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Proposed Counsel to the Debtors and Debtors in Possession

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
INSIGHT HEALTH SERVICES)	Case No. 10-[_____] (____)
HOLDINGS CORP., <u>et al.</u> , ¹)	
)	
Debtors.)	(Joint Administration Requested)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: InSight Health Services Holdings Corp. (0028); InSight Health Services Corp. (2770); Comprehensive Medical Imaging Centers, Inc. (6946); Comprehensive Medical Imaging, Inc. (2473); InSight Health Corp. (8857); Maxum Health Services Corp. (5957); North Carolina Mobile Imaging I LLC (9930); North Carolina Mobile Imaging II LLC (0165); North Carolina Mobile Imaging III LLC (0251); North Carolina Mobile Imaging IV LLC (0342); North Carolina Mobile Imaging V LLC (0431); North Carolina Mobile Imaging VI LLC (0532); North Carolina Mobile Imaging VII LLC (0607); Open MRI, Inc. (1529); Orange County Regional PET Center - Irvine, LLC (0190); Parkway Imaging Center, LLC (2858); and Signal Medical Services, Inc. (2413). The location of the Debtors' corporate headquarters and the Debtors' service address is: 26250 Enterprise Court, Suite 100, Lake Forest, California 92630.

**DEBTORS' MOTION FOR ENTRY OF AN
ORDER AUTHORIZING, BUT NOT DIRECTING, PAYMENT OF
UNIMPAIRED CLAIMS IN THE ORDINARY COURSE OF BUSINESS**

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) hereby move the Court, pursuant to this motion (this “Motion”), for the entry of an order, substantially in the forms attached hereto as Exhibit A, authorizing, but not directing, the Debtors to pay claims that are unimpaired by the *Debtors’ Prepackaged Joint Chapter 11 Plan of Reorganization* (the “Plan”), filed contemporaneously herewith, in the ordinary course of business and granting related relief as is just and proper. In support of this Motion, the Debtors respectfully state as follows:²

Jurisdiction

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.
3. The statutory bases for the relief requested herein are sections 105(a), 363, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”). Further support for the relief set forth herein is provided by the *Amended Procedural Guidelines for Prepackaged Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of New York*, General Order M-387, dated November 24, 2009 (“General Order M-387”).

² The facts and circumstances supporting this Motion are set forth in the Declaration of Keith S. Kelson of InSight Health Services Holdings Corp. (I) in Support of Debtors’ Chapter 11 Petitions and First Day Motions and (II) Pursuant to Local Bankruptcy Rule 1007-2 (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.

Background

4. The Debtors and their affiliates are a leading diagnostic medical imaging services provider that own and operate a network of 62 fixed-site imaging centers and 104 mobile facilities in more than 30 states. Through their imaging centers and mobile facilities, the Debtors provide magnetic resonance imaging, ultrasound, x-ray and other diagnostic imaging services that generate representations of internal anatomy used by physicians for the diagnosis of certain medical conditions.

5. Through a prior restructuring, the Debtors converted their subordinated unsecured debt into common equity and, thereby, reduced their debt service costs and preserved liquidity. The Debtors believed, at that time, that they would be able to maintain competitive operations without the need for further deleveraging. However, as with other businesses and individuals, the significant economic downturn of 2008 and 2009, the effects of which are still felt today, reduced demand for the Debtors' services, making it necessary for the Debtors to further restructure their debt obligations.

6. Beginning in the fall of 2010, the Debtors engaged in discussions with their revolving loan agent and major senior secured noteholders regarding a consensual debt restructuring. Prior to filing these chapter 11 cases, the Debtors successfully negotiated and obtained agreement from their major creditor constituents to the restructuring and exchange embodied in their prepackaged chapter 11 plan, filed contemporaneously herewith.

7. The proposed prepackaged plan converts all of the Debtors' senior secured notes into new common equity, eliminating more than \$290 million of debt. The plan also leaves the Debtors' general unsecured creditors unimpaired and provides them with a full recovery on their general unsecured claims. In connection with receiving their plan distribution, the senior

secured noteholders will convey warrants to acquire two percent of the new common stock exercisable when the enterprise value reaches a certain threshold to the Debtors' existing equity holders.

