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Proposed Counsel to Debtors and

Debtors-in-Possession

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.*<sup>1</sup>

Debtors,

☒ Affects all Debtors

☐ Affects Beverly Community  
Hospital Association

☐ Montebello Community Health  
Services, Inc.

☐ Beverly Hospital Foundation

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

Jointly administered with:

Case No.: 2:23-bk-12360-SK

Case No. 2:23-bk-12361-SK

Hon. Sandra R. Klein

Chapter 11 Case

**DEBTORS' SUPPLEMENT IN SUPPORT OF  
EMERGENCY MOTION FOR A FINAL  
ORDER (I) AUTHORIZING THE DEBTORS  
TO OBTAIN POST-PETITION FINANCING,  
(II) GRANTING ADEQUATE PROTECTION  
TO PREPETITION SECURED CREDITORS,  
AND (III) GRANTING RELATED RELIEF**

Date: May 24, 2023

Time: 9:00 a.m.

Judge: Sandra R. Klein

Place: Zoom.Gov

255 E. Temple St.

Los Angeles, CA 90012

<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: 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.



**SUPPLEMENT**

The above-captioned debtors and debtors-in-possession (collectively, the “Debtors”)<sup>2</sup> filed the *Debtors’ Emergency Motion for Interim and Final Orders (I) Authorizing the Debtors to Obtain Post-Petition Financing, (II) Granting Adequate Protection to Prepetition Secured Creditors, and (III) Granting Related Relief; Memorandum of Points and Authorities in Support Thereof* [Docket No. 31] (the “DIP Motion”),<sup>3</sup> on April 20, 2023. The Court entered an interim order approving the DIP Motion on May 2, 2023 (the “Interim DIP Order”). At the Debtors’ first day hearing, the Court requested legal support for approval of the “carve-out” originally included in Section 14 of the proposed interim order attached to the DIP Motion.<sup>4</sup> The Interim DIP Order [Docket No. 182] does not contain any carve-out for professional fees. The Debtors submit this supplement (the “Supplement”) to address the Court’s concerns regarding approval of a carve-out.

This Supplement supports approval of the form of carve-out included in Exhibit 2 to the DIP Motion (the “Carve-Out”), as agreed to by and amongst the Debtors and the DIP Lender.<sup>5</sup> The Carve-Out is an agreement between the Debtors and the DIP Lender (whose collateral provides the carve-out) whereby the DIP Lender permits certain of its collateral to be segregated for the payment of professional fees in these chapter 11 cases. Without the Carve-Out, the Debtors’ bankruptcy professionals (and possibly others) would have to work essentially on a contingency fee basis which is not warranted by the facts here.

In further support of this Supplement, the Debtors rely upon and refer this Court to the Declaration of Alice Cheng, Chief Executive Officer of the Debtors [Docket No. 9] (the “Cheng Declaration” or “First Day Decl.”) in Support of the First Day Motions, the Declaration of Alyssa Lozynski in Support of the DIP Motion [Docket No. 36] (the “Lozynski Declaration”) as well as the Declaration of Jason Cohen in Support of the DIP Motion [Docket No. 34] (the “Cohen”

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<sup>2</sup> A detailed description of the Debtors and their business, and the facts and circumstances supporting 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 on April 19, 2023.

<sup>3</sup> Capitalized terms used herein and not otherwise defined shall have the meaning ascribed in the DIP Motion.

<sup>4</sup> First Day Hr’g Tr. at 30:23–35:3.

<sup>5</sup> The form of the Final DIP Order is currently being reviewed and negotiated amongst all interested parties. Accordingly, nothing herein should be construed as a representation that such order is agreed to by any party.

1 Declaration”). In addition, the Debtors request that the Court take judicial notice of all documents  
2 filed with the Court in this Case.

3 While often used, the term “carve-out” is rarely defined. A “carve-out” is commonly  
4 understood to be “an agreement by a party secured by all or some of the assets of the estate to allow  
5 some portion of its lien proceeds to be paid to others, i.e., to *carve out* of its lien position.” *See In*  
6 *re White Glove, Inc.*, No. 98–12493DWS, 1998 WL 731611, at \*6 (Bankr.E.D.Pa. Oct.14, 1998).  
7 A “carve out” requires the consent of the secured creditor, because the Bankruptcy Code requires  
8 that a secured creditor's collateral may only be diminished to the extent such secured creditor waives  
9 its rights to the protections under the Bankruptcy Code, or to the extent that the expense priority  
10 directly confers a benefit on the secured creditor.” *Harvis Trien & Beck, P.C. v. Federal Home Loan*  
11 *Mortgage Corp.*, 153 F.3d 61, 68 (2d Cir.1998); *In re U.S. Flow Corp.*, 332 B.R. 792, 796 (Bankr.  
12 W.D.Mich. Oct. 29, 2005). *See also*, Richard I. Aaron, “*Carve Out*” *As A Noun*, 7 J. Bankr.L. &  
13 Prac. 487, 487 (a “carveout” occurs when fees for the debtor's attorney or other professionals are  
14 paid “by extracting them from the secured lender's *otherwise unassailable* collateral.”

