

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

REVA MEDICAL, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 20-10072 (JTD)

**MOTION OF THE DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION WAGES  
AND COMPENSATION AND MAINTAIN AND CONTINUE EMPLOYEE  
BENEFIT PROGRAMS AND (II) AUTHORIZING AND DIRECTING  
BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS  
RELATED TO SUCH EMPLOYEE OBLIGATIONS**

REVA Medical, Inc. (“REVA” or the “Debtor”), by and through its proposed counsel, DLA Piper LLP (US), hereby submits this motion (the “Motion”) for entry of interim and final orders, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting the relief described below. In support of this Motion, the Debtor relies upon, and incorporates by reference, the *Declaration of Jeffrey Anderson in Support of Chapter 11 Filing and First Day Pleadings* (the “First Day Declaration”),<sup>2</sup> filed contemporaneously with this Motion. In further support of this Motion, the Debtor respectfully states as follows:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the District of Delaware (this “Court”) has jurisdiction over this chapter 11 case, the Debtor, property of the Debtor’s estate and this matter under 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United

---

<sup>1</sup> The last four digits of the Debtor’s tax identification number are (0505). The Debtor’s mailing address is 5751 Copley Drive, Suite B, San Diego, CA 92111.

<sup>2</sup> Capitalized terms used but not otherwise defined in this Motion shall have the meanings ascribed to them in the First Day Declaration.

States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), the Debtor consents to the entry of a final judgment or order with respect to this Motion if it is determined that this Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

3. Venue of this chapter 11 case in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The statutory bases for the relief requested in this Motion are sections 363(b)(1), 363(c)(1), 507(a), 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 4001, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and Local Rule 9013-1(m).

### **BACKGROUND**

5. The Debtor is a leading medical device company based in San Diego, California, focused on the development and commercialization of bioresorbable polymer technologies for three vascular applications – coronary artery disease (“CAD”), peripheral artery disease (“PAD”) and embolization therapy. Generally, scaffolds are inserted into blood vessels in order to expand the vessel and prevent blockage. Similarly, bioresorbable scaffolds are used to restore the flow of blood, support the artery through the healing process and then disappear from the body after a period of time.

6. Given the costs associated with the development and commercialization of its products, which are early in the commercialization stage, the Debtor has incurred significant

operating losses since inception and relied on its ability to fund operations primarily through equity and debt financings. Amid headwinds that have affected developers of bioresorbable scaffolds, REVA began working with its key stakeholders to identify a solution that would deleverage the balance sheet and recapitalize the company in order to position REVA for long-term growth.

7. Over the course of the last few months, REVA entered into arm's-length negotiations with key stakeholders, which negotiations resulted in the entry into a restructuring support agreement among the Debtor, Goldman Sachs International and certain of its affiliates, Senrigan Master Fund and certain affiliates of Elliott Management Corporation, pursuant to which the Debtor would implement the transactions (the "Restructuring") set forth in the *Prepackaged Chapter 11 Plan of REVA Medical, Inc.* (the "Plan"), filed contemporaneously herewith. The Debtor commenced solicitation of the Plan on January 13, 2020. On the date hereof (the "Petition Date"), the Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code to seek confirmation of the Plan and consummation of the Restructuring.

8. The Debtor continues to be in possession of its assets and to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. As of the date hereof, no trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtor's chapter 11 case. No date has been set for a meeting pursuant to section 341 of the Bankruptcy Code.

9. Additional factual background regarding the Debtor, including its business operations, capital and debt structures and the events leading to the filing of this chapter 11 case, is set forth in detail in the First Day Declaration, which is fully incorporated into this Motion by reference.

**RELIEF REQUESTED**

10. By this Motion, the Debtor seeks to eliminate any personal hardship to its employees as a result of the filing of this chapter 11 case and to minimize the disruption to the Debtor's efforts to reorganize its operations, consistent with the Plan. As of the Petition Date, certain of the Debtor's prepetition obligations to its Employees or other third parties (collectively, the "Prepetition Workforce Obligations"), remain unpaid or not yet provided because, among other things: (a) the Debtor commenced this chapter 11 case in the beginning of a payroll period and payroll is paid in arrears, (b) checks previously issued on account of employee and independent contractor obligations may not have been presented for payment or may not have cleared the banking system, (c) amounts related to prepetition services, while accrued in whole or in part, had not yet become due and payable by the Debtor, and (d) amounts deducted from Employee paychecks were not then due to be paid over to the intended recipient or account, including (i) deductions taken from Employees' paychecks to make payments on behalf of the Employees for or with respect to the Debtor's Employee Benefit Programs (as defined below) or amounts due to third parties in connection therewith, and (ii) withholdings from Employees' paychecks on account of various federal, state or local income, state disability, unemployment and other taxes for remittance to the appropriate federal, state or local taxing authority.

