

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

In re:

REVA MEDICAL, INC.,

Debtor.¹

Chapter 11

Case No. 20-10072 (JTD)

MOTION OF THE DEBTOR FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING CONTINUED USE OF EXISTING CASH MANAGEMENT SYSTEM, BANK ACCOUNTS, AND BUSINESS FORMS AND PAYMENT OF RELATED PREPETITION OBLIGATIONS; AND (II) WAIVING CERTAIN DEPOSIT REQUIREMENTS

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”),² 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*

¹ 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.

² 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)(A).

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 105, 345, 363 and 503(b)(1) of title 11 of the United States Code (as amended, the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

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 ("GSI") 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 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.

A. Cash Management System and Bank Accounts

10. Prior to the Petition Date, and in the ordinary course of its businesses, the Debtor maintained a simple cash management system designed to, among other things, efficiently collect, concentrate, and disburse the funds generated by the Debtor's business operations (such system, the "Cash Management System").

11. The Cash Management System is comprised of three bank accounts (the "Bank Accounts"),³ which are maintained by Bank of America, N.A. ("Bank of America") and H.S.B.C. Bank, N.A. ("HSBC") and held by the Debtor. REVA historically operated out of a single checking account (the "Main Account"), however, in connection with entry into the *Second Amendment to Credit and Guarantee Agreement* by and among REVA, as Company, GSI, as administrative agent for the lenders, the other lenders party thereto and Goldman Sachs Specialty Lending Group, L.P., as a new lender, the Debtor established two additional bank accounts, one of which is intended to receive the proceeds of any future loans (the "Cash Collateral Account"), and the other is intended to operate exclusively as a payroll account (the "Payroll Account" and, together with the Cash Collateral Account, the "Cash Collateral Accounts"). Currently, the Debtor operates almost entirely out of the Cash Collateral Account and the Payroll Account and will operate during the pendency of the case exclusively out of the Cash Collateral Account and the Payroll Account (in a manner consistent with prepetition operations). For the avoidance of doubt, the Cash Collateral Account (and the funds deposited therein) and the Payroll Account (and the funds deposited therein) constitute prepetition collateral of the Debtor's secured lenders. A list of

³ REVA's wholly owned German subsidiary has an account with Commerzbank, Kaiserstr. 30, 60311 Frankfurt am Main. This subsidiary has no operations and it appears that there is *de minimis* cash, if any, held in this account. The Debtor will not use this account during the course of this chapter 11 case.

the Bank Accounts is attached hereto as **Exhibit C**. The Cash Management System allows the Debtor to control the administration of these Bank Accounts.

12. The Debtor's personnel, located at the Debtor's headquarters in San Diego, California, oversee all cash receipt and disbursement activity in the Cash Management System. This centralization facilitates the Debtor's cash forecasting, monitoring of collections, approval of disbursement of funds, preservation of capital, and management of liquidity requirements. It also reduces administrative expenses by facilitating the movement of funds and development of more timely and accurate balance and presentment information.

13. As described further below, REVA receives all revenues and makes all payments through its Cash Management System. If the Debtor is unable to maintain its Cash Management System, the Debtor's operations will be severely impeded. The Debtor, with the assistance of its advisors, has implemented protocols to ensure that only claims arising postpetition and certain claims arising prepetition (if payment of such prepetition claims is approved by this Court) will be paid by the Debtor.

14. The Debtor generates revenues primarily from direct and distributor sales of its CE Mark approved products, Fantom, Fantom Encore, and MOTIV. Customer payments are received in several forms, including paper checks, wire and automated clearing house ("ACH") transfers, and credit cards. All revenues are received into the Main Account and transferred into the Cash Collateral Accounts. Funds in the Cash Collateral Accounts are used to pay the Debtor's operating expenses and payroll-related disbursements.

15. The Debtor also uses the services of GPS Capital Markets, Inc. ("GPS") to facilitate wires and foreign exchange transactions. Moving funds from the Cash Collateral Accounts to GPS occurs through an ACH debit initiated by GPS based on the total US Dollars needed to fund wires

set-up daily. Once wires are initiated and approved in GPS, an ACH transfer occurs to debit funds from the Cash Collateral Accounts and fund the wires.

a. **Cash Management System Fees**

16. From time to time, and in the ordinary course of business, the Debtor incurs obligations for the maintenance of the Cash Management System. These obligations primarily consist of (a) amounts owed to Bank of America or HSBC for the maintenance of and services related to the Bank Accounts (“Bank Fees”) and (b) amounts owed to GPS on account of wires and foreign exchange transactions (“GPS Fees” and, together with the Bank Fees and other fees and obligations relating to the maintenance of the Cash Management System, the “Cash Management Fees”). Bank Fees average approximately \$750 per month. The Debtor estimates that accrued, unpaid, and undisputed prepetition amounts outstanding as of the date hereof on account of the Cash Management Fees (the “Cash Management Claims”) total approximately than \$3,000 in the aggregate.

