

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

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In re:

Chapter 11

LONG BEACH MEDICAL CENTER,
et al.

Case Nos. 14-70593-ast
14-70597-ast

Debtors.

(Jointly Administered)

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**INTERIM ORDER PURSUANT TO SECTIONS 363(b) AND 105(a) OF THE
BANKRUPTCY CODE (I) AUTHORIZING PAYMENT OF CERTAIN
PREPETITION WAGES, EMPLOYEE BENEFITS AND EXPENSE
REIMBURSEMENT AND (II) AUTHORIZING AND DIRECTING
BANKS TO HONOR CHECKS WITH RESPECT THERETO**

Upon consideration of the motion (the “Motion”)¹ of Long Beach Medical Center (“LBMC”) and Long Beach Memorial Nursing Home, Inc. *dba* The Komanoff Center for Geriatric and Rehabilitative Medicine (“Komanoff”), as Chapter 11 debtors and debtors in possession (each a “Debtor” and collectively the “Debtors”)² in these chapter 11 cases (the “Chapter 11 Cases”), seeking entry of an Order, pursuant to §§ 363(b) and 105(a), title 11, the United States Code (as amended, the “Bankruptcy Code”), authorizing (i) payment of all unpaid prepetition wages and salaries; (ii) payment of funds deducted from payroll, including without limitation, payroll related trust taxes, tax deposits, third party providers and processing fees; (iii) use of accrued PTO; (iv) reimbursement of employee expenses; (v) payment of employee benefits; and (vi) banks to honor any employee wage, salary and benefit checks with respect thereto, all as described more fully in the Motion; and the Court having subject matter jurisdiction to consider the Motion and the relief requested therein; the Motion being a core proceeding pursuant to 28 U.S.C. § 157(B); and venue being proper before the Court pursuant to

¹Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

² The debtors in these chapter 11 cases, along with the last four digits of each debtor’s federal tax identification number include: Long Beach Medical Center (5084) and Long Beach Memorial Nursing Home, Inc. *dba* The Komanoff Center for Geriatric and Rehabilitative Medicine (3422).

28 U.S.C. §§ 1408 and 1409; and due and appropriate notice of the Motion having been provided under the circumstances of this case; and it appearing that no other or further notice of the Motion need be provided; and a hearing on the Motion having been conducted before this Court on February 21, 2014; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the affidavit of Douglas Melzer in Support Pursuant to Local Rule 1007-2 and in Support of First Day Motions, dated as of the Petition Date; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent provided herein.
2. The Debtors are hereby authorized, but not directed, to pay all unpaid Prepetition Wages and related Withholdings, subject to the maximum permitted amounts in §§ 507(a)(4) and 507(a)(5) of the Bankruptcy Code, and in accordance with any post-petition financing order entered by the Court in these cases.
3. The Debtors are authorized, but not directed, to continue the programs and policies as related to PTO on a postpetition basis and to alter, modify, or discontinue such programs and policies as they deem necessary or appropriate in the ordinary course of business, without further notice to or order of the Court; provided, however, that nothing herein modifies the Debtors' obligations under § 1113 of the Bankruptcy Code. Notwithstanding the foregoing, the Debtors are authorized, but not directed, to (a) to continue to honor programs and policies as related to PTO in the ordinary course of the Debtors' postpetition business operations during any Employees' continued postpetition employment by the Debtors, and (b) to continue to allow Employees to use their accrued prepetition and postpetition PTO Leave in the ordinary course of

the Debtors' postpetition business operations during the applicable Employees' continued postpetition employment by the Debtors, provided that: (i) each Employee will be required to use any accrued postpetition time first and, thereafter, any accrued prepetition time would be applied; (ii) the Debtors are not authorized to cash out or otherwise pay any employee for unused PTO upon separation from the Debtors or otherwise; and (iii) all requests for PTO Leave must be coordinated and approved by such Employees' Supervisor(s), consistent with past practices, so as not to disrupt the Debtors' business operations. Notwithstanding the foregoing, to the extent that relief is granted in the Order authorizing the payment of any amount that is otherwise required by applicable nonbankruptcy law to be paid (*i.e.*, the payment of a trust fund tax), the Debtors shall comply with applicable nonbankruptcy law in the exercise of their discretion.

