

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

In re:

GULF COAST HEALTH CARE, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11336 (KBO)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM
AND FINAL ORDERS AUTHORIZING THE DEBTORS TO
PAY CERTAIN PREPETITION TAXES AND FEES**

Gulf Coast Health Care, LLC (“**Gulf Coast**”) and certain of its affiliates and subsidiaries, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), hereby move (the “**Motion**”) for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively), granting the relief described below. In support thereof, the Debtors rely upon the *Declaration of M. Benjamin Jones in Support of Chapter 11 Petitions and First Day Pleadings* (the “**First Day Declaration**”),² filed concurrently herewith. In further support of the Motion, the Debtors respectfully represent as follows:

RELIEF REQUESTED

1. By the Motion, the Debtors respectfully request entry of the Interim Order and the Final Order authorizing the Debtors to pay, in their sole discretion, sales and use taxes, provider

The last four digits of Gulf Coast Health Care, LLC's federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC's corporate headquarters and the Debtors' service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

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

taxes, income taxes, franchise taxes and fees, permit and licensing fees, and various other governmental taxes, fees, and assessments (collectively, the “**Taxes**”)³ that accrued or arose before the Petition Date and will become due during the pendency of the Chapter 11 Cases to the applicable federal, state, and local taxing, licensing, regulatory, and other governmental or quasi-governmental authorities (collectively, the “**Taxing Authorities**”) in the ordinary course of business, without prejudice to the Debtors’ rights to contest the amounts and/or priority of any Taxes on any grounds they deem appropriate.⁴

2. The Debtors also request that the Interim Order and the Final Order authorize the Debtors’ banks and other financial institutions (collectively, the “**Banks**”) to receive, process, honor, and pay any and all checks and other forms of payment drawn on the Debtors’ bank accounts, including fund transfers and electronic payment requests, to the extent they relate to any of the foregoing and to rely on the Debtors’ direction to pay amounts authorized under the Motion, provided that sufficient funds are available in the applicable accounts to make such payments.

JURISDICTION AND VENUE

3. The Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C.

³ By this Motion, the Debtors are not seeking authorization with respect to payment of payroll taxes and withholdings related to the Debtors’ employees. Rather, such authorization is sought pursuant to the *Motion of Debtors for Entry of Interim and Final Orders Authorizing Debtors to (I) Pay Prepetition Wages, Compensation, and Employee Benefits, (II) Continue Certain Employee Benefit Programs in the Ordinary Course, and (III) Granting Related Relief* filed contemporaneously herewith.

⁴ This Motion neither affects the Debtors’ ability to contest the amount or basis of any Taxes that may be due to the various Taxing Authorities nor requires the Debtors to pay any of the applicable Taxes. Accordingly, the Debtors reserve all of their rights and defenses related thereto.

§ 157(b). Venue of these cases and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested herein are sections 105(a), 363(b), 507(a)(8), and 541 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

5. The Debtors confirm their consent, 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**”), to the entry of a final order by the Court in connection with the Motion in the event that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

BACKGROUND

I. The Chapter 11 Cases

6. On the date hereof (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

7. The Debtors continue to operate their businesses and manage their properties as debtors and debtors-in-possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

8. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed any official committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed.

9. Additional information regarding the Debtors and the Chapter 11 Cases, including the Debtors' business operations, capital structure, financial condition, and the reasons for and objectives of the Chapter 11 Cases, is set forth in the First Day Declaration.

II. The Debtors' Taxes and Assessments

10. The Debtors, in the ordinary course of their businesses, incur various tax liabilities. The Debtors' books and records reflect that they have paid all Taxes that were due and payable prior to the Petition Date. The Taxing Authorities, however, will continue to invoice the Debtors for Taxes relating to periods prior to the Petition Date following the commencement of the Chapter 11 Cases. As of the Petition Date, the Debtors owe approximately \$2.4 million in prepetition Taxes. Of that amount, approximately \$1.55 million in Taxes will become due and payable within the first thirty (30) days of the Chapter 11 Cases (the "**Interim Period**"), which the Debtors seek to pay pursuant to the Interim Order. The Debtors seek authority to pay the remaining outstanding taxes of \$850,000 pursuant to the Final Order.