11. By this Motion, the Debtor seeks authority, but not direction, consistent with the proposed cash collateral budget, to pay or provide as they become due all Prepetition Workforce Obligations and the related administrative fees that have already accrued. The Debtor also requests confirmation of their right to continue to perform its obligations with respect to the Employee Benefit Programs (as defined below). Such relief, including any and all authorizations or payments requested herein, shall be subject to and implemented in accordance with the provisions of any

orders of this Court approving any use of cash collateral by the Debtor, including any approved budget in connection therewith.

12. The Debtor seeks authority to pay or honor, in its discretion, the following Prepetition Workforce Obligations, subject to the limits in the chart below:

<b>Prepetition Workforce Obligations</b>	<b>Amount</b>
Unpaid Compensation (including Withholding Taxes and Obligations)	\$100,000
Employee Benefit Programs	\$750
<b>Total</b>	<b>\$100,750</b>

13. The Debtor further requests that the Court: (a) authorize and direct the Banks to receive, process, honor, and pay all of the Debtor's prepetition checks and fund transfers on account of any of the Prepetition Workforce Obligations; (b) prohibit the Banks from placing any holds on, or attempting to reverse, any automatic transfers to any account of an Employee or other party for Prepetition Workforce Obligations; and (c) authorize the Debtor to issue new postpetition checks or effect new postpetition fund transfers on account of the Prepetition Workforce Obligations to replace any prepetition checks or fund transfer requests that may be dishonored or rejected.

14. The Debtor also requests that the Orders: (a) authorize all applicable banks and other financial institutions (collectively, the "Banks"), when requested by the Debtor, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers (collectively, the "Payments"), on account of Prepetition Workforce Obligations, whether such Payments were submitted before, on, or after the Petition Date, *provided that* sufficient funds are on deposit in the applicable accounts to cover such Payments; (b) authorize the Banks to rely on any directions and representations of the Debtor as to which Payments are subject to this

Motion, *provided that* any such Bank shall not have any liability to any party for relying on such directions or representations by the Debtor; (c) provide that the Banks shall, at the direction of the Debtor, receive, process, honor, and pay all prepetition and postpetition Payments on account of the Prepetition Workforce Obligations that have not been honored and paid as of the Petition Date, *provided that* sufficient funds are on deposit in the applicable accounts to cover such Payments and that any such Bank shall not have any liability to any party for relying on such direction by the Debtor; (d) authorize, but not direct, the Debtor to issue new postpetition checks or effect new postpetition fund transfers or other new postpetition Payments to replace any checks, drafts, and other forms of payment, including fund transfers, that may be inadvertently dishonored or rejected; and (e) authorize, but not direct, the Debtor to continue in their ordinary course to make payments on the Prepetition Workforce Obligations during the Debtor's chapter 11 case.

### **THE DEBTOR'S WORKFORCE, COMPENSATION, AND BENEFITS**

#### **I. The Debtor's Workforce**

15. As of the Petition Date, REVA has seventeen (17) full time employees and one (1) part time and/or temporary employee who work out of the Debtor's San Diego headquarters across the Debtor's main business units: administration, finance and accounting, manufacturing and R&D, and commercial/sales (collectively, the "Employees"). REVA pays approximately \$125,000 biweekly in salary, benefits, payroll tax, 401k matching and other fees. The Employees will be central to operating the Debtor's businesses postpetition and will be instrumental in exiting bankruptcy in a timely manner.

16. The Employees' skill, knowledge, and understanding with respect to the Debtor's operations, customer relations, and infrastructure are essential to maintaining the Debtor's business during this chapter 11 case. Moreover, just as the Debtor depends on the Employees to operate its

business, those individuals also depend on the Debtor. Indeed, the vast majority of these individuals rely exclusively on payments from the Debtor for their basic living necessities

17. Accordingly, as set forth herein, the Debtor seeks authority, but not direction, to pay any pre-petition amounts outstanding up to the statutory cap of \$13,650 to the Employees.

## **II. Prepetition Wages, Salaries, and Other Compensation**

### **A. Unpaid Compensation**

18. In the ordinary course of business, the Debtor pays its Employees on a biweekly basis, in arrears. Employees are salaried or paid hourly. Employees are generally paid on Fridays. The Debtor's first postpetition scheduled payroll date for the Employees is January 17, 2020, which will compensate Employees for prepetition and postpetition services. As of the Petition Date, the Employees are owed approximately \$100,000 in accrued and unpaid compensation, all of which will be due in the first 21 days of the chapter 11 case (the "Unpaid Compensation").

