

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
:
VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 ()
:
Debtors. : (Joint Administration Requested)
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**MOTION OF THE DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING THE DEBTORS TO (I) CONTINUE THEIR INSURANCE
PROGRAM, AND (II) PAY ALL PREPETITION AND POSTPETITION
OBLIGATIONS WITH RESPECT THERETO**

Valeritas Holdings, Inc. and its affiliated debtors (collectively, the “Debtors”), by and through their proposed counsel, DLA Piper LLP (US), hereby submit this motion (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively: (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) to continue their insurance program and honor prepetition and postpetition obligations with respect thereto; and (b) renew, supplement, modify, extend, terminate, or purchase insurance coverage in the ordinary course of business; (ii) authorizing and directing applicable banks and financial institutions to honor and process checks and transfers related to such insurance obligations; and (iii) granting related relief. In support of this Motion, the Debtors rely upon, and incorporate by reference, the *Declaration of John E. Timberlake in Support of Chapter 11*

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.



*f*Petitions and First Day Pleadings (the “First Day Declaration”),² filed contemporaneously with this Motion. In further support of this Motion, the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over these chapter 11 cases (the “Chapter 11 Cases”), the Debtors, property of the Debtors’ estates and this matter under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of these Chapter 11 Cases in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are sections 105, 363, 503(b), 1107, and 1108 of Title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

5. On the date hereof (the “Petition Date”), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

² Capitalized terms used but not otherwise defined in this Motion shall have the meaning ascribed to them in the First Day Declaration.

6. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in these Chapter 11 Cases. No date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

7. Additional factual background regarding the Debtors, including their business operations, capital structure and the events leading to the filing of these Chapter 11 Cases, is set forth in detail in the First Day Declaration, which is fully incorporated into this Motion by reference.

I. Insurance Program

8. The Debtors' insurance program (the "Insurance Program") is comprised of: (i) commercial insurance policies maintained by the Debtors, a list of which is attached here as **Schedule 1**³ (each, a "Commercial Insurance Policy" and collectively, the "Commercial Insurance Policies")⁴ that are administered through various insurers (the "Insurers"), and which provide coverage for, among other things, commercial liability (property and general liability), automobile liability, employers' liability, cyber security liability, directors' and officers' liability, ocean cargo liability, accident liability, and fiduciary liability. Maintenance of insurance coverage under the Insurance Program is essential to the continued operation of the Debtors'

³ The Debtors believe that **Schedule 1** is a complete list of their Insurance Policies as of the Petition Date. However, to the extent that any Insurance Policy has been omitted from that list, the Debtors request that the order granting the relief sought herein apply to any and all of the Debtors' Insurance Policies.

⁴ In addition to the Commercial Insurance Policies listed on **Schedule 1**, the Debtors maintain other insurance policies and programs with respect to employee benefits including, without limitation, health, dental, disability, and life insurance. These programs and policies are addressed in detail in the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Wages and Compensation, (II) Authorizing the Continuation of Employee Benefit Programs, (III) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations; and (IV) Granting Related Relief* (the "Employee Wage Motion"), filed contemporaneously herewith.

business and is required under the *Operating Guidelines for Chapter 11 Cases* (the “Operating Guidelines”) promulgated by the Office of the United States Trustee for Region 3 (the “U.S. Trustee”), the laws of the various states in which the Debtors operate, applicable federal law and certain of the Debtors’ customer contracts and real estate leases. Thus, the Debtors submit that they should be authorized, but not directed, to continue to pay premiums, claims, deductibles, taxes, charges, fees, and other obligations owed under or with respect to the Insurance Program as such obligations come due in the ordinary course of the Debtors’ business.