11. The Debtors are subject to the following Taxes, among others:

- (a) **Use Taxes.** In the ordinary course of business, the Debtors incur use taxes (the "**Use Taxes**") as the result of purchasing supplies from out of state vendors. Certain Taxing Authorities require the Debtors to pay Use Taxes that are based on a percentage of sales prices. The Use Taxes are billed monthly or quarterly and are paid in arrears. The Debtors estimate approximately \$6,000 in prepetition Use Taxes will become due and payable following the Petition Date for prepetition amounts owed, of which approximately \$2,000 will become due and payable in the Interim Period.
- (b) **Franchise Taxes.** Certain Taxing Authorities impose and collect franchise taxes, licensing, *de minimis* registration, and other filing fees (collectively, the "**Franchise Taxes**") on the Debtors for the right to exist as a domestic corporation, for the privilege of doing business in the state as a foreign corporation, or for the actual conduct or carrying on of business in the state. The Debtors are current on their Franchise Taxes and do not anticipate that any Franchise Taxes will come due during the pendency of these Chapter 11 Cases.

- (c) **Provider Taxes.** Certain states in which the Debtors operate facilities charge a tax based on the number of residents treated per day at the facilities (the “**Provider Taxes**”). The Provider Taxes are paid monthly and typically are due on the 20th of each month. As of the Petition Date, the Debtors estimate that they owe approximately \$2,200,000 in prepetition Provider Taxes, of which approximately \$1,500,000 will become due and payable in the Interim Period.
- (d) **Excise Taxes.** The Debtors are also obligated to pay annual excise taxes to the U.S. federal government (the “**Excise Taxes**”). As of the Petition Date, the Debtors estimate that they owe approximately \$8,000 in prepetition Excise Taxes. None of this amount will become due and payable in the Interim Period.
- (e) **License Fees.** The Debtors also incur certain fees to state agencies related to compliance with state licensing, permitting, and reporting requirements (the “**License Fees**”). These License Fees include fees related to the operating licenses for each of the Debtors’ facilities. As of the Petition Date, the Debtors estimate that they owe approximately \$169,000 in prepetition License Fees, of which approximately \$31,000 will become due and payable in the Interim Period.

12. The continued payment of the prepetition Taxes on their normal due dates ultimately will preserve the resources of the Debtors’ estates. In particular, if such obligations are not timely paid, the Debtors will be required to expend time and money to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority’s applicable laws, including (a) whether the obligations are priority, secured, or unsecured in nature, (b) whether they are proratable or fully prepetition or postpetition, and (c) whether penalties, interest, attorneys’ fees, and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys’ fees, and costs are priority, secured, or unsecured in nature. The Debtors’ desire to avoid unnecessary disputes with the Taxing Authorities—and expenditures of time and money resulting from such disputes—over a myriad of issues that are typically raised by such entities as they attempt to enforce their rights to collect taxes.

13. Moreover, the Debtors may suffer immediate and irreparable harm if the prepetition Taxes are not paid when they become due and payable. For instance, if the Debtors do not pay such amounts in a timely manner, the Taxing Authorities may impose audits, attempt to revoke the Debtors' licenses, suspend the Debtors' operations, and pursue other remedies that will harm the estates. Any disputes that could impact the Debtors' ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors' operations as a whole.

14. Further, certain of the Taxes may not be property of the estate, as they are collected from third parties and held in trust for payment to various Taxing Authorities. The federal government and states in which the Debtors operate have laws providing that the Debtors' officers, managers, or other responsible employees could, under certain circumstances, be held personally liable for the nonpayment of such Taxes. To the extent any accrued Taxes of the Debtors were unpaid as of the Petition Date in these jurisdictions, the Debtors' officers and managers could be subject to lawsuits during the pendency of the Chapter 11 Cases. In such events, collection efforts by the Taxing Authorities would be extremely distracting for the Debtors and their managers and officers in their efforts to bring the Chapter 11 Cases to an expeditious conclusion.

15. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, particularly under the circumstances of the Chapter 11 Cases, and is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest and, therefore, should be granted.

BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY

I. Payment of Prepetition Taxes is Appropriate and Warranted in The Chapter 11 Cases.

16. There are several well-grounded bases to grant the relief requested in this Motion.

17. **First**, a portion of the Taxes may be entitled to priority status under Bankruptcy Code section 507(a)(8) and therefore must be paid in full under any chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(C). Thus, payment of these Taxes at this time only affects the timing of the payment and does not prejudice the rights of other creditors. Moreover, to the extent the Debtors pay the Taxes in the ordinary course of business on the grounds that the payments are necessary for a successful reorganization, the Debtors will avoid the cost of paying additional accrued amounts to which the Taxing Authorities may be entitled, such as related penalties. *See* 11 U.S.C. § 507(a)(8)(G) (granting priority status to a “penalty related to a claim of a kind specified in this paragraph and in compensation for actual pecuniary loss”).

18. **Second**, in some or all of the states in which the Debtors do business, liens can attach to property on which the Debtors have unpaid Taxes, thus potentially entitling the relevant Taxing Authorities to a secured claim against property of the Debtors’ estates and the payment of postpetition interest and penalties. Secured claims must be paid in full under any chapter 11 plan. *See* 11 U.S.C. § 1129(b)(2)(A). Payment of these Taxes will therefore affect only the timing of the payments, and not the amounts that would ultimately be payable to the applicable Taxing Authorities, and may, in some instances, allow the Debtors to avoid the payment of unnecessary interest and penalties.

19. **Third**, Bankruptcy Code section 541(d) provides, in relevant part, that “[p]roperty in which the debtors hold, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estates under subsection (a)(1) or (a)(2) of this

section only to the extent of the debtors' legal title to such property but not to the extent of any equitable interest in such property that the debtors do not hold." 11 U.S.C. § 541(d). As such, some of the Taxes may constitute "trust fund" taxes that the Debtors are required to collect from third parties and hold in trust for the benefit of such Taxing Authorities, and may not constitute property of the estates. *See Begier v. Internal Revenue Service*, 496 U.S. 53, 57–60 (1990) (holding that any prepetition payment of trust fund taxes is not an avoidable preference because such funds are not property of the debtors' estate); *see also City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92 (3d Cir. 1994) (funds withheld from employees' paychecks for the purpose of paying city income taxes may be subject to a trust and therefore may not be property of the estate); *Rosenow v. Illinois*, 715 F.2d 277, 282 (7th Cir. 1983) (noting that use tax is a trust fund tax); *In re Al Copeland Enterprises, Inc.*, 133 B.R. 837, 841 (Bankr. W.D. Tex. 1991), *subsequently aff'd sub nom. Matter of Al Copeland Enterprises, Inc.*, 991 F.2d 233 (5th Cir. 1993) (stating that sales and use taxes are treated as trust fund taxes). Accordingly, because the Debtors may have no equitable interest in any such trust fund Taxes, payment of such Taxes would not prejudice the rights of any of the Debtors' other creditors, and the Debtors should be permitted to pay them to the relevant Taxing Authorities as they become due.

20. **Fourth**, certain states and countries may impose personal liability on the Debtors' managers and officers to the extent the Debtors fail to meet their obligations to remit Taxes, even if the failure to pay such Taxes was not a result of any malfeasance on their part. In addition, the Debtors' failure to pay certain Taxes could cause some states to challenge the Debtors' right to operate within the states' jurisdictions. Addressing any action taken by these states would be costly and burdensome, and would be an unnecessary distraction during the Chapter 11 Cases.

Therefore, it is in the best interests of the Debtors' estates to eliminate the possibility of the foregoing distractions.