19. The Debtor utilizes the services of Paychex, Inc. ("Paychex"), a third-party payroll administrator, to process their payroll and coordinate the remittance of Withholding Taxes and Obligations (as defined below). The Debtor remits a lump sum payment into a specified Paychex account, which Paychex then uses to fund payroll. REVA pays approximately \$400 per month for Paychex services. Additionally, REVA pays \$160 per month related to Paychex time clock services. The Debtor seeks authority to continue to administer and process its Employee payroll and to pay Paychex amounts owed. REVA believes it is current on amounts owed to Paychex, but requests authority to make any appropriate associated payments.

20. In addition, the Debtor processes payroll and coordinate the remittance of Withholding Taxes and Obligations for certain other Employees, which the Debtor seeks authority through this Motion to continue.

21. In connection with the wages and salaries paid to their Employees, the Debtor is required by law to withhold from their Employees' paychecks certain amounts for federal, state, and local income taxes and other payments, employee benefits, employee programs, and unemployment insurance (collectively, the "Withholding Taxes and Obligations") and to remit the withheld amounts to the appropriate taxing and other governmental authorities in the United States and all other applicable jurisdictions (collectively, the "Authorities"). As part of the service they provide to the Debtor, Paychex remits the Withholding Taxes and Obligations directly to the appropriate Authorities for certain Employees.

### **C. Employee Benefit Programs**

22. In the ordinary course of business, the Debtor maintains various employment benefit plans and policies, including, without limitation, medical plans, dental plans, vision plans, life insurance plans, short term and long term disability plans (collectively, the "Employee Benefit Programs") as described in greater detail below.

- (a) Health Plans. The Debtor's medical, dental and vision insurance plans, employee assistance program ("EAP"), LiveHealth Online program (collectively, the "Health Plans"), each as discussed in greater detail below, are provided by Beyond Benefits, an insurance company focused on servicing life science industry employees. The Debtor pays between 75%% to 100% of the Employee's and his or her dependents' premiums. The Debtor estimates that the Health Plans costs approximately \$26,000 per month, and as of the Petition Date, there are no amounts due and owing by the Debtor.
- i. Medical, Dental and Vision Insurance Plans. The Debtor's medical, dental and vision insurance plans are provided by Beyond Benefits ("Beyond Benefits"), an insurance company focused on servicing life science industry employees. With respect to each type of insurance, the Debtor pays 87.5% of the Employee's premiums and 75% of dependents' premiums.<sup>3</sup>
  - ii. Employee Assistance Plan. The Debtor provides an employee assistance program ("EAP") through Beyond Benefits. The EAP provides confidential counseling and similar services on a wide range of personal topics, ranging

---

<sup>3</sup> The Debtor also makes it possible for Employee contributions for qualified premiums to be paid on a pretax basis.



from mental health issues to addressing identity theft. The Debtor pays 100% of the premium for both the Employee and his or her dependents.

- iii. LiveHealth Online. The Debtor provides access to LiveHealth Online, a program offered through Beyond Benefits that permits employees to contact a doctor virtually through a two-way video program or via secure instant messaging. The Debtor pays 100% of the premium for both the Employee and his or her dependents.
- (b) Life, AD&D, Short-Term and Long-Term Disability Insurance. The Debtor provides basic life insurance and accidental death and dismemberment (“AD&D”) insurance, short term and long term disability programs, and a travel assistance program, as well. Each of these programs are provided through Beyond Benefits. The Debtor pays 100% of the Employee’s premium associated with these programs. The Debtor estimates that these programs cost \$800 per month. As the Petition Date, there are no amounts due and owing.
- (c) 401(k) Plan. The Debtor offers both traditional and Roth 401(k) plans to eligible employees. To help encourage participation in these plans, the Debtor matches 1% of an Employee’s annual compensation. The Debtor estimates that the costs associated with offering its 401(k) program and in matching Employee contributions total approximately \$1,500 per month. As of the Petition Date, the Debtor approximately \$750 in costs associated with its 401(k) plan is due and owing.
- (d) PTO. The Debtor provides a total of 120 hours of personal time off (“PTO”) per 12-month period, which accrues ratably per each bi-weekly pay period that you work (for each 80 paid hours, the Employee accrues 4.61 PTO hours). Employees may accumulate accrued PTO up to a maximum of 150 hours. The Debtor intends to honor its prepetition PTO policy. As of the Petition Date, the Debtor estimates that there is approximately \$74,000 in accrued, prepetition PTO.