A. Commercial Insurance Policies

9. For the 2019-2020 policy period, the Debtors incurred approximately \$730,000 in annual premiums relating to the Commercial Insurance Policies, including associated fees and taxes. The significant Commercial Insurance Policies are summarized as follows:

- (a) Workers’ Compensation Policy. The Debtors maintain a Commercial Insurance Policy that covers workers’ compensation liability (the “Workers’ Compensation Policy”) with TriNet Group, Inc. (“TriNet”). The Workers’ Compensation Policy provides coverage through July 1, 2020. There is no separate premium for the Workers’ Compensation Policy because TriNet provides such policy in connection with other employment-related services. The Debtors will request the ability to make payments to TriNet as part of the Employee Motion.
- (b) General Liability Policy. The Debtors maintain a Commercial Insurance Policy that covers general liability (the “General Liability Policy”) with StarNet Insurance Company. The General Liability Policy provides coverage through July 1, 2020. The Debtors paid \$65,749 for the 2019-2020 policy period for the General Liability Policy.
- (c) Cargo Policy. The Debtors maintain a Commercial Insurance Policy that covers the loss or damage of cargo in transit (the “Cargo Policy”) with Continental Casualty Company. The Cargo Policy provides coverage through July 1, 2020. The Debtors paid \$39,280 for the 2019-2020 policy period for the Cargo Policy.
- (d) Product and Clinical Trials Policy. The Debtors maintain a Commercial Insurance Policy that covers the losses associated with products liability and/or liabilities associated with clinical trials for the Debtors’ products

(the “Products Liability Policy”) with Gemini Insurance Company. The Debtors paid \$64,821 for the 2019-2020 policy period for the Products Liability Policy.

- (e) Commercial Automobile Policy. The Debtors maintain a Commercial Insurance Policy that covers the Debtors’ owned and leased business automobiles (the “Commercial Automobile Policy”) with Berkley Regional Insurance Company. The Commercial Automobile Policy provides coverage through July 1, 2020. The Debtors paid \$5,526 for the 2019-2020 policy period for the Commercial Automobile Policy.
- (f) Crime Policy. The Debtors maintain a Commercial Insurance Policy with the Federal Insurance Company that covers loss from crime (the “Crime Policy”). The Crime Policy provides coverage through May 3, 2020. The Debtors incur approximately \$5,500 in annual premiums to cover the Crime Liability Policy.
- (g) Cyber Security Liability Policy. The Debtors maintain a Commercial Insurance Policy that covers cyber security liability (the “Cyber Security Liability Policy”) with NAS Insurance. The Cyber Security Liability Policy provides coverage through May 3, 2020. The Debtors incur approximately \$7,500 in annual premiums to cover the Cyber Security Liability Policy.
- (h) Employer Liability Policies. The Debtors maintain Commercial Insurance Policies that cover certain employer liability matters (the “Employer Liability Policy”) with National Union Fire Insurance Company of Pittsburgh, PA. The Employer Liability Policy provides coverage through May 3, 2020. The Debtors incur approximately \$20,000 in annual premiums for the Employer Liability Policy.
- (i) D&O Liability Policies. The Debtors maintain Commercial Insurance Policies that cover directors’ and officers’ liability and related excess liability, and fiduciary liability (collectively, the “D&O Liability Policies”) with National Union Fire Insurance Company of Pittsburgh, PA, Berkley National Insurance Company, and XL Specialty Insurance Company. The D&O Liability Policies provide coverage through May 3, 2020. The Debtors paid \$517,688 for the 2019-2020 policy period for the D&O Liability Policies.

10. The Debtors have diligently reviewed their records and believe that there are no outstanding amounts owed in premiums to their Insurers under the Commercial Insurance Policies as of the Petition Date. To the extent there are any outstanding prepetition amounts owed on account of the Commercial Insurance Policies, the Debtors request that this Court

authorize, but not direct, the Debtors to pay any such outstanding amounts in their discretion. The Debtors' maintenance of their relationships with the Insurers is critical to ensuring the continued availability of insurance coverage and reasonable pricing of such coverage for future policy periods. Further, there may be prepetition amounts due and owing to the Insurers of which the Debtors are unaware, for example if audits are conducted after the Petition Date.

