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10 Proposed Counsel to Debtors and
11 Debtors in Possession

12 UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA - LOS ANGELES DIVISION

13 In re:
14 BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
15 (A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al*,¹

16 Debtors,

- 17
-
- 18 Affects all Debtors
19 Affects Beverly Community
20 Hospital Association
21 Montebello Community Health
Services, Inc.
22 Beverly Hospital Foundation
23

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

Jointly administered with:
Case No: 2:23-bk-12360
Case No: 2:23-bk-12361

Hon. Sandra R. Klein
Chapter 11 Case

**DEBTORS' EMERGENCY MOTION FOR
ENTRY OF INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE
DEBTORS TO HONOR PREPETITION
OBLIGATIONS TO (A) LIEN
CLAIMANTS; (B) 503(b)(9) CLAIMANTS;
AND (C) CRITICAL VENDORS, AND
(II) GRANTING RELATED RELIEF**

Date: April [•], 2023
Time: TBD
Judge: Hon. Sandra R. Klein
Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

27 ¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor's federal tax identification
28 number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community
Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309
W. Beverly Blvd., Montebello, California 90640.



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I.

RELIEF REQUESTED

The above-captioned debtors and debtors in possession (collectively, the “Debtors”)¹ hereby move, on an emergency basis (this “Motion”), to seek entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “Interim Order” and the “Final Order,” respectively): (a) authorizing the Debtors to honor prepetition obligations to (i) lien claimants, (ii) 503(b)(9) claimants, and (iii) critical vendors, and (b) granting related relief. In addition, the Debtors request that the Court schedule a final hearing within 21 days of the commencement of these chapter 11 cases to consider approval of this motion on a final basis.

II.

JURISDICTION AND VENUE

The United States Bankruptcy Court for the Central District of California (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *General Order No. 13-05* (C.D. Cal. Jul. 1, 2013), and Rule 5011-1(a) of the Local Bankruptcy Rules for the United States Bankruptcy Court Central District of California (the “Local Bankruptcy Rules”). This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

The bases for the relief requested herein are sections 105(a), 363, 503(b), 507, 1107(a), 1108, and 1129 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Rules 2081-1(a)(7) and 9075-1 of the Local Bankruptcy Rules.

¹ A detailed description of the Debtors and their business, and the facts and circumstances supporting this Motion and the Debtors’ chapter 11 cases, are set forth in greater detail in the *Declaration of Alice Cheng in Support of the Debtors’ First Day Emergency Motions* (the “First Day Declaration”), filed contemporaneously with the Debtors’ voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”), on the date hereof (the “Petition Date”). Capitalized terms used but not otherwise defined in this Motion have the meanings given to them in the First Day Declaration or elsewhere in this Motion.

1 **III.**

2 **STATEMENT OF FACTS**

3 **A. The Debtor's Background.**

4 Beverly Hospital is a nonprofit, 202-bed hospital in Montebello that serves low-income
5 patients in the nearby Los Angeles area. As a safety net hospital, Beverly serves a geographic area
6 where half of the population lives under the Federal Poverty Level. Beverly has been historically
7 underfunded and, in the post-Covid economy, became increasingly cash-strapped. With 91% of its
8 patients relying on Medicare and Medi-Cal, Beverly Hospital's financial struggles only worsened
9 as the cost of labor, medical supplies and medicine ballooned while government reimbursement
10 rates have stayed the same.

11 On the Petition Date, each of the Debtors filed a voluntary petition for relief under chapter
12 11 of the Bankruptcy Code. The Debtors are operating their business and managing their properties
13 as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.
14 Concurrently with the filing of this Motion, the Debtors filed a motion requesting procedural
15 consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy
16 Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these
17 chapter 11 cases, and no committees have been appointed or designated.

18 **B. Beverly Hospital and its Supply and Service Needs.**

19 The Debtors' ability to provide patient care is contingent on the continuous flow of goods
20 and services from certain vendors, suppliers, and service providers. In most cases, these goods and
21 services are highly specialized and technologically complex such that finding alternate sources
22 would be difficult if not impossible. Even where these goods and services are not sole sourced, the
23 time and resources associated with switching to replacement vendors, suppliers, and service
24 providers would be cost prohibitive.

25 Moreover, as the operator of a hospital licensed under California state law and certified to
26 participate in the Medicare and Medi-Cal programs, local, state, and federal laws and regulations
27 place certain compliance requirements on the Debtors. Notably, the Debtors must comply with all
28 hospital licensing and certification requirements provided under the California Health and Safety

1 Code and Title 22 of the California Code of Regulations. *See, e.g.*, Cal. Health & Safety Code §§
2 1250 *et seq.*; 22 Cal. Code Regs. §§ 70001 *et seq.*; 22 Cal. Code Regs. § 51207. As a certified
3 participant in Medicare and Medi-Cal reimbursement programs, the Debtors must remain compliant
4 with the attendant prerequisites and conditions to participation as set forth in Title 42 of the U.S.
5 Code of Federal Regulations. 42 C.F.R. §§ 482 *et seq.* Further, the Debtors must concurrently
6 monitor and comply with all of the other licensing and operational requirements applicable to the
7 hospital's programs and service lines, including those applicable to the hospital pharmacies (Cal.
8 Bus. & Prof. Code §§ 1200 *et seq.*) and laboratories (Cal. Bus. & Prof. Code §§ 4000 *et seq.*). *See*
9 *also* Cal. Health & Safety Code §§ 11000 *et seq.*;(establishing compliance requirements for
10 distribution of controlled substances under the California Controlled Substances Act).