b. **Business Forms**

17. The Debtor uses various business forms, such as checks, invoices, letterhead, and other business and marketing materials in the ordinary course of its business (the “Business Forms”). Because the Business Forms were used prepetition, they do not reference the Debtor’s current status as a debtor in possession. Requiring the Debtor to change existing Business Forms would unnecessarily distract the Debtor from its restructuring efforts and impose needless expenses on the estate. Thus, the Debtor requests that it be authorized to use its existing Business Forms without placing a “Debtor-In-Possession” legend on each.

RELIEF REQUESTED

18. By this Motion, the Debtor seeks entry of the Interim Order and the Final Order: (i) authorizing, but not directing, (a) the Debtor to maintain its existing cash management system and waiving certain requirements set forth in the U.S. Department of Justice, Office of the United States Trustee: Guidelines for Debtors-in-Possession (the “U.S. Trustee Guidelines”), (b) the payment of related prepetition obligations, (c) the Debtor’s continued use of business forms, and (d) waiving certain requirements relating to bank accounts under section 345(b) of the Bankruptcy Code.

19. 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 the Cash Management System, 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 will not have any liability to any party for relying on such directions or representations by the Debtor; (c) 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, which may be inadvertently dishonored or rejected; and (d) authorize, but not direct, the Debtor to continue to

pay certain fees related to its Cash Management System in the ordinary course during this Chapter 11 Case.

20. In addition, the Debtor requests that the Court schedule a final hearing (the “Final Hearing”) to consider the relief requested herein on a final basis and entry of the Final Order.

21. For the reasons set forth herein, the Debtor submits that the relief requested is in the best interest of the Debtor, its estate, creditors, and other parties in interest, and therefore should be granted.

BASIS FOR RELIEF

I. The Court Should Authorize the Debtor’s Continued Use of the Cash Management System and Waive Certain U.S. Trustee Guidelines Requirements.

22. Pursuant to Local Bankruptcy Rule 2015-2(a), “upon a motion of the debtor, the Court may, without notice and a hearing, permit the debtor to . . . use its existing bank accounts.” Del. Bankr. L.R. 2015-2(a). Additionally, as set forth below, authorizing the Debtor to utilize the prepetition Cash Management System is consistent with the applicable provisions of the Bankruptcy Code, specifically, sections 363(c)(1), 363(b)(1), and 105(a) of the Bankruptcy Code.

23. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor in possession to use “property of the estate, in the ordinary course of business, without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in the ordinary transactions required to operate its business without undue oversight by creditors or the court. *See, e.g., In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992). Included within the purview of section 363(c) is the ability to continue “routine transactions” stemming from a debtor’s cash management system. *See Amdura Nat’l Distrib. Co. v. Amdura Corp.*, (*In re Amdura Corp.*), 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, to

minimize the disruption caused by this Chapter 11 Case and maximize the value of the Debtor's estate, the Debtor requests authority to continue to utilize the Cash Management System.

24. To the extent the use of the Cash Management System is deemed to be beyond the ordinary course of the Debtor's business, such use is permitted by sections 363(b)(1) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides that the Court may "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).

25. Courts in the Third Circuit have recognized that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part and rev'd in part*, 997 F.2d 1039 (3d Cir. 1993). The Third Circuit Court of Appeals has emphasized that requiring a debtor to maintain separate bank accounts "would be a huge administrative burden and economically inefficient." *Columbia Gas Sys.*, 997 F.2d at 1061.

26. Bankruptcy courts routinely grant chapter 11 debtors authority to continue utilizing existing cash management systems and treat requests for such authority as a relatively "simple matter[.]" *In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987). Bankruptcy courts in this district have granted similar relief to the relief requested in this Motion in other complex chapter 11 cases. *See, e.g., In re Emerge Energy Servs. LP*, Case No. 19-11563 (KBO) [D.I. 187] (Bankr. D. Del. Aug. 13, 2019); *In re THG Holdings LLC*, Case No. 19-11689 (JTD) [D.I. 46] (Bankr. D. Del. July 31, 2019); *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG)

