

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10316 (\_\_\_\_)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN  
CRITICAL VENDORS AND ADMINISTRATIVE CLAIMHOLDERS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby file this motion (this “Motion”) for the entry of interim and final orders, substantially in the form attached hereto as Exhibit A (the “Interim Order”) and Exhibit B (the “Final Order,” and together with the Interim Order, the “Proposed Orders”), pursuant to sections 105(a), 363(b), 503(b)(9), 1107(a), and 1108 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”), authorizing, but not directing, the Debtors to pay, in the ordinary course of business, the prepetition fixed, liquidated, and undisputed claims of certain critical vendors (the “Critical Vendors”), subject to the conditions described herein (the “Critical Vendor Payments”). The facts and circumstances supporting this Motion are set forth in the concurrently-filed *Declaration of Donald Van der Wiel in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”). In further support of this Motion, the Debtors respectfully state as follows:

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

## **JURISDICTION AND VENUE**

1. The Court has 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 as of February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and, 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 Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent 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. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are sections 105(a), 363(b), 503(b)(9), 1107(a) and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004.

## **BACKGROUND**

3. On the date hereof (the “Petition Date”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No official committees have been appointed in these chapter 11 cases, and no request has been made for the appointment of a trustee or examiner.

4. Additional information regarding the Debtors’ business, capital structure and the circumstances leading to the filing of these chapter 11 cases is set forth in the First Day Declaration.

**RELIEF REQUESTED**

5. By this Motion, the Debtors seek entry of the Proposed Order, authorizing, but not directing, the Debtors, in their sole discretion, to make, in the ordinary course of business, Critical Vendor Payments to certain Critical Vendors that delivered goods and services to the Debtors before the Petition Date (the “Critical Vendor Claims”). The aggregate amount of Critical Vendor Payments made prior to the entry of the Final Order will not exceed \$200,000 (the “Interim Vendor Claims Cap”) and will not exceed \$265,000 (the “Vendor Claims Cap”) on a final basis, absent further court order. The Debtors propose making such prepetition payments to such entities that agree to supply goods and/or services postpetition to the Debtors according to the ordinary course trade terms (including pricing) that existed before the Petition Date, or on such other terms that are acceptable to the Debtors.

6. The Debtors also seek authority for banks and other financial institutions to receive, process, honor, and pay checks or electronic transfers used by the Debtors to pay the foregoing and to rely on the representations of such Debtors as to which checks are issued and authorized to be paid in accordance with this Motion and relief granted in connection herewith.

**A. The Critical Vendors**

7. In the ordinary course of business, the Debtors make payments to the Critical Vendors who supply dry ice essential to the Debtors’ ability to continue to provide services to customers of the Debtors’ medical logistics business.

8. The Debtors believe that payment of the Critical Vendor Claims is vital to the Debtors’ chapter 11 efforts. A failure to pay the Critical Vendor Claims would likely result in many of the Critical Vendors refusing to provide dry ice to the Debtors postpetition and may

force the Debtors, where it is even possible, to obtain such goods elsewhere at a higher price or in a quantity or quality that is insufficient to satisfy the Debtors' requirements.

9. The Debtors have examined the extent to which payment of the Critical Vendor Claims is necessary to avoid irreparable harm and to ensure that the Debtors have access to essential products on a postpetition basis. Specifically, the Debtors have reviewed their accounts payable and have undertaken a process to identify those vendors who are truly essential to the Debtors' operations. The Debtors consulted with appropriate members of their management team, with the assistance of the Debtors' professionals, to identify those vendors that are essential to the Debtors' operations using the following criteria: (i) whether the vendor in question is a "sole source" provider; (ii) if a vendor is not a sole source provider, whether the Debtors can engage alternative providers to adequately meet the needs of the Debtors' clients and fulfill the Debtors' mandates on a timely, cost-effective, and consistent basis; (iii) whether the Debtors have favorable pricing and other terms with the vendors that would be lost if the Debtors were to switch to a new vendor; and (iv) whether a vendor meeting the standards of (i), (ii), and (iii) is likely to refuse to continue providing goods or services postpetition if its prepetition claims are not paid. Pursuant to this analysis, the Debtors have determined that the Critical Vendors provide essential goods that justify the Debtors' payment of the Critical Vendor Claims.