23. After the Petition Date, the Debtor seeks authority to continue to provide and administer the Employee Benefit Programs for the Employees. Further, the Debtor will offer COBRA insurance for the Employees to cover certain periods should any such Employees have a covered termination.

24. Employees who work 40 hours per week are eligible for all company sponsored benefits. Employees that work 30 to less than 40 hours per week are eligible for all company sponsored benefits, prorated based on actual number of hours worked. Employees that work less

than 30 hours are eligible for PTO and holiday pay, and can participate in the 401(k) plan if they meet certain minimum qualifications.

25. Accordingly, by this Motion, the Debtor seeks authority to continue the Employee Benefit Programs and to provide COBRA insurance for the Employees, subject to the Debtor's discretion regarding the modification or discontinuation such programs.

### **BASIS FOR RELIEF REQUESTED**

#### **I. The Proposed Payments are Accorded Priority Under Section 507 of the Bankruptcy Code.**

26. Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code require that certain claims for prepetition wages, salaries, commissions, vacation, sick leave, and employee benefit contributions be accorded priority in payment in an amount not to exceed \$13,650 for each employee (to the extent such amounts accrued within 180 days of the Petition Date). None of the Employees are owed amounts for accrued and unpaid prepetition wages or salaries, including outstanding and uncashed payroll checks, in excess of the statutory caps of Bankruptcy Code sections 507(a)(4) and 507(a)(5).<sup>4</sup> Granting the relief requested is consistent with the Bankruptcy Code's purpose in ensuring employees are paid in full on account of the priority status of their claims, up to the statutorily imposed limit. Indeed, the Debtor submits that payment of unpaid obligations to Employees up to the statutory cap will enhance value for the benefit of all stakeholders because it will help ensure that the Employees – the lifeblood of the Debtor's business operations – will continue to provide vital services to the Debtor at this critical juncture. Additionally, under the Plan, all administrative claims will be paid in full so this relief merely

---

<sup>4</sup> Due to the amount of accrued PTO, should three officers of the Debtor and one Employee in senior management of the Debtor terminate their employment with the Debtor, each would be owed amounts for accrued and unpaid prepetition wages or salaries in excess of the statutory caps of Bankruptcy Code 507(a)(4) and 507(a)(5). In the event that such Employees terminate their employment with the Debtor during this chapter 11 case, the Debtor will seek authority to honor its PTO obligations to such employees by subsequent motion.

changes the timing (from the Effective Date to near the Petition Date) not amount of payment. Accordingly, the Debtor submits that no prejudice to creditors or other parties in interest would result from granting the relief requested herein.

**II. Payment of the Prepetition Workforce Obligations is Appropriate Under Section 541 of the Bankruptcy Code.**

27. The Debtor also seeks authority to pay certain deductions, withholdings, and payroll taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain deductions, including contributions varies benefits programs, child support, and alimony payments, are not property of the Debtor's estate because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b); *Begier v. IRS*, 496 U.S. 53, 59 (1990) (holding that taxes such as excise taxes, FICA taxes, and withholding taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); *see also Old Republic Nat'l Title Ins. Co. v. Tyler (In re Dameron)*, 155 F.3d 718, 721 (4th Cir. 1998) (holding that deposits subject to an express trust are excluded from the bankruptcy estate); *City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92, 98–103 (3d Cir. 1994) (finding that funds withheld from employees' paychecks may be subject to a trust, and thus are not property of a debtor's estate, even where such funds were commingled with the debtor's other property). Accordingly, such funds are not available for general distribution to a debtor's creditors.

28. Further, federal and state laws require the Debtor and its officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. § 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95–97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees'

wages created a trust relationship between debtor and the city for payment of withheld income taxes).

29. Because the deductions and payroll taxes are not property of the Debtor's estate, the Debtor requests that the Court authorize it to transmit the deductions and payroll taxes to the proper parties.

**III. The Proposed Payments and Continuation of the Employee Benefit Programs are Appropriate Under Sections 105(a), 363(b), 1107(a), and 1108 of the Bankruptcy Code, and the Doctrine of Necessity.**

**A. Valid Business Justification Under Section 363(b) of the Bankruptcy Code**

30. Under section 363(b) of the Bankruptcy Code, after notice and a hearing, a bankruptcy court may authorize a chapter 11 debtor to use property of the estate other than in the ordinary course of business. Under the same section, a court should authorize non-ordinary course business transactions where the debtor has articulated a valid business justification for the requested use of estate assets. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages) (section 363(b) gives the court "broad flexibility" to make payments outside of ordinary course of business as long as the debtor articulates a business justification); *In re Cont'l Air Lines, Inc.*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.").