[D.I. 46] (Bankr. D. Del. June 11, 2019); *In re Hosp. Acquisition LLC*, Case No. 19-10998 (BLS) [D.I. 43] (Bankr. D. Del. May 8, 2019); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (MFW) [D.I. 58] (Bankr. D. Del. Apr. 2, 2019); *In re CTI Foods, LLC*, Case No. 19-10497 (CSS) [D.I. 73] (Bankr. D. Del. Mar. 12, 2019); *In re 1515-GEEnergy Holding Co. LLC*, Case No. 19-10303 (KJC) [D.I. 32] (Bankr. D. Del. Feb. 19, 2019); *In re Imerys Talc America, Inc.*, Case No. 19-10289 (LSS) [D.I. 55] (Bankr. D. Del. Feb. 14, 2019).⁴

27. Here, requiring the Debtor to adopt a new, segmented cash management system during this chapter 11 case would be expensive, burdensome, and unnecessarily disruptive to the Debtor's operations. Any disruption of the Cash Management System could have severe adverse effects on the Debtor's restructuring efforts, the cost of which would ultimately be borne by the Debtor's creditors and other stakeholders. Maintaining the current Cash Management System will facilitate the Debtor's smooth transition into and operation in chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.

28. Although the Debtor maintains the Bank Accounts as part of an established Cash Management System, the U.S. Trustee Guidelines include certain requirements that, if not waived, would require the Debtor (as debtor in possession) to take certain actions with respect to prepetition Bank Accounts that are designed to draw a clear line of demarcation between prepetition and postpetition transactions and operations, and prevent the inadvertent postpetition payment of prepetition claims. For the reasons set forth below, the Debtor submits that a waiver of these requirements is warranted.

⁴ The referenced orders are voluminous in nature and are not attached to this Motion. However, in light of the requirements of Local Rule 7007-2(a)(vii), undersigned counsel has retained copies of each order and will make them available to the Court, if requested, or to any party that requests them.

29. Under the U.S. Trustee Guidelines, debtors in possession must, among other things, close prepetition bank accounts and open new “debtor in possession” operating, payroll, and tax accounts at an authorized depository. In addition, the U.S. Trustee Guidelines prohibit disbursements other than by numbered checks, which checks must bear the applicable debtor’s case name and case number, a “debtor in possession” designation and an indication of the account type. Under the circumstances, the Debtor submits that waiving compliance with the U.S. Trustee Guidelines and authorizing continued use of the Bank Accounts and the Business Forms is appropriate and in the best interests of the estate.

30. The Bank Accounts are maintained at Bank of America and HSBC, both financially stable banking institutions that are authorized depositories in the District of Delaware, insured by the FDIC up to applicable limits, and a party to a Uniform Depository Agreement with the U.S. Trustee. Notwithstanding the U.S. Trustee Guidelines, the Debtor’s continued use of the Bank Accounts will allow it to smoothly and orderly transition into and operate during chapter 11, and will best serve all parties in interest, as it will minimize disruption of the Debtor’s business. Moreover, because the Debtor’s existing Cash Management System allows it to differentiate between prepetition and postpetition transactions, account balances, and obligations, any changes to the Cash Management System are unnecessary. As noted, the Debtor will maintain records of all transfers within the Cash Management System to the same extent they were recorded by the Debtor before the commencement of this Chapter 11 Case. As a result, the Debtor will be able to document and record the transactions occurring within the Cash Management System for the benefit of all parties in interest. To protect against the unauthorized payment of prepetition obligations, the Debtor represents that if it is authorized to continue using the Bank Accounts, it

will not pay, and the Banks will not be directed to pay, any debts incurred before the Petition Date (other than as authorized by this Court).

31. For these reasons, as well as to avoid delays in Payments to administrative creditors, the Debtor is authorized by this Court to pay, to ensure as smooth a transition into chapter 11 as possible, and to aid in the Debtor's efforts to maximize the value of its estate (i) the Debtor should be permitted to continue to (a) use its Cash Management System, (b) maintain its existing Bank Accounts and open new and close existing accounts, as needed, in the ordinary course, and (c) deduct, without further order of this Court, from the appropriate Bank Accounts the Cash Management Fees; and (ii) the requested relief should extend to any new accounts by providing that any new account is deemed to be a Bank Account and subject to the rights, obligations, and relief granted by this Court.

II. The Debtor Should Be Granted Authority to Honor Certain Prepetition Obligations Related to the Cash Management System.

32. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Debtor requests that the Banks be permitted to debit the Debtor's accounts in the ordinary course of business without the need for further order of this Court for: (i) all checks drawn on the Bank Accounts that were cashed at each Bank by the payees thereof prior to the Petition Date; and (ii) Cash Management Claims. The Debtor also requests that the Banks 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 Cash Management System, so long as sufficient funds are available in the applicable accounts to make the payments. The Debtor further requests that the Banks be restrained from honoring any Payments on the Bank Accounts on account of a prepetition claim unless (i) authorized by an order of this Court, (ii) not otherwise prohibited by a "stop payment"

request received by the Bank from the Debtor, and (iii) supported by sufficient funds in the Bank Account in question.