10. In calculating the Vendor Claims Cap, the Debtors carefully assessed the universe of vendors satisfying the foregoing criteria and estimated the total amount of payments that might be necessary to ensure the continued supply of critical goods and services to the Debtors following the Petition Date.

11. As described in the First Day Declaration, the Debtors' business operations consists, in part, of their medical logistics support services which is run through Debtor BeavEx Incorporated's Guardian Medical Logistics Division. In connection with the medical logistics business, the Debtors require reliable and consistent deliveries of dry ice to assist with the safe transportation of certain customer medical samples. Any interruption in the supply of such services to the Debtors' customers, however brief, could jeopardize their client relationships and contracts and cause certain customers to attempt to shift business to the Debtors' competitors. The harm to the Debtors' estates of not having the services provided by the Critical Vendors would far exceed the cost of payment of the Critical Vendor Claims.

12. The Debtors' dry ice suppliers are Critical Vendors because the process for replacing these suppliers is extremely inefficient (if not impossible, for sole-source suppliers), both in terms of time and expense. Moreover, any delay caused by the need to find alternative service providers, where possible, may result in the destruction of the Debtors' customers medical samples. Because of the difficult (and, in certain cases, insurmountable) limitations on the Debtors' replacement options, the Debtors depend on the continuous supply of products from their existing supplier base.

13. In summary, payment of the Critical Vendor Claims will allow the Debtors to continue to receive the services of Critical Vendors, as well as eliminate the risk of the potential harm to the Debtors' customers. The Debtors, therefore, believe that, given the circumstances and practical realities, it is in the best interests of their estates and creditors to have the authority to satisfy the Critical Vendor Claims.

**B. Terms and Conditions for Payment of Critical Vendor Claims**

14. Subject to the Court's approval, the Debtors intend to pay the Critical Vendor Claims only to the extent necessary to preserve their business. The Debtors have designated a core group of employees and professionals who have experience in the Debtors' business, as well as the reorganization process, to review, assess and potentially recommend payments to the Critical Vendors.

15. The Debtors propose that any Critical Vendor Payments made pursuant to the Proposed Orders be subject to the following conditions:

a. The Debtors, in their sole discretion, shall determine which parties are entitled to payment under the Proposed Orders.

b. If a Critical Vendor accepts payment under the Proposed Orders, such party is deemed to have agreed to continue supplying goods to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors in the 12 months before Petition Date, or on such other favorable terms as the Debtors and the Critical Vendor may otherwise agree (the "Customary Trade Terms").

c. If a Critical Vendor accepts payment under the Proposed Orders and thereafter does not continue to provide goods or services to the Debtors on the Customary Trade Terms during the pendency of these chapter 11 cases, then (i) any payment on a prepetition claim received by such party shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, recoverable by the Debtors in cash upon written request and (ii) subject to subparagraph (e) below, upon recovery by the Debtors, any such prepetition claim shall be reinstated as if the payment had not been made, less the Debtors' reasonable costs in recovering such amounts;

d. Prior to making a payment to a party under the Proposed Orders, the Debtors may, in their sole discretion, settle all or part of the prepetition claims of such party for less than their face amount, without further notice or hearing to anyone except the Debtors' prepetition secured lenders; in any event, the Debtors may elect to only pay part of a prepetition claim under the authorization requested, leaving the remainder of the claim to be addressed pursuant to the provisions of the Bankruptcy Code; and

e. If the Debtors seek to recover payments under subparagraph (c) above, nothing shall preclude a party from contesting such treatment by making a written request (a "Request") to the Debtors to schedule a hearing before the court. If such a Request is made, the hearing on the Request will be the next scheduled hearing date not less than thirty (30) days after the Debtors received the Request, of which hearing the Debtors will provide notice to the

requesting party and other interested parties in accordance with the Bankruptcy Code and the orders of the court.

