Hearing Date and Time: TBD
Objection Deadline: TBD

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UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
INTERFAITH MEDICAL CENTER, INC.,	:	
	:	Case No. 12-48226 (CEC)
Debtor.	:	

OBJECTION OF BILL DE BLASIO, INDIVIDUALLY AND IN HIS CAPACITY AS THE PUBLIC ADVOCATE FOR THE CITY OF NEW YORK TO DEBTOR'S MOTION FOR ENTRY OF AN ORDER PURSUANT TO SECTIONS 105, 363 AND 1108 OF THE BANKRUPTCY CODE, AUTHORIZING THE DEBTOR TO IMPLEMENT, IN ACCORDANCE WITH NEW YORK STATE LAW, A PLAN OF CLOSURE FOR THE DEBTOR'S HOSPITAL AND CERTAIN AFFILIATED OUTPATIENT CLINICS AND PRACTICES; AND CROSS-MOTION FOR ENTRY OF AN ORDER (I) PURSUANT TO FED. R. BANKR. P. 2018(a) AUTHORIZING BILL DE BLASIO TO PERMISSIVELY INTERVENE IN THE DEBTOR'S CHAPTER 11 CASE, AND (II) PURSUANT TO SECTIONS 362(d) AND 105 OF THE BANKRUPTCY CODE, FED. R. BANKR. P. 4001, AND LOCAL BANKRUPTCY RULE 4001-1 FOR RELIEF FROM THE AUTOMATIC STAY TO PERMIT BILL DE BLASIO TO INITIATE A NEW YORK STATE COURT ACTION AGAINST NON-DEBTORS

Bill de Blasio, individually and in his capacity as the Public Advocate for the City of New York (the "Public Advocate"), hereby submits the following: (i) objection (the "Objection") to the motion of the Debtor for entry of an order pursuant to sections 105, 363 and 1108 of the Bankruptcy Code, authorizing the Debtor to implement, in accordance with New York state law, a plan of closure for the Debtor's hospital and certain affiliated outpatient clinics

and practices (the "Closure Motion"); and (ii) cross-motion for entry of an order (I) pursuant to Fed. R. Bankr. P. 2018(a) authorizing the Public Advocate to permissively intervene in the Debtor's Chapter 11 case, and (II) pursuant to sections 362(d) and 105 of the Bankruptcy Code, Fed. R. Bankr. P. 4001 and Local Bankruptcy Rule 4001-1 for relief from the automatic stay to permit the Public Advocate to initiate a state court action against non-debtors (the "Cross-Motion"). In support of the Objection and the Cross-Motion, the Public Advocate respectfully states as follows:

PRELIMINARY STATEMENT

1. As stated by Governor Cuomo in his May 7, 2013 letter to HHS Secretary Kathleen Sebilius seeking an 1115 Medicaid waiver amendment to facilitate the implementation of the State of New York's Medicaid Redesign Team multi-year action plan (the "Cuomo Letter"), as a result of "the rapid deterioration in the financial status of essential components of the health care services system in Brooklyn," the borough stands on the brink of a health care catastrophe.

2. To wit, at least four hospitals – including Interfaith Medical Center, Inc. (the "Debtor" or "IMC"), a hospital in the Bedford-Stuyvesant section of Brooklyn serving a primarily African-American and Caribbean-American section of Central Brooklyn – are in grave danger of closing due to a funding crisis, among other reasons. Such closures, if they were to occur, will be disastrous to the community, as access to health care in Brooklyn will be severely compromised, many jobs will be lost, and the lives of many New Yorkers will be put directly at risk. Even the Debtor, in the Closure Motion, acknowledges and agrees that the closure of IMC will have a widespread negative impact on health care in Brooklyn and on its 2.5 million residents.

3. Despite this grim outlook, ignoring the needs of the communities which it serves and which rely on IMC to help preserve and save lives, the Debtor, by and through the Closure Motion, is determined to effectuate the closing of IMC via a written plan of closure (the "Closure Plan"). The Debtor blames the New York State Department of Health (the "DOH"), a public agency of the State of New York which supervises all hospitals operating within the State of New York and adopts rules and regulations for that purpose. The Debtor also blames its secured lender, the Dormitory Authority of the State of New York ("DASNY"), another New York state public agency which provides financing and construction services to public and private universities, not-for-profit healthcare facilities and other institutions which serve the public good. According to the Debtor, IMC presented the DOH and DASNY with a plan of reorganization in July 2013 that would have kept IMC open for business and would not require state financing following IMC's emergence from Chapter 11, but that those state agencies flatly rejected the Debtor's plan and conditioned IMC's continued use of cash collateral after July 29 on effectuation of an orderly shutdown plan.

4. In response to DOH's and DASNY's alleged rejection of the Debtor's proposed restructuring plan and directive to IMC to commence closure plans, and claiming there is no alternative funding source to keep the Debtor afloat, IMC capitulated and filed the Closure Motion. Pursuant to the Closure Motion, the Debtor, coordinating with DOH and DASNY, now seeks authority to shutter IMC for good using non-specific, general provisions of the Bankruptcy Code and cites no case law where a vital public hospital has been closed under similar facts.

5. While the Debtor, the DOH and DASNY all appear to have given up this fight, those actually affected by IMC's closure, including the Public Advocate, a long-standing Brooklyn resident, representing himself and the millions of Brooklyn-ites and other New

Yorkers whose lives will be put at risk by the closing of IMC, stands undeterred and has no choice but to face this crisis head-on.

6. In that regard, it is clear that DOH, in issuing its directive to IMC to, among other things (a) submit a closure plan for the Debtor, (b) divert ambulances from IMC to other medical and mental care facilities, (c) deny the admission or re-admission of patients and (d) transfer IMC's clinics to other hospitals or healthcare facilities, acted arbitrarily, capriciously, and not in accordance with New York law. In addition, DOH's provision to IMC of only two (2) weeks to submit a restructuring plan without state aid was unreasonable, arbitrary, capricious, and contrary to law pursuant to Article 78 of the New York Civil Practice Law and Rules (the "CPLR"). Moreover, DOH's July 19, 2013 denial of the Debtor's restructuring plan based on the fact that the plan submitted was only a "working draft" was unreasonable, arbitrary, capricious, and contrary to law pursuant to Article 78 of the CPLR. Finally, DOH's failure to observe the ninety day notice requirements for closure of a medical facility codified at 10 NYCRR 401.3(g) was also arbitrary, capricious, and contrary to New York state law. For these and other reasons set forth herein, the Closure Motion must be denied.

7. Due to these and other acts taken by DOH directly contrary to New York state law, and not remedied by DOH, the closure of IMC may not be effectuated by the Debtor and the Closure Motion must be denied. The Closure Motion must also be denied for the critical public policy considerations germane to Brooklyn and the City of New York as discussed above and herein. In addition to the specific policy reasons directly impacting the lives of Brooklyn's citizens that underpin the Public Advocate's request that the Court deny the Debtor's plan to close IMC, there are also more general policy arguments that mandate the Closure Motion be denied. As more fully described below, the Debtor has a responsibility to protect the public

interest while in Chapter 11, and cannot use the Bankruptcy Code to evade those responsibilities by attempting to effectuate closure of a critical medical facility like IMC under the auspices of general Bankruptcy Code statutes. The intent of the drafters of the Bankruptcy Code was not to permit debtors to use the Bankruptcy Code as a sword to harm the public interest. For these reasons alone the Closure Motion must be denied.