15 Here, the DIP Lender, the relevant secured creditor here, has consented to the Carve-Out in  
16 exchange for, among other things, the Debtors’ provision of a waiver of their rights under 506(c) as  
17 it relates to the DIP Lender.<sup>6</sup> The DIP Lender has also received superpriority claims for the DIP  
18 Obligations as part of the agreement to provide the Carve-Out for the benefit of all estate  
19 professionals.<sup>7</sup> The Carve-Out ensures that estate professionals (including those of the recently  
20 formed official committee of unsecured creditors and the US Trustee) are not working for the benefit  
21 of the DIP Lender and Prepetition Secured Creditors without fair and just compensation. Without  
22 the Carve-Out, such professionals run that exact risk.

23 No party objected specifically to the Carve-Out at the First Day Hearing or otherwise,  
24 although the Court requested that the Debtors provide support for its inclusion in the order.  
25 Bankruptcy courts in this district and within the Ninth Circuit have routinely authorized debtor  
26 professional fee carve outs similar to the Carve-Out in the DIP Motion in other large chapter 11  
27

28 <sup>6</sup> *See*, Interim DIP Order at ¶ G.

<sup>7</sup> *See*, Interim DIP Order at ¶  
12.

1 cases. *See, e.g., In re Verity Health Sys. of Cal., Inc.*, Case No. 2:18-bk-20151-ER (Bankr. C.D.  
2 Cal. Oct. 4, 2018) [Docket No. 409] (final order authorizing DIP facility providing for debtor  
3 professional fee carve out in the amount of \$2,000,000); *In re Gardens Reg'l Hosp. & Med. Ctr.*,  
4 Case No. 2:16-bk-17463-ER (Bankr. C.D. Cal. July 28, 2017) [Docket No. 257] (final order  
5 authorizing DIP facility providing for debtor professional fee carve out in the amount of \$500,000);  
6 *In re Collab9, LLC*, Case No. 2:21-bk-12222-ER (Bankr. C.D. Cal. Apr. 21, 2021) [Docket No. 96]  
7 (final order authorizing DIP facility providing for debtor professional fee carve out in the amount  
8 of \$275,000); *In re Cal.-Nev. Methodist Homes*, Case No. 21-40363 (Bankr. N.D. Cal. May 9, 2022)  
9 [Docket No. 501] (final order authorizing DIP facility providing for professional fee carve out in  
10 the aggregate amount of \$550,000); *In re Watsonville Hosp. Corp.*, Case No. 21-51477 (Bankr. N.D.  
11 Cal. Jan. 20, 2022) [Docket No. 232] (final order authorizing DIP facility providing for debtor  
12 professional fee carve out in the amount of \$200,000); *In re Capitol Station 65, LLC*, Case No. 17-  
13 23629-B-11 (Bankr. E.D. Cal. Jan. 8, 2019) [Docket No. 333] (final order authorizing DIP facility  
14 providing for professional fee carve out in the aggregate amount of \$200,000).<sup>8</sup>

15 Therefore, the Debtors submit the Carve-Out should be approved, in keeping with the  
16 precedent in this district and in light of the consent by the DIP Lender.

#### 17 **RESERVATION OF RIGHTS**

18 Nothing contained herein is intended or shall be construed as: (a) an admission as to the  
19 amount of, basis for, or validity of any claim against the Debtors under the Bankruptcy Code, any  
20 foreign bankruptcy or insolvency law, or other applicable nonbankruptcy law; (b) a waiver of the  
21 Debtors' or any other party in interest's right to dispute any claim on any grounds, (c) a promise or  
22 requirement to pay any particular claim; (d) an implication or admission that any particular claim is  
23 of a type specified or defined in this Supplement or the DIP Motion; (e) a request or authorization  
24 to assume, adopt, or reject any prepetition agreement, contract, or lease pursuant to section 365 of  
25 the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of  
26 any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (g) a  
27

28 <sup>8</sup> Due to the voluminous nature of the orders cited herein, such orders have not been attached to this Supplement. Copies  
of these orders are available upon request to the Debtors' proposed counsel.

1 waiver of any claims or causes of action which may exist against any entity under the Bankruptcy  
2 Code or any other applicable law. If the Court grants the relief sought herein, any payment made  
3 pursuant to this Interim Order or Final Order is not intended and should not be construed as an  
4 admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently  
5 dispute such claim.

6 **NOTICE**

7 The Debtors will provide notice of this Supplement via first class mail, facsimile or email  
8 (where available) to: (a) the Office of the U.S. Trustee Region 16; (b) the Official Committee of  
9 Unsecured Creditors and counsel thereto; (c) U.S. Bank, N.A. and counsel thereto; (d) Hanmi Bank  
10 and counsel thereto; (e) the DIP Lender and their counsel, (f) the Internal Revenue Service; (g) the  
11 Office of the Attorney General of the State of California; (h) the National Association of Attorneys  
12 General; and (i) all other parties who have filed a request for special notice and service of papers  
13 with the clerk of this Court.

14 WHEREFORE, the Debtors respectfully request that the Court grant the relief requested in  
15 the DIP Motion on a final basis, this Supplement, and approve the Carve-Out, and granting such  
16 other relief as is just and proper.

17 Dated: May 18, 2023

18 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

19  
20 By /s/ Jennifer L. Nassiri  
21 Jennifer L. Nassiri

22 JUSTIN R. BERNBROCK  
23 JENNIFER L. NASSIRI  
24 CATHERINE JUN  
25 ROBERT B. McLELLARN  
26 ALEXANDRIA G. LATTNER

27 Proposed Attorneys for Debtors and  
28 Debtors-in-Possession