

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS
AUTHORIZING (I) CONTINUED USE OF EXISTING CASH MANAGEMENT
SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK ACCOUNTS,
CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION
OF EXISTING DEPOSIT PRACTICES**

The above-captioned debtors and debtors in possession (the “**Debtors**”) hereby move the Court (the “**Motion**”) for entry of an interim order (the “**Interim Order**”) and a final order (the “**Final Order**”), pursuant to sections 105(a), 345, 363, and 364 of title 11 of the United States Code (the “**Bankruptcy Code**”); Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”); and Rule 2015-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing cash management system, including maintenance of existing bank accounts, checks, and business forms, (ii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices, and (iii) granting related relief. In support of the Motion, the Debtors rely upon the *Declaration of Adrian Kettering in Support of Chapter 11 Petitions and First Day Pleadings*, filed with the Court concurrently herewith (the “**First Day Declaration**”).² In further support of

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration.

the Motion, the Debtors, by and through their undersigned proposed counsel, respectfully represent:

JURISDICTION AND VENUE

1. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b). Under Local Rule 9013-1(f), the Debtors consent to entry of a final order under Article III of the United States Constitution. Venue of these cases and the Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

2. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 345, 363, and 364, and Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2.

BACKGROUND

A. General Background

3. On the date hereof (the “**Petition Date**”), each of the Debtors filed a voluntary petition in this Court commencing a case for relief and electing treatment under subchapter V of chapter 11 of the Bankruptcy Code (the “**Cases**”). The factual background regarding the Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of the Cases, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

4. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of the Cases pursuant to Bankruptcy Rule 1015(b). The Debtors continue to manage and operate their business as debtors in possession pursuant to

Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Cases and no committees have been appointed.

B. The Debtors' Cash Management System and Existing Bank Accounts

5. In the ordinary course of their business, the Debtors maintain a cash management system (the "**Cash Management System**") that is integral to the operation and administration of their business. The Cash Management System allows the Debtors to (i) monitor and control all of the Debtors' cash receipts and disbursements, (ii) identify the cash requirements of the Debtors, and (iii) transfer cash as needed to respond to the obligations of the Debtors. The Cash Management System is managed by the Debtors at their headquarters in Tualatin, Oregon where they oversee the administration of the various bank accounts to effectuate the collection, disbursement, and investment of cash. The Debtors' oversight ensures accurate cash forecasting and reporting and the monitoring of the collection and disbursement of funds to and from the Debtor Bank Accounts (as defined below).

6. As of the Petition Date, the Debtors maintain five bank accounts, which are described in further detail on the schedule attached hereto as Schedule 1³ and below (each a "**Debtor Bank Account**", and collectively, the "**Debtor Bank Accounts**"). The majority of the Debtor Bank Accounts are maintained at Umpqua Bank ("**Umpqua**") and the remainder of Debtor Bank Accounts are maintained at Bank of America ("**BOA**" and, together with Umpqua, the "**Banks**"). Specifically, the Debtor Bank Accounts are summarized as follows:

³ The Debtors believe, and have undertaken reasonable efforts to ensure, that Schedule 1 lists all of the bank accounts that comprise the Debtors' Cash Management System. In the event that any bank account has been inadvertently omitted from Schedule 1, the Debtors request that the relief sought by this Motion be deemed to apply to such account.

Account	Account Description
Master Checking Account (8034)	Primary centralized operating account. Customer payments and other receipts are deposited into this account and funds are transferred from this account via check and/or wire. This account primarily deals with the domestic operations.
Wire Account (8042)	Deposit account into which international customer wire payments and other wire deposits are received and funds are transferred from this account when wires are required.
Business Checking Account (4573)	Account used to process electronic batch deposits from credit card payments; for disbursements to ADP, which handles payroll for Debtors' employees; and to remit periodic payments to credit card.
Community Business Checking (1105)	Entity level operating account to satisfy entity specific cash needs.
Money Market Account (8067)	Investment account used for excess and/or reserve cash

7. As the foregoing overview reflects, the Cash Management System is simple but specifically designed to administer the Debtors' business and cannot be altered without significant disruption to the Debtors' business operations and material distraction to the Debtors' management. The Debtors, therefore, request that the Court authorize them to continue using the existing Cash Management System, and to move funds into, out of, and through the Cash Management System using the current methods in accordance with the agreements governing the Debtor Bank Accounts, including, without limitation, any prepetition cash management agreements, bank account terms and conditions, or treasury services agreements.

