

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. : (Joint Administration Requested)

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MOTION OF THE DEBTORS FOR ENTRY OF AN ORDER (I) GRANTING ADMINISTRATIVE EXPENSE PRIORITY TO ALL UNDISPUTED OBLIGATIONS FOR GOODS ORDERED PREPETITION AND DELIVERED POSTPETITION; (II) AUTHORIZING THE DEBTORS TO SATISFY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS; AND (III) GRANTING RELATED RELIEF

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 an order, substantially in the form attached hereto as **Exhibit A**, (i) granting administrative expense priority to all undisputed obligations for Goods (as defined below) ordered prepetition and delivered postpetition, (ii) authorizing the Debtors to satisfy such obligations in the ordinary course of business, 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 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:

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 in this Motion shall have the meaning ascribed to them in the First Day Declaration.



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(a), 363, and 503(b) 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

A. General 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.

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.

B. The Outstanding Orders

8. Prior to the Petition Date, and in the ordinary course of business, the Debtors ordered approximately \$200,000 in goods and supplies (the “Goods”) which are vital to the production and manufacture of the V-Go[®] Wearable Insulin Delivery device, which is the Debtors’ flagship product. Although these orders were placed to various suppliers and vendors (the “Suppliers”) prior to the Petition Date, the Goods that are the subject of this Motion have not been delivered as of the Petition Date (the “Outstanding Orders”). The Suppliers may be concerned that, because the Debtors’ obligations under the Outstanding Orders arose prior to the Petition Date, such obligations will be treated as general unsecured claims in these Chapter 11 Cases and, accordingly, may refuse to provide the Goods to the Debtors (or may recall shipments thereof). If this were to happen, the Debtors’ ability to deliver V-Go[®] to market, and more importantly, to the patients that have come to rely upon V-Go[®], would be severely hampered. This would also cause irreparable harm to the going concern value of the Debtors’ business. As such, the Debtors seek entry of an order confirming administrative expense priority status as to the Outstanding Orders, authorizing the Debtors to pay the Suppliers for undisputed obligations associated with the Outstanding Orders, all subject to the terms of any related prepetition agreements.

RELIEF REQUESTED

9. By this Motion, the Debtors seek the entry of an order, substantially in the form attached hereto as **Exhibit A**, pursuant to sections 105(a) and 503(b) of the Bankruptcy Code, (a) granting administrative expense priority to all undisputed obligations for Goods ordered prepetition and delivered postpetition; (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business; and (c) granting related relief.

BASIS FOR RELIEF

A. The Obligations Owed Under the Outstanding Orders Are Entitled to Administrative Expense Priority Under Section 503(b) of the Bankruptcy Code.

10. It is black letter law that obligations arising in connection with the postpetition delivery of goods and services, including goods and services ordered prepetition, are entitled to administrative expense priority because they benefit the bankruptcy estate postpetition. 11 U.S.C. § 503(b)(1)(A); *see In re Chateaugay Corp.*, 10 F.3d 944, 956 (2d. Cir. 1993) (holding that an obligation arising from the postpetition performance relating to a prepetition transaction is entitled to administrative expense priority); *cf. In re Mervyn's Holdings, LLC*, Case No. 08-11586 (KG), 2013 WL 85169, at *7 (Bankr. D. Del. Jan. 8, 2013) (noting that an obligation giving rise to an administrative priority must have benefitted the debtors); *In re Matter of Cont'l Airlines, Inc.*, 146 B.R. 520, 527 (Bankr. D. Del. 1992) (finding substantial benefit to the debtors where creditors' service allowed the asset to continue to support the conduct of the debtor's business).

11. The Suppliers are entitled to administrative priority for delivery of the Goods that are the subject of the Outstanding Orders. The Debtors' business depends on their ability to obtain the Goods from their Suppliers in order to produce V-Go[®] and bring it to market. The Suppliers' refusal to deliver Goods would have a significant detrimental impact on the Debtors'

business, the success of their sale process, and, ultimately, the patients who rely on V-Go[®] for to maintain their A1c goals. Given the importance of the Goods to the Debtors' ongoing business, this Court should confirm the administrative priority of the Outstanding Orders.

12. Moreover, because the Suppliers are entitled to administrative priority for the Outstanding Orders, granting this relief would not prejudice any other party in interest; it changes only the timing, and not the priority, of payments. The Debtors will be required to pay in full all claims entitled to administrative priority in order to confirm any chapter 11 plan filed in these cases. *See* 11 U.S.C. § 1129(a)(9)(A) (requiring payment in full of claims entitled to priority). Although the Bankruptcy Code does not specify a time for payment of administrative expenses, bankruptcy courts have the discretion to allow for distributions to administrative claimants prior to confirmation if the debtor has the ability to pay and there is a need to do so. *See Matter of Cont'l Airlines, Inc.*, 146 B.R. 520, 531 (Bankr. D. Del. 1992) (“The timing of payment of an administrative claim is at the sound discretion of the court.”). Accordingly, the Debtors would be required to pay these Suppliers on account of the Outstanding Orders in full to confirm a chapter 11 plan. Thus, for these Suppliers, authorization of payment as requested in this Motion affects the timing, but not the ultimate amount, of such payment.