33. As with the Cash Management System, payment of the Cash Management Claims will minimize disruption to the Debtor's operations and is therefore in the best interests of the estate. Absent payment of the Cash Management Claims, the Banks might assert setoff rights against the funds in the Bank Accounts on account of the Cash Management Claims, freeze the Bank Accounts, or refuse to provide services to the Debtor. The payment of the Cash Management Claims will not prejudice unsecured creditors given that, as noted above, the Banks may have setoff rights with respect to the Cash Management Claims, and that many unsecured creditors will be paid in full under the Debtor's prepackaged plan. 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 Cash Management Claims. 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.

III. The Debtor Should Be Granted Authority to Continue Using Existing Business Forms and Checks.

34. Local Bankruptcy Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing checks without the designation "Debtor-in-Possession" and use its existing bank accounts. However, once the debtor's existing checks have been used, the debtor shall, when reordering checks, require the designation "Debtor-in-Possession" and the corresponding bankruptcy number on all such checks.

Del. Bankr. L.R. 2015-2(a).

35. To minimize expenses to its estate, the Debtor seeks authorization to continue using the Business Forms existing immediately prior to the Petition Date, without reference to the Debtor's status as a debtor in possession. Modifying existing Business Forms would be burdensome and expensive and would confer no corresponding benefit upon those dealing with the Debtor, most of whom, as noted above, will be aware of the commencement of this Chapter 11 Case, and who will receive formal notice of the same. This burden is particularly acute where, as here, the Debtor will likely be in bankruptcy for a relatively short period of time. The Debtor therefore requests authorization to use its existing Business Forms without adding a "Debtor-in-Possession" or similar legend.

36. Similar relief has been granted by this Court in other chapter 11 cases. *See, e.g., In re Emerge Energy Servs. LP*, Case No. 19-11563 (KBO) [D.I. 187] (Bankr. D. Del. Aug. 13, 2019); *In re THG Holdings LLC*, Case No. 19-11689 (JTD) [D.I. 46] (Bankr. D. Del. July 31, 2019); *In re Insys Therapeutics, Inc.*, Case No. 19-11292 (KG) [D.I. 46] (Bankr. D. Del. June 11, 2019); *In re Hosp. Acquisition LLC*, Case No. 19-10998 (BLS) [D.I. 43] (Bankr. D. Del. May 8, 2019); *In re Southcross Energy Partners, L.P.*, Case No. 19-10702 (MFW) [D.I. 58] (Bankr. D. Del. Apr. 2, 2019); *In re CTI Foods, LLC*, Case No. 19-10497 (CSS) [D.I. 73] (Bankr. D. Del. Mar. 12, 2019); *In re 1515-GEEnergy Holding Co. LLC*, Case No. 19-10303 (KJC) [D.I. 32] (Bankr. D. Del. Feb. 19, 2019); *In re Imerys Talc America, Inc.*, Case No. 19- 10289 (LSS) [D.I. 55] (Bankr. D. Del. Feb. 14, 2019).⁵

⁵ The referenced orders are voluminous in nature and are not attached to this Motion. However, in light of the requirements of Local Rule 7007-2(a)(vii), undersigned counsel has retained copies of each order and will make them available to the Court, if requested, or to any party that requests them.

IV. Cause Exists to Waive Requirements of Section 345(b) of the Bankruptcy Code.

37. Section 345(a) of the Bankruptcy Code authorizes a debtor in possession to make deposits or investments of estate money in a manner “as will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, “unless the court for cause orders otherwise.” 11 U.S.C. § 345(b). Alternatively, the debtor may require the entity to deposit governmental securities pursuant to 31 U.S.C. § 9303.⁶

38. A court is authorized to relieve a debtor in possession of the deposit and investment restrictions “for cause.” 11 U.S.C. § 345(b)(2). In evaluating whether “cause” exists, courts have considered a number of factors, including, among others, the sophistication and size of a debtor’s business, the amount of the investments involved, bank ratings, the complexity of the case, the debtor’s safeguards for the funds, the debtor’s ability to reorganize in the face of a failure of one or more of the financial institutions, the benefit to the debtor of a waiver or modification of the section 345(b) requirements, the potential harm to the estate, and the reasonableness of such a waiver or modification under the circumstances. *See In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

⁶ Section 9303 of title 31 provides that when a person is required by law to give a surety bond, that person, in lieu of a surety bond, may instead provide an eligible obligation, designated by the Secretary of the Treasury, as an acceptable substitute for a surety bond. *See* 31 U.S.C. § 9303.