8. Importantly, the IM Foundation, Inc. (the "Foundation") has concurrently moved to terminate the Debtor's exclusive right to file and solicit a plan, outlined the plan prepared by its financial advisor laying out a strategy to re-configure IMC's operations and keep it up and running as a going concern, and filed its Chapter 11 plan. Thus, there is even more reason to deny or at least delay a ruling on the Closure Motion to allow the Foundation to move forward with its operational plan, which would save IMC and permit the continued and uninterrupted provision of heath care services to Brooklyn communities that have no reasonable alternative.

9. In conjunction with the Objection, the Public Advocate also submits the Cross-Motion to enable him to file a New York Supreme Court action (the "Article 78 Action") against the DOH, DASNY, and the heads of each of those state agencies to, among other things, enjoin the DOH from taking any further action to implement the Closure Plan, as well as to enjoin DASNY from cutting off funding to IMC and/or terminating the Debtor's right to use its cash collateral. The Public Advocate, in both his individual capacity and his capacity as an elected official, will be the Petitioner in the Article 78 Action. A copy of the draft Complaint (the "Draft Complaint") to be filed in New York Supreme Court pending receipt of stay relief is attached hereto as Exhibit A. Evaluated using the *Sonnax* factors, as enumerated in detail below, there is more than sufficient "cause" to lift the automatic stay pursuant to section 362(d) of the Bankruptcy Code to permit the Public Advocate to initiate the Article 78 Action.

10. In this case in particular, the balance of the equities – *i.e.*, the dire situation faced by the citizens of Brooklyn if IMC closed, depriving many communities of vital health care services and putting lives directly at risk – weighs heavily in favor of lifting the stay under the Court's equitable powers codified at section 105 of the Bankruptcy Code. Importantly, the Public Advocate is only seeking stay relief out of an abundance of caution rather than immediately initiating the Article 78 Action, given the reasonable possibility that this Court may find that any steps taken to enjoin DOH and/or DASNY – non-debtors – from taking actions necessary to implement the Closure Plan may in fact be acts taken to, for all intents and purposes, exercise domination and control over property of the Debtor's estate.

11. In addition, to the extent that the Public Advocate is not deemed a "party-in-interest" in this Chapter 11 case pursuant to section 1109(b) of the Bankruptcy Code, the Public Advocate also cross-moves for permissive intervention into this Chapter 11 case pursuant to Bankruptcy Rule 2018(a). In that regard, the Public Advocate is the voice and representative of the communities of Brooklyn who stand to be directly and severely harmed by the planned closure of IMC, and, in fact, the Public Advocate himself is a member of those communities. The Public Advocate's personal interests in preservation of life and the vibrant economics present in the borough of Brooklyn are in direct alignment with the masses that are not adequately represented in this Chapter 11 case. In addition, given the fast track that this case is on, with an evidentiary hearing on the Closure Motion set for August 26, 2013 (the "Hearing"), the Public Advocate's intervention into this matter will not cause any undue delay or prejudice to the existing parties. Simply put, the Public Advocate and the communities he represents are entitled to their day in Court on this critical matter of health care and public policy. Quite literally, lives hang in the balance.

12. For the reasons set forth herein, the Public Advocate urges this Court to deny the Closure Motion, grant the Cross-Motion, and not deny Brooklyn's citizens the health care services they so desperately need and to which they are indeed unquestionably entitled under New York state law. This is particularly true in this case where there is a viable plan on the table that would keep IMC open that would save lives, save jobs, and have minimal downside impact, if any.

JURISDICTION

13. This Court has jurisdiction over the Closure Motion, the Objection and the Cross-Motion under 28 U.S.C. §§ 157 and 1334.

14. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b).

15. The predicates for the relief sought in the Cross-Motion are sections 105(a), 362(d) and 1109(b) of Chapter 11, Title 11 of the United States Code (the "Bankruptcy Code"), Rules 2018 and 4001 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Eastern District of New York (the "Local Rules").

16. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

FACTUAL BACKGROUND

A. IMC Medical Center

17. IMC operates a hospital and sixteen (16) medical and mental health clinics located in Central Brooklyn, serving over two hundred fifty thousand (250,000) patients annually. Central Brooklyn is a densely populated urban area, comprising the neighborhoods of Crown Heights, Flatbush, Bedford-Stuyvesant, and Lefferts Gardens. As the Debtor notes in the Closure Motion, thirty-one percent (31%) of Central Brooklyn residents are at or below the

Federal poverty line, twenty-one percent (21%) are uninsured, and twenty-nine percent (29%) are without a primary healthcare provider. The United States Department of Health and Human Services ("HHS") has designated a large part of Central Brooklyn a Health Professional Shortage Area.[1]

18. IMC operates a 287-bed short stay acute care hospital. The 287 beds are distributed among the various healthcare areas as follows:

BED TYPE	**NUMBER (#)**
Chemical Dependence/Rehab	20
Chemical Dependence/Detox	20
Intensive Care	13
Medical/Surgical	104
Pediatric	10
Psychiatric	120
Total Beds	**287**

19. IMC also maintains a broad range of community based healthcare programs and services. These programs consist of the following:

1. Behavioral Health Program – Child and Adolescent Clinic
2. Center for Mental Health
3. Chemical Dependence Outpatient Services (CDOS)
4. Intensive Psychiatric Rehabilitation Therapy Program (IPRT)
5. Mobile Crisis Team
6. Partial Hospital Program

20. In addition to the 287-bed acute care hospital and community based programs and services mentioned above, IMC provides emergency services through its Emergency Department (the "ED") totaling approximately 50,000 visits per year. Most of the aforesaid visits are "treat and release" patients emanating from IMC's immediately surrounding zip codes (11233, 11213, 11216, 11221 and 11238). However, the ED is the locus for ambulatory community care and the

[1] A Health Professional Shortage Area is an area that has shortages of primary medical care, dental or mental health providers.

triage of behavioral health diagnoses. Approximately thirteen percent (13%) of patients from IMC's primary service area seek emergency care in the ED.