B. Insurance Brokers

11. As referenced above, in the ordinary course of business, the Debtors employ Woodruff Sawyer, an insurance brokerage firm ("Woodruff") and Conner, Strong & Buckelew ("CSB" and, together with Woodruff, the "Brokers"), to assist the Debtors in procuring and negotiating elements of the Debtors' Insurance Program. For broker-related services, the Debtors pay the Brokers' commissions⁵ in the ordinary course of business (together, the "Broker Fees"). The Brokers are essential to the Debtors' ability to secure insurance coverage, as they structure and manage their Insurance Program in a reasonable and prudent manner and enable the Debtors to realize considerable savings in the procurement of aspects of the Insurance Program. For instance, the Debtors do not have access to certain key markets unless represented by the Brokers. The Debtors believe that they are current in their obligations to the Brokers. The Debtors seek this Court's authority to continue to employ the Brokers in the ordinary course of business and to pay Broker Fees as necessary in connection with procurement and maintenance of the Insurance Program.

⁵ For the 2019-2020 policy period, the Woodruff commission was approximately \$77,190 and the CSB commission was approximately \$5,878.50.

RELIEF REQUESTED

12. By this Motion, the Debtors seek entry of interim and final orders, substantially in the forms attached to this Motion as **Exhibit A** and **Exhibit B**, respectively, (i) authorizing the Debtors to (a) continue their Insurance Program on an uninterrupted basis in the ordinary course of the Debtors' business, (b) renew, supplement, modify, or terminate their Insurance Program or obtain replacement coverage, and (c) pay all prepetition and postpetition insurance obligations for all undisputed premiums, and Broker Fees, as well as related claims, deductibles, administrative fees, Broker Fees, and other obligations relating to the Insurance Program, as applicable, (collectively, the "Insurance Obligations"); and (ii) authorizing and directing the applicable banks and financial institutions to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, as well as to rely on the representations of the Debtors regarding the same, provided there are sufficient funds on deposit.

A. Continuation of the Insurance Program Is Necessary to Comply with the Operating Guidelines and Applicable Law.

13. Maintenance of the Debtors' insurance coverage under the Insurance Program is required under the Operating Guidelines, the laws of the various states in which the Debtors operate, and the Debtors' various financial agreements. *See* Operating Guidelines ¶ 3. Given these requirements, the continuation of the Debtors' Insurance Program—through payment of the Insurance Obligations, and the renewal, revision, extension, supplementation, modification, or entry into new insurance coverage, as needed in the Debtors' business judgment without further order of this Court—is necessary and essential to the Debtors' operation of their business during these Chapter 11 Cases. In addition, the Debtors are required to maintain insurance under many of their agreements, including credit agreements and customer contracts. Because such

agreements are a key component and contributing source of the vast majority of the Debtors' liquidity and revenue, the Debtors' inability to continue their insurance coverage would be disastrous and could doom the Debtors' prospects for a successful sale process to the detriment of all stakeholders.

B. Payment of the Insurance Obligations Is Authorized Under Sections 1107(a) and 1108 of the Bankruptcy Code.

14. Payment of the Insurance Obligations is also authorized under sections 1107 and 1108 of the Bankruptcy Code. The Debtors are operating their business as debtors in possession under Bankruptcy Code sections 1107(a) and 1108 as fiduciaries for their estates. *See In re Marvel Entm't Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1998) (citation omitted); *In re CoServ, LLC*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.* at 497.

15. Payment of the Insurance Obligations and the renewal, revision, extension, supplementation, modification, or entry into new insurance policies, as needed in the Debtors' business judgment, will protect the Debtors' ongoing operations. As noted above, not only is insurance coverage is required by the Operating Guidelines, it is also mandated by applicable state and federal law, as well as under certain of their contractual arrangements. Moreover, as fiduciaries for the bankruptcy estates, the Debtors could be violating their duties if they jeopardize the coverage provided under the Insurance Program. Non-payment of the Insurance Obligations could result in cancellation of the Insurance Program, and the Debtors may be unable to find alternative insurance coverage, or find such alternatives only at a much higher cost than the Debtors currently incur. Therefore, the relief requested in this Motion is essential to satisfy the Debtors' fiduciary obligations.

C. Continuing the Insurance Program and Paying All Associated Undisputed Obligations Is Necessary to Preserve the Value of the Debtors' Estates.

16. Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur administrative expenses as “actual, necessary costs and expenses of preserving the estate.” 11 U.S.C. § 503(b)(1)(A). Additionally, under section 363(b) of the Bankruptcy Code, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business where the debtor has articulated a valid business justification for the requested use of estate assets. *See In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate under this section, courts require the debtor to show that a sound business purpose justifies such actions.”); *In re Filene’s Basement, LLC*, No. 11-13511, 2014 WL 1713416, *12 (Bankr. D. Del. Apr. 29, 2014) (“Where the debtor articulates a reasonable basis for its business decisions . . . courts will generally not entertain objections to the debtor’s conduct.”) (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986)); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) gives the court “broad flexibility” for the debtor to pay prepetition wages as long as the debtor articulates a business justification).

17. Once a debtor articulates such a valid business justification, a presumption exists in favor of the debtor’s business decisions. *See In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (“Overcoming the presumption of the business judgment rule on the merits is a near-Herculean task.”); *see also Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985) (describing the business judgment rule as “a presumption that in making a business decision, the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company”). The Debtors submit that the use of estate funds for payment of undisputed prepetition Insurance Obligations is permitted by sections 503(b)(1)

and 363(b) of the Bankruptcy Code as necessary costs of preserving the estate and should be approved as such.

18. Further, section 105(a) of the Bankruptcy Code supplements these explicit powers and permits this Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *see also Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts are authorized to approve orders allowing payment of prepetition claims that are necessary for the debtors to have a successful reorganization); *In re Just For Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor’s business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same). “Under 11 U.S.C. § 105 the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.” *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); *see also In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (recognizing the doctrine of necessity and authorizing the debtor to pay prepetition claims if such payment was essential to the continued operation of the debtor).

19. With these statutory underpinnings, the “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See Lehigh*, 657 F.2d at 581 (holding that court may authorize payment of prepetition claims if

such payment was essential to continued operation of debtor); *In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing existence of judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to debtors' continued operation). This doctrine is frequently invoked early in a chapter 11 case, particularly in connection with the payment of prepetition claims. The rationale for the doctrine of necessity rule is consistent with the paramount goal of chapter 11 "facilitating the continued operation and rehabilitation of the debtor." *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Friedman's Inc.*, No. 09-10161 CSS, 2011 WL 5975283, at *3 (Bankr. D. Del. Nov. 30, 2011) ("[N]ormally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . most courts will allow such payments under the 'doctrine of necessity,' if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor's business."). Accordingly, pursuant to section 105(a) of the Bankruptcy Code, this Court is empowered to grant the relief requested in this Motion.

20. The nature and extent of the Debtors' business operations make it essential for them to maintain their Insurance Program on an uninterrupted basis. If the Debtors fail to pay any premiums, deductibles, or related fees under the Insurance Program, then the Insurer may seek to terminate existing Commercial Insurance Policies, or they may decline to renew the Commercial Insurance Policies or refuse to insure the Debtors in the future. If the Commercial Insurance Policies lapse without renewal, the Debtors could be exposed to substantial liability for personal and/or property damages to the detriment of all stakeholders. In addition, the Debtors would be in default under certain key contracts and applicable law, which require that the Debtors maintain adequate insurance coverage. Consequently, if the Debtors' Commercial Insurance Policies lapsed, the Debtors would be required to obtain replacement coverage on an

emergency basis and, likely, at significant expense. Therefore, the continuation of the Insurance Program on an uninterrupted basis and the payment of the Insurance Obligations are essential to preserve the Debtors' business and the value of the Debtors' estates for all parties in interest in these Chapter 11 Cases.

21. Courts in this District frequently have granted similar relief. *See In re GCX Limited*, Case No. 19-12031 (CSS) (Bankr. D. Del. Oct. 15, 2019), ECF No. 101; *In re uBiome, Inc.*, Case No. 19-11938 (LSS) (Bankr. D. Del. Sept. 27, 2019), ECF No. 99; *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Oct. 24, 2019), ECF No. 284; *In re Sienna Biopharmaceuticals, Inc.*, Case No. 19-12051 (MFW) (Bankr. D. Del. Sept. 18, 2019), ECF No. 32; *In re Furie Operating Alaska, LLC*, Case No. 19-11781 (LSS) (Bankr. D. Del. Sept. 13, 2019), ECF No. 136.⁶

D. Financial Institutions Should Be Authorized to Honor and Process Related Checks and Transfers.

22. The Debtors also request that all applicable banks and other financial institutions (the "Banks") be authorized to (a) receive, process, honor, and pay all checks presented for payment of, and to honor all fund transfer requests made by the Debtors related to the claims that the Debtors request authority to pay in this Motion, regardless of whether the checks were presented or fund transfer requests were submitted before or after the Petition Date, and (b) rely on the Debtors' designation of any particular check as approved by this Court's order.