B. Payment of the Outstanding Orders Is Warranted Under Sections 363(b) and 105(a) of the Bankruptcy Code.

13. 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).

14. Once a debtor articulates 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”).

15. Moreover, section 105(a) of the Bankruptcy Code empowers 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).

16. 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.

17. Payment of the Outstanding Orders represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is therefore justified under applicable law. Without the Goods, the Debtors’ ability to manufacture and sell V-Go[®] would be severely impaired, which would irreparably damage the Debtors’ going concern value and jeopardize consummation of the contemplated sale of their business, to the detriment of all stakeholders. Indeed, the Debtors believe that without the relief requested, current Suppliers may withhold the delivery of the Goods, which would cripple the Debtors’ postpetition operations. Moreover, the relief requested in this Motion is narrowly tailored to pay Suppliers for Goods that were ordered prepetition but will be delivered postpetition.

18. Courts in this District frequently authorize payment for goods ordered prepetition but delivered postpetition. *See, e.g., In re David’s Bridal, Inc.*, Case No. 18-12635 (LSS) (Bankr. D. Del. Nov. 20, 2018), ECF No. 94 (granting administrative priority as well as the payment of claims in the ordinary course of business); *In re Southeastern Grocers, LLC*, Case No. 18-10700 (MFW) (Bankr. D. Del. Apr. 23, 2018), ECF No. 336 (same); *see also In re American Blue Ribbon Holdings, LLC*, Case No. 20-10161 (LSS) (Bankr. D. Del. Jan. 28, 2020), ECF No. 43 (granting administrative priority); *In re Bumble Bee Parent, Inc.*, Case No. 19-12502 (LSS) (Bankr. D. Del. Nov. 22, 2019), ECF No. 172 (same).³

C. The Court Should Authorize Applicable Financial Institutions to Honor and Process Related Checks and Transfers.

³ 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.

19. The Debtors also request that all applicable banks and other financial institutions that the Debtors use to make payments to the Suppliers (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 interim and final orders.

THE DEBTORS SATISFY REQUIREMENTS OF BANKRUPTCY RULE 6003(b)

20. 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 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).

21. Specifically, as described in this Motion and in the First Day Declaration, granting administrative priority to, and authorizing payment in the ordinary course to, the Suppliers on account of the Outstanding Orders is essential to the Debtors' business operations, their smooth transition into chapter 11, and their continued ability to offer V-Go[®] to the patients who rely on it. The failure to grant the relief requested in this Motion would have immediate and negative consequences to the Debtors' business operations and their value as a going concern value, to the detriment of all stakeholders. Based on the foregoing, the Debtors submit that the relief requested in this Motion is necessary to avoid immediate and irreparable harm, and, therefore, the Debtors satisfy the requirements under Bankruptcy Rule 6003 for the payment of prepetition claims.

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

22. 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 relief requested in this Motion **were** not granted, the Suppliers may refuse to deliver such Goods at all or otherwise require immediate payment that could have a significant detrimental impact on the Debtors' business and impair their sale process. 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

23. 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

24. 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 Suppliers; and (j) 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.

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WHEREFORE, the Debtors respectfully request that the Court: (i) enter an order, substantially in the form attached hereto as **Exhibit A** granting the relief requested in this Motion; and (ii) grant such other and further relief as the 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*

EXHIBIT A

Proposed 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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**ORDER (I) GRANTING ADMINISTRATIVE EXPENSE PRIORITY TO ALL
UNDISPUTED OBLIGATIONS FOR GOODS ORDERED PREPETITION AND
DELIVERED POSTPETITION; (II) AUTHORIZING THE DEBTORS TO SATISFY
SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS; AND
(III) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of an Order (I) Granting Administrative Expense Priority to all Undisputed Obligations for Goods Ordered Prepetition and Delivered Postpetition; (II) Authorizing the Debtors to Satisfy Such Obligations in the Ordinary Course of Business; and (III) Granting Related Relief* (the “Motion”),² all, as further described in the Motion, filed by the above-captioned debtors (collectively, the “Debtors”), for entry an order (this “Order”); 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 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

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 in this Order shall have the meaning ascribed to them in the Motion.

Constitution, (iii) this is a core proceeding under 28 U.S.C § 157(b)(2)(A), (iv) venue of this 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 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 and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED, as set forth in this Order.
2. Any undisputed obligations related to the Outstanding Orders shall be entitled to administrative expense priority under section 503(b)(1)(A) of the Bankruptcy Code.
3. The Debtors are authorized, but not directed, to pay the Suppliers all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date, in an amount not to exceed \$200,000 in the aggregate.
4. The Banks are directed to honor all related checks and electronic payment requests from the Debtors for payment of the Outstanding Orders.
5. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with any Outstanding Order.

6. Nothing in the Motion or this Order, or the Debtors' payment of any claims pursuant to this Order, shall be deemed or construed as: (a) an admission as to the validity of any claim or lien against the Debtors or their estates; (b) a waiver of the Debtors' right to dispute any claim or lien; (c) an approval or assumption of any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (d) an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Supplier.

7. 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.

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

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

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

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

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