21. IMC's 120 Psychiatric beds represent approximately thirteen percent (13%) of the psychiatric beds in Brooklyn. On average, approximately ninety-five point seven (95.7%) of those beds are occupied, leaving excess capacity of only 5.1 beds. IMC's daily census of 114.9 psychiatric beds occupied daily represents fourteen percent (14%) of the psychiatric beds occupied in the Borough. The chart set forth below provides a broader picture of the psychiatric beds available and their occupancy rates, numbers, location and excess capacity:

	2011 AVG Daily CENSUS	BEDS	OCCUPANCY	EXCESS CAPACITY
Brookdale Hospital Medial Center	62.6	67	93.4%	4.4
Kingsbrook Jewish Medical Center	31.7	33	96.1%	1.3
Lutheran Medical Center	35.0	35	100.0%	0.0
Maimonides Medical Center	60.5	70	86.5%	9.5
Coney Island Hospital	56.6	64	88.4%	7.4
Kings County Hospital Center	195.8	205	95.5%	9.2
Woodhull Medical & Mental Health Center	124.8	133	93.8%	8.2
New York Methodist Hospital	42.7	50	85.3%	7.3
University Hospital of Brooklyn	45.9	73	62.9%	27.1
Long Island College Hospital	39.9	39	102.2%	(0.9)
IMC Medical Center	**114.9**	**120**	**95.7%**	**5.1**
Total Kings County	810.4	889	91.2%	78.6

22. The closure of IMC would result in an immediate undersupply of approximately 41.4 beds in Brooklyn, which will be exacerbated by the closing of Long Island College Hospital and result in a psychiatric bed shortage of approximately 81 beds in Kings County.

23. IMC maintains 40 beds for chemical dependent patients. These 40 beds represent approximately thirty three percent (33%) of the Chemical Dependence bed capacity in Kings County. The average daily census of Chemical Dependence beds through the first half of 2013

was 29.4 patients per day. The allocation of Chemical Dependence beds in use amongst hospitals in Brooklyn is set forth below:

INPATIENT CHEMICAL DEPENDENCE BEDS

	DETOX	REHAB
Brooklyn Hospital	10	-
Coney Island	15	-
Kings County	30	-
Lutheran	8	-
Woodhull	21	-
IMC	**20**	**20**
Total Chemical Dependence	104	20

24. IMC also maintains a behavioral health program. In 2012, there were 94,000 visits to IMC's Behavioral Health clinics. The 94,000 clinic visits break down as follows:

BEHAVIORAL HEALTH CLINIC VISITS

	2011	**2012**
Chemical Dependence OP Services	6,377	4,865
Center for Mental Health	24,609	24,569
Crisis Outreach Response System	10,701	8,578
Mentally-Ill Chemical Abuser	4,576	4,598
Intensive Psych Rehab Therapy	2,431	2,100
Partial Hospital Program	3,780	2,870
Behavioral Health Program – Adult	9,501	5,502
Behavioral Health Program – Child & Adolescent	2	0
Continuing Day Treatment Program	20,165	18,850
Methadone Maintenance Treatment Program	0	22,072
Total Behavioral Health Clinics	**82,142**	**94,004**

B. Events Leading to Commencement of IMC's Chapter 11 Case

25. IMC is the primary acute care provider to its community. Therefore, Central Brooklyn's need for IMC's healthcare services is absolutely critical. Accordingly, IMC fulfills a vital mission in its community. In the Cuomo Letter, Governor Cuomo described IMC and other

Brooklyn hospitals in danger of closing as "essential components of the health care services system in Brooklyn". Governor Cuomo also stated that if those hospitals close, "the outcome will be disastrous," and, "[a]ccess to care will be compromised and the remaining health care providers in the borough will be destabilized."

26. As the Debtor acknowledges, IMC operates in an increasingly challenging environment. Medicaid reimbursement rates for hospitals such as IMC repeatedly have been cut, including cuts of approximately forty percent (40%) from 2010 to 2012. Approximately thirty-three percent (33%) of IMC's adult patients are uninsured and many of the uninsured are illegal immigrants. The costs of providing medical care by IMC and other hospitals continue to rise significantly. *See* Closure Motion at ¶ 4.

27. As the Debtor further notes, IMC sought a new business relationship with one or more other hospitals. In February 2012, IMC and The Brooklyn Hospital Center ("BHC") applied to the DOH for a HEAL 21 grant in order to fund the development and implementation of a cohesive health system for North/Central Brooklyn.[2] IMC did not receive any HEAL 21 grant funds. *Id.* at ¶ 6.

28. According to the Debtor, IMC entered into a Memorandum of Understanding (the "MOU") with BHC with the intention to improve the provision of health care to the Central Brooklyn community. BHC agreed to make commercially reasonable, good faith efforts to maintain IMC as a general hospital with inpatient services. Notably, the MOU precluded IMC from soliciting alternative transactions while BHC performed its due diligence. The Debtor asserts that these provisions were included primarily because DOH (and DASNY) required IMC

[2] The purpose of HEAL NY grants is to improve primary and community-based care, eliminate excess bed capacity, and reduce overreliance on in-patient care in hospitals and nursing homes.

to enter into the BHC MOU at that time. On March 22, 2013, the Court approved IMC's entry into the MOU with BHC. *Id.* at ¶ 10.

29. However, a transaction with BHC never came to fruition. In response, the Debtor states that it developed a proposed draft business plan that would form the basis for a stand-alone restructuring of IMC. *Id.* at ¶ 12.

30. The Debtor also states that IMC had an agreement for DOH (through DASNY) to provide IMC with debtor-in-possession financing from New York State to help IMC continue its operations while a comprehensive restructuring blueprint for many of Brooklyn's hospitals was being developed. DOH later withdrew its approval of that financing. *Id.*

C. Other DOH Actions

31. The Debtor makes note that the same hospital management firm provided senior management personnel to IMC for over 20 years. Following the Debtor's bankruptcy filing, the DOH objected to this long-standing arrangement. As a result, the operative management contract was cancelled. *Id.* at ¶ 17.

32. According to the Debtor, the only management change at IMC resulting from the termination of that contract was the replacement of IMC's Chief Restructuring Officer ("CRO"). After the new CRO was in place, DOH withdrew its approval of the debtor-in-possession bridge financing for IMC. *Id.* at ¶ 18.

33. According to the Debtor, DOH announced at a meeting with IMC representatives and by letter dated June 25, 2013 that it would only consider a restructuring plan that would enable IMC to operate without future State funding and required the Debtor to submit this plan by July 9, 2013 (a mere two weeks with an interceding July Fourth Holiday weekend). *Id.* at ¶ 19.

34. Furthermore, the Debtor admits that while the DOH required any restructuring plan to preclude use of State funds, it offered to provide IMC with $15 million in debtor-in-possession financing if the Debtor acquiesced to a closure plan. *Id.*

35. The Debtor alleges that on July 9, 2013, IMC provided DOH with a working draft of a proposed restructuring plan that did not include any State funding. *Id.* at ¶ 20.

36. The Debtor further asserts that by letter dated July 19, 2013, DOH told IMC: "(a) its proposed restructuring plan was not accepted based on various DOH findings; (b) IMC's plan could not be resubmitted; and (c) IMC must commence implementation of a closure plan." DOH also required IMC to make substantial revisions to its draft closure plan by July 22, 2013 (later extended to July 25, 2013). *Id.* at ¶ 21.

37. The Debtor alleges that by letter dated July 22, 2013, IMC advised DOH of certain errors in DOH's July 19 letter with respect to bases for rejection of IMC's restructuring plan, clarified various other points raised by DOH, confirmed IMC's restructuring plan was a discussion document subject to revision, and requested a meeting with DOH. *Id.* at ¶ 22.

