

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.*,<sup>1</sup> : Case No. 20-10290 (LSS)
  
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Debtors. : (Jointly Administered)
  
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X Re: D.I. 14
  
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**INTERIM ORDER INTERIM ORDER (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**

Upon the *Motion of the Debtors for 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 "Motion")<sup>2</sup> filed by the Debtors for entry of an interim order (this "Interim Order"), (i) authorizing the Debtors to pay prepetition wages and other compensation, taxes and withholdings, and reimbursable employee expenses, (ii) authorizing the Debtors to honor and continue benefit programs for employees, (iii) authorizing the Banks to receive, process, honor, and pay all checks issued and electronic-payment requests made related to such employee obligations, and (iv) granting related relief, all as further described in the Motion; and upon consideration of the First Day Declaration; and this Court having found that (i) this Court has jurisdiction to consider the Motion and the relief

<sup>1</sup> The debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification number, are: 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

<sup>2</sup> Capitalized terms used but not otherwise defined in this Interim Order shall have the meaning ascribed to them in the Motion.



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)(2)(A), (iv) venue of this proceeding and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409, and (v) the Debtors' notice of the Motion and opportunity for a hearing were adequate and appropriate under the circumstances and no other or further notice need be provided; and this Court having (i) reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court, and (ii) determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted herein; 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 thereon and 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 directed, in their sole discretion, to continue, modify, change, or discontinue the Employee Benefit Programs in the ordinary course during these Chapter 11 Cases, and without the need for further Court approval, subject to applicable law and the terms of this Interim Order; *provided, however*, that the Debtors shall seek Court approval of any modification or change to this Interim Order that would implicate any portion of section 503(c) of the Bankruptcy Code.
3. Pending entry of a final order, the Debtors are authorized, but not directed, to pay and/or honor, in their sole discretion, the Prepetition Employee Obligations, subject to an

**\$446,000**

aggregate maximum of ~~\$1,249,000~~, as reflected below, including any processing costs related to the foregoing that have accrued and remain unpaid (including those amounts that remain unpaid as a result of dishonoring of checks due to the filing of these Chapter 11 Cases) as of the Petition Date to or for the benefit of their Employees, subject to the limitations set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code and entry of a final order.

| Prepetition Employee Obligations                                  | Amount           |
|---|------------------|
| Unpaid Compensation (including Withholding Taxes and Obligations) | \$0              |
| Business Expenses   | \$350,000        |
| Employee Benefit Programs   | \$65,000         |
| 401(k) Employer Match   | \$31,000         |
| <b>Total</b>  | <b>\$446,000</b> |

4. The Debtors are authorized, but not directed, to remit the 401(k) Employee Contributions to the 401(k) Plan Administrator.

5. Nothing herein shall be deemed to (1) authorize the payment of any amounts in satisfaction of bonus obligations, or which are subject to section 503(c) of the Bankruptcy Code; or (2) authorize the Debtors to cash out unpaid vacation/leave time upon termination of an employee, unless applicable state law requires such payment; *provided, however*, that nothing in this Interim Order shall prejudice the Debtors' ability to seek approval of relief pursuant to section 503(c) of the Bankruptcy Code at a later time.

6. Nothing herein shall be deemed to authorize the payment of any prepetition amounts above the Statutory Cap imposed by section 507(a)(4) and (a)(5) of the Bankruptcy Code with respect to prepetition amounts owed on account of the Employee compensation and benefits obligations, except upon further order of this Court.

7. The Debtors are authorized, but not directed, in their sole discretion, to honor and continue their Business Expense policy, Employee Benefit Programs, and policies, plans, practices and procedures, in the ordinary course in accordance with prepetition practices, that were in effect as of the Petition Date, and to pay any prepetition amounts associated with the Business Expense policy and Employee Benefit Programs; *provided, however*, that such relief shall not constitute or be deemed an assumption or an authorization to assume any of such Employee Benefit Programs under section 365(a) of the Bankruptcy Code.

8. The Debtors are not currently seeking authority to make incentive payments under the Non-Field Incentive Plan and the Non-Field Incentive Plan is not approved but the Debtors may seek approval of the Non-Field Incentive Plan at a final hearing.

9. The Debtors are authorized, but not directed, to forward any unpaid amounts on account of Withholding Taxes and Obligations and Payroll Taxes to the appropriate third-party recipients or taxing authorities in accordance with the Debtors' prepetition policies and practices. The Banks are directed to honor all checks, drafts, or payment requests (provided that such funds are on deposit to cover such checks) without regard to the date of issue of such checks, drafts, or payment requests in the same manner that such checks, drafts, and payment requests were honored during the prepetition period, including electronic payment requests made by the Debtors related to employee obligations and benefits.

10. In accordance with this Interim Order, the Banks are authorized to (a) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related to the Prepetition Employee Obligations, to the extent that sufficient funds are on deposit in those accounts and (b) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should

be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

11. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth herein, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Chapter 11 Cases. To the extent any Employee has suffered any actual monetary penalty or charge due to the inadvertent dishonor of any check of the Debtors on account of any Prepetition Employee Obligations, the Debtors shall be authorized, but not directed, to reimburse the Employee for such amount without further order of this Court.

12. Nothing contained herein is intended, or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of any of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between any of the Debtors and any third party under section 365 of the Bankruptcy Code. Any payment made pursuant to this Interim Order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of any of the Debtors' rights to dispute <sup>any unpaid portion of</sup> such claim.

13. Notwithstanding entry of this Interim Order, nothing herein shall create, nor is intended to create, any rights in favor of or enhance the status of any claim held by, any party.

14. Notwithstanding any other provision of this Interim Order, no payments to any individual Employee shall exceed the amounts set forth in 11 U.S.C. §§ 507(a)(4) and 507(a)(5).

15. The final hearing (the "Final Hearing") on the Motion shall be held on **March 12, 2020 at 2:00 p.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 March 5, 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.

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

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

18. 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.

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

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

Dated: Feb. 12, 2020  
Wilmington, Delaware

  
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THE HONORABLE LAURIE SELBER SILVERSTEIN  
UNITED STATES BANKRUPTCY JUDGE