21. **Fifth**, the use of estate assets to pay the Taxes should be authorized under section 363(b) of the Bankruptcy Code so long as a sound business purpose exists for doing so. *In re Kmart Corp.*, 359 F.3d 866, 872 (7th Cir. 2004); *see also In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (finding that a sound business justification existed to justify payment of prepetition wages); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (finding that a debtor is entitled to pay certain prepetition creditors upon a showing that the payment is "essential to the continued operation of the business") (citations omitted); *In re CEI Roofing, Inc.*, 315 B.R. 50, 54-55 (Bankr. N.D. Tex. 2004) (citing *In re Kmart Corp.*, 359 F.3d at 872). Indeed, failure to pay such Taxes jeopardizes the Debtors' ability to continue to operate in various jurisdictions and may subject the Debtors' managers and officers to personal liability. Furthermore, Taxing Authorities may audit the Debtors if the Taxes are not timely paid and may also seek to impose liens on the Debtors' assets on account of unpaid "trust fund" Taxes. Cooperating with such audits and challenging and removing such liens would needlessly divert the Debtors' attention from their chapter 11 efforts. Prompt and regular payment of the Taxes would avoid any such unwarranted governmental action.

22. **Sixth**, and finally, Bankruptcy Code section 105(a) provides that "[t]he 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). Section 105(a) essentially codifies the Bankruptcy Court's inherent equitable powers and ensures that bankruptcy courts have the "power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." *See 2 Collier on*

Bankruptcy ¶ 105.01 (16th ed. 2017). The relief requested in this Motion is critical to the Debtors' operations and therefore is justified under Bankruptcy Code section 105(a).

23. Under section 105(a), courts have used the "necessity of payment" rule to authorize debtors-in-possession to pay certain prepetition claims. Payment of the prepetition Taxes is justified under the "necessity of payment" rule, which "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." *In re Ionosphere Clubs, Inc.*, 98 B.R. at 176 ("The ability of a Bankruptcy Court 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."); *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 Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (necessity of payment doctrine "teaches no more than, if payment of a claim which arose prior to reorganization is essential to the continued operation of the [business] during reorganization, payment may be authorized even if it is made out of corpus").

24. Such circumstances exists where, as here, the Debtors, are operating their businesses as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108 and thus 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.* There are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.*

25. As described above, the Taxing Authorities likely maintain secured or priority claims against the Debtors for the Taxes, and thus failure to pay the Taxes would be detrimental to the Debtors' estates. Payment of the Taxes, in the Debtors' discretion, is therefore necessary so they can meet their fiduciary duties as debtors-in-possession under Bankruptcy Code sections 1107(a) and 1108. *See CoServ*, 273 B.R. at 497. Accordingly, such payment should be authorized under the doctrine of necessity and Bankruptcy Code sections 105(a), 1107 and 1108.

26. Bankruptcy courts in this District and elsewhere have relied on these authorities and precedent to authorize the payment of prepetition tax obligations. *See, e.g., In re CMC II, LLC*, Case No. 21-10461 (JTD) (Bankr. D. Del. Apr. 1, 2021) (authorizing debtors to pay prepetition taxes and related obligations in the ordinary course of business); *In re Quorum Health Corp.*, Case No. 20-10766 (KBO) (Bankr. D. Del. May. 1, 2020) (same); *In re THG Holdings LLC*, Case No. 19-11689 (JTD) (Bankr. D. Del. Aug. 22, 2019) (same); *In re Center City Healthcare, LLC d/b/a Hahnemann Univ. Hospital*, Case No. 19-11466 (MFW) (Bankr. D. Del. Jul. 24, 2019) (same); *In re Promise Healthcare Grp., LLC*, Case No. 18-12491 (CSS) (Bankr. D. Del. Dec. 3, 2018) (same). Accordingly, the Debtors respectfully submit that similar relief should be granted in the Chapter 11 Cases.

II. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers.