RELIEF REQUESTED

8. By this Motion, the Debtors seek entry of an Interim Order and a Final Order, substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, (i) authorizing, but not directing, the Debtors to continue to maintain and use their existing Cash Management

System, including maintenance of the Debtor Bank Accounts and existing checks and business forms, (ii) authorizing, but not directing, the Debtors to continue to maintain and use their existing deposit practices notwithstanding the provisions of Bankruptcy Code section 345(b), and (iii) authorizing and directing all banks with which the Debtors maintain accounts to continue to maintain, service, and administer such accounts and authorize third-party payroll and benefits administrators and providers to prepare and issue payment on behalf of the Debtors.

BASIS FOR RELIEF

A. The Debtors Should Be Authorized to Continue to Use Their Existing Cash Management System and the Debtor Bank Accounts

9. The Cash Management System is an ordinary course, customary and essential business practice, the continued use of which is essential to the Debtors' business operations during the Cases and their goal of maximizing value for the benefit of all parties in interest. To require the Debtors to adopt a new cash management system at this early and critical stage would be expensive, impose needless administrative burdens, and cause undue disruption. Any disruption in the collection of funds as currently implemented would adversely (and perhaps irreparably) affect the Debtors' ability to maximize estate value. Moreover, such a disruption would be wholly unnecessary because the Cash Management System provides a valuable and efficient means for the Debtors to address their cash management requirements. Historically, the Debtors have maintained the Bank Accounts at Umpqua and Bank of America. Umpqua is not on the United States Trustee's List of Authorized Depositories for bankruptcy cases filed in Region 3. However, upon information and belief Umpqua is an authorized depository bank within Region 15. Therefore, although Umpqua is not on the authorized list here in this District, the Debtors submit that Umpqua is a well-capitalized and financially stable institution insured by the FDIC and recognized as such by the Office of the United States Trustee. Moreover, other than the Money

Market Account, the Umpqua Bank Accounts hold a daily balance that does not exceed the applicable FDIC-insured amount. Thus, the Debtors believe that the funds deposited in the Bank Accounts are secure, and therefore the Debtors are in compliance with section 345 of the Bankruptcy Code regarding the Bank Accounts.

10. The Debtors maintain excess cash in the Money Market Account in accordance with prudent investment guidelines with the goal of maximizing yield and liquidity. The Debtors believe that “cause” exists to allow the Debtors to continue to invest in the Money Market Account which invests exclusively in securities that are backed by the full faith and credit of the United States. Requiring these small Debtors to hold such securities directly, rather than through an investment vehicle, does not result in any significant risk mitigation, but rather would result in exponential time and costs to transition at a time when the Debtors are already critically stretched. Similarly, it is difficult for the Debtors to meet the bond requirements of section 345(b) of the Bankruptcy Code without incurring considerable costs to the detriment of their estates.

11. Thus, for the aforementioned reasons, maintaining the existing Cash Management System without disruption is in the best interests of the Debtors, their estates, and all interested parties. Accordingly, the Debtors request that they be allowed to maintain and continue to use the Cash Management System, including maintenance of their existing Debtor Bank Accounts. To the extent that the Debtor Bank Accounts or the Money Market Account do not comply with section 345 of the Bankruptcy Code or any other requirements of the U.S. Trustee, the Debtors request that the Court waive any such noncompliance. The Debtors submit that “cause” exists for such a waiver because, among other things, (a) the banks in which the Debtor Bank Accounts and Money Market Account are held are highly rated and are federally chartered banks subject to supervision by federal banking regulators in the United States, (b) the Debtors retain the right to remove funds

held at the Banks and establish new bank accounts as needed, and (c) the burdens associated with satisfying the requirements of Bankruptcy Code section 345 are too great for these small Debtors without resulting in true risk elimination.

12. As part of the relief requested herein, and to ensure that their transition into chapter 11 is as smooth as possible, the Debtors seek an entry of interim and final orders authorizing the Debtors to (i) maintain and continue to use the Debtor Bank Accounts, including but not limited to those accounts listed on Schedule 1 hereto, in the same manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Debtor Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Debtor Bank Accounts, (iii) pay ordinary course bank fees in connection with the Debtor Bank Accounts, including prepetition fees, (iv) perform their obligations under the documents and agreements governing the Debtor Bank Accounts, and (v) for all purposes, treat the Debtor Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

13. If the relief requested herein is granted, the Debtors will implement appropriate mechanisms to ensure that no payments will be made on any debts incurred by the Debtors prior to the Petition Date, other than those authorized by this order of the Court. To prevent the possible inadvertent payment of prepetition claims against the Debtors, except those otherwise authorized by order of the Court, the Debtors will work closely with the Banks to ensure appropriate procedures are in place to prevent checks issued by the Debtors prepetition from being honored absent this Court's approval and to ensure that no third-party with automatic debit capabilities is able to debit amounts attributable to the Debtors' prepetition obligations.