THE DEBTORS SATISFY THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b)

23. Bankruptcy Rule 6003(b) provides that, "[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the

⁶ In accordance with Local Rule 7007-2, the Debtors' proposed counsel has copies of each of the above-referenced orders and will make them available to this Court and to any party that requests them. The orders are also available on this Court's CM/ECF PACER site at the cited docket numbers and on the dates specified above.

filing of the petition, issue an order granting . . . a motion to . . . pay all or part of a claim that arose before the filing of the petition.” Immediate and irreparable harm exists where the absence of relief would significantly disrupt a debtor’s business and operations, thereby challenging a debtor’s ability to resolve a bankruptcy case in an orderly manner. *See, e.g., In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2014). The Third Circuit has interpreted language similar to the “immediate and irreparable harm” language in the context of preliminary injunctions and has instructed that irreparable harm is a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App’x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994).

24. As described above, the failure to maintain the Insurance Program would have immediate and negative consequences to the Debtors’ business operations to the detriment and prejudice of all parties in interest. Accordingly, the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and, therefore, Bankruptcy Rule 6003(b) is satisfied.

REQUEST FOR WAIVER OF BANKRUPTCY RULES 6004(a) AND (h)

25. For the successful implementation of the foregoing, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). As set forth above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors. If the Insurance Program were not maintained,

the Debtors would be required to seek alternative coverage, which would likely be at a significantly higher cost and potentially cause the Commercial Insurance Policies to lapse or fail in the interim. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent both apply.

RESERVATION OF RIGHTS

26. Nothing contained in this Motion is intended or shall be construed as (i) an admission as to the validity of any claim against the Debtors; (ii) a waiver of the Debtors' or any party in interest's rights to dispute any claim; or (iii) an approval or assumption of any agreement under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought in this Motion, any payment made pursuant to such an order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim at a later date.

NOTICE

27. Notice of this Motion will be provided in accordance with the Local Rules to: (a) the Office of the United States Trustee for Region 3; (b) the Debtors' Prepetition Secured Lenders; (c) HB Fund LLC, the proposed DIP Lender; (d) the Internal Revenue Service; (e) the Securities and Exchange Commission; (f) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (g) the United States Attorney for the District of Delaware; (h) the Food and Drug Administration; (i) the Insurers; (j) the Brokers; (k) the Banks; and (l) all parties entitled to notice pursuant to Local Rule 2002-1(b). As this Motion is seeking "first day" relief, notice of this Motion and any order entered in connection with this Motion will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the

circumstances surrounding this Motion and the nature of the relief sought, the Debtors respectfully submit that no further notice of this Motion is required.

WHEREFORE, the Debtors respectfully request that this Court (i) enter an interim order, substantially in the form attached hereto as **Exhibit A** granting the relief requested in this Motion, (ii) schedule a final hearing on this Motion and thereafter enter a final order substantially in the form attached hereto as **Exhibit B**, and (iii) grant such other and further relief as this Court may deem proper.