16. The Debtors also propose that, where applicable, all payments of Critical Vendor Claims shall be applied first to the Critical Vendor's claims for goods received by the Debtors within 20 days prior to the Petition Date. These claims are entitled, in many instances, to priority as administrative claims pursuant to section 503(b)(9) of the Bankruptcy Code. Accordingly, such payments will only affect the timing of the distribution, but not the amount, of the Critical Vendor Claims.

17. If a Critical Vendor accepts a Critical Vendor Payment on account of a prepetition obligation of the Debtors and thereafter fails to provide the Debtors with the requisite Customary Trade Terms or honor any other conditions to receipt of a Critical Vendor Payment, the Debtors seek authority to (a) treat any Critical Vendor Payment received by the Critical Vendor as an unauthorized postpetition transfer under section 549 of the Bankruptcy Code that the Debtors may (i) recover from the Critical Vendor in cash, services, or goods, and (ii) at the Debtors' option, apply as a credit against any outstanding postpetition claims held by such Critical Vendor, and (b) upon recovery of any Critical Vendor Payment under (i) or (ii) above, reinstate the prepetition claim of the Critical Vendor in the amount recovered by the Debtors, less the Debtors' reasonable costs and attorneys' fees incurred in recovering such amounts. In essence, the Debtors seek to return the parties to their respective positions immediately before entry of the Proposed Orders if a Critical Vendor refuses to supply the Debtors on Customary Trade Terms following payment of its Critical Vendor Claim.

18. Under the circumstances, the Debtors maintain that paying the Critical Vendor Claims is both necessary and essential to their ability to achieve their chapter 11 objectives and preserve value for their constituencies.

**BASIS FOR RELIEF**

**A. Payment of Critical Vendor Claims is Essential to the Debtors' Continued Operations During the Chapter 11 Cases**

19. As more particularly described in the First Day Declaration and briefly discussed above, the Debtors' business operations include the provision of medical logistics support services. The Debtors' ongoing business is dependent upon their ability to continue to provide excellent customer service, which, in turn, is dependent upon the Debtors' access to certain essential products. The Debtors believe that payment of the Critical Vendor Claims is vital to the Debtors' ability to maintain existing client relationships and, thus, to their effort to preserve and maximize value for all stakeholders.

20. The Debtors believe that some of their vendors and service providers will continue to do business with them after commencement of the chapter 11 cases because doing so would be mutually beneficial. In some cases, however, certain vendors may refuse to deliver services and products on reasonable price or credit terms absent payment of the prepetition claims, thereby effectively refusing to do business with the Debtors. Where Critical Vendors do so, the Debtors request authorization to pay the Critical Vendor Claims of such vendors, subject to the criteria discussed above, because payment of such claims is necessary to achieve their chapter 11 objectives and preserve value for their various constituencies.

**B. The Court May Allow Payment of Critical Vendor Claims Under Section 363 of the Bankruptcy Code**

21. Under section 363(c) of the Bankruptcy Code, a debtor is authorized to operate its business in the ordinary course of business, including entering into transactions to use, sell, or lease property of the estate. Section 363(b)(1) of the Bankruptcy Code empowers the bankruptcy court to allow a debtor to expend funds in the bankruptcy court's discretion outside the ordinary course of business. A debtor's decision to use, sell, or lease assets outside the



ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application).