31. The payment of the Prepetition Workforce Obligations serves the sound business purpose of alleviating the severe hardship on the Debtor's Employees resulting from the filing of this chapter 11 case and issues associated with the restructuring of the businesses. Absent such relief, the Debtor's Employees would likely not be compensated for the work done between the last payroll date and the Petition Date. Accordingly, the Court should grant the requested relief under section 363 of the Bankruptcy Code.

32. Further, in the sound exercise of the Debtor's business judgment, the maintenance and continuation of the Employee Benefit Programs provides necessary incentive and comfort for the Employees who are the backbone of the Debtor's operations. Absent such benefits, it is likely that there would be significant disruption to the Debtor's restructuring to the detriment of all stakeholders.

**B. Sound Exercise of the Debtor's Fiduciary Duties**

33. The Debtor, as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.* Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate." *Id.* The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

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

*Id.* at 498.

34. Payment of the Prepetition Workforce Obligations meets each element of the *CoServ* court's standard. As described above, the Employees likely maintain priority claims

against the Debtor for the Prepetition Workforce Obligations. In addition, any failure by the Debtor to pay the Prepetition Workforce Obligations would cause severe hardship on the Debtor's Employees.

35. With respect to the Employees, the Debtor has examined other options short of payment of the Prepetition Workforce Obligations and has determined that to avoid significant disruption of the Debtor's operation and to maintain value as a going concern, there exists no practical or legal alternative to payment of such obligations. Therefore, the Debtor can only meet its fiduciary duties as debtor in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Prepetition Workforce Obligations.

**C. Proper Application of the Doctrine of Necessity**

36. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). A Bankruptcy Court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *Ionosphere Clubs*, 98 B.R. at 175; *see also Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that courts are authorized to approve orders allowing payment of prepetition claims, which is necessary for the debtors to have a successful reorganization). Moreover, "[u]nder Section 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177). The authority to pay such prepetition obligations is known as the "necessity of payment" rule (also referred to as the "doctrine of necessity").

37. The doctrine of necessity "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is

essential to the continued operation of the debtor.” *Ionosphere Clubs*, 98 B.R. at 176; *see also In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”).

38. The doctrine of necessity is an accepted component of modern bankruptcy jurisprudence. *See Just For Feet*, 242 B.R. at 826 (approving payment of key inventory suppliers’ prepetition claims when such suppliers could destroy debtor’s business by refusing to deliver new inventory on eve of debtor’s key sales season); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of critical prepetition suppliers’ claims when such suppliers agree to provide postpetition trade credit); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. at 175; *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994). Moreover, courts have recognized the applicability of the doctrine of necessity with respect to the payment of prepetition employee compensation and benefits. *See, e.g., Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.)*, 80 B.R. 279, 285–89 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it is appropriate for bankruptcy court to defer to debtors’ business judgment in permitting payment of certain workers’ compensation claims); *Ionosphere Clubs*, 98 B.R. at 176 (“This rule recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor.”).

39. The relief requested represents a sound exercise of the Debtor's business judgment, is necessary to avoid immediate and irreparable harm to the Debtor's estate, and is therefore justified under the applicable authority.

40. Courts in this and other jurisdictions have routinely has approved the payment of prepetition claims of employee wages, salaries, expenses and benefits in various chapter 11 cases. *See, e.g., In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) [D.I. 49] (Bankr. D. Del. June 11, 2019) (authorizing the debtors to pay prepetition wages, compensation, and maintain and continue benefits in the ordinary course); *In re Hosp. Acquisition LLC*, Case No. 19-10998 (BLS) [D.I. 51] (Bankr. D. Del. May 9, 2019) (same); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (MFW) [D.I. 54] (Bankr. D. Del. Apr. 2, 2019 (same); *In re Checkout Holding Corp.*, Case No. 18-12794(KG) (Bankr. D. Del. Jan. 10, 2019) [D.I. 187] (same); *In re ATD Corp.*, Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) [D.I. 100] (same); *In re Welded Constr., L.P.*, Case No. 18-12378 (KG) (Bankr. D. Del. Oct. 23, 2018) [D.I. 38] (same); *In re Brookstone Holdings Corp.*, Case No. 18-11780 (BLS) (Bankr. D. Del. Aug. 3, 2018) [D.I. 67] (same).

41. Accordingly, for the foregoing reasons, the Debtor submits that cause exists for granting the relief requested herein.

#### **IV. Cause Exists To Authorize The Debtor's Financial Institutions To Honor Electronic Fund Transfers.**

42. The Debtor also requests that all applicable banks and other financial institutions be authorized, when requested by the Debtor in its sole discretion, to receive, process, honor, and pay any and all Payments made by the Debtor related to the Prepetition Workforce Obligations, so long as sufficient funds are available in the applicable accounts to make the Payments.