Dated: February 9, 2020
Wilmington, Delaware

Respectfully submitted,

DLA PIPER LLP (US)

/s/ Maris J. Kandestin

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-and-

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Proposed Counsel to the Debtors and Debtors in Possession

SCHEDULE

Commercial Insurance Policies

COMMERCIAL INSURANCE POLICIES			
INSURER	COVERAGE	LAST 4 DIGITS OF POLICY NUMBER	EXPIRATION DATE
Trinet Group, Inc. 9000 Town Center Parkway Bradenton, FL 34202	Workers' Compensation	3261	07/01/2020
StarNet Insurance Company Berkley Life Sciences 200 Princeton South Corporate Center Suite 250 Ewing NJ, 08628	Products/General Liability	72-15	07/01/2020
Continental Casualty Company P.O. Box 8317 Chicago IL 60680-8317	Ocean Cargo	7133	07/01/2020
Gemini Insurance Company Berkley Life Sciences 200 Princeton South Corporate Center Suite 250 Ewing NJ, 08628	Package-Berkeley (Products & Clinical Trials)	353-6	07/01/2020
Berkley Regional Insurance Company 11201 Douglas Avenue Urbandale, IA 50322	Commercial Automobile	14-10	07/01/2020
Federal Insurance Company Chubb Specialty Insurance One Financial Center 22nd Floor Boston, MA 02111	Crime	0022	05/03/2020
NAS Insurance Service 16501 Ventura Blvd. Encino, CA 91436	Cyber Liability	6505	05/03/2020
National Union Fire Insurance Company of Pittsburgh, PA 175 Water Street, New York, NY 10038	Employment Practices/Fiduciary Liability	46-27	05/03/2020
National Union Fire Insurance Company of Pittsburgh, PA (Primary) 175 Water Street, New York, NY 10038	Directors' & Officers' Liability	01-94	05/03/2020
Berkley National Insurance Company (Excess) Berkley Life Sciences 200 Princeton South Corporate Center Suite 250 Ewing NJ, 08628		58-12	05/03/2020
National Union Fire Insurance Company of Pittsburgh, PA (Excess A-Side) 175 Water Street, New York, NY 10038		04-77	05/03/2020
XL Specialty Insurance Company		92-19	05/03/2020

<p>AXA XL -Professional Insurance (Excess A-Side) 100 Constitution Plaza 17th Floor Hartford, CT 06103</p>			
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EXHIBIT A

Proposed Interim Order

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

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In re: : Chapter 11

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VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (____)

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Debtors. : (Jointly Administered)

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: **Re: D.I. __**

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INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE THEIR INSURANCE PROGRAM, AND (II) PAY PREPETITION AND POSTPETITION OBLIGATIONS IN RESPECT THEREOF

Upon the *Motion of the Debtors for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Their Insurance Program, and (II) Pay Prepetition and Postpetition Obligations In Respect Thereof* (the “Motion”),² filed by the above-captioned debtors (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) to continue their insurance program and pay prepetition and postpetition obligations in respect thereof, and (b) renew, supplement, modify, terminate, or purchase insurance coverage in the ordinary course of business; (ii) authorizing the Debtors’ financial institutions to honor and process checks and transfers related to such insurance obligations; and (iii) granting related relief, all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates, property of their estates and to consider the Motion and the relief requested therein under 28

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.

U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b), (iv) venue of the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order, and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis, as set forth in this Interim Order.
2. The Debtors are authorized, but not required, to pay, in their sole discretion, all Insurance Obligations in connection with the Insurance Program, attached to this Interim Order as **Schedule 1** to the Motion, and those Insurance Obligations that were due and payable as of the Petition Date, or will become due and payable prior to entry of a final order on the Motion.
3. The Debtors are authorized and empowered to maintain their Insurance Program without interruption on the same basis and to the extent consistent with their practices and procedures that were in effect prior to the Petition Date.

4. The Debtors are hereby authorized, but not directed, to pay any such undisputed prepetition amounts that are later determined to be due and owing as a result of an audit, including any additional fees and costs imposed as a result of any audit.

5. Without further order of this or any other Court, the Debtors are authorized to honor their Insurance Obligations under the Insurance Program and to renew the existing Commercial Insurance Policies or enter into new insurance arrangements in the ordinary course of business, as may be required as the annual terms of existing arrangements expire.

6. The Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are authorized to be honored and paid pursuant to this Interim Order.