27. The Debtors also request that all applicable banks and other financial institutions be authorized to receive, process, honor, and pay all checks presented for payment, and to honor all electronic payment requests made by the Debtors, related to the obligations described herein, whether such checks were presented or electronic requests were submitted prior to or after the Petition Date. The Debtors further request that all such banks and financial institutions be authorized to rely on the Debtors' designation of any particular check or electronic payment

request as approved pursuant to this Motion. The Debtors represent that they have sufficient availability of funds to pay any amounts described herein.

28. Also, the Debtors represent that checks or wire transfer requests will be readily identified as relating to an authorized payment made with respect to the Taxes. Accordingly, the Debtors believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests with respect to the Taxes.

IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY

29. The Court may grant the relief requested in the Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). In the context of preliminary injunctions, the Third Circuit has interpreted the language “immediate and irreparable harm” to refer to a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages are inadequate. *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)). The harm also must be actual and imminent, not speculative or unsubstantiated. *See, e.g., Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtors submit that, for the reasons already set forth herein, the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors.

30. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other

than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in the Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief. Moreover, the Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a).

RESERVATION OF RIGHTS

31. Nothing in the Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors’ ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

NOTICE

32. The Debtors will provide notice of the Motion to: (a) the U.S. Trustee; (b) the Internal Revenue Service; (c) the Securities and Exchange Commission; (d) the United States Attorney for the District of Delaware; (e) the Centers for Medicare & Medicaid Services; (f) the parties included on the Debtors’ consolidated list of their 40 largest unsecured creditors; (g) counsel for Omega Healthcare Investors, Inc.; (h) counsel for New Ark Capital, LLC; (i) counsel for Barrow Street Capital LLC and its affiliates; (j) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings); (k) each of the Taxing Authorities; and (l) all parties entitled to

notice pursuant to Local Rules 2002-1(b) and 9013-1(m). The Debtors submit that no other or further notice is required.

NO PRIOR REQUEST

33. No previous request for the relief sought herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request that the Court enter the Interim and Final Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: Wilmington, Delaware
October 14, 2021

MCDERMOTT WILL & EMERY LLP

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*Proposed Counsel for Debtors and
Debtors-in-Possession*

EXHIBIT A

Proposed Interim Order

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

)	Chapter 11
In re:)	
)	Case No. 21-11336 (KBO)
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , ¹)	
)	Jointly Administered
Debtors.)	
)	Related to Docket No. ____
)	

INTERIM ORDER AUTHORIZING THE DEBTORS TO PAY CERTAIN PREPETITION TAXES AND FEES

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Order**”) and a Final Order authorizing, but not directing, the Debtors to pay certain prepetition taxes and fees and granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their

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

creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay all prepetition Taxes set forth in the Motion to the Taxing Authorities in the ordinary course of their businesses, up to an aggregate amount of \$1.55 million during the Interim Period.
3. This Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any Taxes or audit amounts on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be preserved.
4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.
5. Nothing contained herein shall be construed to accelerate payments to any Taxing Authority that are not otherwise due and payable.
6. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized to be made pursuant to this Order.

8. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

9. Nothing in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, continuation, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