43. To stabilize the Debtor's operations, and to smoothly transition into chapter 11, it is imperative that the Debtor normalize its business. Failure to do so would result in extremely



adverse business effects. Under the Debtor's existing cash management system, the Debtor represents that wire and other electronic bank transfer requests can be readily identified as relating to an authorized payment made on account of Prepetition Workforce Obligations. Accordingly, the Debtor believes that unauthorized wire and electronic bank transfer requests will not be honored inadvertently and that all applicable financial institutions may rely on the representations of the Debtor as to which wire or electronic bank transfers are made and authorized to be paid in accordance with this Motion without any duty of further inquiry and without liability for following the Debtor's instructions.

**THE DEBTOR SATISFIES THE REQUIREMENTS OF BANKRUPTCY RULE 6003(b)**

44. Bankruptcy Rule 6003(b) provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, issue an order granting . . . (b) a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition . . . .” Immediate and irreparable harm exists where the absence of relief would significantly disrupt a debtor's business and operations, thereby challenging a debtor's ability to resolve a bankruptcy case in an orderly manner. *See, e.g., In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 469 (Bankr. S.D.N.Y. 2014). Specifically, without authority to pay Prepetition Workforce Obligations, the Debtor faces the bleak reality that the Employees may seek alternative employment, which would necessarily impair the Debtor's ability to effectuate the contemplated reorganization. Based on the foregoing, the Debtor submits that the relief requested in this Motion is necessary to avoid immediate and irreparable harm, and therefore, the Debtor satisfies the requirements under Bankruptcy Rule 6003 for the payment of pre-petition claims. For the reasons discussed herein, the relief requested is necessary in order for the Debtor to effectuate the contemplated restructuring and to maximize the value of the estate. Accordingly,

the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

**REQUEST FOR WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)**

45. For the successful implementation of the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h). As set forth above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor. The Debtor submits that ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent both apply.

**RESERVATION OF RIGHTS**

46. The Debtor reserves all rights. Without limiting the generality of the foregoing, nothing contained herein is or should be construed as: (i) an admission as to the validity, extent, perfection, priority, allowability, or enforceability of any claim or any security interest which purportedly secures such claim; (ii) a waiver of the Debtor’s or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtor; (iii) a promise to pay any claim; (iv) a waiver of any claims or causes of action which may exist against any creditor or interest holder; (v) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and nothing herein otherwise affects the Debtor’s rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease with any party subject to this Motion; (vi) granting third-party beneficiary status or bestowing any additional rights on any third party; or (vii) being otherwise enforceable by any third party. Further, and without limiting the generality of the foregoing (i) the Debtor expressly reserves all of its rights to contest any obligations specific to the motion and

claims related thereto, and (ii) if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not and should not be construed as an admission as to the validity of any obligations specific to the motion or claims related thereto or as a waiver of the Debtor's rights to dispute such obligations specific to the motion or claims related thereto.

**NOTICE**

47. Notice of this Motion will be provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (iv) the Internal Revenue Service; (v) the Securities and Exchange Commission; (vi) counsel to Goldman Sachs International, Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Kevin Bostel, Esq.); (vii) counsel to Elliott Management Corporation and its affiliates, Debevoise & Plimpton LLP, 919 Third Avenue, New York, New York 10022 (Attn: Jasmine Ball, Esq.); (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (ix) any other party in interest entitled to notice of this Motion. As this Motion is seeking "first day" relief, notice of this Motion and any order entered in connection with this Motion will be served on all parties required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief in it, the Debtor respectfully submits that no further notice of this Motion is required.

**NO PRIOR REQUEST**

48. No previous request for the relief sought herein has been made by the Debtor to this or any other Court.

*[Remainder of Page Intentionally Left Blank]*

**WHEREFORE**, the Debtor respectfully requests that this Court (i) enter interim and final orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested in this Motion, and (ii) grant such other and further relief as this Court may deem just and proper.