7. This Interim Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

8. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Interim Order nor any payments made in accordance with this Interim Order shall constitute the postpetition assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

9. Notwithstanding the relief granted in this Interim Order and any actions taken hereunder, nothing contained in the Motion or this Interim Order or any payment made pursuant to this Interim Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien, (c) an undertaking, obligation, or commitment to pay any claims hereunder, or (d) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

10. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2020 at ____:____ .m. (EST). Any objections or responses to entry of a final order on the Motion (each, an "Objection") shall be filed on or before **4:00 p.m. (EST)** on _____, 2020, and served on the following parties: (i) the Debtors, 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807 (Attn.: John E. Timberlake, President and CEO); (ii) proposed counsel for the Debtors, DLA Piper LLP (US), 1201 N. Market Street, Suite 2100, Wilmington, Delaware 19801 (Attn.: Maris J. Kandestin, Esq., maris.kandestin@us.dlapiper.com), and 1251 Avenue of the Americas, New York, New York 10020 (Attn.: Rachel Ehrlich Albanese, Esq., rachel.albanese@us.dlapiper.com); (iii) the Office of the United States Trustee, J. Caleb Boggs Federal Building, 844 King St., Lockbox 35, Wilmington, Delaware 19801 (Attn.: Richard L. Schepacarter, Esq., Richard.Schepacarter@usdoj.gov); (iv) counsel to the official committee of unsecured creditors appointed in these Chapter 11 Cases, if any; (v) counsel to the Debtors' prepetition secured lenders, Venable LLP, 1201 N. Market Street, Suite 1400, Wilmington, Delaware 19801 (Attn.: Daniel A. O'Brien, Esq., dao'brien@venable.com), and 1042 Rockefeller Center, 1270 Avenue of the Americas, 24th Floor, New York, New York 10020 (Attn.: Carol Weiner Levy, Esq. and

Jeffrey S. Sabin, Esq., cweinerlevy@venable.com and jssabin@venable.com); and (vi) counsel to the HB Fund LLC, Proskauer Rose LLP, Eleven Times Square, New York, New York 10036 (Attn: Peter Antoszyk, Esq. and Lucy F. Kweskin, Esq., pantoszyk@proskauer.com and lkweskin@proskauer.com), and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, Delaware 19081 (Attn: Adam G. Landis, Esq. and Kerri Mumford, Esq., landis@lrclaw.com and mumford@lrclaw.com). In the event no Objections to entry of a final order on the Motion are timely received, this Court may enter such final order without need for the Final Hearing.

11. Notwithstanding anything set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed under the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* and any related final order (each as amended, modified or supplemented in accordance with the terms thereof, the “DIP Order”), including the Approved Budget (as defined in the DIP Order); and (b) to the extent there is any inconsistency between the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order and the Approved Budget shall control.

12. The requirements of Bankruptcy Rule 6003(b) are satisfied.

13. The requirements of Bankruptcy Rule 6004(a) are waived.

14. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Interim Order.

16. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Interim Order.

EXHIBIT B

Proposed Final Order

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

-----X
 :
 In re: : Chapter 11
 :
 VALERITAS HOLDINGS, INC., *et al.*,¹ : Case No. 20-10290 (____)
 :
 Debtors. : (Jointly Administered)
 :
 : **Re: D.I. __ & __**
 -----X

**FINAL ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE THEIR
INSURANCE PROGRAM, AND (II) PAY PREPETITION AND POSTPETITION
OBLIGATIONS IN RESPECT THEREOF**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Their Insurance Program, and (II) Pay Prepetition and Postpetition Obligations In Respect Thereof* (the “Motion”)², filed by the above-captioned debtors (collectively, the “Debtors”) for entry of a final order (this “Final Order”) (i) authorizing, but not directing, the Debtors, in their sole discretion, to (a) to continue their insurance program and pay prepetition and postpetition obligations in respect thereof, and (b) renew, supplement, modify, terminate, or purchase insurance coverage in the ordinary course of business; (ii) authorizing the Debtors’ financial institutions to honor and process checks and transfers related to such insurance obligations; and (iii) granting related relief; all as further described in the Motion, and upon consideration of the First Day Declaration and the record of these Chapter 11 Cases; and this Court having found that (i) this Court has jurisdiction over the Debtors, their estates,

¹ The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Valeritas Holdings, Inc. (8907); Valeritas, Inc. (1056); Valeritas Security Corporation (9654); Valeritas US, LLC (0007). The corporate headquarters and the mailing address for the debtors is 750 Route 202 South, Suite 600, Bridgewater, New Jersey 08807.