38. According to the Debtor, DOH did not formally respond to IMC's July 22 letter. In addition, on July 24, 2013, DASNY advised IMC that, among other things: (a) "DASNY believes that there is no viable prospect of any additional funding [for IMC] coming from the State of New York or any other source, other than in connection with a prompt closure of IMC"; (b) "DASNY's consent to continued use of cash collateral starting on Monday, July 29, 2013, is expressly conditioned on IMC's agreement to implement the closure plan and use cash collateral based solely on the closure budget"; (c) DASNY expects, "in connection with DASNY's consent to use cash collateral that IMC will file [a] closure motion prior to Monday, July 29, 2013"; and (d) DASNY believes "IMC should as soon as practicable send out WARN notices to all of its

affected employees; and [DASNY is] adding that as a requirement in the proposed Cash Collateral Order." *Id.* at ¶ 22-23.

D. IMC's Filing of Closure Motion

39. Conceding to the demands of DOH and DASNY, on July 30, 2013, the Debtor filed the Closure Motion seeking Court approval of the Closure Plan. *See* Docket No. 602.

40. On August 2, 2013, the Debtor filed a supplement to the Closure Motion annexing the draft Closure Plan. *See* Docket No. 606.

41. On August 8, 2013, the Court entered a revised order (the "Scheduling Order") establishing a schedule for propounding objections and scheduling the Hearing. *See* Docket No. 620.

42. On August 12, 2013, the Debtor filed its second supplement to the Closure Motion annexing a revised draft Closure Plan and DASNY's commitment letter with respect to the $15 million debtor-in-possession financing offered by DASNY to fund the closure of IMC. *See* Docket No. 627.

E. IM Foundation Plan

43. On August 16, 2013, the Foundation filed a motion ("Exclusivity Termination Motion") seeking to terminate the exclusive period during which only the Debtor may file and solicit acceptances of a Chapter 11 plan pursuant to section 1121(d) of the Bankruptcy Code.

44. In the Exclusivity Termination Motion, the Foundation explains that it has completed its analysis and prepared a draft plan of for an operational restructuring and is prepared to move forward with its Chapter 11 plan if and when exclusivity is terminated.

45. The Foundation's plan provides for: (i) retention of behavioral health and crisis services and coordination of ambulatory services with an ambulatory care partner; (ii)

development of leasing model for healthcare services including nursing, physical rehabilitation, long-term acute care, and healthcare education; (iii) support for community primary care access; and (iv) transition of ambulatory care operations to a qualified health center that would also assume clinical and AIDS housing programs. *See* Exclusivity Termination Motion at ¶ 10.

F. Impact of Potential Closure of IMC

46. The closure of IMC, if approved, will have a significant impact on other medical facilities in Brooklyn, and, indeed, in the entire City of New York, as they will need to absorb IMC's emergency room volume, inpatient medical/surgical and inpatient psychiatric admissions.

47. The potential closure of IMC would have a profound effect upon city services. First, it will have a direct and damaging effect upon ambulance services. In New York City, the primary provider of pre-hospital care in the five boroughs is the New York City Fire Department ("FDNY"). In this regard, the Public Advocate has already received complaints regarding the imminent closure of IMC. Specifically, the closure of IMC will result in the diversion of ambulances and diminished city services because New York City residents serviced by FDNY ambulances will experience (1) longer transit times en route to remaining hospitals when they could otherwise have been delivered to IMC; (2) longer delivery times once an ambulance eventually reaches a different hospital; and (3) slower turnover of emergency vehicles and delays in servicing subsequent emergency calls because the FDNY vehicles are forced to travel longer distances and make fewer overall trips.

48. In addition, the permanent closure of IMC will have a grave impact on city services provided to city residents by the New York City Health and Hospitals Corporation ("HHC"). HHC is a city agency that operates six medical centers in the borough of Brooklyn. HHC already operates on a tight budget and the permanent closure of IMC will force

more city residents to seek medical care at HHC hospitals. That increase in the number of patients seeking care at HHC hospitals will inevitably increase the burden on HHC and yield longer wait times and diminished services. With the loss of IMC, HHC facilities, such as Kings County Hospital Center (located just 1.8 miles from IMC) ("KKCH"), can expect a permanent strain on both emergency and non-emergency services with no foreseeable relief.

49. Moreover, should the Closure Plan be implemented, the health care professionals that currently work at IHC, most notably the doctors and nurses and other key medical personnel, will all be forced to leave the community and find alternate employment at other facilities outside the area. Once they leave, they may never return. This grim reality will result in less medical care personnel in Bedford-Stuyvesant and the surrounding areas, which will have a direct and tremendously negative impact on the community.

50. Simply put, should IMC be shuttered, the lives of Brooklyn's citizens will be put at risk in a variety of ways, and the economy of the communities that make up Brooklyn will suffer major trauma.

OBJECTION TO CLOSURE MOTION[3]

51. In the Closure Motion, the Debtor seeks authority to implement the Closure Plan in coordination with DOH and DASNY pursuant to sections 105(a), 363 and 1108 of the Bankruptcy Code. All three of these provisions are very general and non-specific provisions of the Bankruptcy Code that (i) authorize a debtor to operate its business in Chapter 11 (11 U.S.C. § 1108(a)); (ii) authorize a debtor to enter into transactions involving property of the estate outside

[3] The Public Advocate has standing to interpose the Objection pursuant to section 1109(b) of the Bankruptcy Code as a party-in-interest whose rights are directly affected by the outcome of the Closure Motion, and stands to be aggrieved should the Closure Motion be granted. In addition, pursuant to the Cross-Motion, the Public Advocate seeks permissive intervention into this Chapter 11 case pursuant to Bankruptcy Rule 2018(a) to both file, prosecute and be heard as to the Objection, as well as to seek relief from the automatic stay in order to initiate the Article 78 Action. A full discussion as to the bases for the Public Advocate's standing and intervenor status is included below as part of the Cross-Motion.

the ordinary course of business (11 U.S.C. § 363(c)(1)); and (iii) state that bankruptcy courts can issue any orders, process or judgments that are necessary to carry out the purposes of Title 11 of the United States Code (11 U.S.C. § 105(a)). In addition, the Debtor alleges that it is only entitled to further use of cash collateral if it proceeds with the Closure Plan, and that therefore it is left with no alternative but to pursue closure.

52. While these Bankruptcy Code provisions *may*, in the Debtor's view, provide *some* minimum statutory basis to undertake the actions it seeks to take via the Closure Motion, these statutes are not specifically applicable to our facts. The Debtor's attempt to utilize these general provisions as alleged authority to close IMC (without providing any further, more detailed authority related specifically to facts such as the case at bar), a decision that will have a devastating impact on the Brooklyn health care system and its citizens should the closure be effectuated, is misguided and must fail. Moreover, the Debtor fails to consider the improper, arbitrary and capricious actions taken by DOH and DASNY in connection with the proposed closure, which actions preclude the closing of IMC. By the Cross-Motion, the Public Advocate seeks relief from the automatic stay in order to initiate the Article 78 Action where he intends to prove those allegations in New York state court. Due to the improper actions of DOH and DASNY which violate New York state law, the Debtor is prohibited from proceeding with the Closure Plan, and the general Bankruptcy Code statutes cited by the Debtor are inapplicable to the specific facts of this case and provide no sustainable legal authority to justify approval of the Closure Plan.