22. Courts in this and other jurisdictions have relied on section 363(b)(1) to authorize the payment of prepetition claims held by vendors. *See, e.g., In re MPC Computers, LLC*, No. 08-12667 (PJW) (Bankr. D. Del. Nov. 10, 2008) (authorizing, pursuant to § 363, the payment of prepetition claims of some suppliers); *In re Conseco, Inc.*, No. 02-49672 (CAD) (Bankr. N.D. Ill. Jan. 14, 2003); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, 29 B.R. 391, 397 (S.D.N.Y. 1983) (district court affirmed bankruptcy court's decision under section 363 of the Bankruptcy Code authorizing contractor to pay prepetition claims of some suppliers who were potential lien claimants).

23. The business judgment rule is satisfied where “the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985), *appeal dismissed*, 3 F.3d 49 (2d Cir. 1993)). In fact, “[w]here the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). Courts have consistently and appropriately been loath to interfere with corporate decisions absent

a showing of bad faith, self-interest, or gross negligence, and will uphold a board's decisions as long as they are attributable to any "rational business purpose." *Integrated Res.*, 147 B.R. at 656.

24. Here, because the relief requested in this Motion is necessary to the continued operation and restructuring of the Debtors' businesses, the transactions between the Debtors and the Critical Vendors fall well within the parameters of section 363 of the Bankruptcy Code. In addition, the relief requested in this Motion contemplates payments to be made to Critical Vendors who agree to provide services and products on Customary Trade Terms. In that case, the transaction between the Debtors and such Critical Vendors is authorized by section 363 of the Bankruptcy Code as a sound exercise of the Debtors' business judgment because it will allow the Debtors to maintain and benefit from favorable trade terms.

25. The Critical Vendors' cessation of supplying the Debtors with products would drastically affect the Debtors' revenues, cash flows, and profitability. In addition, it is possible that the Debtors may not be able to fulfill obligations to their customers, which could potentially lead to customers asserting sizeable damage claims against the Debtors' estates to the detriment of the Debtors' other creditors. The Debtors assert that the amount of the Critical Vendor Claims pales in comparison to the likely damage to the Debtors' businesses should the relief requested herein not be granted. Not only would the Debtors' other creditors not be harmed by payment of the Critical Vendor Claims, but such creditors also would benefit from the Court's empowering the Debtors to make payments to the Critical Vendors so as to achieve a smooth transition into bankruptcy with minimal disruption to their operations. In light of these factors, payment of the Critical Vendor Claims is in the best interests of the Debtors' estates and creditors. Accordingly, even if payment of the Critical Vendor Claims is deemed to be outside the ordinary course of business, there is a sufficient business justification for such payments.

Thus, the Debtors respectfully submit that the Court should grant the requested relief under section 363 of the Bankruptcy Code.

**C. Payment of the Critical Vendor Claims is Authorized Under Sections 1107(a) and 1108 of the Bankruptcy Code**

26. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries “holding the bankruptcy estate and operating the business for the benefit of its 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.*

27. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.*; *see also In re Mirant Corp.*, 296 B.R. 427, 429-30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay claims “reasonably believe[d]” to be authorized under the *CoServ* test or whose payment was necessary “in the exercise of their business judgment . . . in order for [the d]ebtors to continue their respective businesses”). The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *CoServ*, 273 B.R. at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

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

*Id.*

28. Payment of the Critical Vendor Claims meets each element of the *CoServ* test. The Debtors believe that if they do not satisfy the Critical Vendor Claims, there is substantial risk of interruption to the Debtors' operations. Such interruption of the Debtors' operations could cost the Debtors' estates millions of dollars in lost current and future revenues. The harm and economic disadvantage that would stem from the failure of any of the Critical Vendors timely to provide the Debtors essential products is grossly disproportionate to the amount of the prepetition claims that would have to be paid in order to ensure the continued supply of critical goods to the Debtors. Finally, with respect to each Critical Vendor, the Debtors will examine the legal options short of payment of such creditors' prepetition claims and will pay such amounts only where they determine that there exists no practical or legal alternative to payment of the Critical Vendor Claims to avoid significant disruption of the Debtors' business operations. Therefore, payment of the Critical Vendor Claims is consistent with the Debtors' fiduciary duties as debtors in possession under sections 1107(a) and 1108 Bankruptcy Code.