14. The Debtors request that no Bank that implements such handling procedures and then honors a prepetition check or other item drawn on any account that is the subject of this Motion (i) at the direction of the Debtors to honor such prepetition check or item, (ii) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (iii) as a result of a good faith error made despite implementation of reasonable item handling procedures, be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item being honored post-petition. The Debtors believe that such flexibility accorded the Banks is necessary to induce them to continue providing cash management services to the Debtors.

15. The Debtors further request that the Banks be authorized to deduct from the appropriate Debtor Bank Accounts applicable fees and expenses (the “**Bank Fees and Expenses**”), and that no liens, if any, on any Debtor’ Bank Accounts take priority over the Bank Fees and Expenses except as set forth in any deposit agreements between the Debtors and the Banks.

16. The Debtors will also use their good faith efforts to cause Umpqua to execute a Uniform Depository Agreement in a form prescribed by the Office of the U.S. Trustee in Region 3 within thirty (30) days of the date of entry of a final order granting this Motion. Additionally, within fifteen (15) days of the date of entry of an Interim Order granting this Motion, the Debtors will (i) contact Bank of America, (ii) provide it with the Debtors’ employer identification numbers, and (iii) identify each of their accounts held there as held by a debtor in possession in a bankruptcy case.

17. In the interest of maintaining the continued and efficient operation of the Cash Management System during the pendency of the Cases, the Debtors request that the Banks be authorized and directed to continue to administer, service, and maintain the Debtor Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and

in the ordinary course (including making deductions for Bank Fees and Expenses), and, when requested by the Debtors in their sole discretion, to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date.

18. The Debtors further request that they be authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any of the Debtor Bank Accounts and opening any additional bank accounts following the Petition Date (the “**New Accounts**”) wherever the Debtors deem that such accounts are needed or appropriate and whether or not the banks in which the accounts are opened are designated approved depositories in the District of Delaware. Notwithstanding the foregoing, any New Accounts that the Debtors open will be at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to execute such an agreement, and any New Accounts that the Debtors open will be (i) with a bank that is organized under the laws of the United States of America or any state therein and that is insured by the FDIC, and (ii) designated a “Debtor in Possession” account by the relevant bank. The Debtors request that the relief sought by this Motion extend to any New Accounts and that any order approving this Motion provide that the New Accounts are deemed to be Debtor Bank Accounts that are similarly subject to the rights, obligations, and relief granted in such order. The Debtors will provide the U.S. Trustee, and the Subchapter V Trustee (to be appointed by the U.S. Trustee), with prompt notice of any Debtor Bank Accounts that they close or New Accounts that they open. In furtherance of the foregoing, the Debtors also request that the relevant Banks be authorized to honor the Debtors’ requests to open or close (as the case may be) such Debtors’ Bank Account(s) or New Account(s).

B. The Debtors Should Be Granted Authority to Continue to Use Existing Checks and Business Forms

19. Local Rule 2015-2(a) provides:

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

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

20. To minimize expenses to their estates, the Debtors seek authorization to continue using all checks substantially in the forms existing immediately prior to the Petition Date, without reference to the Debtors’ status as debtors in possession; provided, however, that in the event a Debtor generates new checks during the pendency of the Cases other than from its existing stock of checks, such checks will include a legend referring to the Debtors as a “Debtor in Possession.” The Debtors also seek authority to use all correspondence and other business forms (including, without limitation, letterhead, purchase orders, and invoices) without reference to the Debtors’ status as debtors in possession.⁴

21. Changing the Debtors’ existing checks, correspondence, and other business forms would be expensive, unnecessary, and burdensome to the Debtors’ estates. Further, such changes would disrupt the Debtors’ business operations and would not confer any benefit upon parties that deal with the Debtors. For these reasons, the Debtors request that they be authorized to use their

⁴ Although the operating guidelines established for a debtor in possession by the U.S. Trustee would require the Debtors to obtain and use new checks bearing the “Debtor in Possession” designation, the Debtors do not believe that such guidelines impose any limitation on the Debtors’ other correspondence and business forms. Nevertheless, out of an abundance of caution, the Debtors seek explicit authority to continue using their existing correspondence and business forms without reference to the Debtors’ status as debtors in possession.

existing check stock, correspondence, and other business forms without being required to place the label “Debtor in Possession” on any of the foregoing.