A. Public Policy Reasons Specific To Brooklyn And The City Of New York Overwhelmingly Require Denial Of The Closure Motion

53. As detailed extensively herein, closure of IMC will put lives directly at risk in the communities that IMC serves, result in a loss of many jobs, and in turn have a highly negative

impact on the economy of Brooklyn. In the first instance, it will have a direct and damaging effect upon ambulance services. To wit, the closure of IMC will result in the diversion of ambulances and diminished city services because New York City residents serviced by FDNY ambulances will experience (1) longer transit times en route to remaining hospitals when they could otherwise have been delivered to IMC; (2) longer delivery times once an ambulance eventually reaches a different hospital; and (3) slower turnover of emergency vehicles and delays in servicing subsequent emergency calls because the FDNY vehicles are forced to travel longer distances and make fewer overall trips.

54. The Debtor's closure will also have a devastating impact on city services provided to Brooklyn residents by the HHC. Since HHC already operates on a tight budget, the permanent closure of IMC will force more city residents to seek medical care at HHC hospitals. That increase in the number of patients seeking care at HHC hospitals will surely increase the burden on HHC and yield longer wait times and diminished services. With the loss of IMC, HHC facilities, such as Kings County Hospital Center will receive a permanent strain on both emergency and non-emergency services with no foreseeable relief.

55. The Closure Plan will result in far less medical care personnel in Bedford-Stuyvesant and the surrounding areas – who will seek alternate employment at other facilities and may never return to the area – a result that can be characterized as nothing less than awful for the community immediately surrounding IMC and which relies on IMC most for its services. For those reasons alone, the Public Advocate urges the Court to deny the Closure Motion.

B. The Debtor And The Court Have A Responsibility To Protect The Public Interest In Chapter 11 Cases

56. Beyond the public policy reasons germane to Brooklyn that overwhelmingly require denial of the Closure Motion so that IMC can remain operational, there are other

overriding, but more general, public policy reasons that require denial of the Closure Motion. In this regard, it is beyond doubt that one of the primary purposes of the bankruptcy laws is to prevent failure of, and facilitate the rehabilitation of, failing and distressed business. *See* H.R. REP. NO. 595, 95th Cong., 1st Sess. 340, reprinted in 1978 U.S. CODE CONG. & AD NEWS 6296; S. REP. NO. 989, 95th Cong., 2d Sess. 54, reprinted in 1978 U.S. CODE CONG. & AD. NEWS 5840. *See also* H.R. REP. NO. 687, 89th Cong., 1st Sess. (1965); S. REP. NO. 1158, 89th Cong., 2d Sess. (1966). Although courts typically strive to effectuate the goals of the Bankruptcy Code, there are times when the overall public interest must override these objectives. Congress clearly had this concept in mind when it enacted the Bankruptcy Reform Act of 1978.

57. These issues and concepts often arise in the context of large environmental cleanup cases. While the underlying facts of these cases do not involve hospitals, the general concepts regarding purposes of the Bankruptcy Code are identical to the case at bar. The Third Circuit took an instructive position in *Penn Terra Ltd. v. Department of Environmental Resources,* 733 F.2d 267, 278 (3d Cir. 1984). In that case, a strip mine operator committed various violations of state environment law. *Id.* at 269. The operator then entered into a settlement agreement with the state to remediate erosion issues that had become severe. *Id.* Subsequently, the operator did not timely comply with its remediation requirements. *Id.* at 270. In response, the state sought relief in state court to compel the operator to comply. *Id.* Penn Terra thereafter filed for Chapter 11 protection, and sought a stay of the state's state court compliance order. *Id.* In interpreting the automatic stay provision, the Third Circuit stated:

> The police power of the several States embodies the main bulwark of protection by which they carry out their responsibilities to the People; its abrogation is therefore a serious matter. . . . **Where important state law or general equitable principles protect some public interest, they should not be overridden by federal legislation unless they are inconsistent with explicit**

congressional intent such that the supremacy clause mandates their supersession.

Id. at 273 (emphasis added).

58. Similarly, in *Thomas Solvent Co. v. Kelley*, 44 B.R. 83, 88 (Bankr. W.D. Mich. 1984), a case involving water purification and protection of groundwater issues, the court noted that "[a] debtor in possession may not preserve its viability as a business entity, yet avoid its responsibility to society, simply by filing a Chapter 11 petition." While this court ultimately stayed the state court action initiated by the State of Michigan to enforce a state court order against the debtor related to the groundwater issues, that stay was primarily granted because Michigan's actions could have resulted in a money judgment against the debtor. *Id.* at. 85-86. In the instant case, there is no money judgment being sought against IMC in Chapter 11, or in the proposed Article 78 proceeding. Moreover, despite the result reached by the *Thomas Solvent* court, the court was very clear that the Bankruptcy Code cannot be used by a debtor to evade its responsibilities at large. *See Thomas Solvent Co.*, 44 B.R. at 88.

59. In both of the aforementioned cases, the courts made clear that the public interest must be considered in adjudicating issues in Chapter 11 cases, and indeed must be given significant weight in the proceedings.[4]

60. In hospital bankruptcies as well, courts have given public interest considerations priority over monetary ones. In *In re United Healthcare System, Inc.* 1997 WL 176574 (D. N.J.

[4] Other examples of statutory provisions exist that further demonstrate that Congress did not intend for the Bankruptcy Code to be used to evade compliance with other laws. Under 28 U.S.C. § 959(b), Congress provided that management of an estate must be carried out in accordance with state laws. In addition, under 11 U.S.C. § 523(7), a discharge under the Bankruptcy Code "does not discharge an individual debtor from any debt . . . to the extent such debt is for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit, and is not compensation for actual pecuniary loss." Each of these provisions shed more light on the fact that Congress did not intend for debtors to use the bankruptcy process to the detriment of the public interest.

Mar. 26, 1997), the district court reversed the bankruptcy court's decision voiding the sale of the debtor-hospital on the grounds that the bankruptcy court failed to consider non-monetary consideration in evaluating bids. The district court explained that "in viewing [the] totality of circumstances [surrounding a hospital bankruptcy], this Court cannot mechanically apply bankruptcy principles of "highest and best" offer. Rather, the Court must not only weigh the financial aspects of the transaction but also look to the countervailing consideration of a public health emergency." *Id.* at *5. The district court further noted that the bankruptcy court failed to consider the debtor-hospital board's fiduciary duty to maintain the legacy of the Children's Hospital. *Id.* at *6. The district court found that the hospital board exercised sound business judgment in approving a sale that maintained the acute care facility as unit in the community.[5] *Id.*

61. Here, IMC, in giving up the fight, attempting to close and ignore other viable restructuring alternatives, is trying to use sections 105, 363 and 1108 of the Bankruptcy Code as a sword to achieve its goals, all the while eschewing the public interest (which is overwhelming) in keeping IMC open and operational. Such actions are not in accordance with Congress' intent in drafting the bankruptcy laws. If the Debtor is permitted to use the Bankruptcy Code in this fashion, a very troubling precedent will be set.