39. Here, these factors warrant a waiver of the requirements of section 345 of the Bankruptcy Code to the extent the Cash Management System does not already strictly comply with its requirements. The Debtor does not maintain any investment accounts,⁷ instead all cash generated by the business is used for operating expenses and maintained in the Bank Accounts held at Bank of America and HSBC, financially stable banking institutions. Thus, good cause exists to waive the investment and deposit restrictions under section 345(b) of the Bankruptcy Code. The Debtor respectfully requests authority to maintain cash in the Bank Accounts in a safe and prudent manner, in accordance with its existing practices.

RESERVATION OF RIGHTS

40. The Debtor reserves all rights. Without limiting the generality of the foregoing, nothing contained herein is or should be construed as: (a) an admission as to the validity, extent, perfection, priority, allowability, or enforceability, or character of any claim or any security interest which purportedly secures such claim or other asserted rights or obligation, or a waiver or other limitation on the Debtor's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (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 Motion; (f) granting third-party beneficiary status or bestowing any additional rights on any third party; or (g) being otherwise

⁷ Note that one of the Debtor's Bank Accounts is a money market savings account at Bank of America.

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 Cash Management Claims 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 Cash Management Claims or claims related thereto or as a waiver of the Debtor's rights to dispute such claims.

THE DEBTOR SATISFIES REQUIREMENTS OF BANKRUPTCY RULE 6003(B)

41. 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... a motion to... pay all or part of a claim that arose before the filing of the petition.” For a debtor to obtain relief to make pre-plan payments within 21 days of the Petition Date, it must establish that such payments satisfy the requirements mandated by Bankruptcy Rule 6003—namely, that the relief requested is necessary to avoid “immediate and irreparable harm.” Immediate and irreparable harm exists when absent the requested relief a debtor’s prospect of reorganizing is threatened or a swift diminution in the value of the debtor’s estate is likely. *See In re Ames Dep’t Stores, Inc.*, 115 B.R. 34, 36 n.2 (Bankr. S.D.N.Y. 1990) (finding that “immediate and irreparable harm” exists where loss of the business threatens ability to reorganize). The Third Circuit has interpreted language similar to the “immediate and irreparable harm” language in the context of preliminary injunctions and has instructed that irreparable harm is a continuing harm that cannot be adequately redressed by final relief on the merits and for which money damages cannot provide adequate compensation. *See, e.g., Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App’x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). Furthermore, the harm must be shown to be actual and

imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cnty.*, 40 F.3d 645, 653-55 (3d Cir. 1994).

42. Here, immediate and irreparable harm would result if the relief requested herein is not granted. If unable to maintain its existing Cash Management System, the Debtor's employees and management will be unable to focus on confirmation and consummation of the Plan. To the extent that the Debtor owes any accrued but unpaid Cash Management Fees as of the Petition Date, failure to pay such prepetition Cash Management Fees in the ordinary course may cause the Bank to setoff against funds in the Bank Accounts, cease providing wire and foreign transaction processing services, or impose other penalties which would be detrimental to the value of the Debtor's estate.

43. Moreover, payment of any prepetition Cash Management Claims is essential to ensure the smooth operation of the Debtor's business. Failure to do so during the first 21 days of this Chapter 11 Case would result in needless disruption to the Debtor's business and may jeopardize the Debtor's operations at this critical time. For these reasons, the Debtor submits that the relief requested to be included in the Orders is essential to prevent immediate and irreparable harm to the Debtor's operations and preserve the ongoing value of the Debtor's business and stakeholder recoveries.

WAIVER OF BANKRUPTCY RULE 6004(a) AND 6004(h)

44. To implement the foregoing successfully, and given the nature of the relief requested herein, the Debtor respectfully requests that this Court find (x) the notice requirements under Bankruptcy Rule 6004(a) are met and (y) the 14-day stay under Bankruptcy Rule 6004(h) is waived. Such waiver is warranted here because the immediate payment of any Cash Management

Claims is essential to prevent potentially irreparable harm to the Debtor's business, value, and ability to reorganize.

