

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

In re:

Balance Point LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 21-11279 (JKS)

(Joint Administration Pending)

**DECLARATION OF ADRIAN KETTERING IN SUPPORT OF CHAPTER  
11 PETITIONS AND FIRST DAY PLEADINGS**

Pursuant to 28 U.S.C. § 1764, Adrian Kettering, declares as follows under the penalty of perjury:

1. I am the Vice President of MECTA Corporation (“**MECTA**”, and with Balance Point LLC, collectively, the “**Debtors**”), as debtors and debtors in possession in the above-captioned chapter 11 cases (the “**Cases**”). In this capacity, I am familiar with the Debtors’ day-to-day operations and financial affairs. I am authorized by the Debtors to submit this Declaration (“**First Day Declaration**”), and if called upon to testify, I would testify competently to the facts set forth herein.

2. On the date hereof (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under subchapter V of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Court**”), and filed the motions described herein requesting certain relief (the “**First Day Pleadings**”). I submit this First Day Declaration on behalf of the Debtors to assist the Court and parties in interest in

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

gaining an understanding of the circumstances that led to the commencement of these Cases and in support of the Petition and the First Day Pleadings.

3. The Debtors are operating their businesses as debtors in possession pursuant to Bankruptcy Code sections 1181(a) and 1184.

4. The First Day Pleadings seek, among other things, to meet the Debtors' goals of: (a) continuing their small business operations as debtors in possession with as little disruption and loss of productivity as possible; (b) maintaining the confidence and support of the Debtors' employees, customers, vendors, and other key constituencies during the Cases; and (c) establishing procedures for the smooth and efficient administration of these Cases. Gaining and maintaining the support of the Debtors' critical parties in interest while maintaining the day-to-day operations of the Debtors' business with minimal disruption, will be critical to the success of these Cases.

5. Part I of this Declaration describes the Debtors' business operations and organizational structure. Part II of this Declaration describes the events leading to these Cases. Part III of this Declaration sets forth the relevant facts in support of the First Day Pleadings.

### **I. BACKGROUND AND BUSINESS OPERATIONS**

6. MECTA was formed when Gorham and Robin Nicol purchased assets from Custom Systems Associated Inc. in 1980, and since then, MECTA has become the leading marketer, manufacturer, and distributor of Electroconvulsive Therapy (ECT) devices worldwide.

7. Balance Point was formed to hold, maintain, develop and license intellectual property supporting the medical devices used in the treatment of mental illness. Balance Point is a wholly owned subsidiary of MECTA, and as of the Petition Date, MECTA has a non-exclusive license to all of Balance Point's patents, trademarks, copyrights, trade secrets and other intellectual property which MECTA uses in connection with the business.

8. MECTA has designed and manufactured five generations of ECT devices over the past forty years. These devices have been used in research at some of the nation's most prestigious universities. MECTA has used the results of that research to continue to improve upon their devices with each generation, including but not limited to the most recent device, the MECTA  $\Sigma$ igma™, which is the most innovative ECT device ever designed. MECTA ECT devices are used to treat patients for depression, catatonia and bipolar disorder worldwide in over 90 countries, and are the premier ECT devices available on the market today.

9. Since the 1940s, electroconvulsive therapy (ECT)<sup>2</sup> has been considered the most effective intervention for severe mood disorders. No treatment, pharmacological or otherwise, has ever matched ECT in speed or likelihood of remission of major depressive episodes. ECT is equally effective in unipolar and bipolar depression and has profound anti-manic properties. Historically, the two major clinical considerations thought to limit ECT use were its cognitive side effects and propensity for relapse. In recent years both limitations have been substantially addressed.

10. ECT saves thousands of lives each year, and many doctors and patients rely on it to help patients who are seriously contemplating suicide; particularly when every other modality of treatment has proven unsuccessful. In fact, ECT is critically important to hospitals and their patients, that from the start of the COVID-19 pandemic lock-down, ECT was deemed an “essential treatment” and patients continued to be treated with ECT, even when most other hospital services were put on hold. Hospitals, doctors, and most importantly, patients, rely on MECTA devices for this life saving treatment.

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<sup>2</sup> ECT is a procedure in which small electric currents are passed through the brain. ECT causes changes in brain chemistry that can quickly reverse symptoms of significant mental health conditions. See MAYO CLINIC: ELECTROCONVULSIVE THERAPY, <https://www.mayoclinic.org/tests-procedures/electroconvulsive-therapy/about/pac-20393894> (last visited Aug. 20, 2021).