4. The Debtors are authorized, but not directed, to reimburse employees for Expenses incurred in the ordinary course of business. Any ordinary course Expense reimbursements shall not be considered payments to the Employee within Bankruptcy Code § 507(a)(4).

5. The Debtors are authorized, but not directed, to continue to allocate and distribute the Withholdings in accordance with their existing policies and prepetition practices or as required by applicable federal, state and local law, without regard to whether such amounts arose before or after the Petition Date.

6. To the extent that checks are issued to Employees or other entities in connection with the Prepetition Employee Obligations (including, but not limited to, prepetition Wages), the Banks upon which any checks are drawn in payment thereof, either before, on, or after the Petition Date are hereby authorized to honor such checks upon presentation.

7. All applicable Banks are authorized and directed, when requested by the Debtors, to receive, process, honor, and pay any and all checks drawn on the Debtors' accounts, payable under the terms of this Order, whether presented prior to or after the Petition Date. Such banks and financial institutions are authorized and directed to rely on the representations of the Debtors as to which checks are issued or authorized to be paid pursuant to this Order.

8. The Debtors are authorized, but not directed, to reissue any check, electronic payment, or other transfer that was drawn in payment of any claims arising from, or related to, the Prepetition Employee Obligations that are not cleared by a depository.

9. Notwithstanding anything contained herein to the contrary, pending entry of a final order, the Debtors are not authorized and shall not make any payments for prepetition obligations, including the Prepetition Wages and Expenses, to any insiders of the Debtors, as that term is defined in § 101(31) of the Bankruptcy Code.

10. Any payment or transfer made or service rendered by the Debtors pursuant to this Order is not, and shall not be deemed, an admission as to the validity of the underlying obligation, a waiver of any rights the Debtors may have to dispute such obligation, or an approval or assumption of any agreement, contract, or lease under § 365 of the Bankruptcy Code.

11. The Debtors are authorized, but not directed, to take all actions necessary to implement the relief granted in this Order.

12. Notwithstanding anything in this Order to the contrary, the payment of any claims pursuant to this Order and other honoring of the Prepetition Employee Obligations shall neither (a) make such obligations administrative expenses of the estates entitled to priority

status under §§ 503 and 507 of the Bankruptcy Code nor (b) constitute approval by this Court of any employee plan or program, including any incentive plans, under any section of the Bankruptcy Code, including § 503(c).

13. Nothing contained in this Order shall be deemed to be an assumption or adoption of any policy, procedure, or executory contract that may be described or referenced herein or in the Motion. The Debtors retain the discretion to not make the payments contemplated by this Order or the Motion for particular Employees and nothing in this Order will, in and of itself, constitute a promise or guarantee of any payment to any Employee.

14. There shall be a hearing held on **March 10, 2014 at 10:00 am** (the “Final Hearing”) to consider any payments for prepetition obligations, including the Prepetition Wages and Expenses, to any insiders of the Debtors, as that term is defined in § 101(31) of the Bankruptcy Code, as was requested in the Motion. Any objections to that portion of the Motion shall be filed with the Bankruptcy Court electronically in accordance with Administrative Order 476 (which can be found at www.nysb.uscourts.gov <<http://www.nyeb.uscourts.gov>>, the official website for the Bankruptcy Court), and served so as to be received no later than March 6, 2014 by: (i) Garfunkel Wild, P. C., 111 Great Neck Road, Great Neck, NY 11021 (Attn: Burton S. Weston, Esq., Afsheen A. Shah, Esq. and Adam T. Berkowitz, Esq.) (ii) the Office of the United States Trustee, 560 Federal Plaza, Suite 560 Long Island Fed. Courthouse Central Islip, NY 11722 (Attn: Al Dimino, Esq.); and (iii) counsel for the Creditors’ Committee, once appointed.

15. The terms of this Order shall be immediately effective and enforceable upon its entry pursuant to Bankruptcy Rule 6004(h).

16. The requirements set forth in Bankruptcy Rule 6004(a) are hereby waived.

17. Debtors shall serve a copy of this Order on all parties in interest by no later than **February 26, 2014**.

Dated: February 24, 2014
Central Islip, New York





Alan S. Trust
United States Bankruptcy Judge