NOTICE

45. 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

46. 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
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-and-

Thomas A. Califano (*pro hac vice* admission pending)
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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.¹

Chapter 11

Case No. 20-10072 (JTD)

**INTERIM ORDER (I) AUTHORIZING CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, BANK ACCOUNTS, AND BUSINESS FORMS
AND PAYMENT OF RELATED PREPETITION OBLIGATIONS; AND
(II) WAIVING CERTAIN DEPOSIT REQUIREMENTS**

Upon the motion (the “Motion”)² of the Debtor for entry of an order (this “Order”), pursuant to sections 105(a), 345(b), and 363 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Bankruptcy Rule 9013-1: (i) authorizing continued use of the Debtor’s existing Cash Management System, Bank Accounts, and Business Forms and payment of related prepetition obligations; and (ii) waiving certain deposit requirements, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*, dated February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules, and it appearing that no other or further notice need be provided; and a hearing

¹ 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.

² Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtor, its estate, its creditors, its stakeholders, and all other parties-in-interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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 herein.
2. The Debtor is authorized to continue to use its existing Cash Management System.

The Bank Accounts are deemed debtor-in-possession accounts. The Debtor, in its discretion, is authorized, but not directed, to designate, maintain, and continue to use any and all of its Bank Accounts in existence as of the Petition Date, with the same account numbers, including the accounts identified in **Exhibit C** annexed to the Motion, including, without limitation: (a) to deposit funds in, and withdraw funds from, the Bank Accounts by all means, including checks, wire transfers, automated clearinghouse (“ACH”) transfers, drafts, electronic fund transfers, and other debits or items presented, issued, or drawn on the Bank Accounts; (b) to pay Cash Management Fees; (c) to perform its obligations under the documents and agreements governing the Bank Accounts, including without limitation, any prepetition cash management agreements or treasury services agreements; and (d) to treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as debtor in possession.

3. The Debtor is not required to (a) close existing bank accounts and open new debtor-in-possession accounts or (b) establish specific bank accounts for tax payments. The Debtor may transfer funds into, out of, and through the Cash Management System using ordinary transfer methods in accordance with the Debtor's prepetition practice. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly. The Debtor and the Banks may agree, without further order of this Court, to implement any changes to the Cash Management System and procedures in the ordinary course of business that they deem appropriate in their sole discretion.

4. The Debtor is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion, *provided, however*, that the Debtor is only authorized to open new bank accounts (i) after providing five (5) calendar days' prior notice to the U.S. Trustee, Weil, Gotshal & Manges LLP, counsel to Goldman Sachs International and Debevoise & Plimpton LLP, counsel to Elliott Management Corporation and its affiliates; (ii) with a bank that (a) is organized under the laws of the United States of America or any state thereof, (b) is insured by the FDIC, and (c) has executed, or is willing to immediately execute, a Uniform Depository Agreement with the U.S. Trustee; and (iii) that are designated "Debtor-in-Possession" accounts by the relevant bank.

5. Within five (5) days from the date of entry of this Order, the Debtor shall contact Bank of America and HSBC and provide it with the Debtor's employer identification numbers and identify each of its Bank Accounts as being held by a debtor in possession.

6. The Debtor is authorized, but not directed, to pay and/or reimburse its Banks and service providers in the ordinary course of business for any Cash Management Fees arising prior

to or after the Petition Date, subject to the terms of any interim and final orders of this Court approving the use of cash collateral, including, without limitation, the Budget approved therein.

7. The Banks are authorized without the need for further order of this Court to in the ordinary course of business: (a) continue to administer, service, and maintain, the Bank Accounts as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the ordinary course; (b) receive, process, honor, and pay any and all Payments on account of a claim; and (c) debit the Bank Accounts for (i) all undisputed prepetition Cash Management Claims, if any, owed to the Banks for the maintenance of the Cash Management System, (ii) all checks drawn on the Debtor's Bank Accounts that were cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date, and (iii) all checks or other items deposited in one of the Bank Accounts with such Bank prior to the Petition Date that have not been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; *provided, however*, that no Payments (excluding any electronic fund transfers that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts prior to the Petition Date shall be honored, unless (a) expressly authorized by this Court and the Debtor, (b) not otherwise prohibited by a "stop payment" request timely received by the Debtor's Banks from the Debtor, and (c) supported by sufficient funds in the Bank Account in question.

8. Subject to the provisions of this Order, the Banks are authorized to and shall rely on the representations of the Debtor as to which Payments are authorized to be honored or dishonored, whether or not such Payments are dated, drawn, or issued prior to, on, or subsequent to the Petition Date. The Banks shall not be deemed in violation of this Order and shall have no

liability for relying on such representations by the Debtor or honoring any Payment that is subject to this Order either (a) at the direction of the Debtor to honor such prepetition Payment, (b) in the good faith belief that this Court has authorized such prepetition Payment to be honored, or (c) as a result of an innocent mistake. To the extent that the Debtor directs that any Payment be dishonored or the Banks inadvertently dishonor any Payments, the Debtor may issue replacement Payments consistent with the orders of this Court.