C. The Debtors Should Be Granted a Temporary Suspension of Certain Requirements of the U.S. Trustee Guidelines

22. The Debtors further request, pursuant to Bankruptcy Code sections 105(a) and 363, that this Court grant a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with (i) the Debtors’ existing practices under the Cash Management System, or (ii) any action taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Cases. To supervise the administration of the Cases, the U.S. Trustee has established certain operating guidelines for debtors in possession. These requirements (the “**UST Requirements**”) require chapter 11 debtors to, among other things: (i) close all existing bank accounts and open new debtor in possession bank accounts, (ii) establish one debtor in possession account for all estate monies required for the payment of taxes, including payroll taxes, (iii) maintain a separate debtor in possession account for cash collateral, and (iv) obtain checks for all debtor in possession accounts that bear (a) the designation “Debtor In Possession,” (b) the bankruptcy case number, and (c) the type of account. The UST Requirements are designed to clearly demarcate prepetition transactions and operations from post-petition transactions and operations, and to prevent the inadvertent post-petition payment of prepetition claims. As set forth above, the Debtors submit that (i) they are able to work with the Banks to ensure that this goal of separation between the prepetition and post-petition periods is observed, and (ii) enforcement of certain of these UST Requirements would disrupt the Debtors’ operations and impose an undue financial burden on the Debtors’ estates.

23. It would be onerous for the Debtors to meet the UST Requirement to close all existing Debtor Bank Accounts and open a new debtor in possession account. Indeed, this requirement would unnecessarily inconvenience the Debtors.

24. Further, it would be unnecessary and inefficient to require the Debtors to abide by the UST Requirement to establish specific debtor in possession accounts for tax payments (including payroll taxes) and to deposit in such accounts sufficient funds to pay any tax liability (when incurred) associated with the Debtors' payroll and other tax obligations. The Debtors can pay their tax obligations most efficiently from their existing accounts in accordance with their existing practices, and the U.S. Trustee will have wide latitude to monitor the flow of funds into and out of such accounts through required monthly operating reports. The creation of new debtor in possession accounts designated solely for tax obligations would be unnecessarily burdensome and inefficient.

25. In addition, it is unnecessary to require the Debtors to abide by the UST Requirement to establish specific debtor in possession accounts for cash collateral. As set forth in the First Day Declaration, filed concurrently herewith, no party has a security interest in the Debtors' cash or cash equivalents.

D. The Debtors Should Be Authorized to Continue Their Deposit Practices

26. As part of the Cash Management System, the Debtors routinely deposit funds into the Debtor Bank Accounts (the "**Deposit Practices**"). The Debtors request authorization to continue to deposit funds in accordance with the Deposit Practices under the Cash Management System, subject to any reasonable changes the Debtors may implement to the Cash Management System.

APPLICABLE AUTHORITY

A. The Bankruptcy Code Permits the Debtors to Continue to Use the Cash Management System and the Debtor Bank Accounts

27. Bankruptcy Code section 363(c)(1) authorizes a debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” 11 U.S.C. § 363(c)(1). The purpose of section 363(c)(1) is to provide a debtor in possession “flexibility to engage in ordinary transactions” required to operate its business without unneeded oversight by its creditors or the court. *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) (“Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate’s assets.”); *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007). The authority granted by Bankruptcy Code section 363(c)(1) extends to a debtor in possession’s continued use of its customary cash management system and, thus, supports the relief requested. *See, e.g., Charter Co. v. Prudential Ins. Co. Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (indicating that an order authorizing the debtor to employ a cash management system that was “usual and customary in the past” was “entirely consistent” with Bankruptcy Code section 363(c)(1)); *Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996) (included within the scope of Bankruptcy Code section 363(c) is a debtor’s ability to continue “routine transactions” necessitated by a debtor’s cash management system).

28. Moreover, Bankruptcy Code section 364(a) authorizes a debtor in possession to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and a hearing. *See* 11 U.S.C. § 364(a). This provision further supports the relief requested, and provides the Debtors with the ability, to the extent necessary, to obtain unsecured credit and incur unsecured debt in the ordinary operation of the Cash Management System.

29. Bankruptcy Code section 105(a) also authorizes this Court to permit the Debtors to continue to use the Cash Management System, including maintenance of their existing Debtor Bank Accounts. Bankruptcy Code section 105(a) vests in this Court the power to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The continuation of the Cash Management System, including the continued use of the Debtor Bank Accounts, is essential to the efficient administration of the Cases and to the Debtors’ efforts to maximize estate value for all parties in interest. Indeed, one court, in another context, has recognized that a centralized cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). Therefore, the relief requested is appropriate under Bankruptcy Code section 105(a).