Dated: January 14, 2020  
Wilmington, Delaware

Respectfully submitted,

**DLA PIPER LLP (US)**

*/s/ Stuart M. Brown*

---

Stuart M. Brown (DE 4050)  
1201 North Market Street, Suite 2100  
Wilmington, Delaware 19801  
Telephone: (302) 468-5700  
Facsimile: (302) 394-2341  
Email: stuart.brown@us.dlapiper.com

-and-

Thomas A. Califano (*pro hac vice* admission pending)  
Jamila Justine Willis (*pro hac vice* admission pending)  
1251 Avenue of the Americas  
New York, New York 10020  
Telephone: (212) 335-4500  
Facsimile: (212) 335-4501  
Email: thomas.califano@us.dlapiper.com  
jamila.willis@us.dlapiper.com

*Proposed Counsel to the Debtor*

**EXHIBIT A**

**Proposed Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

REVA MEDICAL, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 20-10072 (JTD)

Re: D.I. \_\_

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN  
PREPETITION WAGES AND COMPENSATION AND MAINTAIN AND CONTINUE  
EMPLOYEE BENEFIT PROGRAMS AND (II) AUTHORIZING AND DIRECTING  
BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO  
SUCH EMPLOYEE OBLIGATIONS**

This matter coming before the court upon the *Motion of the Debtor for the Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Wages and Compensation and Maintain and Continue Employee Benefit Programs and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations* (the “Motion”)<sup>2</sup> filed by the above-captioned debtor (the “Debtor”) for entry an interim order (this “Interim Order”), (i) authorizing the Debtor to: (a) pay prepetition wages and other compensation, taxes and withholdings and (b) maintain and continue Employee Benefit Programs, and (ii) authorizing and directing the Banks to honor and process checks and transfers related to such employee obligations; all as further described in the Motion; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and this Court having found that (i) this Court has jurisdiction over the Debtor, its estate, property of its estate and to consider the Motion and the relief requested therein under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of*

---

<sup>1</sup> The last four digits of the Debtor’s tax identification number are (0505). The Debtor’s mailing address is 5751 Copley Drive, Suite B, San Diego, CA 92111.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

*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 this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and having determined that the legal and factual bases set forth in the Motion and the First Day Declaration establish just cause for the relief granted in this Interim Order; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor's estate, its 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 an interim basis, as set forth in this Interim Order.
2. The Debtor is authorized, but not directed, to pay and/or honor (including to any third parties that provide or aid in the monitoring, processing or administration of the Prepetition Workforce Obligations, including Paychex), in their sole discretion, the Prepetition Workforce Obligations, subject to an aggregate maximum during the interim period of \$100,750 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 this chapter 11 case) as of the Petition Date to or for the benefit of its 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.

<b>Prepetition Workforce Obligations</b>	<b>Amount</b>
Unpaid Compensation (including Withholding Taxes and Obligations)	\$100,000
Employee Benefit Programs	\$750
<b>Total</b>	<b>\$100,750</b>

3. The Debtor is authorized, but not directed, in its sole discretion, to honor and continue the 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.

4. The Debtor's Banks are hereby authorized, when requested by the Debtor, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtor pursuant to this Interim Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.

5. All Withholding Taxes and Obligations are hereby authorized to be paid by the Debtor, through Paychex where necessary, in the ordinary course of the Debtor's business.

6. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an admission as to the validity, extent, perfection, priority, allowability, or enforceability of any claim or any security interest which purportedly secures such claim, (b) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor, (c) a promise to pay any claim, (d) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and nothing herein otherwise affects the Debtor's rights under section 365 of the Bankruptcy Code.



Code to assume or reject any executory contract or unexpired lease with any party subject to this Interim Order, (f) granting third-party beneficiary status or bestowing any additional rights on any third party; or (g) being otherwise enforceable by any third party. Without limiting the generality of the foregoing, nothing in the Motion or this Interim Order nor any payment of any Employee pursuant to this Interim Order shall be construed as impairing the Debtor's right to contest the validity, priority, or amount of any Employee's claim allegedly due or owing to any such Employee, and all of the Debtor's rights with respect thereto are hereby reserved.

7. Payments made pursuant to this Interim Order are not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently. The Debtor retains the sole discretion whether to pay any claim that the Court authorizes under this Interim Order.

8. Notwithstanding the relief granted in this Interim Order, any payment made by the Debtor pursuant to the authority granted herein shall be subject to and in compliance with any orders entered by the Court authorizing the Debtor's use of cash collateral and any budget in connection therewith.

9. 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).

10. All payments authorized by this Interim Order may be made solely to the extent in compliance with the Budget (as defined in the interim or final order approving the Debtor's use of cash collateral (the "Cash Collateral Order")) then in effect. To the extent there is any inconsistency between the terms of this Interim Order and the Cash Collateral Order, the Cash Collateral Order shall control.

11. The requirements set forth in Local Bankruptcy Rule 9013-1(b) are satisfied.

12. The Court finds and determines that the requirements of Bankruptcy Rule 6003(b) are satisfied and that the relief is necessary to avoid immediate and irreparable harm.

13. The notice requirement set forth in Bankruptcy Rule 6004(a) is satisfied.

14. This Interim Order is immediately effective and enforceable notwithstanding the provisions of Bankruptcy Rule 6004(h) or otherwise.

15. This Court retains jurisdiction with respect to all matters arising from or related to the enforcement of this Interim Order.

16. The deadline by which objections to entry of a final order on the Motion must be filed is \_\_\_\_\_, 2020 at \_\_\_\_\_.m. (Eastern Time) (the "**Objection Deadline**"). The Final Hearing, if required, will be held on \_\_\_\_\_, 2020 at \_\_\_\_\_.m. (Eastern Time).

**Exhibit B**

**Proposed Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

REVA MEDICAL, INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No. 20-10072 (JTD)

Re: D.I. \_\_ & \_\_

**FINAL ORDER (I) AUTHORIZING THE DEBTOR TO PAY CERTAIN PREPETITION WAGES AND COMPENSATION AND MAINTAIN AND CONTINUE EMPLOYEE BENEFIT PROGRAMS AND (II) AUTHORIZING AND DIRECTING BANKS TO HONOR AND PROCESS CHECKS AND TRANSFERS RELATED TO SUCH EMPLOYEE OBLIGATIONS**

This matter coming before the Court on the *Motion of the Debtor for Entry of Interim and Final Orders (I) Authorizing the Debtor to Pay Certain Prepetition Wages and Compensation and Maintain and Continue Employee Benefit Programs and (II) Authorizing Banks to Honor and Process Checks and Transfers Related to Such Employee Obligations* (the “Motion”),<sup>2</sup> filed by the above-captioned debtor (the “Debtor”), (i) authorizing the Debtor to: (a) pay prepetition wages and other compensation, taxes and withholdings and (b) maintain and continue Employee Benefit Programs, and (ii) authorizing and directing the Banks to honor and process checks and transfers related to such employee obligations; all as further described in the Motion; and upon consideration of the First Day Declaration and the record of this chapter 11 case; and this Court having found that (i) this Court has jurisdiction over the Debtor, its estate, property of its estate 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*

<sup>1</sup> The last four digits of the Debtor’s tax identification number are (0505). The Debtor’s mailing address is 5751 Copley Drive, Suite B, San Diego, CA 92111.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

*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) no further or other notice of the Motion is required under the circumstances; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and the Court having entered the relief requested in the Motion on an interim basis [D.I \_\_\_\_]; 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 Debtor's estate, its 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 Debtor is authorized, but not directed, in its sole discretion, to honor and continue the 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.
3. The Debtor's Banks are hereby authorized, when requested by the Debtor, to receive, process, honor, and pay any and all checks and transfer requests evidencing amounts paid by the Debtor pursuant to this Final Order, whether presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable amounts to make such payments.
4. All Withholding Taxes and Obligations are hereby authorized to be paid by the Debtor, through Paychex where necessary, in the ordinary course of the Debtor's business.

5. Nothing in the Motion, the Interim Order, or this Final Order, nor the Debtor's payment of claims pursuant to this Interim Order, shall be deemed or construed as: (a) an admission as to the validity, priority or amount of any claim against the Debtor or its estate; (b) a limitation on Nothing contained in the Motion or this Final Order, nor any payment made pursuant to the authority granted by this Final Order, is intended to be or shall be construed as (a) an admission as to the validity, extent, perfection, priority, allowability, or enforceability of any claim or any security interest which purportedly secures such claim, (b) a waiver of the Debtor's or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtor, (c) a promise to pay any claim, (d) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (e) an assumption or rejection of any executory contract or unexpired lease pursuant to section 365 of the Bankruptcy Code, and nothing herein otherwise affects the Debtor's rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease with any party subject to this Final Order, (f) granting third-party beneficiary status or bestowing any additional rights on any third party; or (g) being otherwise enforceable by any third party. Without limiting the generality of the foregoing, nothing in the Motion or this Final Order nor any payment of any Employee pursuant to this Final Order shall be construed as impairing the Debtor's right to contest the validity, priority, or amount of any Employee's claim allegedly due or owing to any such Employee, and all of the Debtor's rights with respect thereto are hereby reserved.

6. Payments made pursuant to this Final Order are not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to dispute such claim subsequently. The Debtor shall retain the sole discretion whether to pay any claim that the Court authorizes under this Final Order.

7. All payments authorized by this Final Order may be made solely to the extent in compliance with the Budget (as defined in the interim or final order approving the Debtor's use of cash collateral (the "Cash Collateral Order")) then in effect. To the extent there is any inconsistency between the terms of this Final Order and the Cash Collateral Order, the Cash Collateral Order shall control.

8. Notwithstanding any other provision of this Final 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).

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

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

11. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

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