11 The Debtors and the communities they serve are therefore in an extremely vulnerable
12 position. Maintaining compliance with these extensive, comprehensive regulations and
13 requirements necessitates continued, uninterrupted access to essential goods and services. Any
14 disruption in the supply of these essential goods and services jeopardizes the availability of life-
15 saving care and compromise the Debtors' ability to maintain their high standards of patient care and
16 safety. This would irreparably harm the Debtors, and by extension, the Debtors' patients and the
17 community in which Beverly Hospital serves

18 The Debtors submit that the requested relief will allow the Debtors to preserve the viability
19 of Beverly Hospital by paying the prepetition claims of certain counterparties that are critical to
20 Beverly Hospital's operations and specifically patient care. In framing the relief requested herein,
21 the Debtors have categorized the prepetition claims they seek authorization to pay into the following
22 three groups: (a) claims of creditors that may be able to assert liens against the Debtors' assets; (b)
23 claims that may entitle a vendor or supplier to administrative expense priority under section
24 503(b)(9) of the Bankruptcy Code; and (c) claims of certain critical vendors without whom the
25 Debtors could not effectively or efficiently conduct their business and provide services to their
26 customers and who meet a set of specific criteria as outlined below.

27 As of the Petition Date, the Debtors estimate that they owe approximately \$17,500,000 in
28 aggregate outstanding amount to all of their vendors on account of goods delivered and/or services

1 rendered prior to the Petition Date. By this Motion, the Debtors are only seeking authority to pay
2 only those claims that they have deemed necessary, in their business judgment and in their sole
3 discretion, to continue providing patient care services that are vital to the communities the Debtors
4 serve, to preserve the value of their estates, and to maintain compliance with applicable laws,
5 regulations, and licenses governing hospital operations (collectively, the “Trade Claims”).

6 **C. Lien Claimants.**

7 In the ordinary course of business, the Debtors incur obligations (the “Lien Claims”) to
8 various third parties, including contractors, repair technicians, and other service providers, that may
9 be able to assert and perfect liens, including mechanic’s liens, construction liens, and other similar
10 liens, against the Debtors’ property if the Debtors fail to pay for the services rendered (collectively,
11 the “Lien Claimants”). The Debtors regularly hire Lien Claimants to make improvements and
12 repairs to their properties and certain equipment used in the operation of Beverly Hospital. Such
13 properties and equipment include the Debtors’ medical facilities themselves, as well as highly
14 technical and specialized medical equipment, the operation of which is an integral component of the
15 Debtors’ ongoing businesses. Simply put, countless aspects of the Debtors’ operations depend on
16 continuing business relationships with, and services provided by, their Lien Claimants. Failure to
17 timely pay amounts owed to the Lien Claimants could result in, among other things, Lien Claimants
18 asserting liens against certain of the Debtors’ assets under applicable state law, which could disrupt
19 the Debtors’ ordinary course operations and delivery of quality patient care.

20 As of the Petition Date, the Debtors estimate that they owe approximately \$350,000 on
21 account of the Lien Claims, all of which are past due or will come due in the first twenty-one days
22 after the Petition Date. To continue benefitting from the Lien Claimants’ goods and services, the
23 Debtors request authority to pay the Lien Claims as they become due and payable and to continue
24 paying the Lien Claims in the ordinary course of business. For the avoidance of doubt, the Debtors
25 seek authority to pay only those amounts of Lien Claims that the Debtors determine to be necessary
26 or appropriate to (a) continue providing safe, reliable, and compliant healthcare services, (b) obtain
27 release of critical or valuable goods, (c) maintain reliable, efficient, and smooth distribution systems,
28

1 and (d) induce the Lien Claimants to continue performing or otherwise supporting the Debtors’
2 operations on a postpetition basis.

3 **D. 503(b)(9) Claimants.**

4 The Debtors may have received certain inventory, supplies, equipment, materials, or other
5 goods from Critical Vendors or other suppliers within the 20-day period immediately preceding the
6 Petition Date (the “503(b)(9) Claimants”), thereby giving rise to prepetition claims under section
7 503(b)(9) of the Bankruptcy Code (the “503(b)(9) Claims”). Many of the Debtors’ relationships
8 with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors obtain
9 inventory, supplies, equipment, materials, or other goods from such claimants on an order-by-order
10 basis. As a result, 503(b)(9) Claimants may refuse to supply new orders without payment of their
11 prepetition claims. Such refusal could negatively affect the Debtors’ estates as the Debtors’ business
12 is dependent on the steady flow of vital goods that are necessary to provide essential patient care
13 services. Disruptions to the supply of these goods and services could jeopardize the availability of
14 life-saving care and would be detrimental to the Debtors’ enterprise value. In light of these
15 consequences, the Debtors have concluded, in their business judgment, that payment of the
16 503(b)(9) Claimants is essential to avoid irreparable harm to Debtors and their patients.

17 The estimated amounts owing to the 503(b)(9) Claimants set forth below pales in comparison
18 to the potential damage to the Hospital if the Hospital’s operations were to experience significant
19 disruption. As of the Petition Date, the Debtors estimate that they owe approximately \$350,000 on
20 account of goods delivered within the twenty days immediately preceding the Petition Date, a
21 significant portion of which is past due or will come due in the first twenty-one days after the Petition
22 Date, and the value of which may be entitled to administrative priority under section 503(b)(9) of
23 the Bankruptcy Code. Accordingly, the Debtors request the authority, but not direction, to pay the
24 undisputed 503(b)(9) Claims as and when they come due in the ordinary course of business. For
25 the avoidance of doubt, the Debtors do not seek to accelerate or modify existing payment terms with
26 respect to the 503(b)(9) Claims.

1 **E. Critical Vendors.**

2 The Debtors rely on a number of vendors to provide them with goods and/or services used
3 in the operation of their business. The Debtors and their advisors have engaged in an extensive
4 process of reviewing and analyzing the Debtors' books and records, consulting operations
5 management and purchasing personnel, reviewing contracts and supply agreements, and analyzing
6 applicable laws, regulations, and historical practices to identify business relationships which, if lost,
7 could materially harm the Debtors' patients, the Debtors' businesses, reduce their enterprise value,
8 or otherwise impair their restructuring process. This process, which remains ongoing, has informed
9 the Debtors' efforts to identify, using their business judgment, only those vendors, suppliers, and
10 service providers most critical to the Debtors' ability to provide patient care (collectively, the
11 "Critical Vendors," and together with the Lien Claimants and the 503(b)(9) Claimants, the "Trade
12 Claimants"). The Debtors' Critical Vendors include medical supplies and equipment providers
13 (collectively, the "Medical Supplies and Equipment Providers") non-medical goods and services
14 providers (collectively, the "Non-Medical Goods and Services Providers").

15 The Debtors require the use of various medical supplies and medical equipment, including,
16 but not limited to, blood and plasma, heart valves, coronary intervention products, laparoscopic and
17 minimally invasive surgical supplies, other surgical medical products, vaccinations and other
18 pharmaceuticals, nuclear medicines, medical gases, anesthesia medical equipment, laboratory
19 medical supplies, radiation equipment, gastrointestinal supplies, orthopedic implants, spinal
20 implants, sterilization equipment and products, and other goods essential to the provision of
21 inpatient medical care. Equipment includes medical equipment rentals, biomedical repair tools and
22 equipment, patient beds and stretchers, vital sign monitoring, infusion pumps, medication supply
23 stations, gastro-intestinal lab equipment, cardiac catheterization lab equipment, operating room
24 equipment, imaging equipment, laboratory equipment, pharmacy dispensing equipment, and
25 transplant program equipment. The medical supplies and medical equipment the Debtors receive
26 from the Medical Supplies and Equipment Providers are vital to the Debtors. The Debtors will
27 suffer immediate irreparable harm should the Court not grant the Debtors' request to include the

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1 Medical Supplies and Equipment Providers as Critical Vendors subject to payment on prepetition
2 claims.

3 Moreover, the Debtors require services of various non-medical goods and services providers,
4 including, but not limited to, those who provide services such as diagnostic technology,
5 interoperability between devices, risk management and software services, hosting services for
6 applications, and point of care data management system services. Critical patient care systems such
7 as electronic health record systems and enterprise resource planning systems must be maintained to
8 ensure continuity of patient care. These non-medical services are vital to the Debtors' day-to-day
9 operations and the Debtors' ability to comply with regulatory requirements set by the State of
10 California legislature, and the Debtors will suffer immediate irreparable harm should the Court not
11 grant the Debtors' request to include the Non-Medical Goods and Services Providers as Critical
12 Vendors.

13 Any material interruption in the Critical Vendors' supply of vital goods and services—
14 however brief—would cause irreparable harm to the Debtors and their patients. Such harm would
15 likely far outweigh the cost of payment of the prepetition claims accrued in the ordinary course of
16 business held by certain Critical Vendors. As part of the Critical Vendor identification process, the
17 Debtors have deemed certain vendors, suppliers, and service providers as critical because each of
18 these Critical Vendor meets certain criteria, including, but not limited to, the following:

- 19 a. the vendor supplies goods and/or services that are essential to the provision
20 of patient care;
- 21 b. the vendor is either the sole source of such essential goods and/or services or
22 replacing the claimant would be cost prohibitive;
- 23 c. the vendor holds an unpaid prepetition claim for the provision of goods and/or
24 services;
- 25 d. the Debtors lack a contractual relationship with the vendor or are otherwise
26 without leverage to compel the vendor to continue the prepetition
27 relationship; and
28

1 e. failure to pay all or part of the vendor's claim could cause the vendor to refuse
2 to provide critical goods and services on a postpetition basis.

3 As of the Petition Date, the Debtors owe approximately \$17,500,000 on account of all
4 accounts payable to the Debtors' trade creditors. By this Motion, the Debtors are only seeking
5 authority to pay an amount that they have deemed necessary, in their business judgment and in their
6 sole discretion, to preserve the value of their estates, which shall not exceed \$600,000 on an interim
7 basis and \$2,000,000 on a final basis on account of prepetition claims held by certain Critical
8 Vendors and accrued in the ordinary course of business (the "Critical Vendor Cap"). The Debtors'
9 will use commercially reasonable efforts to require the vendor to sign a postpetition agreement with
10 normalized terms and conditions that contractually bind the vendor to continue providing essential
11 goods and services postpetition (the "Critical Vendor Agreement").

12 **F. Customary Trade Terms**

13 Subject to the Court's approval, the Debtors intend to pay Trade Claims only to the extent
14 necessary to preserve their businesses. The Debtors have designated a core group of executives,
15 advisors, and employees who have experience in the Debtors' businesses and in the reorganization
16 process to review, assess, and potentially recommend any payment on account of a Trade Claim. In
17 return for paying the Trade Claims, the Debtors will use commercially reasonable efforts to
18 condition payment of the Trade Claims upon each vendor's agreement to, as applicable, continue
19 supplying goods and services on terms that were in place in the 120 days prior to the Petition Date
20 or are otherwise acceptable to the Debtors in light of customary industry practices (the "Customary
21 Trade Terms").

22 In addition, the Debtors request that if any party accepts payment pursuant to the relief
23 requested by this Motion and thereafter does not continue to provide goods or services on Customary
24 Trade Terms, then: (a) such payment may be deemed to be an improper postpetition transfer on
25 account of a prepetition claim, and therefore, immediately recoverable by the Debtors in cash upon
26 written request; (b) upon recovery by the Debtors, any prepetition claim of such party shall be
27 reinstated as if the payment had not been made; and (c) if there exists an outstanding postpetition
28 balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any

1 payment made pursuant to the relief requested by this Motion to such outstanding postpetition
2 balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that
3 exceed the postpetition obligations then outstanding without the right of any setoffs, claims,
4 provisions for payment of any claims, or otherwise.

5 **IV.**

6 **BASIS FOR RELIEF**

7 **A. The Court Should Authorize the Payment of the Critical Vendor Claims Pursuant to**
8 **Sections 363(b) and 105(a) of the Bankruptcy Code.**

9 Courts have recognized that it is appropriate to authorize the payment of prepetition
10 obligations, including payments to critical vendors, where necessary to protect and preserve the
11 estate. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts
12 “have approved . . . ‘critical vendor’ orders that allow payment of essential suppliers’ prepetition
13 invoices”); *see also In re Scotia Dev., LLC*, 2007 WL 2788840, at *2 (Bankr. S.D. Tex. Sep. 21,
14 2007) (outlining the factors for when a critical vendor payment is necessary); *In re Ionosphere*
15 *Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a bankruptcy court to
16 authorize the payment of pre-petition debt when such payment is needed to facilitate the
17 rehabilitation of the debtor is not a novel concept.”). Thus, these courts acknowledge that several
18 legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of
19 prepetition claims as provided herein.

20 Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may
21 be authorized where a sound business purpose exists for doing so. *See Ionosphere*, 98 B.R. at 175
22 (emphasizing the “broad flexibility” of section 363(b)). Section 105(a) empowers bankruptcy courts
23 to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions
24 of this title.” 11 U.S.C. § 105(a). Section 1107(a) “contains an implied duty of the debtor-in-
25 possession” to “protect and preserve the estate, including an operating business’ going-concern
26 value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315
27 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D.
28 Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*,

1 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor
2 in possession and, through its management . . . was burdened with the duties and responsibilities of
3 a bankruptcy trustee.”).

4 The Debtors have determined, in the exercise of their business judgment, that honoring
5 prepetition obligations to the Critical Vendors (up to the Critical Vendor Cap) in the amounts set
6 forth in the Budget attached to the Cheng Declaration, in the Debtors’ discretion, is in the
7 overwhelming best interests of their Estates. Granting the Debtors the authority to honor such
8 prepetition claims (up to the Critical Vendor Cap) greatly benefits the Debtors’ estates by preserving
9 the Debtors’ relationships with their most critical vendors, suppliers, and service providers, without
10 whom the Debtors cannot adequately provide medical services or comply with statutory
11 requirements necessary for certification, and by maintaining the value of Beverly Hospital , so that
12 the Debtors can continue business operations while they continue upon a marketing and sale process
13 for their business.

14 As noted above, the Debtors intend to market and sell Beverly Hospital and other assets as
15 a going concern. Therefore, it is critical that, while the Debtors proceed with an expedited marketing
16 and sale process for their Hospital and other assets, the Debtors maintain their medical and business
17 operations and preserve the value of their assets. The Debtors can only do so by continuing to retain
18 their employees or contractors, operate their medical facilities, or meet their patients’ daily medical
19 services needs and statutory compliance requirements in the ordinary course of business, which the
20 Debtors simply cannot do without the services and goods provided by the Critical Vendors.

21 Authorizing the Debtors to pay prepetition Critical Vendor Claims is especially appropriate
22 where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the
23 Bankruptcy Code—preserving the going concern value for the Debtors’ business and maximizing
24 the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v.*
25 *203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999) (describing a reconciliation of “the two
26 recognized policies underlying Chapter 11 . . . preserving going concerns and maximizing property
27 available to satisfy creditors”). Reflecting the recognition that payment of prepetition claims of
28 certain essential suppliers and vendors is, in fact, both critical to a debtor’s ability to preserve going

1 concerns and maximize creditor recovery, courts regularly grant relief consistent with that which
2 the Debtors are seeking in this motion. *See CoServ*, 273 B.R. at 497 (noting that “it is only logical
3 that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize
4 satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”).

5 Furthermore, courts in this jurisdiction have granted relief similar to that requested herein in
6 other large chapter 11 cases. *See, e.g., In re Verity Health System of California, Inc.*, No. 2:18-bk-
7 20151-ER (Bankr. C.D. Cal. Sept. 7, 2018) [Docket No. 134] (authorizing the debtors to pay and/or
8 honor the prepetition claims of critical vendors); *In re Victor Valley Community Hospital*, No. 6:10-
9 bk-39537-CB (Bankr. C.D. Cal. Sept. 17, 2010) [Docket No. 34] (same); *In re Downey Regional*
10 *Medical Center-Hosp., Inc.*, No. 2009-BK-34714-BB (Bankr. C.D. Cal. Oct. 19, 2009) [Docket No.
11 148] (same); *In re American Suzuki Motor Corp.*, No. 8:12-bk-22808-SC (Bankr. C.D. Cal. Nov. 7,
12 2012) [Docket No. 69] (same); *In re California Coastal Communities, Inc.*, No. 8:09-bk-21712-TA
13 (Bankr. C.D. Cal. Dec. 9, 2009) [Docket No. 87] (same); *In re Evergreen Oil, Inc.*, No. 8:13-bk-
14 13163 (Bankr. C.D. Cal. Apr. 10, 2013) [Docket No. 32] (same); *In re HDOS Enters.*, No. 2:14-
15 BK-12028-NB (Bankr. C.D. Cal. Feb. 6, 2014) [Docket No. 66] (same); *In re Green Fleet Systems,*
16 *LLC*, No. 2:15-bk-11542-BR (Bankr. C.D. Cal. Mar. 16, 2015) [Docket No. 81] (same).

17 Moreover, in other cases of similar magnitude but with much less at stake than the lives of
18 patients, courts have authorized payment of significantly higher amounts in critical vendor claims.
19 *See, e.g., In re The Great Atlantic & Pacific Tea Co., et al.*, (Bankr. S.D.N.Y. 2010) [Docket No.
20 55] (authorizing payment of up to \$62 million in critical vendor claims); *In re Chassix Holdings,*
21 *Inc.*, No. 15-10578 (Bankr. S.D.N.Y. 2015) [Docket Nos. 85, 275] (authorizing payment of critical
22 vendor claims up to \$5 million on an interim basis and \$40 million on a final basis); *In re Old HB,*
23 *Inc. (f/k/a Hostess Brands, Inc.)*, No. 7:2012-bk-22052 (Bankr. S.D.N.Y. Jan. 13, 2012) [Docket No.
24 76] (authorizing payment of up to \$14 million in critical vendor claims); *In re The Readers Digest Ass’n,*
25 *Inc.*, No. 09-23529 (Bankr. S.D.N.Y. Sept. 17, 2009) [Docket No. 91] (authorizing payment of up
26 to \$25 million to critical vendors).

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1 **B. The Court Should Authorize the Payment of Claims Entitled to Priority Pursuant to**
2 **Section 503(b)(9) of the Bankruptcy Code.**

3 Section 503(b)(9) provides administrative priority for the “value of any goods received by
4 the debtor within twenty (20) days before the date of commencement of a case under this title in
5 which goods have been sold to the debtor in the ordinary course of such debtor’s business.” Courts
6 in the Ninth Circuit have recognized that “[t]he administrative priority status accorded by §
7 503(b)(9)” includes, but is not limited to, “critical vendors.” *In re Brown & Cole Stores, LLC*, 375
8 B.R. 873, 878 (B.A.P. 9th Cir. 2007). These claims must be paid in full for the Debtors to confirm
9 a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A).

10 In fact, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to
11 confirmation. As administrative claims incurred in the ordinary course of business, the Debtors
12 submit that they may pay such claims in accordance with their business judgment pursuant to section
13 363(c)(1). Courts regularly authorize the payment of claims arising under section 503(b)(9) in the
14 ordinary course of business. *See, e.g., In re Chassix Holdings, Inc.*, No. 15-10578 (Bankr. S.D.N.Y.
15 Apr. 14, 2015) [Docket No. 275] (authorizing debtors to pay 503(b)(9) claims “in the ordinary
16 course if the Debtors determine it is in the estates’ best interests to do so”); *In re The Great Atlantic*
17 *& Pacific Tea Co., et al.*, No. 10-24549 (Bankr. S.D.N.Y. Dec. 14, 2010) (Nos. 55, 504) (authorizing
18 payment of 503(b)(9) claims up to \$5 million); *In re Lear Corp.*, No. 09-14326 (Bankr. S.D.N.Y.
19 July 8, 2009) [Docket No. 68, 245] (authorizing payment of 503(b)(9) claims up to \$23.15 million
20 on an interim basis and \$46.3 million on a final basis); *In re Glob. Home Prods., LLC*, No. 06-10340
21 (KG), 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006) (stating that “the timing of the
22 payment of that administrative expense claim is left to the discretion of the Court”); *In re Chrysler*
23 *LLC*, No. 09-50002 (Bankr. S.D.N.Y. May 20, 2009) [Docket No. 1318] (authorizing debtors to pay
24 uncapped “claims of any creditors or claimants entitled to administrative priority pursuant to section
25 503(b)(9) . . . in the ordinary course of the Debtors’ businesses and on such terms and conditions as
26 the Debtors deem appropriate,” subject to the terms of debtors’ DIP facility).

27 The Debtors’ ongoing ability to obtain goods as provided herein is key to their survival and
28 necessary to preserve the value of their estates. Absent this relief, the Debtors could be denied

1 access to the goods necessary to maintain their operations and maximize the value of their estates.
2 Thus, the Court should allow the Debtors to pay the 503(b)(9) Claims in the ordinary course of
3 business and in accordance with the relief requested in this Motion.

4 **C. The Court Should Authorize the Payment of Lien Claims.**

5 Certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert
6 certain possessory liens on the goods or equipment in the Debtors' possession (notwithstanding the
7 automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their
8 prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens,
9 to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the
10 automatic stay.² The Debtors anticipate that certain of the Lien Claimants may assert or perfect
11 liens, simply refuse to turn over goods or equipment in their possession, or stop performing their
12 ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession
13 of the Debtors' inventory, equipment, or products, mere possession or retention could disrupt the
14 Debtors' operations.

15 Paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11
16 cases. Where the amount owed to a Lien Claimant is less than the value of the materials and
17 equipment that could be held to secure a Lien Claimant's claim, such party may be a fully secured
18 creditor of the Debtors' estates. In such instances, payment only provides such party with what they
19 might be entitled to receive under a chapter 11 plan without any interest costs that might otherwise
20 accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless
21 transition of the Debtors' operations into bankruptcy and the ultimate delivery of high-quality
22 medical services to the Debtors' patients.

23 **D. Payment of the Critical Claims Is in Furtherance of the Debtors' Fiduciary Duties**
24 **under Sections 1107(a) and 1108 of the Bankruptcy Code.**

25 The Debtors, operating their business as debtors in possession under sections 1107(a) and
26 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate and operating the

27 _____
28 ² See 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

1 business for the benefit of its creditors and (if the value justifies) equity owners.” *CoServ*, 273 B.R.
2 at 497. Implicit in the duties of chapter 11 debtors in possession is the duty “to protect and preserve
3 the estate, including an operating business’s going-concern value.” *Id.*

4 Courts have noted that there are instances in which debtors in possession can fulfill their
5 fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *Id.* The *CoServ* court
6 specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a
7 debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of
8 the estate,” and also when the payment was to “sole suppliers of a given product.” *Id.* at 498. The
9 *CoServ* court provided a three-pronged test for determining whether a preplan payment on account
10 of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

11 First, it must be critical that the debtor deal with the claimant. Second,
12 unless it deals with the claimant, the debtor risks the probability of
13 harm, or, alternatively, loss of economic advantage to the estate or the
14 debtor’s going concern value, which is disproportionate to the amount
15 of the claimant’s prepetition claim. Third, there is no practical or legal
16 alternative by which the debtor can deal with the claimant other than
17 by payment of the claim.

18 *Id.*

19 Payment of the Trade Claims meets each element of the *CoServ* court’s standard. As
20 described above, the failure to timely pay the Trade Claims could jeopardize patient well-being and
21 diminish the value of the Debtors’ estates and their ability to achieve the highest and best offer for
22 the business. The harm and economic disruption that would stem from the failure to timely pay the
23 Trade Claims is grossly disproportionate to the amount of the prepetition claims that would have to
24 be paid. Finally, with respect to each of the Trade Claims, the Debtors have determined that, no
25 practical or legal alternative to payment of the Trade Claims exists, so continued partnership with
26 the Trade Claimants is necessary to avoid significant diminution in value of the Debtors’ estates.
27 Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections
28 1107(a) and 1108 of the Bankruptcy Code through payment of the Trade Claims.

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V.

**PROCESSING OF CHECKS AND ELECTRONIC FUND TRANSFERS SHOULD BE
AUTHORIZED**

The Debtors have sufficient funds to pay any amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations. In addition, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the Insurance Policies. Accordingly, the Debtors believe there is minimal risk that checks or wire transfer requests that the Court has not authorized will be inadvertently made. Therefore, the Debtors respectfully request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion.

VI.

EMERGENCY CONSIDERATION

Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the petition date “to the extent that relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Additionally, Local Bankruptcy Rule 2081-1(a)(12) allows a movant to request the type of relief herein for emergency consideration. For the reasons discussed above, (a) authorizing the Debtors to honor prepetition obligations to (i) Lien Claimants, (ii) 503(b)(9) Claimants, and (iii) Critical Vendors; and (b) granting related relief as requested herein is integral to the Debtors’ ability to transition their operations into these chapter 11 cases. Failure to receive such authorization and other relief during the first 21 days of these chapter 11 cases would severely disrupt the Debtors’ operations at this critical juncture. The relief requested is necessary in order for the Debtors to operate their business in the ordinary course and preserve the ongoing value of the Debtors’ operations and maximize the value of their estates for the benefit of all stakeholders. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

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VII.

WAIVER OF BANKRUPTCY RULE 6004(A) AND 6004(H)

To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

VIII.

WAIVER OF MEMORANDUM OF POINTS AND AUTHORITIES

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

IX.

NOTICE

The Debtors will provide notice of this Motion via first class mail, facsimile or email (where available) to: (a) the Office of the U.S. Trustee Region 16; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) U.S. Bank, N.A. and counsel thereto; (d) Hanmi Bank and counsel thereto; (e) the Internal Revenue Service; (f) the Office of the Attorney General of the State of California Attorney General; (g) the National Association of Attorneys General; and (h) all other parties who have filed a request for special notice and service of papers with the clerk of this Court.

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

Exhibit A

Proposed Interim Order

EXHIBIT A

[Proposed Interim Order]

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:
BEVERLY COMMUNITY HOSPITAL ASSOCIATION, dba BEVERLY HOSPITAL (A NONPROFIT PUBLIC BENEFIT CORPORATION), et al,¹

Debtors,

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

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

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

[PROPOSED] INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS TO (A) LIEN CLAIMANTS; (B) 503(b)(9) CLAIMANTS; AND (C) CRITICAL VENDORS; AND (II) GRANTING RELATED RELIEF

Date: April [•], 2023

Time: TBD

Judge: Hon. Sandra R. Klein

Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

Upon the Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor Prepetition Obligations to (A) Lien Claimants, (B) 503(b)(9) Claimants, and (C) Critical Vendors; and (II) Granting Related Relief (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed on April 19, 2023; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

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

1 States Constitution; and this Court having found that venue of this proceeding and the Motion in
2 this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that
3 the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and
4 other parties in interest; and this Court having found that the Debtors' notice of the Motion and
5 opportunity for a hearing on the Motion were appropriate under the circumstances and no other
6 notice need be provided; and this Court having reviewed the Motion and having heard the statements
7 in support of the relief requested therein at a hearing before this Court on April [], 2023 at
8 [].m; and this Court having determined that the legal and factual bases set forth in the Motion
9 and at the Hearing establish just cause for the relief granted herein and is necessary to avoid
10 immediate and irreparable harm pursuant to Bankruptcy Rule 6003; and after due deliberation and
11 sufficient cause appearing therefor,

12 **IT IS HEREBY ORDERED THAT:**

13 1. The Motion is GRANTED on an interim basis subject to the terms of this Interim
14 Order.

15 2. The Court will hold a Final Hearing on the Motion [] [], 2023 at [].m].
16 Any objections or responses to entry of a final order on the Motion shall be filed on or before []
17 [], 2023 at [].m], and served on the Notice Parties. In the event no objections to entry of a
18 final order on the Motion are timely received, this Court may enter such final order without need
19 for the Final Hearing.

20 3. The Debtors are hereby authorized, but not directed, in the reasonable exercise of
21 their business judgment, to honor, pay, or otherwise satisfy, on a case-by-case basis, all or part of
22 prepetition amounts on account of: (i) Lien Claims in an amount not to exceed \$350,000 pending
23 entry of the Final Order; (ii) 503(b)(9) Claims in an amount not to exceed \$350,000 pending entry
24 of the Final Order; and (iii) Critical Vendor Claims in an amount not to exceed \$600,000 pending
25 entry of the Final Order.

26 4. The Debtors are authorized to condition payment of the Trade Claims upon the holder
27 of such Trade Claim agreeing to Customary Trade Terms and if any such holder accepts payment
28 hereunder and does not continue supplying goods or services to the Debtors in accordance with

1 Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such
2 party shall be deemed, in the Debtors' discretion, an improper postpetition transfer and, therefore,
3 immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon
4 recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment
5 had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors
6 to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the
7 relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor
8 will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations
9 then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or
10 otherwise.

11 5. Any party that accepts payment from the Debtors on account of all or a portion of
12 any Trade Claim pursuant to this Interim Order shall be deemed to (a) agree to the terms and
13 provisions of this Interim Order, and (b) have waived, to the extent so paid, any and all prepetition
14 claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their
15 assets, and properties.

16 6. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole
17 discretion, the extent, perfection, priority, validity, or amounts of any claims held by any holder of
18 a Trade Claim. The Debtors do not concede that any claims satisfied pursuant to this Interim Order
19 are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or
20 seek the avoidance of all such liens or the priority of such Trade Claims.

21 7. The banks and financial institutions on which checks were drawn or electronic
22 payment requests made in payment of the prepetition obligations approved herein are authorized to
23 receive, process, honor, and pay all such checks and electronic payment requests when presented
24 for payment, and all such banks and financial institutions are authorized to rely on the Debtors'
25 designation of any particular check or electronic payment request as approved by this Interim Order
26 without any duty of further inquiry and without liability for following the Debtors' instructions.

27 8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund
28 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a

1 consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with
2 the relief granted herein.

3 9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

4 10. The requirement under Local Bankruptcy Rule 9013-1(c) to file a memorandum of
5 law in connection with the Motion is waived.

6 11. Notice of the Motion as provided therein shall be deemed good and sufficient notice
7 of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules
8 are satisfied by such notice.

9 12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim
10 Order are immediately effective and enforceable upon its entry.

11 13. The Debtors are authorized to take all actions necessary to effectuate the relief
12 granted in this Interim Order in accordance with the Motion.

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

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Exhibit B

Proposed Final Order

EXHIBIT B

[Proposed Final Order]

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA, LOS ANGELES DIVISION

In re:
BEVERLY COMMUNITY HOSPITAL
ASSOCIATION, dba BEVERLY HOSPITAL
(A NONPROFIT PUBLIC BENEFIT
CORPORATION), *et al.*¹

Debtors,

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

Jointly administered with:

Case No: 2:23-bk-12360

Case No: 2:23-bk-12361

Hon. Sandra R. Klein

Chapter 11 Case

**[PROPOSED] FINAL ORDER
(I) AUTHORIZING THE DEBTORS TO
HONOR PREPETITION OBLIGATIONS
TO (A) LIEN CLAIMANTS; (B) 503(b)(9)
CLAIMANTS; AND (C) CRITICAL
VENDORS; AND (II) GRANTING
RELATED RELIEF**

Date: April [•], 2023

Time: TBD

Judge: Hon. Sandra R. Klein

Place: Zoom.Gov – or - Courtroom 1575
255 E. Temple St.
Los Angeles, CA 90012

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

Upon the *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Honor Prepetition Obligations to (A) Lien Claimants, (B) 503(b)(9) Claimants, and (C) Critical Vendors; and (II) Granting Related Relief* (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed on April 19, 2023; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United

¹ The Debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number, are: Beverly Community Hospital Association d/b/a Beverly Hospital (6005), Montebello Community Health Services, Inc. (3550), and Beverly Hospital Foundation (9685). The mailing address for the Debtors is 309 W. Beverly Blvd., Montebello, California 90640.

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

1 States Constitution; and this Court having found that venue of this proceeding and the Motion in
2 this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that
3 the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and
4 other parties in interest; and this Court having found that the Debtors' notice of the Motion and
5 opportunity for a hearing on the Motion were appropriate under the circumstances and no other
6 notice need be provided; and this Court having reviewed the Motion and having heard the statements
7 in support of the relief requested therein at a hearing before this Court on April [], 2023 at
8 [].m; and this Court having determined that the legal and factual bases set forth in the Motion
9 and at the Hearing establish just cause for the relief granted herein and is necessary to avoid
10 immediate and irreparable harm pursuant to Bankruptcy Rule 6003; and after due deliberation and
11 sufficient cause appearing therefor,

12 **IT IS HEREBY ORDERED THAT:**

- 13 1. Motion is GRANTED on a final basis subject to the terms of this Order.
- 14 2. The Debtors are hereby authorized, but not directed, in the reasonable exercise of
15 their business judgment, to honor, pay, or otherwise satisfy, on a case-by-case basis, all or part of
16 prepetition amounts on account of: (i) Lien Claims in an amount not to exceed \$350,000; (ii)
17 503(b)(9) Claims in an amount not to exceed \$350,000; and (iii) Critical Vendor Claims in an
18 amount not to exceed \$2,000,000.
- 19 3. The Debtors are authorized to condition payment of the Trade Claims upon the holder
20 of such Trade Claim agreeing to Customary Trade Terms and if any such holder accepts payment
21 hereunder and does not continue supplying goods or services to the Debtors in accordance with
22 Customary Trade Terms, then: (a) any payment on account of a prepetition claim received by such
23 party shall be deemed, in the Debtors' discretion, an improper postpetition transfer and, therefore,
24 immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon
25 recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment
26 had not been made; and (c) if there exists an outstanding postpetition balance due from the Debtors
27 to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the
28 relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor

1 will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations
2 then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or
3 otherwise.

4 4. Any party that accepts payment from the Debtors on account of all or a portion of
5 any Trade Claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions
6 of this Final Order, and (b) have waived, to the extent so paid, any and all prepetition claims, of any
7 type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and
8 properties.

9 5. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole
10 discretion, the extent, perfection, priority, validity, or amounts of any claims held by any holder of
11 a Trade Claim. The Debtors do not concede that any claims satisfied pursuant to this Final Order
12 are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or
13 seek the avoidance of all such liens or the priority of such Trade Claims.

14 6. The banks and financial institutions on which checks were drawn or electronic
15 payment requests made in payment of the prepetition obligations approved herein are authorized to
16 receive, process, honor, and pay all such checks and electronic payment requests when presented
17 for payment, and all such banks and financial institutions are authorized to rely on the Debtors'
18 designation of any particular check or electronic payment request as approved by this Final Order
19 without any duty of further inquiry and without liability for following the Debtors' instructions.

20 7. Notwithstanding the relief granted in this Interim Order and any actions taken
21 pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the
22 validity of any prepetition claim against a Debtor entity; (b) a waiver of the Debtors' or any other
23 party in interest's right to dispute any prepetition claim on any grounds; (c) a promise or requirement
24 to pay any prepetition claim; (d) an implication or admission that any particular claim is of a type
25 specified or defined in this Final Order or the Motion; (e) a request or authorization to assume any
26 prepetition agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; or (f) a
27 waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other
28 applicable law. Any payment made pursuant to this Final Order is not intended and should not be

1 construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights
2 to subsequently dispute such claim.

3 8. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund
4 transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a
5 consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with
6 the relief granted herein.

7 9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

8 10. The requirement under Local Bankruptcy Rule 9013-1(c) to file a memorandum of
9 law in connection with the Motion is waived.

10 11. Notice of the Motion as provided therein shall be deemed good and sufficient notice
11 of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Bankruptcy Rules
12 are satisfied by such notice.

13 12. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final
14 Order are immediately effective and enforceable upon its entry.

15 13. The Debtors are authorized to take all actions necessary to effectuate the relief
16 granted in this Final Order in accordance with the Motion.

17 14. This Court retains exclusive jurisdiction with respect to all matters arising from or
18 related to the implementation, interpretation, and enforcement of this Final Order.

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