30. Maintaining the Cash Management System and Debtor Bank Accounts without disruption is in the best interests of the Debtors, their estates, and all interested parties. Based on the foregoing, the Court should grant the Debtors the authority under Bankruptcy Code sections 363(c) and 105(a) to continue the collection, concentration, and disbursement of cash under their Cash Management System.

B. This Court Should Temporarily Suspend the UST Requirements to Permit the Debtors to Continue to Use the Cash Management System

31. The continuation of the Cash Management System, as requested in this Motion, is consistent with the Debtors’ authority to use property of their estates in the ordinary course of business pursuant to Bankruptcy Code section 363(c)(1). Accordingly, this Court should grant the Debtors a temporary suspension of the UST Requirements to the extent that such requirements conflict with the Debtors’ existing practices under the Cash Management System or any action

taken by the Debtors in accordance with any order granting this Motion or any other order entered in the Cases.

32. Moreover, compelling the Debtors to alter their current cash management practices and to modify the Cash Management System to comply with the UST Requirements would risk severe disruption to the Debtors' business and jeopardize the Debtors' ability to maximize value for all parties in interest. *Cf. In re Gaylord Container Corp.*, 1993 WL 188671, at *3, 13 (E.D. La. 1993) (adopting the bankruptcy court's findings of fact and conclusions of law, which included a finding that the banking requirements of the Office of the United States Trustee for the District of Louisiana "represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such rules placed on the debtor's treasury functions"). This factor alone justifies the relief that the Debtors are seeking. *See* 11 U.S.C. § 105(a) ("The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").

C. Bankruptcy Rule 6003 Has Been Satisfied and Bankruptcy Rule 6004 Should Be Waived

33. Certain isolated aspects of the relief requested herein may, if granted, be subject to Bankruptcy Rule 6003. Pursuant to Bankruptcy Rule 6003, a court may grant such relief if it is necessary to avoid immediate and irreparable harm. The Debtors submit that the facts set forth herein demonstrate that the relief requested is necessary to avoid immediate and irreparable harm to the Debtors and, thus, Bankruptcy Rule 6003 has been satisfied.

34. Additionally, to the extent that any aspect of the relief sought herein constitutes a use of property under Bankruptcy Code section 363(b), the Debtors seek a waiver of the fourteen-

day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is immediately necessary in order for the Debtors to be able to continue to operate their businesses and preserve the value of their estates. The Debtors thus submit that the requested waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h) is appropriate.

CONSENT TO JURISDICTION

35. Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent consent of the parties.

RESERVATION OF RIGHTS

36. 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 Bankruptcy Code section 365. Likewise, if this 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

37. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Subchapter V Trustee (to be appointed by the U.S. Trustee); (c) the parties included on the Debtors' consolidated list of twenty (20) largest unsecured creditors; (d) any party that has requested notice pursuant to Bankruptcy Rule 2002; (e) all parties entitled to notice pursuant to Local Rule 9013-1(m); and (f) the Banks (collectively, the "**Notice Parties**"). The Debtors submit that, under the circumstances, no other or further notice is required.

38. If the Court enters the Interim Order granting this Motion, the Debtors propose to serve notice of such entry on the Notice Parties. The notice will provide that any objections to the

relief granted in the Interim Order must be filed with the Court and served upon counsel for the Debtors no later than seven (7) days prior to the final hearing to be held on the Motion (the “**Objection Deadline**”). If an objection is timely filed and served prior to the Objection Deadline, such objection will be heard at the final hearing on the Motion. If no objections are timely filed and served, Debtors’ counsel will file a certification of counsel to that effect attaching a final form of order.

NO PRIOR REQUEST

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

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

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Dated: September 30, 2021
Wilmington, Delaware

Respectfully submitted,

POLSINELLI PC

/s/ Shanti M. Katona

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*Proposed Counsel to the Debtors and
Debtors in Possession*

SCHEDULE 1**Schedule of Debtor Bank Accounts**

Financial Institution	Address	Account Number (Last 4 Digits)	Account Holder	Account Type
Umpqua Bank	Headquarters: 1 SW Columbia Street, Portland, Oregon 97258 Local Branch: 18757 SW Martinazzi Ave Suite 100 Tualatin, OR 97062	(8034)	MECTA Corporation	Master Checking Account
Umpqua Bank	Headquarters: 1 SW Columbia Street, Portland, Oregon 97258 Local Branch: 18757 SW Martinazzi Ave Suite 100 Tualatin, OR 97062	(8042)	MECTA Corporation	Wire Account
Umpqua Bank	Headquarters: 1 SW Columbia Street, Portland, Oregon 97258 Local Branch: 18757 SW Martinazzi Ave Suite 100 Tualatin, OR 97062	(8067)	MECTA Corporation	Main Street Money Market Account
Bank of America	16209 Bryant Rd Lake Oswego, OR 97035	(4573)	MECTA Corporation	Business Checking Account

