

**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 (LSS)
:
Debtors. : (Jointly Administered)
:
-----X Re: D.I. 15, 60

**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY OR HONOR
PREPETITION OBLIGATIONS TO (A) CERTAIN CRITICAL DOMESTIC VENDORS
AND (B) CERTAIN CRITICAL FOREIGN VENDORS; (II) AUTHORIZING AND
DIRECTING FINANCIAL INSTITUTIONS TO HONOR ALL RELATED CHECKS
AND ELECTRONIC PAYMENT REQUESTS; (III) CONFIRMING THE
APPLICATION OF SECTION 362 OF THE BANKRUPTCY CODE TO SUCH
CRITICAL FOREIGN VENDORS; (IV) SCHEDULING A FINAL HEARING;
AND (V) GRANTING RELATED RELIEF**

Upon the *Motion of the Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay or Honor Prepetition Obligations to (A) Certain Critical Domestic Vendors and (B) Certain Critical Foreign Vendors; (II) Authorizing and Directing Financial Institutions to Honor all Related Checks and Electronic Payment Requests; (III) Confirming the Application of Section 362 of the Bankruptcy Code to Such Critical Foreign Vendors; (IV) Scheduling a Final Hearing; and (V) Granting Related Relief* (the “Motion”),² filed by the above-captioned debtors (collectively, the “Debtors”) for entry of a final order (this “Final Order”), authorizing the Debtors to pay the prepetition claims of certain Critical Vendors, up to \$1.5 million in the aggregate (inclusive of the authority approved on an interim basis) on a final basis, and granting related relief, all as further described in the Motion; and upon consideration of the First Day

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.



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 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 the Court having granting the relief requested in the Motion on an interim basis [D.I. 60], and on the record of these Chapter 11 Cases; 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 and 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 directed, to pay the Critical Vendor Claims (including the Vendor 503(b)(9) Claims), up to \$1.5 million in the aggregate (inclusive of the authority approved on an interim basis) on a final basis. The Debtors will advise the advisors to the Official Committee of Unsecured Creditors (the "Committee") of any payments made under this Final Order or the Interim Order, and to the extent the payment of a Critical Vendor Claim exceeds \$100,000, the Debtors shall provide advisors to the Committee at least two (2) business days' advance notice of such payment.

3. The Banks are directed to honor all related checks and electronic payment requests from the Debtors for payment of the Critical Vendor Claims.

4. The Debtors are authorized, but not directed, to undertake appropriate efforts to cause Critical Vendors to enter into Trade Agreements with the Debtors substantially in the form of the agreement that is annexed to this Final Order as Exhibit 1, as a condition of payment of its Critical Vendor Claims.

5. Except as set forth in this Final Order, the Debtors are authorized to make payments on account of Critical Vendor Claims in the absence of a Trade Agreement if the Debtors determine, in their business judgment, that failure to pay such Critical Vendor Claims presents a material risk of irreparable harm to the Debtors' business and there is no reasonable likelihood that the Debtors will negotiate an acceptable Trade Agreement with the applicable provider of goods and/or services.

6. If a Critical Vendor under a Trade Agreement refuses to supply goods and/or services to the Debtors on Customary Trade Terms or Minimum Credit Terms following receipt of payment on its Critical Vendor Claim or otherwise fails to comply with any Trade Agreement entered into between such Critical Vendor and the Debtors, then the Debtors may take any and all appropriate steps to cause such Critical Vendor to repay payments made to it on account of its prepetition claim to the extent that such payments exceeded the postpetition amounts then owing to such Critical Vendor. Nothing herein shall constitute a waiver of the Debtors' rights to seek damages or other appropriate remedies against any breaching Critical Vendor.

7. Notwithstanding the foregoing, the Debtors may, in their discretion, reinstate a Trade Agreement if the underlying default under the Trade Agreement is fully cured by the Critical Vendor not later than five (5) business days following the Debtors' notification to the

Critical Vendor that such default had occurred; or the Debtors, in their discretion, reach a favorable alternative agreement with the Critical Vendor.

8. No claimant who receives payment on account of a Critical Vendor Claim (whether or not such claimant signs a Trade Agreement) is permitted to file or perfect a lien on account of such claim, and any such claimant shall take all necessary action to remove any existing lien relating to such claim, even if the Lien is against property of a non-Debtor. Additionally, no claimant who receives payment on account of a Critical Vendor Claim (whether or not such claimant signs a Trade Agreement) is permitted to file a claim for reclamation or a claim under section 503(b)(9) of the Bankruptcy Code, regardless of the statute or other legal authority upon which such claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to the Critical Vendor by the Debtors.

9. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final 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 unpaid portion of such 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 Critical Vendor.

10. The amount of each Critical Vendor's Critical Vendor Claims set forth in connection with a Trade Agreement shall be used only for purposes of determining such Critical Vendor's claim under this Final Order and shall not be deemed a claim allowed by this Court, and the rights of all interested persons to object to such claim shall be fully preserved until

further order of this Court. Further, signing a Trade Agreement containing a claim amount for purposes of this Final Order shall not excuse such Critical Vendor from filing a proof of claim in these Chapter 11 Cases.

11. The Debtors are protected to the fullest extent applicable by section 362 of the Bankruptcy Code.

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 Final 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 Final Order.

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

Exhibit 1

Proposed Trade Agreement

_____, 2020

TO: [Critical Vendor]
[Name]
[Address]

Trade Agreement

As you may be aware, on February 9, 2020 (the "Petition Date"), the undersigned debtors (collectively, the "Debtors"), filed voluntary petitions (the "Bankruptcy Cases") under chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). On the Petition Date, we requested the Bankruptcy Court's authority to pay certain vendors and service providers in recognition of the importance of our relationship with such vendors and service providers. On _____, 2020, the Bankruptcy Court entered an order (the "Order") authorizing us, under certain conditions, to pay pre-bankruptcy claims of certain vendors and service providers that agree to be bound by the terms of the Order and to the terms set forth below. A copy of the Order is enclosed.

To receive payment on pre-bankruptcy claims, we require you to agree to supply goods and/or services to the Debtors based on "Customary Trade Terms." Customary Trade Terms are trade terms that are the same or better than the trade terms that existed immediately prior to the Petition Date.

For purposes of administration of this trade program as authorized by the Bankruptcy Court (the "Trade Payment Program"), the Debtors and you agree as follows:

1. For purposes of this Trade Agreement, the estimated balance of your prepetition claim (accounting for any setoffs, credits or discounts) (the "Prepetition Claim") is \$_____. The Prepetition Claim will be paid as follows: [_____].
2. The open balance or credit line that you will extend shall be on normal and customary terms on an historical basis for the period prior to the Petition Date.
3. In consideration for the payment described herein, you agree not to file or otherwise assert against any or all of the Debtors, their estates or any other person or entity or any of their respective assets or property (real or personal) any lien (a "Lien"), a claim for reclamation (a "Reclamation Claim"), or a claim under section 503(b)(9) of the Bankruptcy Code (a "Section 503(b)(9) Claim"), regardless of the statute or other legal authority upon which such Lien, Reclamation Claim, or Section 503(b)(9) Claim may be asserted, related in any way to any remaining prepetition amounts allegedly owed to you by the Debtors arising from agreements or other arrangements entered into prior to the Petition Date. Any holders of potential Section 503(b)(9) Claims reserve all of their rights with respect to such claims until such claims are paid in full.
4. You will hereafter extend to the Debtors all Customary Trade Terms, which are:

[ADD INDIVIDUALIZED SET OF CUSTOMARY TRADE/SERVICE TERMS OR ATTACH/CROSS-REFERENCE TERM FROM EXISTING AGREEMENT]

Payment of your Prepetition Claim in the manner set forth in the Order may occur upon execution of this letter by a duly authorized representative of your company and the return of this letter to the Debtors. Your execution of this letter agreement and the return of the same to the Debtors constitute an agreement by you and the Debtors:

1. to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Prepetition Claim set forth above;
2. that, for at least during the pendency of the Bankruptcy Cases, you will continue to supply the Debtors with goods and/or services under the Customary Trade Terms and any terms set forth herein and that the Debtors will pay for such goods and/or services in accordance with the terms hereof;
3. that you have reviewed the terms and provisions of the Order and acknowledge that you are bound by such terms; and
4. that if either the Trade Payment Program or your participation therein terminates as provided in the Order, any payments received by you on account of your Prepetition Claim will be deemed to have been in payment of postpetition obligations owed to you, and the Debtors reserve all of their rights with respect to such claims.

The Debtors and you also hereby agree that any dispute with respect to this agreement, the Order and/or your participation in the Trade Payment Program shall be determined by the Bankruptcy Court.

Please indicate your agreement to the terms hereof by returning a signed copy of this letter to [Name] at (____)_____ or [Name] (____)_____.

Sincerely,

Valeritas Holdings, Inc., Valeritas, Inc.,
Valeritas Security Corporation, and Valeritas
US, LLC (0007).

By:

Its:

Agreed and Accepted by:
[Name of Critical Vendor]
By:
Its:
Dated:

**Dated: March 11th, 2020
Wilmington, Delaware**


**LAURIE SELBER SILVERSTEIN
UNITED STATES BANKRUPTCY JUDGE**