9. The Banks are further authorized to (a) honor the Debtor's directions with respect to the opening or closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions, and the Banks shall have no liability to any party for relying on such representations or instructions.

10. The relief granted in this Order extends to any new bank account opened by the Debtor, in accordance with the provisions of this Order, after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened.

11. The Debtor shall serve a copy of this Order on the Banks within five business days of the entry of this Order, and upon any bank at which the Debtor open a new bank account, immediately upon the opening of such new account.

12. The Debtor is authorized, but not directed to, continue to use its existing Business Forms without alteration or change and without the designation "Debtor-in-Possession" imprinted upon them.

13. Nothing herein nor any actions taken hereunder shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

14. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this 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 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 Order nor any payment of any Cash Management Claim pursuant to this Order shall be construed as impairing the Debtor's right to contest the validity, priority or amount of any Cash Management Claim allegedly due or owing to any Bank, and all of the Debtor's rights with respect thereto are hereby reserved.

15. For the avoidance of doubt, the Debtor shall maintain accurate records of all transfers within the Cash Management System so that all postpetition transfers and transactions are adequately and promptly documented in and readily ascertainable from the Debtor's books and records to the same extent maintained by the Debtor prior to the Petition Date.

16. Notwithstanding the relief granted in this 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.

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

18. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

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

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

21. The Debtor is authorized and empowered to execute and deliver such documents, and to take and perform all actions, necessary to implement and effectuate the relief granted in this Order.

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

23. 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 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.¹

Chapter 11

Case No. 20-10072 (JTD)

**FINAL ORDER: (I) AUTHORIZING CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, BANK ACCOUNTS, AND BUSINESS FORMS AND
PAYMENT OF RELATED PREPETITION OBLIGATIONS; AND
(II) WAIVING CERTAIN DEPOSIT REQUIREMENTS**

Upon the motion (the “Motion”)² of the Debtor for entry of an order (this “Order”), pursuant to sections 105(a), 345(b), and 363 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004 and Local Bankruptcy Rule 9013-1: (i) authorizing continued use of the Debtor’s existing Cash Management System, Bank Accounts, and Business Forms and payment of related prepetition obligations; and (ii) waiving certain deposit requirements, as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference*, dated February 29, 2012; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules, and it appearing that no other or further notice need be provided; and a hearing

¹ 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.

² Capitalized terms used herein and not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

having been held to consider the relief requested in the Motion (the “Hearing”); and upon consideration of the First Day Declaration and the record of the Hearing and all of the proceedings had before the Court; and the Court having found and determined that the relief sought in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtor, its estate, its creditors, its stakeholders, and all other parties-in-interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; 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 herein. Any objections or reservations of rights are overruled, with prejudice.

2. The Debtor is authorized to continue to use its existing Cash Management System. The Bank Accounts are deemed debtor-in-possession accounts. The Debtor, in its discretion, is authorized, but not directed, to designate, maintain, and continue to use any and all of its Bank Accounts in existence as of the Petition Date, with the same account numbers, including the accounts identified in **Exhibit C** annexed to the Motion, including, without limitation: (a) to deposit funds in, and withdraw funds from, the Bank Accounts by all means, including checks, wire transfers, automated clearinghouse (“ACH”) transfers, drafts, electronic fund transfers, and other debits or items presented, issued, or drawn on the Bank Accounts; (b) to pay Cash Management Fees; (c) to perform its obligations under the documents and agreements governing the Bank Accounts, including without limitation, any prepetition cash management agreements or treasury services agreements; and (d) to treat the Bank Accounts for all purposes as accounts of the Debtor in its capacity as debtor in possession.

3. The Debtor is not required to (a) close existing bank accounts and open new debtor-in-possession accounts or (b) establish specific bank accounts for tax payments. The Debtor may transfer funds into, out of, and through the Cash Management System using ordinary transfer methods in accordance with the Debtor's prepetition practice. The Debtor shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly. The Debtor and the Banks may agree, without further order of this Court, to implement any changes to the Cash Management System and procedures in the ordinary course of business that they deem appropriate in their sole discretion.

4. The Debtor is authorized to open any new bank accounts or close any existing Bank Accounts as it may deem necessary and appropriate in its sole discretion, *provided, however*, that the Debtor is only authorized to open new bank accounts (i) after providing five (5) calendar days' prior notice to the U.S. Trustee, Weil, Gotshal & Manges LLP, counsel to Goldman Sachs International and Debevoise & Plimpton LLP, counsel to Elliott Management Corporation and its affiliates; (ii) with a bank that (a) is organized under the laws of the United States of America or any state thereof, (b) is insured by the FDIC, and (c) has executed, or is willing to immediately execute, a Uniform Depository Agreement with the U.S. Trustee; and (iii) that are designated "Debtor-in-Possession" accounts by the relevant bank.