11. There is no question that there is a worldwide mental health crisis taking place today. After months of uncertainty, the time-horizons for psychiatric treatment are now more important than ever, and ECT offers relief sooner than mainstream pharmacological interventions that take far longer to be effective, if at all.

12. As hospitals worldwide reopen and expand their behavioral health departments, ECT is growing rapidly. The entire industry of brain stimulation is helping nearly 100,000 patients in the United States alone to live fulfilling lives, and MECTA has been and is involved at the ground-level in the ongoing research in this field.

## **II. EVENTS LEADING TO THESE CHAPTER 11 CASES**

13. The Debtors have no secured debt and their cash flow needs have historically been managed through sales of MECTA devices and receivables.

14. Despite the support of the U.S. Food & Drug Administration and the breadth of tremendously successful scientific research regarding ECT, unfortunately MECTA is not without critics and detractors. Many of these critics and detractors from across the United States believe that all forms of psychiatry should be banned. Moreover, some have made it their goal to effect a ban on the use of ECT in this country. Consequently, the Debtors' principals have been subjected to direct harassment and meritless litigation from that group of critics.

15. Over the years, the Debtors' principals have been subjected to substantial harassment including, but not limited to, interfering protests outside of the Debtors' business, break-ins at the Debtors' place of business, harassing phone calls, disturbing newspaper and online campaigns targeting the Debtors, and a highly misleading, untruthful and exaggerated movie produced about ECT.

16. Additionally, litigants have named MECTA in lawsuits relating to alleged ECT damages for years. Recently, however, an organized and concerted litigation effort surfaced where it was clear that the actual goal was to put the Debtors out of business. Since 2017, numerous nearly identical lawsuits have been filed across the country by one law firm. MECTA is currently a defendant in five active lawsuits across the country. All of the pending and asserted claims relate to the Debtors' SpECTrum device. To date, MECTA has successfully countered these litigation attempts, without significant settlements or jury verdicts.

17. However, these lawsuits (which continue to arise as recently as last month) have placed tremendous financial pressure on the Debtors. Most significantly, the Debtors have been unable to obtain products liability insurance to cover the SpECTrum device since June, and as such, have had no choice but to discontinue manufacturing and servicing the SpECTrum device as of September 1, 2021. It should be noted that the SpECTrum device is reliable, well made and a favorite among ECT doctors.

18. Although the Debtors' innovative  $\Sigma$ igma™ device is different from SpECTrum, and is insured and cleared by the FDA as a Class II medical device, unfortunately the global supply shortages caused by the COVID-19 pandemic have rendered timely production of the  $\Sigma$ igma™ devices uncertain, impacting projected receivables.

19. Realizing that the Debtors are exposed on account of the SpECTrum devices without insurance, and recognizing that they can no longer afford to respond to manufactured claims on an individual basis across the United States, the Debtors had no choice but to explore options for achieving an orderly and global resolution of claims relating to SpECTrum devices. Additionally, the uncertainty of associated revenue from the  $\Sigma$ igma™ devices further prompted the Debtors to expeditiously consider options.

20. In consultation with legal and financial advisors, the Debtors need to formulate a cost-effective and orderly means of globally addressing the litigation while utilizing the  $\Sigma$ igma™ device. To that end, I look forward to working with the Subchapter V trustee and all creditors to use the bankruptcy process to pursue a chapter 11 reorganization so that the Debtors can emerge and continue to provide the life-saving devices for patients suffering from debilitating mental illness.

### **III. FACTS RELEVANT TO FIRST DAY PLEADINGS<sup>3</sup>**

21. Together with the filing of these Cases, the Debtors filed certain First Day Pleadings that request various types of relief. I have reviewed each of the First Day Pleadings, Proposed Orders, and exhibits and schedules thereto (or have otherwise had their contents explained to me), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruptions and disruptions to their business or loss of productivity or value; and (b) constitutes a critical element in the Debtors' ability to successfully reorganize for the benefit of their estates.

- a. *Debtors' Motion for Entry of an Order Directing Joint Administration of Related Chapter 11 Cases* (the "**Joint Administration Motion**")

22. I understand that the Debtors are requesting that their chapter 11 cases be jointly administered for procedural purposes. I believe that joint administration of the chapter 11 cases will promote efficiency and will ease the administrative burden on this Court and all parties in interest. Because the Debtors' management, financial affairs, and operations are closely related, I

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<sup>3</sup> Capitalized terms used but not defined herein have the meanings ascribed to such terms in the relevant First Day Pleadings.

anticipate that many of the motions, hearings, and orders in the bankruptcy proceedings will affect both of the Debtors. Joint administration also will reduce the volume of paper that otherwise would be filed with the Clerk of the Court because it will avoid the preparation, replication, service, and filing, as applicable, of duplicative notices, applications, and orders.

23. I believe that parties in interest will not be harmed by the relief requested in the Joint Administration Motion; instead, I believe that parties in interest will benefit from the cost reductions associated with the joint administration of these chapter 11 cases. Accordingly, I believe that joint administration of these chapter 11 cases is in the best interests of their estates, their creditors, and all other parties in interest. I also believe that the use of the proposed caption as set forth in the Joint Administration Motion will eliminate cumbersome and potentially confusing procedures and ensure uniformity of pleading identification.

- b. *Application of Debtors for Entry of an Order (I) Approving the Retention and Appointment of Stretto as the Claims and Noticing Agent to the Debtors, Effective Nunc Pro Tunc to the Petition Date, and (II) Granting Related Relief (the “Stretto Application”)*

24. I understand that through the Stretto Application, the Debtors seek entry of an order appointing Stretto as the claims and noticing agent for the Debtors. Stretto is a bankruptcy administrator that specializes in providing comprehensive chapter 11 administrative services, including noticing, claims processing, balloting and other related administrative aspects of chapter 11 cases. Given the number of parties in interest involved here, I believe appointing Stretto as the claims and noticing agent will minimize the administrative burden on the Debtors and their employees while maximizing efficiency and the value of the Debtors’ estates for all their stakeholders.

c. *Motion of Debtors for Entry of an Order Authorizing Debtors to Redact Certain Personnel Information* (the “**Sealing Motion**”)

25. I understand that the Debtors are seeking entry of an order authorizing the Debtors to redact personnel information—including the names and home addresses—of Debtors’ former and current employees, from any document filed on the docket in these chapter 11 cases, including, but not limited to, the schedules of assets and liabilities, statements of financial affairs of the Debtors, creditor matrix, and pleadings, as applicable.

26. By virtue of the Debtors’ business, certain social and religious groups who disapprove of psychiatric medicine and ECT actively protest the Debtors’ operations. Most notably, there have been numerous instances of substantial harassment as detailed above. I have reason to believe that such harassment might extend to the Employees if the protesting organizations are able to access personnel information. As such, disclosure of the Employees’ personnel information could seriously harm the Employees, the Employees’ families, and the Debtors’ relationships with the Employees, thereby risking significant attrition at a critical time in these cases.

27. I believe that the request to redact Employees’ addresses, phone numbers, email addresses, or any other personal information is justified under the circumstances here. I thus submit that under the circumstances, this narrowly crafted solution appropriately balances public access to information while protecting the personal information of the Employees.

d. *Motion for Entry of Interim and Final Orders Authorizing Payment of Certain Prepetition Employee Wages, Benefits, and Related Items* (the “**Wage Motion**”)

28. In connection with the operation of their business, the Debtors currently employ approximately ten (10) full-time employees and one (1) part-time employee (collectively, the



“**Employees**” or “**Workforce**”). Employees are employed at the Company’s corporate headquarters in Tualatin, Oregon.

29. The Employees are critical to the Debtors’ business, and their value cannot be overstated. To a significant extent, the Debtors’ success depends on the Debtors’ ability to attract and retain qualified personnel. The loss of certain Employees will impede the Debtors’ operations and seriously harm the ability to successfully implement their bankruptcy strategy. Furthermore, replacing Employees can be impossible for the Debtors given the limited number of individuals in their geographical area with the breadth of skills and experience required to successfully navigate the technical and scientific issues associated with the Debtors’ business.

30. If the Debtors cannot assure their Employees that they will promptly pay prepetition Compensation Obligations (as defined below) to the extent allowed under the Bankruptcy Code, and continue to honor, as applicable, the Benefits Obligations (as defined below), certain Employees will likely seek employment elsewhere. The loss of Employees at this critical juncture would have a material adverse impact on the Debtors’ business and ability to maximize value through these Cases.

31. The Debtors also utilize the services of contract workers (“**Contractors**” and, together with the Employees, the “**Workforce**”) to provide a variety of services. The Contractors are (i) either employed directly by, and have contracts directly with, the Debtors (the “**Direct Contractors**”), or (ii) employed by third party companies and outsourced to the Debtors (the “**Third Party Contractors**”). There are 3 Direct Contractors who are highly skilled research and development clinical specialists and 3 Third Party Contractors who provide a range of functions, both operational and administrative support.

32. The Contractors fill certain critical and immediate research and development needs of the Debtors and allow the Debtors to have a flexible workforce to meet their operational needs in a cost-effective manner. The Contractors are a critical yet cost-efficient component of the Debtors' business. Thus, as with the Debtors' regular Employees, if the Debtors fail to honor their prepetition compensation obligations to the Contractors, it is likely that the Debtors will lose such individuals' valuable services to the detriment of the Debtors' ongoing business operations.

33. In the ordinary course of business, the Debtors incur payroll and other compensation obligations for their Workforce. The Debtors also provide other benefits to their Employees for the performance of services. These benefits and obligations are described in detail in the Wage Motion.

34. In the ordinary course, the Debtors incur obligations to their Employees for, among other things, wages, salaries, and other obligations described herein. All of the Debtors' Employees are paid semimonthly via direct deposit. As of the Petition Date, the Debtors estimate that their semi-monthly gross payroll liability is approximately \$38,000 and that, as of the Petition Date, approximately \$6,000 has accrued and remains unpaid on account of compensation earned by Employees (the "**Compensation Obligations**"), all of which will come due within the first 30 days of these Cases. As described above, if the Debtors fail to pay the Compensation Obligations, it could result in extreme financial hardship for its Employees. In light of the substantial benefit the Employees will continue to provide to the Debtors, the Debtors wish to avoid imposing such a hardship. None of the Employees are owed more than \$13,650 in accrued and unpaid general prepetition salaries.

35. As of the Petition Date, all Employees have elected to have their payroll administered via direct deposit. The Debtors use Automatic Data Processing, Inc. (“**ADP**”) to process their payroll and coordinate the payment of Withholding Obligations (as defined below).

36. The Debtors seek authorization, but not direction, to pay any unpaid Compensation Obligations. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Compensation Obligations to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

37. As mentioned above, the Debtors use the services of ADP to process payroll and distribute payroll to their Employees. The Debtors submit their payroll to ADP twice per month if there are no off-cycle payments or adjustments. The Debtors pay approximately \$350.00 per month in fees to ADP. Thus, the Debtors seek authority, but not direction, to pay fees to ADP in the ordinary course and consistent with past practice during the administration of these Cases. In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of the fee obligations addressed herein to be honored and to reissue any check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

38. For each applicable pay period, the Debtors routinely deduct certain amounts from Employees’ paychecks, including pre-tax and after-tax deductions payable pursuant to certain employee benefit plans discussed herein, such as an Employee’s share of health care benefits and insurance premiums, savings contributions, legally ordered deductions, and miscellaneous deductions (collectively, the “**Deductions**”), and forward such amounts to various third-party recipients. In addition to the Deductions, certain federal and state laws require that the Debtors

withhold certain amounts from Employees' gross pay related to federal, state, and local income taxes, as well as Social Security and Medicare taxes (collectively, the "**Employee Withholding Taxes**"), and remit the same to the applicable taxing authorities.

39. In addition, the Debtors are required to make matching payments from their own funds for, among other things, social security and Medicare taxes and to pay, based on a percentage of gross payroll, state, and federal unemployment insurance, employment training taxes, and state disability insurance contributions (the "**Employer Payroll Tax Obligations**," and together with Employee Withholding Taxes, the "**Payroll Tax Obligations**"). As of the Petition Date, the Debtors estimate that they will have unpaid Deductions and Payroll Tax Obligations outstanding of approximately \$600.00, the vast majority of which will come due during the interim period.

40. The Debtors seek authorization, but not direction, to continue to make the Deductions and satisfy the Payroll Tax Obligations (collectively, the "**Withholding Obligations**") and to remit amounts withheld on behalf of third parties post-petition in the ordinary course of business.

41. The Debtors offer their Employees paid vacation days ("**Vacation**"), holiday pay ("**Holiday Pay**"), and paid sick days ("**Sick Leave**"). These programs are typical and customary, and continuing to offer them is necessary for the Debtors to retain Employees during the Cases. An individual Employee's paid time off does not accrue over time or roll over from year to year. When an Employee elects to take paid time off, the Employee is paid his or her regular rate.

42. The Debtors request that they be authorized, but not directed, to continue to honor their Vacation, Holiday Pay, and Sick Leave policies going forward, including during the administration of these Cases.

43. Prior to the Petition Date, in the ordinary course of business, the Debtors reimbursed certain Employees for reasonable and legitimate expenses incurred on behalf of the Debtors in the scope of the Employee's employment ("**Reimbursable Expense Obligations**"). Reimbursable Expense Obligations typically include expenses for, among other things, air travel, meals, parking, mileage, and certain other business and travel related expenses. All such expenses are incurred with the applicable Employee's understanding that he or she will be reimbursed by the Debtors in accordance with the Debtors' reimbursement policy, as described in more detail below. In all cases, reimbursement is contingent on the Debtors' determination that the charges are for legitimate, reimbursable business expenses.

44. The Debtors process expense and reimbursement claims on a rolling basis. As such, it is difficult for the Debtors to determine the exact amount of Reimbursable Expense Obligations outstanding as of the Petition Date because, among other things, Employees may have expenses that they have yet to submit to the Debtors for reimbursement. As of the Petition Date, the Debtors estimate that the total amount of unpaid prepetition Reimbursable Expense Obligations will not exceed \$1,000.00.

45. The Reimbursable Expense Obligations are ordinary course expenses that the Debtors' Employees incur in performing their job functions, including all expenses incurred on the Corporate Cards. It is essential to the continued operation of the Debtors' business that the Debtors be permitted to continue reimbursing, or making direct payments on behalf of, Employees for such expenses.

46. Employees incur the Reimbursable Expense Obligations as business expenses on behalf of the Debtors and with the understanding that they would be reimbursed. To avoid harming Employees who have incurred the Reimbursable Expense Obligations, the Debtors request

authority, but not direction, to satisfy all prepetition Reimbursable Expense Obligations to the extent Employees have paid for such expenses directly from their own funds or are otherwise personally liable for such expenses. The Debtors also seek authority to continue their reimbursement policy and Corporate Cards policy in the ordinary course of business during the administration of these Cases.

47. The Debtors offer their full-time Employees the opportunity to participate in a number of health benefit plans, including (a) medical benefits (the “**Medical Plan**”), dental benefits (the “**Dental Plan**”), and vision care (the “**Vision Plan**,” and collectively, with the Medical Plan and the Dental Plan, the “**Health Plans**”); (b) basic life (the “**Life Insurance**”); and (c) simplified employee pension IRA plan (“**IRA**” and together with the Health Plans, Life Insurance, the “**Employee Benefits Plans**”). In certain instances, the Debtors deduct specified amounts from the participating Employees’ paychecks in connection with the Employee Benefits Plans. All obligations with respect to the Employee Benefits Plans are hereinafter referred to as the “**Employee Benefits Obligations.**”

48. As further provided in the Wages Motion, Debtors request authority to pay or provide as they become due all prepetition Employee Benefits Obligations that have already accrued.

49. To minimize the personal hardships the Debtors’ Employees will suffer if prepetition employment-related obligations are not paid when due or as expected, as well as to maintain morale during this critical time, the Debtors seek entry of an order authorizing, but not directing, the Debtors to pay any unpaid Employee Obligations (as defined in the Wage Motion). In addition, the Debtors seek authority to cause any prepetition checks or electronic payment requests that were given in payment of Employee Obligations to be honored and to reissue any

check or electronic payment request that is not cleared by the applicable bank or other financial institution, to the extent necessary.

50. The Debtors maintain workers' compensation insurance for their Workforce at the statutorily required level for the state of Oregon. The Debtors maintain workers' compensation coverage for claims ("**Workers' Compensation Claims**") through SAIF Corporation. The Debtors pay approximately \$2,359.40, annually, in premiums and fees to maintain the workers' compensation insurance. Through the Wages Motion, the Debtors seek authority, but not direction, to pay any Workers' Compensation Claims in the ordinary course and honor payments owed with respect to the Workers' Compensation Claims regardless of when such obligations arose.

51. In the ordinary course of business, the Debtors have typically maintained a year-end performance-based incentive and bonus program for all Employees (collectively, the "**Incentive Program**"). As of the Petition Date, the Debtors estimate that they do not owe any amounts on account of the Incentive Program.

52. For those Employees who are eligible to receive them, bonuses earned under the Incentive Program are an important aspect of their overall compensation. Maintaining historical prepetition practices with regard to the Incentive Program is essential to ensuring that the Debtors can retain their Employees and continue to operate their business and maximize value through the duration of these Cases. Therefore, the Debtors seek authority, but not direction, to honor their obligations under the Incentive Program and to maintain the Incentive Program in the ordinary course of the Debtors' business.

53. To assist in implementing the relief requested, the Debtors further request that the Court authorize their banks and other financial institutions to receive, honor, process and pay, at the Debtors' request and to the extent of funds on deposit: (i) prepetition payroll checks or

electronic transfers and (ii) all other checks or electronic transfers issued for payments approved by the Wage Motion, regardless of whether such checks or electronic transfers were drawn or issued prior to the Petition Date. The Debtors also seek authorization to reissue prepetition checks or electronic transfers for payments approved by the Wage Motion that are dishonored notwithstanding the foregoing direction.

- e. *Motion of Debtors for Interim and Final Orders Authorizing (I) Continued Use of Existing Cash Management System, Including Maintenance of Existing Bank Accounts, Checks, and Business Forms, and (II) Continuation of Existing Deposit Practices (the “Cash Management Motion”)*

54. I understand that through the Cash Management Motion, the Debtors seek authority to maintain certain procedures and practices related to their business operations and cash management.

55. Prior to the commencement of these Cases, the Debtors maintain a cash management system (the “**Cash Management System**”) that is integral to the operation and administration of their business. The Cash Management System allows the Debtors to (i) monitor and control all of the Debtors’ cash receipts and disbursements, (ii) identify the cash requirements of the Debtors, and (iii) transfer cash as needed to respond to the cash requirements of the Debtors.

56. The Cash Management System is managed by the Debtors at their headquarters in Tualatin, Oregon, where they oversee the administration of the various bank accounts to effectuate the collection, disbursement, and movement of cash. The Debtors’ oversight facilitates accurate cash forecasting and reporting and the monitoring of the collection and disbursement of funds to and from the Debtor Bank Accounts (as defined below).

57. As of the Petition Date, the Debtors maintain five bank accounts (the “**Debtor Bank Accounts**”) in the United States. As described in detail in the Cash Management Motion, the majority of the Debtor Bank Accounts are maintained at Umpqua Bank (“**Umpqua**”) and the



remainder of Debtor Bank Accounts are maintained at Bank of America (“**BOA**” and, together with Umpqua, the “**Banks**”). Annexed to the Cash Management Motion as Schedule 1 is the following chart, which provides a complete list of the Debtor Bank Accounts.

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

58. The Debtors’ Cash Management System is simple but specifically designed to administer the Debtors’ small business and cannot be altered without significant disruption to the Debtors’ business operations and material distraction to the Debtors’ management. The Debtors, therefore, request that the Court authorize them to continue using the existing Cash Management System, and to move funds into, out of, and through the Cash Management System using the current methods in accordance with the agreements governing the Debtor Bank Accounts,

including, without limitation, any prepetition cash management agreements, bank account terms and conditions, or treasury services agreements.

59. That being said, the Debtors will use good faith efforts to comply with the requirements of being a debtor in possession in the District of Delaware as soon as practicable.

f. *Motion of Debtors for Entry of Interim and Final Orders (I) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Service, (II) Approving the Debtors' Proposed Adequate Assurance of Payment for Postpetition Services, and (II) Establishing Procedures for Resolving Requests for Additional Adequate Assurance of Payment (the "Utilities Motion")*

60. Pursuant to the Utilities Motion, the Debtors seek entry of an order (i) prohibiting Utility Providers (as defined below) from (a) altering, refusing, or discontinuing utility services to, or discriminating against, the Debtors on account of any outstanding amounts for services rendered prepetition, or (b) drawing upon any existing security deposit, surety bond, or other form of security to secure future payment for utility services; (ii) determining that adequate assurance of payment for postpetition utility services has been furnished to the Utility Providers providing services to the Debtors; and (iii) establishing procedures for resolving future requests by any Utility Provider for additional adequate assurance of payment.

61. In conjunction with their day-to-day operations, the Debtors receive traditional utility services from various utility providers (each, a "**Utility Provider**" and collectively, the "**Utility Providers**") for, among other things, telecommunications, gas, water, electricity, waste disposal, and similar utility products and services (collectively, the "**Utility Services**"). The Utility Providers include, without limitation, the entities set forth on the list annexed to the Utilities Motion as Exhibit C (the "**Utility Providers List**") going forward.

62. The Debtors paid an average of approximately \$2,106 per month on account of all Utility Services during 2020. As "adequate assurance," the Debtors propose to segregate on their

books and records, within 20 days of the Petition Date, an amount equal to the estimated cost for two weeks of Utility Services (*i.e.*, approximately \$1,053), calculated based on the historical data for 2020 (the “**Adequate Assurance Amount**”). The Adequate Assurance Amount will remain on deposit in the Debtors’ existing operating account and will be earmarked for the benefit of each respective Utility Provider. Thus, to maintain uninterrupted Utility Services, the Debtors propose to deposit and/or earmark \$1,053.00 within 20 days of the Petition Date. Thereafter, the Debtors propose to adjust the earmarked amount of the Adequate Assurance Amount to reflect several factors: (a) the termination of Utility Services by the Debtors regardless of any Additional Assurance Requests (as defined below), and (b) agreements reached with Utility Providers. These adjustments will permit the Debtors to maintain the Adequate Assurance Amount in an amount that consistently provides the Utility Providers with approximately 50% of the Debtors’ average monthly consumption of the utilities on account of such services.

63. I believe that uninterrupted Utility Services are essential to the Debtors’ business operations during the pendency of these Chapter 11 Cases. Should any Utility Provider alter, refuse, or discontinue service, even for a brief period, the Debtors’ business operations could be disrupted, and such disruption could jeopardize the Debtors’ ability to successfully reorganize. Therefore, the Debtors seek to establish an orderly process for providing adequate assurance to their Utility Providers without hindering the Debtors’ ability to maintain operations. I am informed and believe that the proposed Adequate Assurance Procedures (as defined in the Utilities Motion) are consistent with procedures that are typically approved in chapter 11 cases in this District. Accordingly, based on the foregoing and those additional reasons set forth in the Utilities Motion, I believe that the relief requested in such motion is necessary to avoid immediate and irreparable

harm and is in the best interests of the Debtors' estates, their creditors, and all other parties in interest.

- g. *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Insurance Coverage Entered Into Prepetition and Satisfy Prepetition Obligations Related Thereto, Including Broker Fees and (B) Renew, Supplement, or Purchase Insurance Policies, (C) Honor Prepetition Insurance Premium Financing Agreement, and (D) Renew Insurance Premium Financing Agreement in the Ordinary Course of Business;(II) Authorizing Banks to Honor and Process Check and Electronic Transfer Requests Related Thereto; and (III) Granting Related Relief (the "Insurance Motion")*

64. I understand that through the Insurance Motion, the Debtors seek authority to fund certain insurance and premium financing obligations after the Petition Date that may relate to coverage provided prior to the Petition Date, as well as authority to renew or enter into new insurance policies or premium financing agreements in the ordinary course.

65. As of the Petition Date, the Debtors maintain insurance programs, including liability, property, and employee benefits insurance, in the ordinary course of their business through several insurance carriers. The Debtors maintain certain of the Policies by directly paying the premiums to the carriers:

Type of Direct-Pay Policy	Direct-Pay Carrier	Annual Premium	Estimated Next Payment and Date
Commercial General Liability	Liberty Mutual	\$4,116.00	1/31/2021 – 1/31/2022
Commercial Property Liability	Liberty Mutual	\$31,524.00	1/31/2021 – 1/31/2022
Employee Benefits Liability	Liberty Mutual	\$1,044.00	1/31/2021 – 1/31/2022

66. Based on the Debtors' records, I do not believe that any postpetition payment for the above-listed policies will constitute payment for prepetition coverage; however, I understand that the Debtors are requesting relief to make such payments out of an abundance of caution.

67. In addition to the policies above, the Debtors also maintain an insurance premium finance agreement (the "PFA") with IPFS Corporation. The PFA allows the Debtors to finance the cost of insurance premiums for one of its liability policies. In the PFA, the Debtors, among other things, grant IPFA security interests in the Debtors' unearned premiums and dividend payments, and appoint IPFS as "attorney in fact" with respect to the applicable financed policy. A true and correct copy of the PFA is attached to the Insurance Motion. Pursuant to the PFA, the IPFS paid the applicable carrier the entire premium. In return, the Debtors pay IPFS as follows:

<b>Insurance Financier</b>	<b>Financed Policies</b>	<b>Financed Carrier(s)</b>	<b>PFA Payment Terms</b>
IPFS	General Liability	Evanston Insurance Co	<b>Interest Rate:</b> 6.50% <b>Monthly Premium:</b> \$38,302.81

68. As of the Petition Date, I believe that \$38,302.81 in premiums are due and will be paid within the first 21 days of these cases pursuant to the PFA. To date, the Debtors have made all payments required under the PFA on time. Based on my experience, I believe that the existing PFA is on commercially reasonable terms under the circumstances.

69. The insurance policies listed herein are essential to the Debtors' businesses, and I believe that it is in the best interests of their estates to continue to pay the amounts due under the policies and the PFA, regardless of whether a given payment became due prior to or after the Petition Date or constitutes payment for prepetition or postpetition coverage. Furthermore, I submit that payment of amounts that come due under the existing PFA is within the ordinary course of business. The termination of the Policies, on the other hand, would leave the Debtors' estates at

risk of catastrophic loss if an unforeseen event occurred. To avoid this risk, if any of the Policies were cancelled postpetition, the Debtors would need to obtain new insurance policies, which the Debtors may not be able to obtain at favorable prices (particularly in chapter 11) and would significantly reduce the assets available for operations and to creditors of the estates if payment is required in full.

70. If the Debtors are unable to maintain the financed policy, other alternatives likely would require considerable additional cash expenditures that the Debtors likely would be unable to fund and would be detrimental to the Debtors' efforts to preserve and maximize the value of their estates. For the same reasons, once the PFA expires, I believe that it is critical for the Debtors, and in the best interests of the estates, to renew the PFA, enter into new PFAs with IPFS, or enter into other PFAs with alternative premium financing companies.

h. *Motion of Debtors for an Order Authorizing Payment of Prepetition Taxes and Fees (the "Taxes Motion")*

71. I understand that through the Taxes Motion, Debtors respectfully request entry of an order, authorizing them to pay prepetition taxes and fees, which may consist of personal property taxes, corporate activities taxes, excise taxes, business license fees, annual report taxes, and other taxes and fees (collectively, the "**Taxes and Fees**") to certain international, federal, state, and local governmental and quasi-governmental units, including as listed on Exhibit B attached to the Taxes Motion (the "**Taxing Authorities**"). Although Debtors do not believe that any amounts are due and owing for Taxes and Fees as of the date hereof, Debtors' anticipate that certain Taxes and Fees will come due and owing in the near term, and, thus, out of an abundance of caution, through the Taxes Motion, Debtors request authority to pay any such amounts that may be or become due and owing.

72. Prior to the Petition Date, the Debtors incurred obligations to federal, state, and local governmental and quasi-governmental units. Although, as of the Petition Date, the Debtors were substantially current in the payment of assessed and undisputed Taxes and Fees, certain Taxes and Fees attributable to the prepetition period have not yet become due and owing. Certain prepetition Taxes and Fees will not be due until the applicable monthly, quarterly, or annual payment dates—in some cases immediately and in others not until next year.

73. The Debtors estimate that approximately \$5,000 in Taxes and Fees relating to the prepetition period are or will become due and owing to Taxing Authorities within 21 days after the Petition Date in the ordinary course.

74. Debtors' accrued and unpaid Taxes and Fees are summarized in the chart attached to the Taxes Motion as Exhibit C.

75. I believe the continued payment of the Taxes and Fees on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting their prospects for a successful chapter 11 process. If such obligations are not timely paid, the Debtors will be required to expend time and incur attorneys' fees and other costs to resolve a multitude of issues related to such obligations, each turning on the particular terms of each Taxing Authority's applicable laws, including whether (i) the obligations are priority, secured, or unsecured in nature, (ii) the obligations are proratable or fully prepetition or postpetition, and (iii) penalties, interest, attorneys' fees and costs can continue to accrue on a postpetition basis and, if so, whether such penalties, interest, attorneys' fees, and costs are priority, secured, or unsecured in nature.

- i. *Motion of Debtors for Entry of an Order Extending Time for Filing Schedules of Assets and Liabilities and Statement of Financial Affairs* (the “**Schedules Extension Motion**”)

76. Pursuant to the Schedules Extension Motion which I understand is forthcoming, the Debtors will seek entry of an order extending the deadline to file their schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs (collectively, the “**Schedules and Statements**”) by an additional fourteen (14) days, from the date such Schedules and Statements are otherwise required to be filed.

77. I believe cause exists to extend the deadline for filing the Schedules and Statements because it is critical that all key employees and advisors in these Cases focus on critical operational and restructuring matters during the first weeks of filing before turning to finalizing the Schedules and Statements.

78. Prior to the Petition Date, the Debtors and professionals focused extensively on preparing for the filing and transitioning the business into the chapter 11 process. Through that process, the Debtors worked on their Schedules and Statements, and I believe that the Schedules and Statements will be filed as soon as possible. Notwithstanding, is in the best interests of the Debtors to respectfully request an extension of fourteen (14) days.

I declare under penalty of perjury, pursuant to section 1746 of title 28 of the United States Code, that the foregoing is true and correct to the best of my knowledge, information, and belief. Accordingly, I respectfully request that the Court grant all relief requested in the First Day Pleadings and such other and further relief as may be just.

Dated: September 30, 2021

Balance Point LLC and MECTA Corporation

By: Adrian Kettering  
Adrian Kettering