Umpqua Bank	Headquarters: 1 SW Columbia Street, Portland, Oregon 97258 Local Branch: 18757 SW Martinazzi Ave Suite 100 Tualatin, OR 97062	(1105)	Balance Point LLC	Community Business Checking Account
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EXHIBIT A

Proposed Interim Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket No. __

**INTERIM ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK
ACCOUNTS, CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION OF
EXISTING DEPOSIT PRACTICES**

Upon the motion (the “**Motion**”)² of the Debtors for entry of an interim order (this “**Interim Order**”), pursuant to Bankruptcy Code sections 105(a), 345, 363, and 364, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their Cash Management System, including maintenance of the Debtor Bank Accounts and existing checks and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or this Interim Order, and (iii) authorizing, but not directing, the Debtors to continue to maintain and use their Deposit Practices; and the Court having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

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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 the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; 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 to continue to use their existing Cash Management System, as described in the Motion, and shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as modified by this Interim Order. The Debtors shall maintain records with respect to all transactions and transfers, including but not limited to intercompany transfers between the Debtors, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions, and shall include a detailed accounting of intercompany transactions between the Debtors in the Debtors' monthly operating reports. Absent further order of this Court, the Debtors shall not make any transfers of cash or property to any of their non-Debtor affiliates.
3. The Debtors are authorized to (i) continue to use the Debtor Bank Accounts in existence as of the Petition Date that are set forth on Schedule 1 to the Motion, in the same manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Debtor Bank Accounts in the ordinary course by all

usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Debtor Bank Accounts, (iii) pay ordinary course bank fees in connection with the Debtor Bank Accounts, including any fees arising prior to the Petition Date, (iv) perform their obligations under the documents and agreements governing the Debtor Bank Accounts, and (v) for all purposes, treat the Debtor Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

4. For accounts held by the Debtors at Umpqua which is currently not party to a Uniform Depository Agreement for the District of Delaware with the U.S. Trustee for Region 3, the Debtors shall use their good faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of date of this Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned bank(s) are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

5. Within fifteen (15) days of entry of this Interim Order, the Debtors shall (i) contact Bank of America, (ii) provide it with the Debtors' employer identification numbers, and (iii) identify each of the Debtor Bank Accounts held there as being held by a debtor in possession in a bankruptcy case and provide the applicable bankruptcy case number.

6. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them. Notwithstanding the foregoing, once a Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; provided, however, that with respect to checks that the

Debtors or their agents print themselves, the Debtors shall begin printing the “Debtor in Possession” legend and the bankruptcy case number on such items within ten (10) days of the date of entry of this Interim Order.

7. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System, including their payroll processor. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third-party providers.

8. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Interim Order or other order of this Court, the Banks are authorized and directed to continue to administer, service, and maintain the Debtor Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions for Bank Fees and Expenses), and, when requested by the Debtors to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; provided, however, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored.

9. The Banks shall implement reasonable handling procedures designed to effectuate the terms of this Interim Order. No Bank that implements such handling procedures and then honors a prepetition check or item drawn on any account that is the subject of this Interim Order at the direction of the Debtors to honor such prepetition check or item shall be deemed to be liable

to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Interim Order.

10. The Debtors are authorized to implement such reasonable changes, consistent with this Interim Order, to the Cash Management System as the Debtors may deem necessary or appropriate. The Debtors may close any of the Debtor Bank Accounts, or open any New Accounts wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement, and any New Account that the Debtors open shall be (i) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor in Possession” account by the relevant bank. The New Accounts are deemed to be Debtor Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Interim Order. The Banks are authorized to honor the Debtors’ requests to open or close (as the case may be) such Debtor Bank Account(s) or New Account(s). In the event that the Debtors open or close any Debtor Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and the Debtors shall give fifteen (15) days’ prior notice to the U.S. Trustee, the Subchapter V Trustee (to be appointed by the U.S. Trustee), and counsel to any official committee of unsecured creditors appointed in these Cases before opening or closing accounts. This period may be shortened by agreement of the aforementioned parties.