62. The Court should not sanction the Debtor's attempt to utilize certain general provisions Bankruptcy Code to authorize the closure of IMC and evade its responsibilities to

[5] While the district court states in *dicta* that the court could defer to state health authorities on matters of public health, there were no allegations that the health commissioner acted in an arbitrary and capricious manner. To the contrary, the health commissioner issued a moratorium on the hiring of physicians from United in order to keep the practices together. *Id.* Moreover, in *United Healthcare*, there was definitely going to be an operational hospital going forward, it was merely a question of who would acquire and run the hospital. Indeed, the *United Healthcare* court took pains to articulate why it felt the state health authorities were justified; it did not merely blindly rubber stamp the state health authorities' decision. *Id.* Here, no one denies that it is preferable to have a hospital than no hospital and that it is in the public interest for IMC to continue to operate.

Brooklyn and the City of New York as a whole. Authorizing such actions was clearly not the intention of the drafters of the Bankruptcy Code, as inferred from the various courts addressing these issues in the environmental and healthcare contexts. The Closure Motion therefore should be denied.

C. The Underlying Actions Of DOH And DASNY Were Unlawful, Arbitrary, Capricious And Not In Accordance With New York Law, And Therefore The Debtor Is Prohibited From Proceeding With The Proposed Closure Plan

63. Beyond the overriding (and compelling) public policy reasons however, as set forth in the Public Advocate's Draft Complaint in connection with the Cross-Motion (as detailed below) through the Article 78 Action (assuming the Public Advocate is granted stay relief pursuant to the Cross-Motion), the Public Advocate will seek a judgment pursuant to Article 78 of the CPLR compelling DOH and DASNY to cease any and all actions interfering with, or otherwise terminating, the Debtor's operations, including enjoining them from ceasing to fund the hospital. More specifically, the Draft Complaint lists three separate causes of action setting forth how DOH and DASNY reached arbitrary and capricious determinations, which therefore preclude the Debtor from implementing the Closure Plan in Chapter 11. The causes of action are as follows (as more fully described in the Cross-Motion below and in the Draft Complaint itself):

- First, the Public Advocate sets forth how the DOH arbitrarily and capriciously gave negligible notice to the Debtor of its abrupt determination that the Debtor could only continue operating if it developed a restructuring plan within a matter of days that requires no state funding;
- Second, the Public Advocate details how the Debtor submitted a working draft of its restructuring plan to the DOH on-time and per the DOH's requirements including the requirement regarding no state funding, but that DOH summarily,

arbitrarily, and capriciously rejected the restructuring plan because it was a working draft, and not a final product and prohibited the Debtor from resubmitting a final product. Instead, the DOH directed the Debtor to commence implementation of a closure plan.

- Third, the Public Advocate describes how the DOH approved in principle the closure plan the Debtor ultimately filed within days after it was submitted, contrary to New York Public Health Law and Regulation § 401.3, which provides that "no medical facility shall discontinue operation or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the [New York State Health Commissioner] and his written approval obtained." 10 NYCRR § 401.3(g). The DOH's rapid approval – or more accurately, pre-approval – was a determination that was made arbitrarily and capriciously.

64. Provided that the Public Advocate receives stay relief, he intends to immediately commence the Article 78 Action to, among other things, enjoin DOH and DASNY from taking any actions or inactions in furtherance of the Closure Plan and/or any attempts to cut off funding from IMC (which would eliminate any potentials issues, to the extent they even exist, regarding the Debtor's alleged conditioned use of cash collateral upon implementation of the Closure Plan).[6] The Public Advocate intends to prove its claims at trial in New York Supreme Court, and given what is at stake in this Chapter 11 case and in Brooklyn as a borough, he should be given

[6] Moreover, pursuant to the Eighth Interim Order (I) Authorizing the Debtor to Utilize Cash Collateral of Pre-petition Secured Party Pursuant to 11 U.S.C. §§ 105, 361 and 363, (II) Granting a Super-priority Claim, (III) Granting Adequate Protection, (IV) Providing Related Relief and (V) Scheduling Final Hearing (the "Cash Collateral Order"), the Debtor currently has use of its cash collateral through a minimum of September 13, 2013. Should the Court lift the automatic stay to permit the Public Advocate to initiate the Article 78 Action, such filing will not violate the Cash Collateral Order, as the Debtor would still be pursuing the closing (which the continued use of cash collateral is predicated upon). For the same reason, if the Court denies or even delays ruling on the Closure Motion in order to permit the parties more time consider the Foundation's alternative plan, that denial or delay also will not violate the Cash Collateral Order, as technically the Debtor would still be pursuing IMC's closure.

the opportunity to do so. Therefore, due to the improper, unlawful, arbitrary and capricious actions taken by DOH and DASNY as set forth in the Draft Complaint (which facts are not contradicted by the Debtor in the Closure Motion), the Debtor simply has no legal authority to implement the Closure Plan at this time because the actions underlying the filing of the Closure Plan were unlawful.

D. An Alternate, Viable Plan That Would Keep IMC Open Has Been Proposed

65. Since the Foundation has moved to terminate exclusivity in this case and to permit it to file a new operational plan for IMC and has also filed a proposed Chapter 11 plan, there is even a greater need to table the Closure Plan, at least for now. Under the Foundation's operational plan, a summary of which was provided in the Exclusivity Termination Motion, the medical center would remain open as a going-concern, with streamlined and revised operations and procedures, thus saving the hospital, maintaining the vital health care services the community so desperately needs, and preserving the livelihood of the many people that are employed at IMC. The availability of a viable, alternative plan that eliminates the need to close the medical center is basis enough for denial of the Closure Motion, and creditors should be given the chance to evaluate the Foundation's plan before it gets mooted out by implementation of the Closure Plan and does not have the chance to see the light of day.

66. Other courts, faced with similar issues, have stopped hospitals from closing for the failure to comply with state law in attempting to effectuate a plan of closure. In *Norris Square Civic Association v. St. Mary Hospital (In re St. Mary Hospital)*, 86 B.R. 393 (Bankr. E.D. Pa. 1988), the bankruptcy court enjoined the proposed closure of a hospital for failure to comply with applicable law. St. Mary commenced its bankruptcy proceeding and promptly sought to implement an operational plan to close its hospital. Numerous parties in interest,

including a group of doctors, community groups, Philadelphia councilmen, a state representative and the City of Philadelphia banded together to enjoin the proposed closure. *Id.* at 395. The injunctive relief proponents argued that the hospital violated federal and state law as well as city ordinances in the steps it took to try to effectuate its closure plan. *Id.* at 397. The court took note of the alleged violations and found that the debtor violated several Philadelphia ordinances. The court also found that the debtor-hospital failed to fully explore viable alternatives for keeping the hospital open. *Id.*

67. Similarly, the Debtor and the DOH have failed to comply with the ninety day notice requirement for closure of a medical facility codified at 10 NYCRR 401.3(g). In addition, the Foundation is prepared to submit an operational restructuring plan that will enable the hospital to continue operations as a going concern. Like the *Saint Mary* court, this Court should afford IMC, its creditors and parties in interest the opportunity to explore and implement the Foundation's plan, which will save livelihoods and lives.

E. The Debtor Has Failed To Cite Any Factually Applicable Case Law In Support Of The Closure

68. Finally, the Closure Motion cites three cases where "relief similar to that requested herein has been granted": *In re North General Hospital*, Case No. 10-13553 (SCC) (Bankr. S.D.N.Y. Aug. 27, 2010); *In re St. Vincent's Catholic Medical Centers of New York*, Case No. 10-11963 (CGM) (Bankr. S.D.N.Y. May 14, 2010); and *In re St. Vincent's Catholic Medical Centers of New York*, Case No. 05-14945 (PCB) (Bankr. S.D.N.Y. Sept. 20, 2005). While it is true that in each of these three cases the court authorized the debtor-hospital's request for authorization to implement a closure plan, these three cases are radically different from the instant matter for the following reason: in those cases, there was no alternative plan to keep the hospitals open! In this case, as described herein and in the Foundation's motion, the Foundation

has sought authority to file an alternative plan constructed by noted restructuring professionals, as well as a brand new operational plan. In the *North General* case and both *St. Vincent's* cases, no alternative plan existed, so there was no viable choice except liquidation. Additionally, in the *North General* case, there was no alternative plan proposed and there were no general objections to the closing at all – a scenario wildly opposite of the instant matter. *See generally In re North General Hospital*, Case No. 10-13553 (SCC).

69. The most recent *St. Vincent's* case can be further distinguished from the instant case as evidenced by the following quote from the Court's opinion:

> The final comments of counsel to the State Court Plaintiffs is telling. They admitted, "we think that Saint Vincent's obviously will and should close … we want to make sure that the services that are going to replace St. Vincent's happen as expeditiously as possible." Transcript at 69. The State Court Plaintiffs did not provide the Court with any legally relevant reasons why the Final Closure Order should not be entered.

In re Saint Vincent's Catholic Medical Centers of New York, 429 B.R. 139, 152 (Bankr. S.D.N.Y. 2010). Therefore, in that case, in addition to there being a lack of an alternative plan, the state court plaintiffs who had brought a similar action against DOH and DASNY as contemplated by the Public Advocate in this case, clearly were in favor of the closure of St. Vincent's. To that end, they failed to provide the Court with any authority to stop the closure.

70. Unlike the state court plaintiffs in *St. Vincent's*, the Public Advocate, the Foundation and others are vehemently opposed to the Closure Plan. Accordingly, the Public Advocate as well as the Foundation and others have set forth detailed legal and policy arguments on the record as to why IMC's closure is inappropriate, prohibited by law, and if permitted to occur, will have devastating effects on the community. In addition, there is an alternative plan being proposed in this case that deserves a chance to be considered by the Debtor's various creditor constituencies and other parties-in-interest.

F. A Balancing Of The Equities Strongly Favors Denial Of The Closure Motion

71. Finally, it is axiomatic that the bankruptcy process is one of equity. *Young v. United States*, 535 U.S. 43, 50 (2002) ("[B]ankruptcy courts ... are courts of equity and 'appl[y] the principles and rules of equity jurisprudence'."). As a court of equity, bankruptcy courts will "balance the equities" related to issues that could have a significant impact on parties-in-interest. *See Enron Power Mktg. v. Pub. Util. Dist. No. 1 of Snohomish County (In re Enron Corp.)*, 364 B.R. 489, 508 (Bankr. S.D.N.Y. 2007). Thus, just as the Debtor has requested relief under the Court's equitable powers as codified at section 105(a) of the Bankruptcy Code, the Public Advocate requests the same under the same authority (in part) – except that, as set forth above, the equities in this case overwhelmingly favor denial of the Closure Motion.

72. For the reasons set forth herein, the equities of the matter require that the Closure Motion be denied. Furthermore, there is no legal authority present to authorize the Debtor to implement the Closure Plan, and the Closure Motion therefore must be denied on that basis as well.

CROSS-MOTION

RELIEF REQUESTED

73. By this Cross-Motion, the Public Advocate urges the Court to enter an order, in the form attached hereto as Exhibit B: (i) granting the Public Advocate the right to generally intervene in this Chapter 11 case pursuant to Bankruptcy Rule 2018(a), and (ii) lifting the automatic stay pursuant to sections 362(d) and 105(a) of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Rule 4001-1 to permit the Public Advocate to initiate the Article 78 Action.

A. The Public Advocate Should Be Permitted To Intervene In This Chapter 11 Case Pursuant To Bankruptcy Rule 2018(a) For The Purposes Of Filing And Prosecuting The Objection To The Closure Motion As Well As To Cross-Move To Lift The Automatic Stay To Permit Him To Initiate The State Court Article 78 Action Against Non-Debtors

74. Bankruptcy Rule 2018(a) provides for permissive intervention, "[i]n a case under the Code, after hearing on such notice as the court directs and for cause shows, the court may permit any interested entity to intervene generally or with respect to any specified matter." Fed. R. Bankr. P. 2018(a). Bankruptcy Rule 2018(a) empowers a merely "interested party" to intervene in a Chapter 11 case. *See In re City of Bridgeport*, 128 B.R. 30, 32 (Bankr. D. Conn. 1991) (*citing In re Public Service Co. of New Hampshire*, 88 B.R. 546, 556-557)).

75. The Court in *Public Service of New Hampshire*, one of the seminal cases addressing Bankruptcy Rule 2018(a), held that the identity of those entities entitled to intervene in a matter as "interested parties" should be construed broadly and liberally. *Id.* at 554. Permissive intervention under Bankruptcy Rule 2018(a) is permitted upon a showing of cause. *Id.* at 551; *In re Ionosphere Clubs, Inc.*, 101 B.R. 844, 853 (Bankr. S.D.N.Y. 1989). In order to establish "cause," a party seeking permissive intervention must demonstrate that such intervention would not result in undue delay or prejudice to existing parties. *Id.* Courts may also grant parties intervenor status where a party seeking permissive intervention might be concerned with the precedential ramifications of the case. *Public Service of New Hampshire*, 88 B.R. at 551. In addition, permissive intervention will be limited and may not be granted if the intervenor's interests are already adequately represented. *See Id.*

76. In this case, it is beyond question that the Public Advocate has adequate cause to intervene in this Chapter 11 case both to file and prosecute the objection and to cross-move for relief from the automatic stay to file the Article 78 Action. First, the Public Advocate is a long-

time Brooklyn resident who will be directly and negatively affected by the proposed closing of IMC and has direct economic and public policy interests in the outcome of the Closure Motion and its related matters. Without question, the Public Advocate, in his individual capacity, is a potentially aggrieved party given the shortage of health care services that will occur in Brooklyn should IMC and other hospitals close – a disastrous domino effect so to speak. In addition, the Public Advocate, as an elected official, seeks to intervene on behalf of not only himself as a resident of Brooklyn but on behalf of the hundreds of thousands of citizens that IMC services each year (as well as others who have not yet but may need IMC's health care services), all of whom stand to be aggrieved by proposed closing of IMC and who have no voice or legal representation in this case. Making matters worse, the Debtor, the DOH and DASNY clearly hope to moot out and silence their collective voices by unreasonably pushing through the proposed closure process as fast as possible.