8. The Debtors launched solicitation of their plan prior to filing these chapter 11 cases to holders of the senior secured notes — the only class of claims or interests entitled to vote on the plan. As of the time of filing these chapter 11 cases, senior secured noteholders holding over two-thirds of the outstanding amount of the notes have voted to accept the plan. The Debtors expect to obtain further acceptance of the plan by the proposed December 27, 2010 voting deadline and anticipate confirming the plan expeditiously.

9. On the date hereof (the "Petition Date"), each of the Debtors filed a petition with the Court under chapter 11 of the Bankruptcy Code to effectuate the prepackaged plan, enhance liquidity and solidify their long-term growth prospects and operating performance. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated. Concurrently with the filing of this Motion, the Debtors have requested procedural consolidation and joint administration of these chapter 11 cases.

Relief Requested

10. By this Motion, the Debtors seek the authority, but not direction, to pay claims that are unimpaired under the Plan (each, an "Unimpaired Claim") to the extent such payments come due in the ordinary course of business. In addition, the Debtors request authority, but not direction, to use commercially reasonable efforts to condition payment to each holder of an Unimpaired Claim (each, an "Unimpaired Claimant") on such Unimpaired Claimant's agreement

to continue supplying goods or services to the Debtors during these chapter 11 cases on terms that are no worse than the best terms the Debtors were able to receive from the Unimpaired Claimant in the 180 days prior to the Petition Date (“Trade Terms”).

11. The Unimpaired Claimants provide the Debtors with a variety of goods and services which may include, but are not limited to: diagnostic equipment and related maintenance, repair and upgrade services; information technology and billing services; medical imaging supplies and related services; advertising and marketing; general office supplies, equipment and services necessary to the Debtors’ business operations; and other general operational expenses. The Debtors are not hereby seeking to give priority to so-called “critical vendors.” Rather, the Debtors are seeking to pay the holders of claims consistent with the spirit of the Plan, which proposes to pay trade and other ordinary course creditors in full. In accordance with General Order M-387, the Debtors are proposing that the Court authorize aggregate payments in an amount of up to \$4.5 million, subject to the Debtors’ right to request authority to make additional payments.

12. Additionally, the Debtors request that the Court provide them with the flexibility to deal with emergency situations. If any Unimpaired Claimant accepts payment pursuant to an order granting the relief requested in this Motion and thereafter does not continue to provide goods or services during the pendency of these chapter 11 cases, the Debtors request that (a) any payment on account of a prepetition claim received by such Unimpaired Claimant may be deemed to be an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request and (b) upon recovery by the Debtors, any prepetition claim of such Unimpaired Claimant shall be reinstated as if the payment had not been made. If there exists an outstanding postpetition balance due from the Debtors to such Unimpaired Claimant, the Debtors

may elect to recharacterize and apply any payments made pursuant to an order granting the relief requested in this Motion to such outstanding postpetition balance and the Unimpaired Claimant will be required to repay immediately to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise.

13. The Debtors submit that authority to satisfy the Unimpaired Claims as provided herein will not create an imbalance of their cash flows because the majority of these obligations have customary payment terms and are not payable immediately. Based on past practice over the preceding twelve months, the Debtors disburse approximately \$20.6 million per month on account of such claims to operate their business in the ordinary course. Cash held by the Debtors, the cash generated in the ordinary course of their business and the proceeds of the Debtors' proposed postpetition financing, will provide sufficient liquidity for payment of the Unimpaired Claims.

Basis for Relief

A. Payment of the Unimpaired Claims Is Essential to the Debtors' Reorganization Efforts.

14. The Plan is the product of arm's length and productive negotiations between the Debtors and their secured noteholders to match the Debtors' capital structure with the Debtors' existing operating environment and prospects. The de-leveraging contemplated by the Plan will provide the Debtors with the financial flexibility necessary to maximize the profitability of their present and future business operations. Notably, all of the claims of the Debtors' several unsecured creditors will be paid in full under the Plan, enabling the Debtors to maintain operational continuity and fully realize the opportunities created by an appropriate capital structure. The Debtors' secured noteholders who have voted in favor of the Plan and the

Debtors' proposed postpetition lenders recognize the need for the Debtors to continue to honor their obligations to necessary vendors and avoid disruption to the Debtors' businesses.

15. The Debtors' immediate ability to maintain operational continuity and the continued support of their customers and vendors during these chapter 11 cases is critical. Any disruption to the Debtors' ordinary course of business, including the Debtors' payment cycle, could significantly impede the Debtors' restructuring. As discussed further below, given the specialized nature of the Debtors' operations, many, if not all, of the Unimpaired Claimants, including diagnostic equipment, equipment maintenance, specialty chemical and technology vendors are essential to their ongoing operations.

1. The Diagnostic Equipment Vendors.

16. As discussed in the First Day Declaration, the Debtors do not provide health care services, but instead, provide diagnostic imaging services to those who do, namely, (a) hospitals, physician groups and other healthcare service providers through their wholesale services business segment and (b) patients (through such patients' doctors or insurance providers) or third party payors, such as Medicare, Medicaid, insurance companies and health maintenance organizations through their retail services business segment. For the fiscal year 2010, these two business segments together comprised nearly 99% of the Debtors' revenues (approximately 50% and 49% of the Debtors' revenues are from the wholesale services and retail services business segments, respectively). As such, the ability of the Debtors to obtain and maintain diagnostic equipment necessary to perform diagnostic imaging and provide interpretation services for individual patients is integral to the Debtors' operations.

17. As of the Petition Date, the Debtors owned or leased over 220 diagnostic imaging systems, which include MRI, Open MRI, PET, PET/CT, CT and other systems. New and

improved systems, however, are continually entering the market and the Debtors are constantly evaluating their mix of diagnostic equipment in response to changes in technology and to market overcapacity. A new diagnostic system typically costs between \$500,000 and \$2.5 million. When new systems are purchased, the Debtors typically pay cash (as credit is usually unavailable due to the Debtors' prior bankruptcy in 2007), with a portion paid at the time of purchase and the remainder paid upon installation, after accounting for any trade-in value. In the ordinary course of business, the Debtors constantly purchase or lease new equipment, improve current equipment through upgrades and dispose of or trade-in old equipment to meet market demands. As the Debtors' industry is highly competitive and fragmented, the Debtors' ability to react to market demand quickly is paramount. Therefore, any restrictions to the Debtors' ability to change their mix of equipment, either through purchase/lease or upgrade, could significantly damage their business to the detriment of their estates and creditors.

18. Significantly, there are only a handful of diagnostic equipment manufacturers, including General Electric Healthcare, Hitachi Medical Systems, Siemens Medical Systems, Toshiba American Medical Systems and Philips Medical Systems (the "Equipment Providers") and other vendors that supply ancillary goods (such as imaging film) and provide certain services necessary for the day-to-day operation of the diagnostic equipment (together with the Equipment Providers, collectively, the "Diagnostic Equipment Vendors"). The Debtors currently own equipment manufactured by all of the Equipment Providers. The Debtors enter into individual purchase agreements with certain of the Diagnostic Equipment Vendors for each piece of equipment or batch of supplies they acquire and do not have long-term purchase agreements in place with many of the Diagnostic Equipment Vendors. Accordingly, given the concentrated number of Diagnostic Equipment Vendors and the importance of this equipment to the Debtors'

business, it is important that the Debtors maintain good working relationships with the Diagnostic Equipment Vendors to ensure that they have continued access to the diagnostic imaging systems and related supplies and services that are required by the market at any given time. Without the relief requested herein, the Diagnostic Equipment Vendors could refuse to sell the Debtors essential equipment on customary terms or require full payment upfront, severely affecting the Debtors' liquidity. Moreover, certain Diagnostic Equipment Vendors could withhold or delay installation of critical equipment that has already been partially paid for without assurances that the Debtors are authorized to pay the remainder of their invoice once such equipment is installed.