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

11. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

12. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

13. The final hearing (the “**Final Hearing**”) on the Motion shall be held on November 12, 2021, at 10:00 a.m. (prevailing Eastern Time). Any objections or responses to the entry of the proposed Final Order shall be filed with the Court and served on the following no later 4:00 p.m. (prevailing Eastern Time) on November 5, 2021: (a) Gulf Coast Health Care, LLC, c/o Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, NY 10017 (Attn: M. Benjamin Jones); (b) proposed counsel to the Debtors, McDermott Will & Emery LLP, 444 West Lake Street, Suite 4000, Chicago, IL 60606 (Attn: Daniel M. Simon and Emily C. Keil), and 1007 North Orange Street, 10th Floor, Wilmington, DE 19801 (Attn: David R. Hurst); (c) counsel for Omega Healthcare Investors, Inc., Weil Gotshal & Manges LLP, 767 Fifth Avenue, New York, NY 10153 (Attn: Robert Lemons), and Ferguson Braswell Fraser Kubasta PC, 2500 Dallas Parkway, Suite 600, Plano, TX 75093 (Attn: Leighton Aiken); (d) counsel for New Ark Capital, LLC, DLA Piper LLP (US), 1900 N. Pearl Street, Suite 2200, Dallas, TX 75201 (Attn: James Muenker); (e) counsel for Barrow Street Capital, LLC and its affiliates, Paul, Weiss, Rifkind, Wharton & Garrison LLP, 1285 Avenue of the Americas, New York, NY 10019 (Attn: Kelley Cornish and Alice Eaton); (f) counsel for Eagle Arc Partners LLC (f/k/a BM Eagle Holdings), Arent Fox LLP, 1301 Avenue of the Americas, 42nd Floor, New York, NY 10019 (Attn: George Angelich and Michael Blass), and Fenigstein & Kaufman, APC, 1900 Avenue of the Stars, Suite 2300, Los Angeles, CA 90067 (Attn: S. Jack Fenigstein); and (g) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (Attn: Joseph J. McMahon, Jr.). If no objections to entry of the Final

Order are filed and served, the Court may enter such Final Order without further notice or hearing.

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

EXHIBIT B

Proposed Final Order

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

In re:)	Chapter 11
)	
GULF COAST HEALTH CARE, LLC, <i>et al.</i> , ¹)	Case No. 21-11336 (KBO)
)	
Debtors.)	Jointly Administered
)	
)	Related to Docket No. ____
)	

**FINAL ORDER AUTHORIZING THE DEBTORS TO
PAY CERTAIN PREPETITION TAXES AND FEES**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an Interim Order and a final order (this “**Order**”) authorizing, but not directing, the Debtors to pay certain prepetition taxes and fees and granting related relief, all as more fully set forth in the Motion; and upon consideration of the First Day Declaration and the Interim Order entered on October ___, 2021; and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and the matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and venue of this proceeding and the Motion in this District being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court being able to issue a final order consistent with Article III of the United States Constitution; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best

¹ The last four digits of Gulf Coast Health Care, LLC’s federal tax identification number are 9281. There are 62 Debtors in these chapter 11 cases, for which the Debtors have requested joint administration. A complete list of the Debtors and the last four digits of their federal tax identification numbers are not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://dm.epiq11.com/GulfCoastHealthCare>. The location of Gulf Coast Health Care, LLC’s corporate headquarters and the Debtors’ service address is 40 South Palafox Place, Suite 400, Pensacola, FL 32502.

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

interests of the Debtors, their estates, their creditors, and other parties-in-interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby

ORDERED, ADJUDGED, AND DECREED that:

1. The Motion is granted on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to pay all prepetition Taxes to the Taxing Authorities in the ordinary course of their businesses, up to an aggregate amount of \$2.4 million.
3. This Order is without prejudice to the rights of the Debtors and their estates to contest the validity, priority, or amounts of any Taxes or audit amounts on any grounds they deem appropriate, and any rights of the Debtors and their estates with respect to such matters shall be preserved.
4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Order shall create any rights in favor of, or enhance the status of any claim held by, any Taxing Authority.
5. Nothing contained herein shall be construed to accelerate payments to any Taxing Authority that are not otherwise due and payable.
6. The banks and financial institutions on which checks were drawn or electronic payment requests made for payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of the Chapter 11 Cases with respect to payments authorized to be made pursuant to this Order.

8. Nothing in the Motion or this Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise or requirement to pay any claim or other obligation; (d) granting third-party-beneficiary status, bestowing any additional rights on any third party, or being otherwise enforceable by any third party.

9. Nothing in the Motion or this Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, continuation, priority, enforceability, or perfection of any security interest or lien, in favor of any person or entity, that existed as of the Petition Date.

10. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

11. The Debtors are authorized to take all actions necessary to implement the relief granted in this Order.

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