11. Nothing in the Motion or this Interim Order, or the Debtors’ payment of any claims pursuant to this Interim Order, shall be deemed or construed as: (i) an admission as to the validity of any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors’ rights to

dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any third party.

12. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Interim Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003.

14. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Interim Order shall be effective and enforceable immediately upon entry hereof.

15. The Debtors are hereby granted an extension of time to comply with the requirements of 11 U.S.C. § 345(b) for a period of thirty (30) days from the date of this Order, without prejudice to the Debtors' rights to seek a further waiver.

16. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Interim Order.

17. The final hearing to consider the entry of a final order granting the relief requested in the Motion shall be held on _____, 2021, at _____.m. Prevailing Eastern Time.

18. Any objection to the entry of a final order granting the relief requested in the Motion shall be filed with the Court and served on, no later than seven (7) days prior to the commencement of the final hearing, (a) MECTA Corporation, 19799 SW 95th Avenue, Suite B, Tualatin, Oregon

97062 (Attn: Adrian Kettering); (b) proposed counsel to the Debtors, Polsinelli PC, 222 Delaware Avenue, Suite 1101, Wilmington, Delaware 19801, Attn: Shanti M. Katona (skatona@polsinelli.com); (c) the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, Attn: Joseph J. McMahon, Jr. (joseph.mcmahon@usdoj.gov); and (d) the Subchapter V Trustee (to be appointed by the U.S. Trustee).

19. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Interim Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT B

Proposed Final Order

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

In re:

Balance Point LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

Re: Docket No. __

**FINAL ORDER AUTHORIZING (I) CONTINUED USE OF EXISTING CASH
MANAGEMENT SYSTEM, INCLUDING MAINTENANCE OF EXISTING BANK
ACCOUNTS, CHECKS, AND BUSINESS FORMS, AND (II) CONTINUATION OF
EXISTING DEPOSIT PRACTICES**

Upon the motion (the “**Motion**”)² of the Debtors for entry of a final order (this “**Final Order**”), pursuant to Bankruptcy Code sections 105(a), 345, 363, and 364, Bankruptcy Rules 6003 and 6004, and Local Rule 2015-2, (i) authorizing, but not directing, the Debtors to continue to maintain and use their Cash Management System, including maintenance of the Debtor Bank Accounts and existing, checks and business forms, (ii) granting the Debtors a temporary suspension of certain bank account and related requirements of the U.S. Trustee to the extent that such requirements are inconsistent with the Debtors’ practices under their Cash Management System or other actions described in the Motion or this Final Order, and (iii) authorizing, but not directing, the Debtors to continue to maintain and use their Deposit Practices; and the Court having reviewed the Motion, the First Day Declaration, and the Interim Order entered on _____, 2021; and the Court having jurisdiction to consider the Motion and the relief

¹ The Debtors in these subchapter V cases, along with the last four digits of each Debtor’s federal tax identification number, are Balance Point LLC (5908) and MECTA Corporation (8275). The Debtors’ mailing address is 19799 SW 95th Avenue, Suite B, Tualatin, Oregon 97062.

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

requested therein in accordance with 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; the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that the Debtors consent to entry of a final order under Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; 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. All objections to the entry of this Final Order, to the extent not withdrawn or settled, are overruled.
3. The Debtors are authorized to continue to use their existing Cash Management System, as described in the Motion and shall maintain detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as modified by this Final Order. The Debtors shall maintain records with respect to all transactions and transfers, including but not limited to intercompany transfers between the Debtors, so that all transactions can be readily ascertained, traced, properly recorded, and distinguished between prepetition and postpetition transactions, and shall include a detailed accounting of intercompany transactions between the Debtors in the Debtors' monthly operating reports. Absent further order of this Court, the Debtors shall not make any transfers of cash or property to any of their non-Debtor affiliates.

4. The Debtors are authorized to (i) continue to use the Debtor Bank Accounts in existence as of the Petition Date that are set forth on Schedule 1 to the Motion, in the same manner and with the same account numbers, styles, and document forms as are currently employed, (ii) deposit funds in and withdraw funds from the Debtor Bank Accounts in the ordinary course by all usual means, including checks, wire transfers, drafts, and electronic fund transfers or other items presented, issued, or drawn on the Debtor Bank Accounts, (iii) pay ordinary course bank fees in connection with the Debtor Bank Accounts, including any fees arising prior to the Petition Date, (iv) perform their obligations under the documents and agreements governing the Debtor Bank Accounts, and (v) for all purposes, treat the Debtor Bank Accounts as accounts of the Debtors in their capacities as debtors in possession.

