “Gross Receivables.” The latter is defined in the Indenture as “all of the accounts, chattel paper, instruments; general intangibles (all as defined in

³ The Debtors believe that within the past year or two, U.S. Bank, National Association may have transferred its trust business to U.S. Bank Trust Company, National Association. If such transfer did occur, the references herein to the Indenture Trustee shall refer to U.S. Bank Trust Company, National Association for matters on and after such transfer.

1 the UCC) of each [Debtor] ..., as are now in existence or as may be hereafter acquired and the
2 proceeds thereof; excluding, however, all Restricted Moneys.” The Debtors agree that the Gross
3 Receivables and the proceeds thereof constitute cash collateral as defined by Bankruptcy Code
4 §363(a) (the “Cash Collateral”).

5 **C. Use of Cash Collateral for the Interim Period of the Cases**

6 Debtors seek to use Cash Collateral during the Interim Period in accordance with the
7 Budget (as defined in the Lozynski Declaration). The Cash Collateral will be used to fund payroll,
8 including benefits, pay physicians and temporary nurses, pay utility bills and insurance
9 obligations, purchase pharmaceuticals, perform maintenance and repairs on the Hospital. In other
10 words, the Cash Collateral will be used to enable the Hospital to continue to serve the community
11 and to continue as a going concern.

12 **D. Adequate Protection for the Use of Cash Collateral**

13 The Debtors propose to grant the Indenture Trustee a replacement lien on the cash generated
14 after the Petition Date with such lien having the same priority viz-a-viz other secured creditors that
15 it had prior to the Petition Date. The Budget demonstrates that Beverly will generate new accounts
16 receivable and cash during the two periods and will need obtain debtor in possession financing that
17 will infuse additional cash into the estates that will provide additional collateral to the Indenture
18 Trustee and well enable the Hospital to keep its doors open. The Debtors anticipate the net proceeds
19 from the DIP Facility will fully offset the cash losses incurred during the Interim Period.

20 In addition to the replacement lien, the Debtors also propose to grant the Indenture Trustee
21 an administrative claim pursuant to Bankruptcy Code §364(b) for any diminution of value in its
22 collateral.

23 **IV.**

24 **BASIS FOR RELIEF**

25 **EMERGENCY CONSIDERATION**

26 Bankruptcy Code § 363(c)(3) provides, among other things, that a hearing on the use of cash
27 collateral “shall be scheduled in accordance with the needs of the debtor.” Pursuant to Bankruptcy
28 Rule 4001(b), a final hearing on a motion to use cash collateral may not be commenced earlier than

1 15 days after service of such motion. The court, however, is authorized to conduct an expedited
2 hearing prior to the expiration of such 15-day period and to authorize the use of cash collateral to
3 the extent necessary to avoid immediate and irreparable harm to a debtor's estate. Moreover,
4 Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the petition
5 date "to the extent that relief is necessary to avoid immediate and irreparable harm." And Local
6 Bankruptcy Rule 2081-1(a)(3) allows a movant to request the type of relief herein for emergency
7 consideration.

8 For the reasons discussed above, approving Beverly's request to use Cash Collateral as
9 described herein is critical to its ability to continue to operate the Hospital. Put more bluntly,
10 denying the Motion would mean that Beverly could not meet payroll and would have to close the
11 Hospital, which would be a body blow to the community and the Hospital's employees and the
12 physicians and nurses who provide services to it. Moreover, the value of the Indenture Trustee's
13 real estate collateral would diminish substantially once the Hospital was no longer a going concern.
14 In short, the relief requested is necessary for Beverly to operate the Hospital in the ordinary course,
15 to preserve the ongoing value of the operations and to maximize the value of the chapter 11 estates
16 for the benefit of all stakeholders including the Indenture Trustee.

17 The Ninth Circuit has recognized that immediate interim relief may be crucial to
18 the success of a business reorganization: We realize that in certain circumstances,
19 the entire reorganization effort may be thwarted if emergency leave is withheld and
20 that reorganization under the Bankruptcy Code is perilous process, seldom more so
21 that at the outset of the proceeding when the debtor is often without sufficient cash
22 flow to fund a central business operation. It is for this reason that Congress specified
23 that hearings concerning the use of cash collateral shall be scheduled in accordance
24 with the needs of the debtor.

22 *Owens-Corning Fiberglas Corp. v. Center Wholesale, Inc. (In re Center Wholesale, Inc.)*,
23 759 F.1d 1440, 1449 n.21 (9th Cir. 1985) (quotations omitted).

24 Other courts have recognized that four (4) principles for courts to consider with
25 regard to "first day" motions:

26 First, the requested relief should be limited to that which is minimally necessary to
27 maintain the existence of the debtor, until such time as the debtor can affect
28 appropriate notice to creditors and parties in interest. In particular, a first day order
should avoid substantive rulings that irrevocably determine the rights of parties.
Second, first day orders must maintain a level of clarity and simplicity sufficient to

1 allow reasonable confidence that an order will effect no unanticipated or untoward
2 consequences. Third, first day orders are not a device to change the procedural and
3 substantive rights that the Bankruptcy Code and Rules have established. In
4 particular, first day orders should provide no substitute for the procedural and
substantive protections of the plan confirmation process. Fourth, no first day order
should violate or disregard the substantive rights of parties, in ways not expressly
authorized by the Bankruptcy Code.

5
6 *In re The Colad Group, Inc.*, 324 B.R. 208, 213-14 (Bankr. W.D.N.Y. 2005). Beverly's
7 immediate need to access cash collateral fits squarely within the Ninth Circuit's *Center Wholesale*,
8 framework, and does not run afoul of the four principles described in *Colad Group*. Accordingly,
9 Beverly requests that the Court (i) schedule the Interim Hearing and a final hearing to consider
10 approval of the Debtors' use of Cash Collateral and (ii) authorize Beverly pursuant to the terms of
11 the Interim Order to use Cash Collateral in accordance with the Budget pending the final hearing.

12 ADEQUATE PROTECTION

13 Bankruptcy Code §363(c)(2) provides that the estate may not use cash collateral unless the
14 entity with an interest in the cash collateral (i.e., in this case, the Indenture Trustee) consents or the
15 bankruptcy court, after notice and a hearing, authorizes such use. The Indenture Trustee has not
16 consented to the request made in the Motion. Beverly hopes that the Indenture Trustee will consent
17 to such use after the interim request is granted and prior to the final hearing on the Motion.

18 In the absence of consent, the Court must find that the lender's interest in cash collateral is
19 adequately protected. Bankruptcy Code §363(e). Here, such interest is adequately protected
20 because use of the Cash Collateral will enable the Hospital to remain open and generate accounts
21 receivable in the future and cash losses will be fully offset by the DIP Facility.

22 WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES

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

V.

NOTICE; FINAL HEARING

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) counsel for the Indenture Trustee; (d) Hanmi Bank and counsel thereto; (e) the Internal Revenue Service; (f) the Office of the Attorney General of the State of California; (g); and all other parties who have filed a request for special notice and service of papers with the Clerk of this Court.

The Debtors request that the final hearing on this Motion be conducted in approximately three weeks and that any opposition to the Motion be filed no later than seven days before the hearing and that any reply be filed no later than two days before the hearing.

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

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

Dated: April 20, 2023

ORRICK, HERRINGTON & SUTCLIFFE LLP

By: /s/ Marc A. Levinson
Marc A. Levinson
Proposed Special Counsel to Debtors and
Debtors in Possession

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,

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

Jointly administered with:

CASE NO: 2:23-bk-12360-SK

CASE NO: 2:23-bk-12361-SK

Hon. Sandra R. Klein

Chapter 11 Case

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

**[PROPOSED] ORDER GRANTING
DEBTORS' EMERGENCY MOTION
FOR ORDER (I) APPROVING DEBTORS'
USE OF CASH COLLATERAL, AND (II)
SETTING A FINAL HEARING ON THE
USE OF CASH COLLATERAL**

Date: April 21, 2023

Time: 2:00 p.m.

Judge: Hon. Sandra R. Klein

Place: Zoom.Gov

Upon the *Debtors' Emergency Motion for Entry of an Order Granting Debtors' Emergency Motion (I) Approving Debtors' Use of Cash Collateral; and (II) Scheduling a Final Hearing on the Use of Cash Collateral* (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed on April [], 2023; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); that it may enter a final order consistent with Article III of the United States Constitution; that venue of this proceeding and the

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.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

1 Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; hat the relief requested
2 in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in
3 interest; that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were
4 appropriate under the circumstances and no other notice need be provided; and this Court having
5 reviewed the Motion and having heard the statements in support of the relief requested therein at a
6 hearing before this Court on April [REDACTED], 2023 at [REDACTED].m; and this Court having determined that the
7 legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief
8 granted herein and is necessary to avoid immediate and irreparable harm pursuant to Bankruptcy
9 Rule 4001; and after due deliberation and sufficient cause appearing therefor,

10 **IT IS HEREBY ORDERED THAT:**

- 11 1. The Motion is GRANTED as set forth in this Order;
- 12 2. The Debtors may use Cash Collateral during the Interim Period in accordance with
13 the Budget;
- 14 3. The Indenture Trustee is granted a replacement lien on Gross Receivables;
- 15 4. The Indenture Trustee is granted an administrative claim under Bankruptcy Code
16 §364(b) for any diminution in value of its collateral;
- 17 5. A final hearing on the Motion shall be held on May ____, 2023 at o'clock . Any
18 opposition to the Motion shall be filed and served on or before 5:00 p.m. Pacific time on April ____,
19 2023, and any reply in support of the Motion shall be filed and served on or before 5:00 p.m. Pacific
20 time on May ____, 2023; and

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

3 Dated: _____, 2023
4 Los Angeles, California

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6 _____
United States Bankruptcy Judge