5. The Debtor is authorized, but not directed, to pay and/or reimburse its Banks and service providers in the ordinary course of business for any Cash Management Fees arising prior to or after the Petition Date, subject to the terms of any interim and final orders of this Court approving the use of cash collateral, including, without limitation, the Budget approved therein.

6. The Banks are authorized without the need for further order of this Court to in the ordinary course of business: (a) continue to administer, service, and maintain, the Bank Accounts

as such accounts were administered, serviced, and maintained prior to the Petition Date, without interruption and in the ordinary course; (b) receive, process, honor, and pay any and all Payments on account of a claim; and (c) debit the Bank Accounts for (i) all undisputed prepetition Cash Management Claims, if any, owed to the Banks for the maintenance of the Cash Management System, (ii) all checks drawn on the Bank Accounts that were cashed at such Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date, and (iii) all checks or other items deposited in one of the Debtor's Bank Accounts with such Bank prior to the Petition Date that have not been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; *provided, however*, that no Payments (excluding any electronic fund transfers that the Banks are obligated to settle), or other items presented, issued, or drawn on the Bank Accounts prior to the Petition Date shall be honored, unless (a) expressly authorized by this Court and the Debtor, (b) not otherwise prohibited by a "stop payment" request timely received by the Debtor's Banks from the Debtor, and (c) supported by sufficient funds in the Bank Account in question.

7. Subject to the provisions of this Order, the Banks are authorized to and shall rely on the representations of the Debtor as to which Payments are authorized to be honored or dishonored, whether or not such Payments are dated, drawn, or issued prior to, on, or subsequent to the Petition Date. The Banks shall not be deemed in violation of this Order and shall have no liability for relying on such representations by the Debtor or honoring any Payment that is subject to this Order either (a) at the direction of the Debtor to honor such prepetition Payment, (b) in the good faith belief that this Court has authorized such prepetition Payment to be honored, or (c) as a result of an innocent mistake. To the extent that the Debtor directs that any Payment be

dishonored or the Banks inadvertently dishonor any Payments, the Debtor may issue replacement Payments consistent with the orders of this Court.

8. The Banks are further authorized to (a) honor the Debtor's directions with respect to the opening or closing of any Bank Account and (b) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions, and the Banks shall have no liability to any party for relying on such representations or instructions.

9. The relief granted in this Order extends to any new bank account opened by the Debtor, in accordance with the provisions of this Order, after the date hereof, which account shall be deemed a Bank Account, and to the bank at which such account is opened.

10. The Debtor shall serve a copy of this Order on the Banks within five business days of the entry of this Order, and upon any bank at which the Debtor opens a new bank account, immediately upon the opening of such new account.

11. The Debtor is authorized, but not directed to, continue to use its existing Business Forms without alteration or change and without the designation "Debtor-in-Possession" imprinted upon them.

12. Nothing herein nor any actions taken hereunder shall create, nor is intended to create, any rights in favor of, or enhance the status of any claim held by, any person.

13. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this 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 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 Order nor any payment of any Cash Management Claim pursuant to this Order shall be construed as impairing the Debtor's right to contest the validity, priority or amount of any Cash Management Claim allegedly due or owing to any Bank, and all of the Debtor's rights with respect thereto are hereby reserved.

14. For the avoidance of doubt, the Debtor shall maintain accurate records of all transfers within the Cash Management System so that all postpetition transfers and transactions are adequately and promptly documented in and readily ascertainable from the Debtor's books and records to the same extent maintained by the Debtor prior to the Petition Date.

15. Notwithstanding the relief granted in this 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.

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

17. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

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

19. This order is immediately effective and enforceable notwithstanding the provisions of Bankruptcy Rule 6004(h) or otherwise.

20. The Debtor is authorized and empowered to execute and deliver such documents, and to take and perform all actions, necessary to implement and effectuate the relief granted in this Order.

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

EXHIBIT C**List of Bank Accounts**

Bank	Account Type	Account Number (Last 4)	Bank Address
Bank of America, N.A.	Main Account	6318	222 Broadway New York, New York 10038
HSBC Bank USA, N.A.	Payroll Account	0595	452 Fifth Avenue New York, New York 10018
HSBC Bank USA, N.A.	Cash Collateral Account	0609	452 Fifth Avenue New York, New York 10018