5. The Debtors shall have (i) contacted Bank of America, (ii) provided it with each of the Debtors' employer identification numbers, and (iii) identified each of the Debtor Bank Accounts as being held by a debtor in possession in a bankruptcy case and provided the case number.

6. For accounts held by the Debtors at Umpqua Bank, the Debtors have used their good faith efforts to cause it to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of date of the Interim Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event that the aforementioned bank(s) are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved.

7. Pursuant to Local Rule 2015-2(a), the Debtors are authorized to continue to use their existing checks, correspondence, and other business forms without alteration or change and without the designation "Debtor in Possession" or a bankruptcy case number imprinted upon them.

Notwithstanding the foregoing, once a Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtor in Possession" and the corresponding bankruptcy case number on all checks; provided, however, that with respect to checks that the Debtors or their agents print themselves, the Debtors shall have begun printing the "Debtor in Possession" legend and the bankruptcy case number on such items.

8. The Debtors are authorized to continue to utilize all third-party providers necessary for the administration of their Cash Management System, including their payroll processor. In addition, the Debtors are authorized, but not directed, to pay all postpetition amounts due to such third-party providers.

9. *Nunc pro tunc* to the Petition Date, and subject to the terms of this Final Order or other order of this Court, the Banks are authorized and directed to continue to administer, service, and maintain the Debtor Bank Accounts as such accounts were administered, serviced, and maintained prepetition, without interruption and in the ordinary course (including making deductions for Bank Fees and Expenses), and, when requested by the Debtors, to honor any and all checks, drafts, wires, electronic fund transfers, or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising on or after the Petition Date; provided, however, that unless otherwise ordered by the Court, no checks, drafts, electronic funds transfers (excluding any electronic funds transfer that the Banks are obligated to settle), or other items presented, issued, or drawn on the Debtor Bank Accounts on account of a claim against the Debtors arising prior to the Petition Date shall be honored.

10. The Banks shall implement reasonable handling procedures designed to effectuate the terms of this Final Order. No bank that implements such handling procedures and then honors a prepetition check or item drawn on any account that is the subject of this Final Order at the

direction of the Debtors to honor such prepetition check or item shall be deemed to be liable to the Debtors or their estates on account of such prepetition check or item being honored postpetition or otherwise in violation of this Final Order.

11. The Debtors are authorized to implement such reasonable changes, consistent with this Final Order, to the Cash Management System as the Debtors may deem necessary or appropriate. The Debtors may close any of the Debtor Bank Accounts, or open any New Accounts wherever the Debtors deem that such accounts are needed or appropriate. Notwithstanding the foregoing, the Debtors shall open such New Account(s) at banks that have executed a Uniform Depository Agreement with the U.S. Trustee, or at such banks that are willing to immediately execute such an agreement and any New Account that the Debtors open shall be (i) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC, and (ii) designated a “Debtor in Possession” account by the relevant bank. The New Accounts are deemed to be Debtor Bank Accounts and are similarly subject to the rights, obligations, and relief granted in this Final Order. The Banks are authorized to honor the Debtors’ requests to open or close (as the case may be) such Debtor Bank Account(s) or New Account(s). In the event that the Debtors open or close any Debtor Bank Account(s) or New Account(s), such opening or closing shall be timely indicated on the Debtors’ monthly operating reports and the Debtors shall give fifteen (15) days’ prior notice to the U.S. Trustee, the Subchapter V Trustee (to be appointed by the U.S. Trustee), and counsel to any official committee of unsecured creditors appointed in these Cases before opening or closing accounts. This period may be shortened by agreement of the aforementioned parties.

12. Nothing in the Motion or this Final Order, or the Debtors’ payment of any claims pursuant to this Final Order, shall be deemed or construed as: (i) an admission as to the validity of

any claim or lien against the Debtors or their estates, (ii) a waiver of the Debtors' rights to dispute any claim or lien, (iii) an approval or assumption of any agreement, contract, or lease pursuant to Bankruptcy Code section 365, (iv) an admission of the priority status of any claim, whether under Bankruptcy Code section 503(b)(9) or otherwise, or (v) a modification of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any third party.

13. Neither the provisions contained herein, nor any actions or payments made by the Debtors pursuant to this Final Order, shall be deemed an admission as to the validity of the underlying obligation or a waiver of any rights the Debtors may have to dispute such obligation on any ground that applicable law permits.

14. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003.

15. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Final Order shall be effective and enforceable immediately upon entry hereof.

16. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Final Order.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation and/or interpretation of this Final Order.

Dated: _____, 2021
Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE