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

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In re:

FEDERATION EMPLOYMENT AND GUIDANCE  
SERVICE INC. d/b/a FECS,<sup>1</sup>

Chapter 11  
Case No. 15-\_\_\_\_\_ ( )

Debtor.

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**DEBTOR'S MOTION FOR ORDER AUTHORIZING CONTINUED  
USE OF THE DEBTOR'S (I) CASH MANAGEMENT SYSTEM; (II) BANK  
ACCOUNTS; AND (III) BUSINESS FORMS; AND (IV) GRANTING A LIMITED  
WAIVER OF SECTION 345 INVESTMENT AND DEPOSIT REQUIREMENTS**

Federation Employment and Guidance Service, Inc. d/b/a FECS ("**FECS**" or the "**Debtor**"), as debtor and debtor-in-possession in this chapter 11 case (the "**Chapter 11 Case**"), by and through its proposed attorneys, Garfunkel Wild, P.C., hereby moves (the "**Motion**") for entry of an Order Authorizing Continued Use of the Debtor's Cash Management System, Bank Accounts and Business Forms and Granting a Limited Waiver of Section 365 Investment and Deposit Requirements, substantially in the form of Exhibit A hereto. In support thereof, the Debtor, by and through its proposed undersigned counsel, respectfully represent as follows:

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4000.

**SUMMARY OF RELIEF REQUESTED**

1. Prior to the commencement of this case, FECS maintained a cash management system (the "**Cash Management System**"), consisting of a series of bank and other investment accounts (the "**Bank Accounts**") through which the Debtor collected deposits and made disbursements in the ordinary course of its operations. The Debtor's Bank Accounts include, among others, those maintained as disbursement accounts, payroll accounts and receipt accounts, investment accounts as well as various accounts designated for specific client related programs. The Debtor routinely deposits, withdraws, and otherwise transfers funds to, from and between its respective Bank Accounts by various methods including, checks, automated clearing house transactions, electronic funds transfers and direct deposits.

2. As further explained below, the Cash Management System ensures the Debtor's ability to efficiently monitor and control cash receipts and disbursements. Closing the existing bank accounts and opening new accounts at the outset of this case would unnecessarily threaten the Debtor's continued operations and would not only be costly and disruptive, but could threaten the viability of the Debtor's Chapter 11 case. Indeed, absent the relief requested herein, the continued viability of the Debtor's more than 300 programs would be undermined, which is especially precarious given that the Debtor is responsible for ensuring the continued payment of rent, salary and other expenses for many of its clients, putting the Debtor's client's safety and welfare at risk. Moreover, disruption of the Cash Management System will ultimately cost the estate significant administrative losses which it is ill equipped to sustain at this critical juncture.

3. To ensure a smooth transition into chapter 11 with minimal disruption, and to aid in the Debtor's efforts to complete these proceedings successfully and rapidly the Debtor seeks a waiver of the requirement under the U.S. Trustee Guidelines that the prepetition bank accounts

be closed and new postpetition bank accounts be opened. The Debtor further requests that the bank accounts be deemed debtor-in-possession accounts and that their maintenance and continued use be authorized in the same manner and with the same account numbers, styles and business forms as those employed during the prepetition period. Accordingly, by this Motion, the Debtor seeks entry of an order, pursuant to sections 105(a), 363 and 364 of title 11, the United States Code (as amended, the “**Bankruptcy Code**”), authorizing continued use: (a) of the existing Cash Management Systems, including a limited waiver of the investment and deposit guidelines of section 345 of the Bankruptcy Code, (b) existing bank accounts and (c) business forms.

#### **JURISDICTION AND VENUE**

4. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this case and this Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). The statutory predicate for the relief sought herein is Bankruptcy Code section 105(a), 363 and 364.

#### **BACKGROUND**

5. On the date hereof (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code.

6. The Debtor remains in possession of its assets and continues to manage its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. A detailed description of the Debtor’s business and the reasons for the filing of this Chapter 11 Case is set forth in the Affidavit of Kristin Woodlock Pursuant to Local Rule 1007 and in

Support of First Day Motions (the "**Woodlock Affidavit**"), which the Debtor filed concurrently herewith and which is incorporated as if fully set forth herein by reference.

7. No trustee, examiner or committee of creditors has yet been appointed in this case.

**The Debtor's Bank Accounts and Cash Management System**

8. As of the Petition Date, the Debtor maintained Bank Accounts at several Federal Deposit Insurance Corporation ("**FDIC**") insured banking institutions (the "**Banks**")<sup>2</sup> which included various operating, payroll and disbursement accounts, as well as certain investment accounts at other financial institutions. A list of the Bank Accounts is attached hereto as Exhibit B and incorporated herein by reference. The movement of funds through the cash management system is detailed below.

9. The Cash Management System utilized by the Debtor is similar to those commonly employed by other large not for profit organizations and is critical to its ongoing operations and the success of this Chapter 11 case. Maintenance of the existing Cash Management System will permit the uninterrupted flow of necessary operating funds, minimize operating costs and ensure client safety is not compromised due to an inability to access funds. It will also allow the Debtor to trace receipts and disbursements and efficiently manage its liquid assets. Indeed, forcing the Debtor to employ new cash management systems could cause delay, confusion, jeopardize its financing and flow of funds, diminish the prospects for a successful conclusion to this chapter 11 case, disrupt payroll, and place a further strain on the Debtor's

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<sup>2</sup> The FDIC insured Banks are JP Morgan Chase Bank, N.A., and TD Bank, N.A., Bank of America, N.A.

relationships with its vendors. Clearly, these relationships must be maintained if the Debtor is to be given the opportunity to successfully operate in this Chapter 11 Case.

10. Interruption of the Cash Management System is especially precarious because the Debtor is responsible for ensuring the continued payment of rent, salary and other expenses for many of its clients. If the Debtor was required to change its bank accounts, it would likely result in mass confusion for a segment of the population ill equipped to handle such matters, and in many instances could put the safety and welfare of the Debtor's clients at risk. In sum, requiring the Debtor to establish a new, segregated cash management structure at such an early and critical stage of this case would be expensive, disruptive and create unnecessary administrative difficulties.

#### **Cash Management System**

11. The Cash Management System consists of a general operating account, a payroll account, a disbursement account as well as various client related accounts, among others. FECS receives payments for services from both governmental and non-governmental payors into its general operating account (the "**Operating Account**"). All operating checks and wires are issued from the accounts payable controlled disbursement account. On a bi-weekly basis, the amounts required to fund payroll for employees not paid by direct deposit are wired from the Operating Account into a payroll account. In addition, the Debtor has several investment accounts holding securities and the proceeds of the liquidation of such securities. Certain of the funds maintained in the investment accounts constitute donor restricted funds.

12. FECS also maintains accounts for the receipt of social security benefits, food stamp benefits, and other client related services (which are not property of the Debtor's estate) as

well as a client payroll account. For example, FECS collects social security payments, as well as certain other miscellaneous funds, on behalf of clients in FECS' residential programs which are deposited into an account at Bank of America for the exclusive benefit of such clients. Those funds are then used in connection with the payment of client bills, personal expenses and other assorted client related expenses. Periodic transfers are also made back to the Debtor's Operating Account to cover payments due from residents. While ultimately under the Debtor's control funds in these client related accounts do not constitute property of the Debtor's estate unless and until they are transferred to the Debtor on account of services rendered by the Debtor.

**Outstanding Prepetition Checks**

13. The Debtor has instructed the Debtor's Banks to stop payment on all outstanding checks issued to vendors or other trade creditors prior to the Petition Date on account of prepetition debts or liabilities, with the exception of (i) those checks to employees for wages and or employee benefits, as described more fully in the Motion For Order (I) Authorizing Payment of Prepetition Wages, Employee Benefits and Expense Reimbursement, (II) Authorizing And Directing Banks To Honor Checks With Respect Thereto, and (III) Approving Payment Of Postpetition Wages and Benefits, filed contemporaneously herewith (the "**Wage Authorization Motion**") and (ii) payments required to be made by the Debtor in connection with the maintenance of its existing insurance programs, as more fully described in the Motion of Debtor and Debtor-in-Possession, Pursuant to Sections 105(A) and 363(B) of the Bankruptcy Code for an Order Authorizing the Debtor to (I) Continue Its Existing Insurance Programs and Related Agreements, and (II) Pay Certain Prepetition Insurance Premiums, Claims and Related Expenses, also filed contemporaneously herewith ("**Insurance Continuation Motion**").

**The Debtor's Business Forms**

14. In the ordinary course of its business, the Debtor utilizes hundreds of different business forms that are in most instances, specifically tailored for the Debtor in order to streamline various client programs. These business forms include, but are not limited to, billing, collection and governmental payor request forms, requests for service forms, managed care forms and other HIPAA-related forms (collectively referred to as the "**Business Forms**"). Many of these Business Forms are standardized and preprinted and cannot be replicated or modified by the Debtor. Moreover, the Debtor only intends to operate for a short period of time after the commencement of this case and, thus, any requirement on the part of the Debtor to revise forms which cannot be computer generated to immediately comply with debtor-in-possession requirements will result in the incurrence of significant time expenditure and expense for the Debtor's estate without any concomitant benefit.

**RELIEF REQUESTED**

15. Pursuant to sections 105(a), 345(b), 363(b), 363(c), and 364(a) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, the Debtor seeks entry of an order, substantially in the form annexed hereto as Exhibit A, (a) authorizing the continued use of the Debtor's existing Cash Management System; (b) honoring certain prepetition obligations relating to the use of the Cash Management System; (c) authorizing the continued use and maintenance of the existing Bank Accounts; (d) authorizing the continued use of existing Business Forms; (e) granting a limited 60 day waiver of the requirements of section 345 of the Bankruptcy Code, and (f) granting a final hearing on the Motion.

16. The Office of the United States Trustee for the Eastern District of New York (the "**U.S. Trustee**") has established certain operating and administrative requirements for debtors in

possession which require, among other things, that debtor-in-possession open new bank accounts upon the filing of a petition and designate such accounts as “Debtor-in-Possession” on the respective account signature cards. These requirements are designed to provide a clear line of demarcation between prepetition and postpetition transactions and operations and prevent the inadvertent postpetition payment of prepetition claims. In addition, there are separate requirements contained in section 345 of the Bankruptcy Code respecting post-petition investments and deposits by a debtor.

17. For the reasons outlined above, strict compliance with these requirements is not necessary under the circumstances of this case and may disrupt and impede the Debtor’s ongoing operations.

**Continuation of the Cash Management System is in the Best Interests of the Debtor’s Estate and all Parties in Interest**

18. The operation of the Debtor’s services requires that its Cash Management System remain in place during the pendency of this Chapter 11 Case. Requiring the Debtor to adopt new, segregated cash management architecture at this early and critical stage of its Chapter 11 Case would be expensive, disruptive, and create unnecessary administrative difficulties. Any disruption in the Debtor’s operations could have a severe adverse impact upon the Debtor’s transition efforts, especially given the Debtor’s acute liquidity problems. Accordingly, maintenance of the existing Cash Management Systems is not only essential, but is in the best interests of all creditors and parties in interest.

19. In addition, the Debtor has used its Cash Management System for years, and the Cash Management Systems has thus evolved over time into a mainstay of the Debtor’s ordinary, usual and essential business practices. As a result, any disruption could have a severe adverse



impact on the Debtor's operations, on client care and could impede the objectives of its Chapter 11 case.

20. Absent preservation of the cash management practices, the Debtor might not be able to trace its receipts and disbursements or efficiently manage its liquid assets. As a result: (a) the Debtor would not be able to timely meet postpetition obligations; (b) payroll for employees could be disrupted; and (c) the Debtor's ability to provide critical services to thousands of clients could be impeded. The Debtor thus submits that the foregoing practices directly and indirectly help maintain and preserve the value of its assets.

**Cause Exists for the Relief Requested Herein**

21. This Court has authority to grant the relief requested herein pursuant to sections 105(a) and 363(c) of the Bankruptcy Code. Section 105(a) provides, in pertinent part, that "[t]he court may issue an order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). Moreover, section 363(c)(1) of the Bankruptcy Code authorizes the trustee to use property of the estate in the ordinary course of business without notice or hearing. The purpose of section 363(c)(1) of the Bankruptcy Code is to provide a debtor-in-possession with the flexibility to engage in the ordinary transactions required to operate its business without unneeded oversight by its creditors or the court. Med. Malpractice Ins. Ass'n v. Hirsch (In re Lavigne), 114 F.3d 379, 384 (2d Cir. 1997); Chaney v. Official Comm. Of Unsecured Creditors of Crystal Apparel, Inc. (In re Crystal Apparel, Inc.), 207 B.R. 406, 409 (Bankr. S.D.N.Y. 1997). See also Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10<sup>th</sup> Cir. 1996) (included within the purview of section 363(c) is a debtor's ability to continue the routine transactions necessitated by a debtor's cash management system).

22. As stated above, maintenance of the Cash Management System constitutes the ordinary business practice of FECS which is vital to the Debtor's ongoing operations. Accordingly, the Debtor seeks authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration and disbursement of cash, pursuant to its existing Cash Management Systems.

23. The Debtor seeks to maintain and utilize its Cash Management Systems during this case. Moreover, the Court has routinely granted the relief requested herein in other Chapter 11 cases. Bankruptcy courts in this and other districts have routinely granted chapter 11 debtors the authority to continue similar cash management systems without interruption. See, e.g., In re Long Beach Medical Center, et al., Case No. 14-70593 (ast) (Bankr. E.D.N.Y. February 26, 2014); In re Cengage Learning, Inc., et al., Case No. 13-44106 (ess) (Bankr. E.D.N.Y. Aug. 20, 2013); In re Peninsula Hospital Center et al., Case No. 11-47056 (ess) (Bankr.E.D.N.Y. Oct. 7, 2011); In re Caritas Health Care, Inc. et al., Case No. 09-40901 (cec) (Bankr. E.D.N.Y. February 11, 2009); In re Victory Memorial Hospital, Case No. 1-06-44387-cec (Bankr. E.D.N.Y. Nov. 16, 2006); The Brooklyn Hospital Center, Case No. 05-26990 (Bankr. E.D.N.Y. 2005).

24. Included within the purview of section 363(c) is a debtor's ability to continue the "routine transactions" necessitated by a debtor's cash management system. Amdura Nat'l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.), 75 F.3d 1447, 1453 (10th Cir. 1996). Accordingly, the Debtor seeks authority under section 363(c)(1) of the Bankruptcy Code to continue the collection, concentration, and disbursement of cash pursuant to its Cash Management Systems described above.

25. To the extent the movement of cash through the Cash Management System is out of the ordinary course of business, it is permitted by sections 363(b)(1) and 105(a) of the Bankruptcy Code under the circumstances of this case. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate”. In addition, Section 364 of the Bankruptcy Code provides a debtor-in-possession the ability to obtain unsecured credit and incur unsecured debt in the ordinary course of business without notice and hearing. 11 U.S.C. § 364(a); see, e.g., In re Amdura Corp., 75 F.3d at 1453.

26. To the best of the Debtor’s knowledge, the Bank Accounts are in financially stable institutions including the Banks that are insured by the FDIC (up to an applicable limit per Debtor per institution). In addition, the Banks are “Authorized Depositories” under the Guidelines. For these reasons, the Debtor believes that the funds held on deposit at the Banks and other institutions are safe, and that any risks associated with such accounts are so *de minimis* that it would be a waste of estate resources to incur the cost required to close such accounts and establish entirely new ones. See, e.g., In re Serv. Merch. Co., 240 B.R. at 896 (waiving section 345(b) bonding requirement based on Congressional Record noting that “[w]hile this [bonding] requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.”) (citing to HR Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4. 1994); 140 Cong. Rec. H10767 (Oct. 4. 1994)).

27. Other courts have also allowed the debtor-in-possession to waive such requirements. See, e.g., In re Long Beach Medical Center, et al., Case No. 14-70593 (ast) (Bankr. E.D.N.Y. February 26, 2014); In re Victory Memorial Hospital, Case No. 1-06-44387-

cec (Bankr. E.D.N.Y. Nov. 16, 2006); In re The Brunswick Hospital Center, Inc., Case No. 8-05-88168-mlc (Bankr. E.D.N.Y. Oct. 13, 2005); In re The Brooklyn Hospital Center, Case No. 1-05-26990-cec (Bankr. E.D.N.Y. Sept. 30, 2005); In re FairPoint Commc'ns, Inc., Case No. 09-16335 (Bankr. S.D.N.Y. Oct. 27, 2009); In re Motors Liquidation Co. (f/k/a Gen. Motors Corp.), Case No. 09-50026 (Bankr. S.D.N.Y. June 25, 2009); In re ION Media Networks, Inc., Case No. 09-13125 (Bankr. S.D.N.Y. May 21, 2009). The Debtor submits that its prepetition cash management practices generally conform with the intent of section 345(b) to protect and maximize the value of its estate and requests a waiver to the extent they do not.

28. Integrally related to the Debtor's Cash Management System is the continued existence of the Bank Accounts. The Debtor, its employees and vendors would suffer great hardship if the Debtor was required to substitute new debtor-in-possession bank accounts for the existing Bank Accounts. By preserving business continuity and avoiding the operational and administrative paralysis that closing the Bank Accounts and opening new ones would necessarily entail, all parties-in-interest will be best served and the Debtor generally will benefit considerably.

29. The Debtor intends to work with its Banks to ensure that the only prepetition checks honored by the Banks are those which are expressly authorized by the Court. In that regard, the Debtor has contacted the applicable Banks and financial institutions and will provide them with notice of this Chapter 11 case, so that they stop payment on all outstanding checks issued to vendors or other trade creditors on account of prepetition debts or liabilities. The Debtor will continue to work with its Banks so that the discreet categories of permissible prepetition payments, such as checks to employees for wages and or employee benefits, as described more fully in the Wage Authorization Motion, and required insurance payments, as

detailed in the Insurance Continuation Motion, may be made if and when authorization is granted by the Court.

30. Subject to the foregoing prohibition against honoring prepetition checks without specific authorization from this Court, the Debtor hereby requests that the Accounts be deemed debtor-in-possession accounts, and that this Court authorize their maintenance and continued use in the same manner and with the same account numbers, styles, and document forms (including checks) as those employed by the Debtor prior to the Petition Date.

31. In other large Chapter 11 cases, bankruptcy courts have recognized that strictly applying the requirement that a debtor-in-possession must close its bank accounts does not serve the Chapter 11 rehabilitative process and that the continuation of an existing cash management system is consistent with section 363(c) of the Bankruptcy Code. Accordingly, Courts in this and other districts have routinely approved the continuation of a debtor's existing cash management system and waived the requirement to close existing bank accounts and replace them with alternative procedures. See, e.g., In re Long Beach Medical Center, et al., Case No. 14-70593 (ast) (Bankr. E.D.N.Y. February 26, 2014); In re Cengage Learning, Inc., et al., Case No. 13-44106 (ess) (Bankr. E.D.N.Y. Aug. 20, 2013); In re Peninsula Hospital Center et al., Case No. 11-47056 (ess) (Bankr. E.D.N.Y. Oct. 7, 2011); In re The Reader's Digest Ass'n, Case No. 09-23529 (Bankr. S.D.N.Y. Nov. 23, 2009); In re FairPoint Commc'ns, Inc., Case No. 09-16335 (Bankr. S.D.N.Y. Nov. 18, 2009); In re Cabrini Med. Ctr., Case No. 09-14398 (Bankr. S.D.N.Y. July 29, 2009); In re Motors Liquidation Co. (f/k/a Gen. Motors Corp.), Case No. 09-50026 (REG) (Bankr. S.D.N.Y. June 25, 2009).

**Honoring the Payment of Prepetition Bank Account Claims is Appropriate and in the Best Interests of the Debtor, its Estate and All Parties in Interest**

32. The Debtor also requests that it be permitted to pay or reimburse any bank fees, claims, costs, expenses or charges associated with the Bank Accounts whether arising before or after the Petition Date (other than charges associated with stopping payment on outstanding prepetition checks as of the Petition Date), including, without limitation, (i) service charges or fees; (ii) checks deposited with the Banks which have been dishonored or returned for insufficient funds; and (iii) any reimbursement or other payment obligations, such as overdrafts, arising under the Bank Account Agreements (the “**Bank Account Claims**”). Payment of the Bank Account Claims is in the best interests of the Debtor, its estates, and all parties in interest as it will prevent any disruption to the Cash Management System. Because the Banks have rights of offset with respect to the payment of the Bank Account Claims, payment of any prepetition Bank Account Claims to the Banks would not affect unsecured creditors, and the issue of paying any such Bank Account Claims would simply be a matter of timing. Accordingly, by this Motion, the Debtor seeks authority, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code to pay the prepetition Bank Account Claims, if any.

**Continued Use of Business Forms Is Necessary and Appropriate**

33. The Debtor also requests permission to use its existing Business Forms and stationery without alteration or change. As noted above, the Debtor uses many Business Forms in the ordinary course of its business which are otherwise essential to providing services the Debtor’s clients rely upon. The Debtor does not print its own business forms and stationery. In addition, many of the governmental forms are standardized and cannot be modified. Thus, substantial time and expense would be required if the Debtor is required to print new business forms and stationery merely to indicate “debtor-in-possession.”

34. By virtue of the nature and scope of the Debtor's business, the standardized billing forms used therewith, and the numerous payors, vendors, and services providers with whom the Debtor deals, it is imperative that the Debtor be permitted to continue to use its existing Business Forms without alteration or change. The Debtor intends, however, to include the designation "debtor-in-possession" on any Business Forms which can be computer generated. In order to avoid breaching the requirement of the Guidelines that the Debtor's postpetition checks and business forms contain the legend "Debtor-in-Possession" or a so-called "debtor-in-possession number," the Debtor requests that this Court enter an order stating that the Debtor's existing Business Forms do not require such legend. However, as indicated and where practicable, once the Debtor's Business Form stock has been used, any new Business Forms shall include the legend "Debtor-in-Possession."

35. Parties working with the Debtor undoubtedly will be aware of the Debtor's status as a Chapter 11 debtor-in-possession and will have received notice of this filing. Changing correspondence and business forms would be unnecessary and burdensome to the estate, as well as expensive and disruptive to the Debtor's postpetition efforts.

36. Courts in other chapter 11 cases have also consistently allowed debtors to use their prepetition checks and other forms without the "debtor-in-possession" label. See, e.g., In re Long Beach Medical Center, et al., Case No. 14-70593 (ast) (Bankr. E.D.N.Y. February 26, 2014); In re Peninsula Hospital Center, et al., Case No. 11-47056 (Bankr. E.D.N.Y. Oct. 7, 2011); In re The Reader's Digest Ass'n, Case No. 09-23529 (Bankr. S.D.N.Y. Nov. 23, 2009); In re ION Media Networks, Inc., Case No. 09-13125 (Bankr. S.D.N.Y. May 21, 2009); In re Old Carco, LLC (f/k/a Chrysler LLC), Case No. 09-50002 (Bankr. S.D.N.Y. May 20, 2009); In re Chemtura Corp., Case No. 09-11233 (Bankr. S.D.N.Y. Mar. 20, 2009); In re Lyondell Chem.

Co., Case No. 09-10023 (Bankr. S.D.N.Y. Mar. 12, 2009); In re Bally Total Fitness of Greater N.Y., Inc., Case No. 08-14818 (Bankr. S.D.N.Y. Dec. 5, 2008); In re Wellman, Inc., Case No. 08-10595 (Bankr. S.D.N.Y. Apr. 21, 2008); In re Dana Corp., Case No. 06-10354 (Bankr. S.D.N.Y. Mar. 29, 2006).

**LIMITED WAIVER OF THE INVESTMENT AND DEPOSIT GUIDELINES OF SECTION 345(B)**

37. Section 345(a) of the Bankruptcy Code authorizes deposits or investments of money of a bankruptcy estate, such as cash, in a manner that will "yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment." 11 U.S.C. 345(a). For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) generally requires the depository institution to issue a bond in favor of the United States secured by the undertaking of an adequate corporate surety.

38. A court may, however, waive the section 345(b) requirements for cause. A totality of the circumstances analysis is utilized to determine if cause exists. The following factors are considered:

- (a) the sophistication of the debtor's business;
- (b) the size of the debtor's business operations;
- (c) the amount of the investments involved;
- (d) the bank ratings (Moody's and Standard and Poor) of the financial institutions where the debtor-in-possession funds are held;
- (e) the complexity of the case;



- (f) the safeguards in place within the debtor's own business of insuring the safety of the funds;
- (g) the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- (h) the benefit to the debtor;
- (i) the harm, if any, to the estate; and
- (j) the reasonableness of the debtor's request for relief from section 345(6) requirements in light of the overall circumstances of the case.

In re Serv. Merch. Co., 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting H.R. REP. 103834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 CONG. REC. H10767 (Oct. 4, 1994).

39. The Debtor believes that such cause exists in the instant case. The Debtor operates a sophisticated health and human service organization with a complex cash management system that relies on multiple Bank Accounts at various Banks and other financial institutions for its operations on a daily basis. In addition, the Debtor has various investment accounts which it has been in the process of liquidating over the last several months. As noted above, the Debtor would be unable to proceed effectively in its Chapter 11 Case if it is forced to implement new cash management system. Indeed, the inability to utilize its existing systems could threaten the very viability of this case. Moreover, the Debtor should not be forced to liquidate its remaining investment positions based solely on the timing of the filing of this Chapter 11 Case, without regard to the relative market influences on the value of those investments.

40. The Debtor believes that the Banks and other financial institutions they utilize are financially stable, and that the Banks are otherwise FDIC or FSLIC insured. For this reason, the Debtor believes that the funds held in deposit are safe, and that any risks associated with such accounts are so *de minimis* that it would be a waste of estate resources to incur the cost required to close such accounts and establish entirely new ones. See, e.g., In re Serv. Merch. Co., 240

B.R. at 896 (waiving section 345(b) bonding requirement based on Congressional Record noting that "[w]hile this [bonding] requirement is wise in the case of a smaller debtor with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors.") (citing to HR Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4. 1994); 140 Cong. Rec. H10767 (Oct. 4. 1994)).

41. Other courts have also allowed debtors in possession to waive such requirements. See, e.g., In re Long Beach Medical Center, et al., Case No. 14-70593 (ast) (Bankr. E.D.N.Y. February 26, 2014); In re Global Aviation Holdings Inc., et al., Case No. 12-40783 (CEC) (Bankr. E.D.N.Y. Mar. 8, 2012); In re The Brown Publishing Co., et al., Case No. 10-73295 (DTE) (Bankr. E.D.N.Y. May 7, 2010); In re D-A-M Liquidating Corp., Case No. 09-41966 (JBR) (Bankr. E.D.N.Y. Mar. 27, 2009); In re Caritas Health Care, Inc. et al., Case No. 09-40901 (CEC) (Bankr. E.D.N.Y. Feb. 10, 2009); In re Victory Memorial Hospital, et al., Case No. 06-44387 (CEC) (Bankr. E.D.N.Y. Nov. 16, 2006); In re The Brunswick Hospital Center Inc., Case No. 05-88168 (MLC) (Bankr. E.D.N.Y. Jan. 9, 2006); In re Brooklyn Hospital Center, Case No. 05-26990 (CEC) (Bankr. E.D.N.Y. Sept. 30, 2005). The Debtor submits that its prepetition cash management practices generally conform with the intent of section 345(b) to protect and maximize the value of its estate. The Debtor has also liquidated many of its investment accounts and would benefit from the ability to liquidate the remaining accounts as cash needs and market conditions dictate. Accordingly, the Debtor requests that the Court enter an order temporarily waiving such requirements for 60 days while it discusses with the U.S. Trustee any additional arrangements potentially necessary to adequately protect those estate funds.

### CONCLUSION

42. Consistent with the foregoing authority, the Debtor hereby seeks authority to continue utilizing its current Cash Management System and prepetition Bank Accounts, as described above, and a waiver of the U.S. Trustee's requirement that the Bank Accounts be closed and that new postpetition bank accounts be opened. The Debtor's operations require that the Cash Management Systems remain in place during the pendency of this case. Its daily cash needs and cash management needs are interrelated. Requiring the Debtor to adopt a new, segregated system would be costly and disruptive to the restructuring process. In contrast, a continuation of the existing Cash Management Systems would help to maintain and preserve the value of the Debtor's business. Accordingly, it is in the best interest of the Debtor's estate, all creditors and parties-in-interest that the relief sought herein be granted.

#### **NOTICE**

43. As of the filing of this Motion, no trustee, examiner or creditors' committee has been appointed in this Chapter 11 case. Notice of this Motion has been given to (a) the Debtor's twenty (20) largest unsecured creditors (on a consolidated basis); (b) each of the Debtor's Prepetition Secured Creditors; (c) the Office of the United States Trustee for the Eastern District of New York; (d) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (e) counsel to the United Jewish Appeal Federation of Jewish Philanthropies of New York, Inc.; and (f) the following state and local taxing and regulatory authorities: (i) the Centers for Medicare and Medicaid Services, (ii) the New York State Department of Health, (iii) the United States Attorney for the Eastern District of New York, (iv) the Attorney General of the State of New York, (v) Corporation Counsel for the City of New York, (vi) Counsel for New York City Human Resources Administration; (vii) the New York State Department of Labor, (viii) Counsel for OPWDD, (ix) Counsel for OMH, (x) the Dormitory Authority of the State of New York; (xi)

Counsel to DASNY; (xii) JPMorgan Chase Bank; (xiii) Counsel to JPMorgan Chase Bank; (xiv) Bank of America; (xv) Counsel to Bank of America; (xvi) the Internal Revenue Service, and (xvii) the New York State Department of Taxation and Finance; (collectively, the “Notice Parties”). The Debtor submits that no other notice need be given.

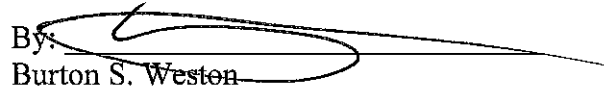
**NO PRIOR REQUEST**

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

**WHEREFORE**, the Debtor respectfully requests that the Court enter an order substantially in the form annexed hereto as Exhibit A granting the relief requested herein, and such other and further relief as may be just and proper.

Dated: March 18, 2015  
Great Neck, New York

GARFUNKEL WILD, P.C.

By:   
Burton S. Weston  
Afsheen A. Shah  
Adam T. Berkowitz  
111 Great Neck Road  
Great Neck, New York 11021  
Telephone: (516) 393-2200  
Facsimile: (516) 466-5964

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

Exhibit A

Form of Order

GARFUNKEL WILD, P.C.  
111 Great Neck Road  
Great Neck, New York 11021  
Telephone: (516) 393-2200  
Facsimile: (516) 466-5964  
Burton S. Weston  
Afsheen A. Shah  
Adam T. Berkowitz

*Proposed Counsel for the Debtor  
and Debtor-in-Possession*

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

-----X  
In re:

FEDERATION EMPLOYMENT AND GUIDANCE  
SERVICE, INC. d/b/a FEGS,<sup>1</sup>

Chapter 11  
Case No. 15-\_\_\_\_\_ ( )

Debtor.

-----X

**INTERIM ORDER AUTHORIZING CONTINUED  
USE OF THE DEBTOR'S (I) CASH MANAGEMENT SYSTEM;(II) BANK  
ACCOUNTS; AND (III) BUSINESS FORMS; AND GRANTING A LIMITED  
WAIVER OF SECTION 345 INVESTMENT AND DEPOSIT REQUIREMENTS**

Upon consideration of the motion (the "Motion")<sup>2</sup> of Federation Employment and Guidance Service, Inc. d/b/a FEGS ("FEGS" or the "Debtor"), seeking entry of an Order, pursuant to sections 105(a), 345(b) and 363(c) of title 11, the United States Code (as amended, the "Bankruptcy Code"), (a) authorizing the Debtor to maintain and use its existing: (i) Cash Management Systems, (ii) Bank Accounts and (iii) business forms, (b) honoring certain prepetition obligations relating to the use of the cash management systems; (c) granting a limited waiver of the investment and deposit requirements of section 345(b) of the Bankruptcy Code; and (d) scheduling a final hearing on the Motion, all as described more fully in the Motion; and

<sup>1</sup> The last four digits of the Debtor's federal tax identification number are 4000.

<sup>2</sup> Capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157 and 1334; and due and appropriate notice of the Motion having been provided under the circumstances of this case and as set forth in the Motion, and it appearing that no other or further notice of the Motion need be provided; and a hearing on this Motion having been conducted before this Court on March \_\_, 2015 (the "**Hearing**"); and just cause having been established at the Hearing; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtor, its estate and all parties in interest; and upon the Affidavit of Kristin Woodlock Pursuant to Rule 1007 and in Support of First Day Motions, dated as of the Petition Date; and all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. Pending a final hearing, the Motion is granted on an interim basis to the extent provided herein.

2. The Debtor is authorized to continue utilizing its prepetition Cash Management Systems, as maintained by the Debtor prior to the commencement of its Chapter 11 Case, and to manage its cash and transfer funds as and when needed and in the amounts necessary or appropriate to maintain its operations and facilitate the orderly operation of its estate or business.

3. The requirement that the Debtor establishes new bank accounts as of the Petition Date is dispensed with and waived.

4. The Debtor is authorized and empowered to designate, maintain, and continue to use its existing pre-petition Bank Accounts, including, without limitation, those set forth in Exhibit B to the Motion, in accordance with the agreements governing the Bank Accounts,

including, without limitation, any account terms, cash management and treasury services agreements (collectively, the "**Bank Account Agreements**") without interruption and in the ordinary course, and in the names and with the account numbers existing immediately prior to the commencement of its Chapter 11 Case, and receive, honor, and pay any and all checks, drafts, wires, and automated clearing house transfers issued and drawn on the Bank Accounts to the extent funds are available in the Bank Accounts upon which such checks, drafts, or wire transfers are drawn and, with respect to automated clearing house transfers, only to the extent such transfers are pre-funded.

5. The Debtor may continue to disburse funds by debit, check, wire, or automated clearing house payments and other means; provided, however, nothing herein shall direct any Bank that did not provide automatic clearing house services to the Debtor prepetition to provide such services postpetition.

6. The Debtor is authorized to continue to deposit and maintain funds in the Bank Accounts in accordance with its prepetition practices, including, without limitation, the maintenance of the investment accounts, without the need for a bond or other collateral as required by section 345(b) of the Bankruptcy Code, for sixty (60) days from the date of this Interim Order.

7. The Debtor is authorized and directed to pay or reimburse any bank fees, claims, costs, expenses or charges associated with the Bank Accounts whether arising before or after the Petition Date (other than charges associated with stopping payment on outstanding prepetition checks as of the Petition Date), including, without limitation, (i) service charges or fees; (ii) checks deposited with the Banks which have been dishonored or returned for insufficient funds;



and (iii) any reimbursement or other payment obligations, such as overdrafts, arising under the Bank Account Agreements (collectively, the “**Bank Account Claims**”). In the course of maintaining any of the Bank Accounts for the Debtor, the Banks are authorized, without further Order of this Court, to continue to deduct from the appropriate Bank Accounts, the Bank Account Claims incurred in connection with the Bank Accounts. The Bank Account Claims shall have administrative expense priority status pursuant to section 503(b) of the Bankruptcy Code.

8. The Debtor shall establish a gap in its check numbers to distinguish between checks issued prepetition versus checks issued postpetition and shall mark all newly ordered checks with a “debtor-in-possession” designation.

9. Nothing in this Order shall authorize the payment of any prepetition obligations to any third-party, including any indebtedness owed to any lender, by way of setoff or otherwise; provided, however, that the Debtor shall be authorized to pay ordinary course Bank Account Claims incurred in connection with the Bank Accounts.

10. The Debtor is authorized to (i) deposit funds in and withdraw funds from such accounts by all usual means, including, without limitation, checks, wire transfers, and other debits; and (ii) treat the Bank Accounts for all purposes as debtor-in-possession accounts.

11. The Debtor is authorized to maintain and continue to use any and all Business Forms substantially in the forms existing immediately prior to the commencement of the Debtor’s Chapter 11 Case, without reference to its status as debtor-in-possession, provided however, that the Debtor shall mark any newly printed and computer generated forms with a “debtor-in-possession” designation.

12. The Debtor reserves the right to close some or all of its pre-petition Bank Accounts, and other investment accounts, and open new debtor-in-possession accounts, provided, however, that the Debtor may open a new bank account only with a bank designated as an Authorized Depository under the United States Trustee Guidelines, unless first obtaining the consent of the U.S. Trustee.

13. The Debtor shall promptly furnish to the Banks a list of those checks, drafts, wires or automatic clearing house transfers and other withdrawals made, drawn or issued in payment of prepetition claims, the payment of which has been authorized by any order(s) of this Court.

14. The Banks are authorized and directed to (a) continue administering the Bank Accounts in the usual and ordinary course of business in accordance with the Debtor's instructions and pursuant to the Bank Account Agreements, (b) pay any and all checks, drafts, wires, or electronic funds transfers presented, issued, or drawn on the Bank Accounts on account of any claims arising prepetition or postpetition so long as sufficient funds are available in such Bank Accounts unless the Debtor specifically issues "stop payment" instructions with respect to such items in accordance with the terms of the Bank Account Agreements, (c) honor the Debtor's directions with respect to the opening or closing of any Bank Account, (d) debit the Debtor's Bank Accounts for payments on account of Bank Account Claims, adequate protection payments (as authorized by separate order of this Court), or payments in respect of equipment leasing arrangements (as directed by the Debtor), and (e) accept and hold, or invest, the Debtor's funds in accordance with the Debtor's instructions. Such Banks may rely on this Order and on the Debtor's representations and instructions as to the payments and transfers that may be honored or dishonored in accordance with the terms of the Bank Account Agreements.

15. The Banks are authorized to accept, honor, and rely upon all representations from the Debtor without an independent duty to verify or audit whether a particular item may be paid in accordance with orders of this Court, as to which checks, drafts, wires or automated clearing house payments, specifically identified by the Debtor to the Banks, should be honored or dishonored consistent with orders entered by this Court, whether the checks or instructions are dated prior to, on, or subsequent to the Petition Date and shall not be held liable for honoring or dishonoring any check, draft, wire or automated clearing house payment presented, issued, or drawn on the Bank Accounts as a result of following the representations of the Debtor.

16. Nothing contained in this Order shall in any way alter or impair the rights and remedies of any of the non-debtor parties to Bank Account Agreements, including, without limitation, any Bank's ability to close any Bank Account pursuant to the terms of such agreements upon at least thirty (30) days' prior written notice to the Debtor of any such proposed closure or the ability immediately to terminate or nullify certain banking services associated with the Bank Accounts.

17. Notwithstanding any provision of this Order to the contrary, the Banks will not be liable to any party on account of (a) following the Debtor's instructions or representations as to any check or other item that may be honored or as to any order of this Court, (b) the honoring of any prepetition check or item in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) an innocent mistake made despite implementation of reasonable item handling procedures..

18. For all purposes in this Order, any and all accounts (a) actually in, or linked to, the Cash Management System, even if such Bank Accounts do not appear on the list attached as

Exhibit B hereto or (b) opened by the Debtor on or after the Petition Date at any Bank, in each case shall be deemed a Bank Account (as if it had been opened prior to the Petition Date and listed on Exhibit B to the Motion) and any and all Banks at which such accounts are opened shall similarly be subject to the rights and obligations of this Order.

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

20. Nothing contained in the Motion or this Interim Order shall be deemed or construed as an admission as to the validity or priority of any claim against the Debtor.

21. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied by the contents of the Motion.

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

23. There shall be a hearing held on \_\_\_\_\_, 2015 at \_\_\_ \_m (the “**Final Hearing**”) to consider any objections to the proposed order (a) authorizing the Debtor to maintain and use its existing: (i) cash management system, (ii) bank accounts and (iii) business forms, (b) honoring certain prepetition obligations relating to the use of the cash management systems; and (c) waiving the investment and deposit requirements of section 345(b) of the Bankruptcy Code. All objections shall be filed with the Bankruptcy Court electronically in

accordance with Administrative Order 476 (which can be found at [www.nysb.uscourts.gov](http://www.nysb.uscourts.gov) <<http://www.nyeb.uscourts.gov>>, the official website for the Bankruptcy Court), so as to be received no later than three (3) business days prior to the Hearing by (i) The Honorable \_\_\_\_\_, United States Bankruptcy Court, Eastern District of New York, Alfonse M. D'Amato U.S. Courthouse, 290 Federal Plaza, Central Islip, New York 11722; (ii) Garfunkel Wild, P. C., 111 Great Neck Road, Great Neck, NY 11021 (Attn: Burton S. Weston, Esq., Afsheen A. Shah, Esq. and Adam T. Berkowitz, Esq.) (iii) the Office of the United States Trustee, 560 Federal Plaza, Suite 560 Long Island Fed. Courthouse Central Islip, NY 11722 (Attn: [ \_\_\_\_\_ ]); and (iv) counsel for the Creditors' Committee, once appointed, so as to be actually received by the filing deadline.

24. Service of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

25. The Debtor is authorized and empowered to take all actions necessary to implement the relief granted in this Order.

26. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation of this Order.

Dated: \_\_\_\_\_, 2015  
Central Islip, New York

\_\_\_\_\_  
HON.  
UNITED STATES BANKRUPTCY JUDGE

Exhibit B  
List of Bank Accounts

<b>Entity</b>	<b>Bank</b>	<b>Account #</b>	<b>Purpose</b>
FEGS	JPMorgan Chase	xxxxxxxxxxxx465	Main Operating Account Client Related
FEGS	JPMorgan Chase	xxxxxxxxxxxx565	Residential Programs Client Related
FEGS	JPMorgan Chase	xxxxxxxxxxxx065	Food Stamps Money Market
FEGS	JPMorgan Chase	xxxxxxxxxxxx466	De Minimis Funds
FEGS	JPMorgan Chase	xxxxxxxxxxxx465	HUD Related
FEGS	JPMorgan Chase	xxxxxxxxxxxx036	AP Disbursement
FEGS	JP Morgan Chase	xxxxxxxxxxxx043	Payroll Disbursement
FEGS	JP Morgan Chase	x xxx98	Escrow Client Related
FEGS	Bank of America	xxxx xxxx x380	Social Security
FEGS	TD Bank	xxx-xxxx091	Client Payroll Client Related
FEGS	JP Morgan Chase	xxxxx004	Pooled Life Income
FEGS	JPMorgan Securities	XXXX9001	Securities Account Grant Account
FEGS	TD Bank	xxx-xxxx879	De Minimis Funds
FEGS	Brevan	xx48	Securities Account
FEGS	COP SPV	X8	Securities Account
FEGS	Greenlight Qualified	xxxxxx892	Securities Account
FEGS	Greenlight Gold	xxxxxx892	Securities Account
FEGS	Millenium	xx423	Securities Account
FEGS	Neuberger Berman	xxx-xx593	Securities Account
FEGS	Neuberger Berman	xxx-xx143	Securities Account
FEGS	Paulson	xxx-xxx72	Securities Account
FEGS	Perry	xx-xxx546	Securities Account
FEGS	Baird-SPF	xxxxxx150	Securities Account
FEGS	Baird-Endow	xxxxxx148	Securities Account
FEGS	Baird-FFO	xxxxxx151	Securities Account
FEGS	Seix	xxxx43	Securities Account
FEGS	Vanguard	xxxx-xxxxxxxx356	Securities Account
FEGS	Vanguard	xxxx-xxxxxxxx519	Deferred Comp
FEGS	Vanguard	xxxx-xxxxxxxx057	Deferred Comp
FEGS	Vanguard	xxxx-xxxxxxxx152	Deferred Comp
FEGS	Vanguard	xxxx-xxxxxxxx152	Deferred Comp