**D. Section 105 of the Bankruptcy Code and the Doctrine of Necessity Support Payment of the Critical Vendor Claims**

29. The proposed payments of prepetition Critical Vendor Claims should be authorized pursuant to section 105 of the Bankruptcy Code and under the "doctrine of necessity." The Court's power to utilize the doctrine of necessity in chapter 11 cases derives from the Court's inherent equity powers and its statutory authority under section 105(a) of the Bankruptcy Code to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport Railway Co.*, in affirming the

authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See* 106 U.S. 286, 309 (1882).

30. The modern application of the doctrine of necessity is largely unchanged from the Court's reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry.*, 657 F.2d 570, 581–82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the continued operation of the [debtor] in serious jeopardy.”). More recent court decisions have observed that the doctrine of necessity recognizes the existence of the judicial power to authorize a debtor to pay pre-petition claims where such payment is essential to the debtor's continued operation. *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *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 NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.”). Thus, the doctrine of necessity also is an accepted component of modern bankruptcy jurisprudence. *See Just For Feet*, 242 B.R. at 826 (approving payment of key inventory suppliers' prepetition claims when such suppliers could destroy debtor's business by refusing to deliver new inventory on eve of debtor's key sales season); *In re Payless Cashways, Inc.*, 268 B.R. 543, 546–47 (Bankr. W.D. Mo. 2001) (authorizing payment of

critical prepetition suppliers' claims when such suppliers agree to provide postpetition trade credit); *see also In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994); *In re Ionosphere Clubs, Inc.*, 98 B.R. at 175–76. Indeed, the propriety of critical vendor relief was recently recognized by the Supreme Court. *See, e.g., Czyzewski v. Jevic Holding Corp.*, 137 S. Ct. 973, 985 (2017) (noting that payment of critical vendors, among other practices that differ from the priorities set forth in the Bankruptcy Code, are justified when they “enable a successful reorganization and make even the disfavored creditors better off” (citation omitted)).

31. As set forth above, maintaining access to the goods provided by the Critical Vendors is absolutely essential to the Debtors' restructuring efforts and is in the best interests of the Debtors' estates and creditors. Consistent with the acknowledgement of the Supreme Court in *Jevic Holding*, it will both “enable a successful reorganization” and make all creditors “better off.”

**E. Section 503(b)(9) of the Bankruptcy Code Supports Payment of Certain of the Critical Vendor Claims**

32. Furthermore, with respect to Critical Vendor Claims that arise from goods provided within 20 days of the petition date, the issue of payment proves to be mostly one of timing. Section 503(b)(9) of the Bankruptcy Code provides administrative expense treatment to claims arising from goods received by the Debtors in the last 20 days prior to the Petition Date. As a result, the Debtors would have to pay these Critical Vendor Claims in full under a plan, to the extent they fall within the scope of section 503(b)(9) of the Bankruptcy Code. *See* 11 U.S.C. § 1129(a)(9)(A). Accordingly, the relief requested merely affects the timing of such payment.

**F. The Court Should Authorize Applicable Banks to Honor Checks and Electronic Fund Transfers in Accordance with the Motion**

33. In connection with the foregoing, the Debtors respectfully request that the Court (a) authorize all applicable banks and other financial institutions (collectively, the

“Banks”) to receive, process, honor, and pay all checks and transfers issued by the Debtors in accordance with this Motion, without regard to whether any checks or transfers were issued before or after the Petition Date; (b) provide that all Banks may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion (such banks and other financial institutions having no liability to any party for relying on such representations by the Debtors provided for herein); and (c) authorize the Debtors to issue replacement checks or transfers to the extent any checks or transfers that are issued and authorized to be paid in accordance with this Motion are dishonored or rejected by the Banks.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

34. Pursuant to Bankruptcy Rule 6003, the Court may grant relief within 21 days after the filing of the petition regarding a motion to “use, sell, lease, or otherwise incur an obligation regarding property of the estate” only if such relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003(b). As described herein, the viability of the Debtors’ business, and ultimately the Debtors’ ability to maximize the value of the Debtors’ estates, are dependent upon the loyalty of their customers. The failure to pay the Critical Vendor Claims may place such loyalty at risk and irreparably harm the Debtors and their estates.

35. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

36. Pursuant to Bankruptcy Rule 6004(h), “[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 set forth throughout this Motion, any disruption in, among other things, the Debtors’ provision of services reliant on the goods provided by the Critical Vendors would be detrimental to the Debtors, their creditors, and their estates, and would impair their ability to optimize their business performance at this critical time as they begin the chapter 11 process.

37. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable to the Proposed Order.

**DEBTORS’ RESERVATION OF RIGHTS**

38. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption, or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice or claim on account of any Critical Vendor Claim. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court’s order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

**NOTICE**

39. Notice of this Motion has been provided to: (i) the Office of the United States Trustee for the District of Delaware; (ii) the Office of the United States Attorney for the District of Delaware; (iii) the Internal Revenue Service; (iv) the Debtors’ thirty (30) largest unsecured creditors on a consolidated basis; (v) counsel to the Debtors’ prepetition and proposed postpetition secured lender and (vi) the Debtors’ Banks. Notice of this Motion and any order



entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**CONCLUSION**

WHEREFORE, the Debtors request that the Court enter the Proposed Order, granting the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: Wilmington, Delaware  
February 18, 2019

YOUNG CONAWAY STARGATT & TAYLOR, LLP

*/s/ Donald J. Bowman, Jr.*

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*Proposed Counsel for the Debtors  
and Debtors in Possession*

**Exhibit A**

**Interim Order**

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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10316 (\_\_\_)

Jointly Administered

Ref. Docket No. \_\_\_\_\_

**INTERIM ORDER AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS  
OF CERTAIN CRITICAL VENDORS AND ADMINISTRATIVE CLAIMHOLDERS**

Upon consideration of the Motion of the above-captioned debtors and debtors in possession (collectively, the “Debtors”); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein; and this Court having determined that the relief sought in the Motion is in the best

<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

interests of the Debtors and their estates; 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 Debtors are authorized, but not directed, to pay on a timely basis, in accordance with past practices, the Critical Vendor Claims. The Debtors' payment of the Critical Vendor Claims shall not exceed \$200,000 (the "Interim Vendor Claims Cap") in the aggregate, unless otherwise ordered by this Court.
3. All payments to Critical Vendors shall be deemed to be first applied to the Critical Vendor's claims, if any, for goods received by the Debtors within 20 days prior to the Petition Date (it being understood that any such payments shall be subject to the Interim Critical Vendor Cap).
4. Payment of the Critical Vendor Claims shall be made under the following conditions:
  - a. The Debtors, in their sole discretion, shall determine which parties are entitled to payment under this Interim Order.
  - b. If a Critical Vendor accepts payment under this Interim Order, such party is deemed to have agreed to continue supplying goods to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors in the 12 months before Petition Date, or on such other favorable terms as the Debtors and the Critical Vendor may otherwise agree (the "Customary Trade Terms").
  - c. If a Critical Vendor accepts payment under this Interim Order and thereafter does not continue to provide goods or services to the Debtors on the Customary Trade Terms during the pendency of these chapter 11 cases, then (i) any payment on a prepetition claim received by such party shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, recoverable by the Debtors in cash upon written request and (ii) subject to subparagraph (e) below, upon recovery by the Debtors, any such prepetition claim shall be reinstated as if the payment had not been made, less the Debtors' reasonable costs in recovering such amounts;

d. Prior to making a payment to a party under this Interim Order, the Debtors may, in their sole discretion, settle all or part of the prepetition claims of such party for less than their face amount, without further notice or hearing to anyone except the Debtors' prepetition secured lenders; in any event, the Debtors may elect to only pay part of a prepetition claim under the authorization requested, leaving the remainder of the claim to be addressed pursuant to the provisions of the Bankruptcy Code; and

e. If the Debtors seek to recover payments under subparagraph (c) above, nothing shall preclude a party from contesting such treatment by making a written request (a "Request") to the Debtors to schedule a hearing before the court. If such a Request is made, the hearing on the Request will be the next scheduled hearing date not less than thirty (30) days after the Debtors received the Request, of which hearing the Debtors will provide notice to the requesting party and other interested parties in accordance with the Bankruptcy Code and the orders of the court.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (i) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (ii) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Interim Order are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens.

6. Any payment made pursuant to this Interim Order should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

7. A final hearing on the relief granted herein shall take place on \_\_\_\_\_, 2019 at \_\_:\_\_.m. (prevailing Eastern Time). Any party-in-interest objecting to the relief sought at the Final Hearing or the proposed Final Order shall file and serve

a written objection, which objection shall be served upon (i) the Debtors, 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339 (Attn: Donald Van der Wiel (dvanderwiel@beavex.com)); (ii) proposed counsel for the Debtors, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Joseph Barry, Matthew Lunn, and Donald J. Bowman, Jr. (emails: jbarry@ycst.com; mlunn@ycst.com; and dbowman@ycst.com)); (iii) counsel to the Debtors' prepetition secured lenders and proposed post-petition secured lender, Winston Strawn, LLP, 200 Park Avenue, New York, NY 10166 (Attn. Carey D. Schreiber, Esq. (email: cschreiber@winston.com)) and Ashby & Geddes, 500 Delaware Avenue, P.O. Box 1150, Wilmington, DE 19899 (Attn. Gregory Taylor, Esq. (email: [gtaylor@ashbygeddes.com](mailto:gtaylor@ashbygeddes.com))); and (iv) counsel to any statutorily appointed committee in these cases so as to be received no later than \_\_\_\_\_, 2019 at 4:00 p.m. (ET). If no objections to the entry of the proposed Final Order are timely filed, this Court may enter the proposed Final Order without further notice or a hearing.

8. The Banks on which checks are drawn or electronic payment requests made in payment of the obligations approved herein are authorized, upon the Debtors' request, to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order. Any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Interim Order.

9. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

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

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Interim Order in accordance with the Motion.

12. This Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Interim Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_

United States Bankruptcy Judge

**EXHIBIT B**

**Final Order**



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

In re:

BEAVEX HOLDING CORPORATION, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 19-10316 (\_\_\_)

Jointly Administered

Ref. Docket Nos. \_\_\_\_\_ & \_\_\_\_\_

**FINAL ORDER AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF  
CERTAIN CRITICAL VENDORS AND ADMINISTRATIVE CLAIMHOLDERS**

Upon consideration of the Motion of the above-captioned debtors and debtors in possession (collectively, the “Debtors”); and this Court having reviewed the Motion; and this Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012; and this Court having found that venue of these cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that it may enter a final order consistent with Article III of the United States Constitution; and it appearing that notice of the Motion has been given as set forth in the Motion and that such notice is adequate and no other or further notice need be given; and this Court having considered the First Day Declaration; and this Court having entered that certain *Interim Order Authorizing Debtors to Pay Prepetition Claims of Certain Critical Vendors and Administrative Claimholders* [Docket No. \_\_\_\_\_]; and this Court having determined that the legal and factual basis set forth in the Motion establish just cause for the relief granted herein;