19. In addition, because certain of the diagnostic equipment used by the Debtors emits various levels of radiation, the Debtors' equipment is regulated and regularly tested by certain state safety agencies. As such, the Debtors rely on certain third parties to provide specialized consulting services associated with obtaining certain licenses and accreditations. These consultants are highly specialized physicists and are critical to the Debtors' business. Without them, the Debtors may not be able to meet state regulations as equipment certifications expire. Moreover, because the Debtors operate in 30 states, they use a single national consulting service, with which they have had a long standing relationship, for all their diagnostic equipment. If the Debtors were forced to find alternative consulting services, they may be required to find local consultants in each of the geographies in which they operate which would add significant expenses and delay to their operations.

20. The Debtors generally do not have long term procurement contracts with the Diagnostic Equipment Vendors or have contracts that can be terminated at will and must maintain good relationships with them. As of the Petition Date, the Debtors estimate that

approximately \$228,000 is payable to the Diagnostic Equipment Vendors that will come due during the course of these chapter 11 cases.

2. The Diagnostic Chemical Vendors.

21. The Debtors also rely on three vendors that provide certain chemicals (or specialized services related to such chemicals) specifically designed to be used with diagnostic imaging equipment to assist the diagnostic process (collectively, the “Diagnostic Chemical Vendors”). Without these specialized chemicals, the Debtors would not be able to create certain diagnostic images for their customers. Specifically, these chemicals, sometimes called radiopharmaceuticals, are used in the field of nuclear medicine as tracers in the diagnosis and treatment of many diseases, including cancer as well as other diseases of the brain, bones and various internal organs. Radiopharmaceuticals are typically administered orally or intravenously prior to imaging. Once inside the body, the radiopharmaceuticals attach themselves to the targeted tumor or organ and can be imaged by diagnostic equipment such as a PET or CT imager. Radiopharmaceuticals are highly specialized products and are only distributed by the handful of Diagnostic Chemical Vendors. Accordingly, if the Diagnostic Chemical Vendors refuse to provide necessary goods to the Debtors during these chapter 11 cases, it could be a significant burden for the Debtors to locate alternate sources of these substances at favorable prices, in sufficient quantities and with the required quality to operate their business safely, efficiently and without interruption. As of the Petition Date, the Debtors estimate that approximately \$474,000 is payable to the Diagnostic Chemical Vendors that will come due during the course of these chapter 11 cases.

3. Technology Services Providers.

22. The Debtors also utilize a number of third parties who provide specialized technology services to companies in the medical equipment industry (the “Technology Services Providers”). These third parties provide the Debtors with services specific to the diagnostic imaging business such as image storage services, coding and transcription services and custom billing services. The services and technology provided by the Technology Services Providers are proprietary and cannot be obtained from another source. Moreover, their technology has been integrated into the Debtors’ operations and switching providers could cause a severe disruption to their business. For instance, if the Debtors were forced to use another technology provider, the Debtors would need to locate another provider, shut down operations at certain locations to install the new technology platform and retrain certain of their employees to use the new technology. Such a disruption could last days if not weeks and result in a loss of revenue and customer goodwill. As of the Petition Date, the Debtors estimate that approximately \$147,000 is payable to the Technology Services Providers that will come due during the course of these chapter 11 cases.

4. The Lien Claimants.

23. The Debtors routinely transact business with a number of other third parties (collectively, the “Lien Claimants”) who can assert liens against or relating to the Debtors and their property if the Debtors fail to pay for the goods or services rendered. The Lien Claimants perform various services for the Debtors, including the construction and renovation of fixed-site diagnostic centers, the maintenance of mobile diagnostic centers and the maintenance and implementation of upgrades for diagnostic systems.

24. Non-payment of the amounts owed to the Lien Claimants may result in many of the Lien Claimants having a right to assert and perfect mechanics', materialmen's or artisans' liens (collectively, the "Mechanics' Liens") against the Debtors' fixed or mobile sites and/or diagnostic equipment, notwithstanding the automatic stay under section 362 of the Bankruptcy Code. Indeed, pursuant to section 362(b)(3) of the Bankruptcy Code, the act of perfecting such Mechanics' Liens and similar liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay. Under section 546(b) of the Bankruptcy Code, a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection." 11 U.S.C. § 546(b)(1)(A).

25. As a result, certain Lien Claimants may refuse to perform their ongoing obligations under their existing agreements with the Debtors, including installation, servicing and warranty obligations. Additionally, the existence and perfection of these Mechanics' Liens could possibly place the Debtors out of compliance under their various leases and other obligations. The Debtors estimate that payments on account of prepetition Lien Claimants will not exceed approximately \$530,000. As of the petition date, six of the Debtor's mobile diagnostic imaging sites are currently being repaired and are possessed by certain Lien Claimants. These multi-million dollar mobile units and their revenue generating value greatly outweigh the amounts owed to the Lien Claimants.

B. The Requested Relief is Consistent with Applicable Authority in this Jurisdiction.

1. This Court May Authorize the Relief Requested as a Valid Exercise of the Debtors' Fiduciary Duties.

26. The Debtors, operating their business as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, are fiduciaries "holding the bankruptcy

estate[s] and operating the business for the benefit of [their] creditors and (if the value justifies) equity owners.” In re CoServ, L.L.C., 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” Id.; see also In re Smart World Techs., LLC, 423 F.3d 166, 175 (2d Cir. 2005) (“As fiduciary, the debtor bears the burden of ‘maximizing the value of the estate’”) (quoting Commodity Futures Trading Comm’n v. Weintraub, 471 U.S. 343, 352 (1985)).

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.” CoServ, 273 B.R. at 497. 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.” Id.

28. As described in the First Day Declaration, in light of the highly specialized nature of the Debtors’ business and the relatively concentrated number of suppliers that can supply the Debtors with the goods and services they need to operate, the Debtors’ ability to avoid potentially significant business disruption can only be achieved if the Debtors are granted the authority to pay Unimpaired Claims as requested herein. As described above, non-payment of certain of the Unimpaired Claimants could cost the Debtors’ estates millions of dollars in lost revenues. Under the Plan, the Unimpaired Claims will be satisfied in full. Thus, the proposed relief only seeks to alter the timing, and not the amount, paid on account of the Unimpaired Claims.

2. Payment of the Unimpaired Claims Is in the Best Interests of the Debtors' Estates and Warranted Under the Doctrine of Necessity.

29. Under section 363(b)(1) of the Bankruptcy Code, a bankruptcy court has the authority, after notice and a hearing, to authorize a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s ability to utilize property of the estate outside the ordinary course of business is governed by the business judgment standard. See In re Lionel Corp., 722 F.2d 1063, 1070 (2d Cir. 1983); see also In re Johns-Manville Corp., 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (“Where the debtor articulates a reasonable basis for its business decisions . . . courts will generally not entertain objections to the debtor’s conduct.”); In re G.S. Distribution, Inc., 331 B.R. 552, 559 (Bankr. S.D.N.Y. 2005) (discussing the “business judgment” standard). Hence, section 363(b)(1) authorizes the payment of prepetition claims where the Debtors have determined, in their business judgment, that such payments would preserve or increase the value of the Debtors’ estates. See In re Ionosphere Clubs, Inc., 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“Section 363(b) gives the court broad flexibility in tailoring its orders to meet a wide variety of circumstances.”).

30. Section 105(a) of the Bankruptcy Code empowers the Court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). A bankruptcy court’s use of its equitable powers to “authorize the payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.” In re Ionosphere Clubs, Inc., 98 B.R. at 175. A court may authorize the payment of prepetition claims under section 105(a) of the Bankruptcy Code if such payment is “essential to the continued operation of the debtor.” In re Just for Feet, Inc., 242 B.R. 821, 825 (D. Del. 1999). The uninterrupted supply of goods and services on customary trade terms and the continued support of the Unimpaired Claimants are imperative to the ongoing operations and

viability of the Debtors. Accordingly, the relief requested herein is consistent with the paramount goal of chapter 11—“facilitating the continued operation and rehabilitation of the debtor. . . .” Ionosphere Clubs, 98 B.R. at 176.

31. The “doctrine of necessity” or the “necessity of payment” rule has long been recognized as precedent within the Second Circuit. See id. Today, the rationale for the necessity of payment rule—the rehabilitation of a debtor’s reorganization cases—is “the paramount policy and goal of Chapter 11.” Id.; see also In re Just For Feet, 242 B.R. at 826 (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); Mich. Bureau of Workers’ Disability Comp. v. Chateaugay Corp. (In re Chateaugay Corp.), 80 B.R. 279, 287 (S.D.N.Y. 1987) (authorizing payment of prepetition worker’s compensation claims on grounds that the fundamental purpose of reorganization and equity powers of bankruptcy courts “is to create a flexible mechanism that will permit the greatest likelihood of survival of the debtor and payment of creditors in full or at least proportionately”); 2 COLLIER ON BANKRUPTCY, ¶ 105.02[4][a] (16th ed.) (discussing cases in which courts have relied on the “doctrine of necessity” or the “necessity of payment” rule to pay prepetition claims immediately).

32. This flexible approach is particularly critical where a prepetition creditor—here, the Unimpaired Claimant—provides vital goods or services to a debtor that would be unavailable if the debtor did not satisfy its prepetition obligations. In In re Structurlite Plastics Corp., the bankruptcy court stated that “a bankruptcy court may exercise its equity powers under § 105(a) [of the Bankruptcy Code] to authorize payment of pre-petition claims where such payment is necessary to ‘permit the greatest likelihood of survival of the debtors and payment of creditors in full or at least proportionately.’” 86 B.R. 922, 931 (Bankr. S.D. Ohio 1988). The court explained

that “a *per se* rule proscribing the payment of pre-petition indebtedness may well be too inflexible to permit the effectuation of the rehabilitative purposes of the [Bankruptcy] Code.” Id. at 932.

33. The Debtors respectfully submit that the relief requested herein is in the best interest of their estates, their creditors and their customers. Payment of the Unimpaired Claims in the ordinary course of business will ensure that the Debtors’ operations suffer only minimal disturbance as the Debtors rapidly implement a capital structure consistent with their present opportunities and future prospects. It is the good faith business judgment of the Debtors that the Unimpaired Claims must be paid in the ordinary course of business to maintain the value of the business as a going concern and to avoid jeopardizing the prepackaged Plan.

34. As set forth above, the Debtors are not seeking authority to pay all their Unimpaired Claims immediately. The Debtors seek to pay such undisputed amounts as they come due in the ordinary course of the Debtors’ business and on terms consistent with the Debtors’ prepetition practices. In light of the prepackaged nature of these chapter 11 cases, the Debtors expect to emerge from chapter 11 on an expedited basis. Thus, approval of this Motion merely affects the timing of such payments and not the ultimate recovery of any creditors. The Plan—a product of arm’s length, good faith negotiations—is based on the primary negotiating parties’ own desire to minimize disruption in the Debtors’ business and maximize its enterprise value by providing full payment to the Unimpaired Claimants. These parties recognize that payment of the Unimpaired Claims in the ordinary course of business is necessary to preserve the value of the Debtors’ business, and will ease the Debtors’ administrative burden during the limited period pending confirmation.

35. Indeed, the Southern District of New York has formally incorporated such a motion into its prepackaged bankruptcy guidelines for first-day motions. See General Order M-387 § VI.C.16. In the context of prepackaged and prearranged bankruptcy cases, where prepetition claims are to be paid in full pursuant to a plan, courts in this jurisdiction and others have routinely authorized the current payment of unimpaired claims pending confirmation of the plan. See, e.g., In re Penton Bus. Media Holdings, Case No. 10-10689 (AJG) (Bankr. S.D.N.Y. Feb. 11, 2010); In re CIT Group Inc., Case No. 09-16565 (ALG) (Bankr. S.D.N.Y. Nov. 23, 2009); In re Charter Commc'ns, Inc., Case No. 09-11435 (JMP) (Bankr. S.D.N.Y. Apr. 15, 2009); see also In re Source Interlink Cos., Inc., Case No. 09-11424 (KG) (Bankr. D. Del. Apr. 29, 2009); In re Masonite Corp., Case No. 09-10844 (PJW) (Bankr. D. Del. Mar. 17, 2009).³

3. Certain of the Unimpaired Claims Are Already Accorded Priority.

36. Certain of the claims sought to be paid herein may be entitled to priority or are secured claims. As discussed above certain claims held by Lien Claimants could be secured by liens on the Debtors' property. In addition, certain of the claims for goods delivered to the Debtors prepetition are entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code. Section 503(b)(9) provides administrative priority for the "value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor's business." 11 U.S.C. § 503(b)(9). As claims entitled to administrative priority, such claims must be paid in full as a condition to confirmation of a chapter 11 plan. See 11 U.S.C. § 1129(a)(9)(A). Consequently, payment on account of claims entitled to priority pursuant to section 503(b)(9) of the Bankruptcy

³ Because of the voluminous nature of the orders cited herein and in paragraph 35 hereof, they are not attached to the Motion. Copies of these orders are available on request of the Debtors' counsel.

Code will only accelerate the relief to which claimants may already be entitled to under the Bankruptcy Code. Conversely, the Debtors' failure to pay these claims could cause significant concerns among the Debtors' vendors regarding the Debtors' prospects for continuing to operate as a going-concern during these chapter 11 cases. Moreover, the Bankruptcy Code does not prohibit a debtor from paying such claims prior to confirmation. Indeed, the timing of such payments lies squarely within the discretion of the Court. See In re Global Home Prods., LLC, No. 06-10340, 2006 WL 3791955, at *3 (Bankr. D. Del. Dec. 21, 2006).

37. In this case, the Debtors' ongoing ability to obtain goods from their suppliers is critical to their survival and necessary to preserve the value of their estates. Absent payment of these claims—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the parts necessary to keep their diagnostic equipment in good repair and functional. Failure to honor these claims in the ordinary course of business may also cause the Debtors' vendor base to withhold support for the Debtors during the chapter 11 process. Such vendors could accelerate or eliminate favorable trade terms. Needless to say, such costs and distractions could impair the Debtors' ability to stabilize their operations at this critical juncture to the detriment of all stakeholders.

No Waiver of Rights

38. Nothing contained in this Motion is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' right to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Order is not intended to be construed and should not be construed

as an admission as to the validity of any claim or a waiver of the Debtors' rights subsequently to dispute such claim.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

39. To implement the foregoing successfully, the Debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

Motion Practice

40. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York.

Notice

41. The Debtors have provided notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of New York; (b) the entities listed on the Consolidated List of Creditors Holding the 50 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the agent for the Debtors' prepetition secured revolving loan and proposed postpetition secured lenders; (d) the indenture trustee for the Debtors' secured floating rate notes; (e) counsel to the ad hoc group of certain holders of the Debtors' secured floating rate notes; (f) the Internal Revenue Service; and (g) the Securities and Exchange Commission. In light of the nature of the relief requested, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

42. No prior motion for the relief requested herein has been made to this or any other court.

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WHEREFORE, the Debtors respectfully request entry of an order, substantially in the form attached hereto as Exhibit A, respectively, (a) authorizing, but not directing, the Debtors to pay Unimpaired Claims in the ordinary course of business and (b) granting such other further relief as is just and proper.

New York, New York

Dated: December 10, 2010

/s/ Edward O. Sassower

James H.M. Sprayregen, P.C.

Edward O. Sassower

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Proposed Counsel to the Debtors and
Debtors in Possession

EXHIBIT A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	Chapter 11
)	
INSIGHT HEALTH SERVICES)	Case No. 10-[_____] (____)
HOLDINGS CORP., <u>et al.</u> , ¹)	
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Debtors.)	(Joint Administration Requested)

**ORDER AUTHORIZING, BUT NOT DIRECTING, PAYMENT OF
UNIMPAIRED CLAIMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) authorizing (a) the payment of Unimpaired Claims in the ordinary course of business and upon the First Day Declaration; it appearing that the relief requested is in the best interests of the Debtors’ estates, their creditors and other parties in interest; the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); venue being proper before this court pursuant to 28 U.S.C. §§ 1408 and 1409; notice of

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, include: InSight Health Services Holdings Corp. (0028); InSight Health Services Corp. (2770); Comprehensive Medical Imaging Centers, Inc. (6946); Comprehensive Medical Imaging, Inc. (2473); InSight Health Corp. (8857); Maxum Health Services Corp. (5957); North Carolina Mobile Imaging I LLC (9930); North Carolina Mobile Imaging II LLC (0165); North Carolina Mobile Imaging III LLC (0251); North Carolina Mobile Imaging IV LLC (0342); North Carolina Mobile Imaging V LLC (0431); North Carolina Mobile Imaging VI LLC (0532); North Carolina Mobile Imaging VII LLC (0607); Open MRI, Inc. (1529); Orange County Regional PET Center - Irvine, LLC (0190); Parkway Imaging Center, LLC (2858); and Signal Medical Services, Inc. (2413). The location of the Debtors’ corporate headquarters and the Debtors’ service address is: 26250 Enterprise Court, Suite 100, Lake Forest, California 92630.

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

the Motion having been adequate and appropriate under the circumstances; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to pay the Unimpaired Claims in the ordinary course of business as they become due and payable, including Unimpaired Claims held by (a) Diagnostic Equipment Vendors; (b) Diagnostic Chemical Vendors; (c) Technology Services Providers; and (d) Lien Claimants; provided that aggregate payments under this Order shall not exceed \$4.5 million, without prejudice to the Debtors' right to seek authority to make additional payments.
3. The Debtors are authorized, but not directed, to use commercially reasonable efforts to condition payment to each Unimpaired Claimant on such Unimpaired Claimant's agreement to continue supplying goods or services to the Debtors during these chapter 11 cases on terms that are no worse than the best terms the Debtors were able to receive from the Unimpaired Claimant in the 180 days prior to the Petition Date.
4. If any Unimpaired Claimant accepts payment authorized pursuant on account of an Unimpaired Claim and thereafter does not continue to provide goods or services on Trade Terms, then (a) any payment on account of a prepetition claim received by such Unimpaired Claimant may be deemed to be an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request and (b) upon recovery by the Debtors, any prepetition claim of such Unimpaired Claimant shall be reinstated as if the payment had not been made. If there exists an outstanding postpetition balance due from the Debtors to such Unimpaired Claimant, the Debtors may elect to recharacterize and apply any payments made pursuant to an order granting the relief requested in this Motion to such outstanding postpetition balance and

the Unimpaired Claimant may be required to repay immediately to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise.

5. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized and directed to receive, process, honor and pay all such checks and electronic payment requests when presented for payment, and that all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order.

6. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to Unimpaired Claims in the event checks or electronic payment requests are dishonored or rejected.

7. Nothing in the Motion or this Order, shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtors or an approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code.

8. Nothing in the Motion or this Order shall be deemed either a grant of administrative expense priority status to, or authority to pay, any amounts that are disputed by the Debtors.

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

10. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such motion and the requirements of Bankruptcy Rule 6004(a) and the local rules of the Court are satisfied by such notice.

11. Notwithstanding Bankruptcy Rules 6004(h), 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

New York, New York

Date: _____, 2010

United States Bankruptcy Judge