² Capitalized terms used but not otherwise defined herein shall have the respective meaning ascribed to such terms in the Motion.

property of their estates and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, (ii) this Court may enter a final order consistent with Article III of the United States Constitution, (iii) this is a core proceeding under 28 U.S.C. § 157(b), (iv) venue of the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and this Court having granted the interim relief requested in the Motion [D.I.____]; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Final Order, and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation, sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, on a final basis, as set forth in this Final Order.
2. The Debtors are authorized, but not required, to pay, in their sole discretion, all Insurance Obligations in connection with the Insurance Program, attached to this Final Order as **Schedule 1** to the Motion, and those Insurance Obligations that were due and payable, or are related to, the period prior to the Petition Date.
3. The Debtors are authorized and empowered to maintain their Insurance Program without interruption on the same basis and to the extent consistent with the practices and procedures that were in effect prior to the Petition Date.

4. To the extent prosecution by the Debtors' employees of their valid workers' compensation claims is barred by the automatic stay provision of section 362 of the Bankruptcy Code, the stay shall be lifted solely to permit such employees to liquidate their workers' compensation claims in the appropriate judicial or administrative forum.

5. The Debtors are hereby authorized, but not directed to pay any undisputed prepetition amounts that are later determined to be due and owing as a result of an audit, including any additional fees and costs imposed as a result of any audit.

6. Without further order of this Court, the Debtors are authorized to honor their Insurance Obligations under the Insurance Program and to renew the existing Commercial Insurance Policies or enter into new insurance coverage arrangements, broker agreements, and related agreements in the ordinary course of business, as may be required as the annual terms of existing arrangements expire.

7. Without further order of this Court, the Debtors are authorized, but not directed, to amend, supplement, change, or enter into new broker retention agreements in connection with the Insurance Programs and to pay any Broker Fees, whether incurred or due and payable before or after the Petition Date, in the ordinary course of the Debtors' business.

8. The Banks shall be and hereby are authorized and directed to receive, process, honor and pay all checks and fund transfers on account of the Insurance Obligations that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments. The Banks are authorized to rely on the representations of the Debtors as to which checks and fund transfers are authorized to be honored and paid pursuant to this Final Order.

9. This Final Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any Insurance Obligations on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be reserved.

10. To the extent that any Insurance Program or any related contract or agreement is deemed an executory contract within the meaning of section 365 of the Bankruptcy Code, neither this Final Order nor any payments made in accordance with this Final Order shall constitute the postpetition assumption of any such Insurance Program or any related contract or agreement pursuant to section 365 of the Bankruptcy Code.

11. Notwithstanding the relief granted in this Final Order and any actions taken hereunder, nothing contained in the Motion or this Final Order or any payment made pursuant to this Final Order shall constitute, nor is it intended to constitute: (a) an admission as to the validity or priority of any claim or lien against the Debtors, (b) a waiver of the Debtors' rights to subsequently dispute such claim or lien, (c) an undertaking, obligation, or commitment to pay any claims hereunder, or (d) the assumption or adoption of any agreement, contract, or lease under section 365 of the Bankruptcy Code.

12. Notwithstanding anything set forth herein: (a) any payment to be made, or authorization contained, hereunder shall be subject to the requirements imposed under the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Status, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* and any related final order (each as amended, modified or supplemented in accordance with the terms thereof, the "DIP Order"),

including the Approved Budget (as defined in the DIP Order); and (b) to the extent there is any inconsistency between the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order and the Approved Budget shall control.

13. The requirements of Bankruptcy Rule 6003(b) are satisfied.

14. The requirements of Bankruptcy Rule 6004(a) are waived.

15. Notwithstanding the possible applicability of Bankruptcy Rule 6004(h), the terms and provisions of this Final Order shall be immediately effective and enforceable upon its entry.

16. The Debtors are hereby authorized to take all actions they deem necessary to effectuate the relief granted in this Final Order.

17. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation or interpretation of this Final Order.