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<sup>1</sup> The Debtors and the last four digits of their respective taxpayer identification numbers are as follows: BeavEx Holding Corporation (7740); BeavEx Acquisition, Inc. (5497); BeavEx Incorporated (7355); JNJW Enterprises, Inc. (4963); and USXP, LLC (2997). The headquarters for the above-captioned Debtors is located at 2120 Powers Ferry Road SE, Suite 300, Atlanta, GA 30339.

and this Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their estates; 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.
2. The Debtors are authorized, but not directed, to pay on a timely basis, in accordance with past practices, the Critical Vendor Claims. The Debtors' payment of the Critical Vendor Claims shall not exceed \$265,000 (the "Vendor Claims Cap") in the aggregate, unless otherwise ordered by this Court.
3. All payments to Critical Vendors shall be deemed to be first applied to the Critical Vendor's claims, if any, for goods received by the Debtors within 20 days prior to the Petition Date (it being understood that any such payments shall be subject to the Critical Vendor Cap).
4. Payment of the Critical Vendor Claims shall be made under the following conditions:
  - a. The Debtors, in their sole discretion, shall determine which parties are entitled to payment under this Final Order.
  - b. If a Critical Vendor accepts payment under this Final Order, such party is deemed to have agreed to continue supplying goods to the Debtors on the most favorable terms in effect between such Critical Vendor and the Debtors in the 12 months before Petition Date, or on such other favorable terms as the Debtors and the Critical Vendor may otherwise agree (the "Customary Trade Terms").
  - c. If a Critical Vendor accepts payment under this Final Order and thereafter does not continue to provide goods or services to the Debtors on the Customary Trade Terms during the pendency of these chapter 11 cases, then (i) any payment on a prepetition claim received by such party shall be deemed to be an unauthorized voidable postpetition transfer under section 549 of the Bankruptcy Code and, therefore, recoverable by the Debtors in cash upon written request and (ii) subject to subparagraph (e) below, upon recovery by the Debtors, any such prepetition claim shall be reinstated as if the payment had not been made, less the Debtors' reasonable costs in recovering such amounts;

d. Prior to making a payment to a party under this Final Order, the Debtors may, in their sole discretion, settle all or part of the prepetition claims of such party for less than their face amount, without further notice or hearing to anyone except the Debtors' prepetition secured lenders; in any event, the Debtors may elect to only pay part of a prepetition claim under the authorization requested, leaving the remainder of the claim to be addressed pursuant to the provisions of the Bankruptcy Code; and

e. If the Debtors seek to recover payments under subparagraph (c) above, nothing shall preclude a party from contesting such treatment by making a written request (a "Request") to the Debtors to schedule a hearing before the court. If such a Request is made, the hearing on the Request will be the next scheduled hearing date not less than thirty (30) days after the Debtors received the Request, of which hearing the Debtors will provide notice to the requesting party and other interested parties in accordance with the Bankruptcy Code and the orders of the court.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (i) an admission as to the validity, priority, or amount of any particular claim against a Debtor entity; (ii) a waiver of the Debtors' rights to dispute any particular claim on any grounds; (iii) a promise or requirement to pay any particular claim; (iv) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion; (v) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (vi) a waiver or limitation of the Debtors' rights under the Bankruptcy Code or any other applicable law; or (vii) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) satisfied pursuant to this Final Order are valid and the Debtors expressly reserve their rights to contest the extent, validity, or perfection or to seek avoidance of all such liens.

6. Any payment made pursuant to this Final Order should not be construed as an admission as to the validity, priority or amount of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

7. The Banks on which checks are drawn or electronic payment requests made in payment of the obligations approved herein are authorized, upon the Debtors' request, to receive, process, honor, and pay all such checks and electronic payment requests when presented

for payment, and all such Banks are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order. Any such Bank shall not have any liability to any party for relying on such representations by the Debtors, as provided for in this Final Order.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Final Order in accordance with the Motion.

10. This Court shall retain jurisdiction over any matters arising from or related to the implementation or interpretation of this Final Order.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

\_\_\_\_\_  
United States Bankruptcy Judge