77. Second, given the lightning fast track that this case is on, with the Hearing set for August 26, permitting the Public Advocate to intervene in this matter will not cause any undue delay or prejudice to the existing parties. To wit, the Public Advocate is concurrently filing a motion for an order shortening the time period for notice of the Cross-Motion so that the Cross-Motion may be adjudicated at the Hearing as well. In sum, the Public Advocate does not seek to unreasonably delay resolution of this matter. He simply asks the Court to give him the opportunity to present the Objection as well as move forward in state court against the non-debtors, both on behalf of himself and as a representative of the citizens of Brooklyn who have no voice in this Chapter 11 case. Permitting the Public Advocate to intervene will cause no prejudice to any other party, each of whom presumably will appear in Court at the Hearing and present their arguments regardless of the presence of the Public Advocate. For those reasons,

cause exists to permit the Public Advocate permissive intervention pursuant to Bankruptcy Rule 2018(a).

78. There is legal precedent to permit an elected public advocate to permissively intervene in a Chapter 11 case. In *In re Eastern Maine Electric Cooperative, Inc.*, 121 B.R. 917 (Bankr. D. Maine 1990), the bankruptcy court permitted a public advocate charged with protecting the interests of the consuming public to intervene pursuant to Bankruptcy Rule 2018(a) and participate in disclosure statement and confirmation hearings. The debtor and two other parties in interest filed three competing plans of reorganization. The Maine public advocate and Maine Public Utility Commission sought permission to intervene under Bankruptcy Rule 2018(a). *Id.* at 922. The court permitted both parties to intervene with respect to general, non-adversary proceedings related to the general operation of the business of the debtor as well as proceedings relating to confirmation of a plan of reorganization. *Id.* An official committee appointed in the debtor's case sought reconsideration of the order allowing intervention. *Id.* The court denied the reconsideration motion and stated that the public advocate has a role to play in representing the interests of consumers of electrical power and should therefore be allowed to intervene as the competing plans will directly affect the interests of the consumers. *Id.* at 925. *See also Public Service Co. of New Hampshire*, 88 B.R. at 555-557 (Bankr. D. N.H. 1988) (permitting intervention by New Hampshire Office of the Consumer Advocate to represent interests of residential electric customers).

79. Likewise, the Public Advocate has the duty to represent the interests of the Central Brooklyn residents directly affected by the impending closure of IMC and should be permitted to intervene in the Debtor's bankruptcy proceeding.[7]

B. Cause Exists To Lift The Automatic Stay To Permit The Public Advocate To Initiate A New York Supreme Court Article 78 Action Against DOH, DASNY And the Heads Of Those State Agencies

80. Though he does not believe that stay relief is technically required for the reasons discussed herein (*i.e.*, that the Article 78 Action seeks relief only against non-debtors), out of an abundance of caution, pursuant to sections 362(d) and 105(a) of the Bankruptcy Code, Bankruptcy Rule 4001 and Local Rule 4001-1, the Public Advocate seeks relief from the automatic stay (to the extent it applies) to commence the Article 78 Action, pursuant to Article 78 of the CPLR in the Supreme Court of the State of New York, County of Kings, against the DOH and its commissioner, Nirav R. Shah, as well as DASNY and its president and chief executive officer, Paul T. Williams, Jr. (the "Respondents").[8]

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[7] In the alternative, the Public Advocate should also be granted standing to file and be heard on both the Objection and Cross-Motion pursuant to section 1109(b) of the Bankruptcy Code. Section 1109(b) of the Bankruptcy Code provides that, "[a] party in interest … may raise and may appear and be heard on any issue in a case under this chapter." 11 U.S.C. § 1109(b). Section 1109(b)'s list of who may be a party in interest is not all-inclusive. *See Ionosphere Clubs, Inc.*, 101 B.R. at 849-850; *In re Saint Vincent's Catholic Medical Centers of New York*, 429 B.R. 139, 150 (Bankr. S.D.N.Y. 2010). In addition, the term "party in interest" is not defined either in the Bankruptcy Code or the Bankruptcy Rules, and therefore its meaning must be construed on a case-by-case basis. *See Ionosphere Clubs, Inc.*, 101 B.R. at 849 (citing *In re Comcoach Corp.*, 698 F.2d 571, 573 (2d Cir. 1983) (other citations omitted)). The *Ionosphere Clubs* court went on to say, "[t]he legislative history indicated Congress sought to encourage and promote greater participation in reorganization cases … [a]s a result, section 1109(b) ought to be construed broadly; an individual has the absolute right to be heard and this ensures fair representation of all claimants. *Id.* (citations omitted). Given the foregoing, coupled with the inexorable fact that the Public Advocate is without question a party to be personally affected by this reorganization process as a citizen of Brooklyn, a borough that stands to be cast into chaos from a health care perspective should the Closure Plan be consummated, the Court should also provide the Public Advocate standing to both file and prosecute the Objection as well as the Cross-Motion pursuant to section 1109(b) of the Bankruptcy Code.

[8] It should also be noted that an action against a debtor that violates a federal, state or local law in conducting its business post-petition is excepted from the automatic stay pursuant to 28 U.S.C. § 959(a) which provides that a party aggrieved by a debtor's actions in violation of applicable law may enforce the applicable law in any court of competent jurisdiction. *See Haberen v. Lehigh & N.E. Ry.*, 554 F.2d 581, 585 (3d Cir. 1977). Accordingly, an action against the Debtor for violation of New York Public Health Law may be maintained without application of

81. Through the Article 78 Action, the Public Advocate will seek a judgment pursuant to Article 78 of the CPLR compelling the Respondents to cease any and all actions interfering with, or otherwise terminating, the Debtor's operations. Article 78 of the CPLR establishes the procedure for challenging the determinations of administrative agencies, public bodies, or officers when the subject determination was "arbitrary and capricious." CPLR § 7803.

82. The Draft Complaint enumerates three separate causes of action demonstrating how the Respondents reached arbitrary and capricious determinations. In his first cause of action, the Public Advocate delineates how the DOH arbitrarily and capriciously gave negligible notice to the Debtor of its abrupt determination that the Debtor could only continue operating if it developed a restructuring plan within a matter of days that requires no state funding.

83. Prior to this sudden announcement, the DOH witnessed for years the various strategies the Debtor employed to weather the financial crush imposed on it by substantial Medicaid and Medicare cuts combined with increasing costs of medical care provision. The Debtor cut operating expenses, pursued a business relationship with another area hospital, and applied to the DOH for grant funding. At every turn, the DOH denied assistance, vetoed the Debtor's attempts, or simply did not respond.

84. Then, on June 25, 2013, the DOH announced to the Debtor that the Debtor's doors would only remain open if it could submit a restructuring plan that would enable it to operate without future state funding. Also, that plan had to be submitted just two weeks later, by July 9, 2013. Since the Fourth of July holiday weekend fell during that period, the Debtor had only eight business days to accomplish this. Significantly, the DOH added that if the Debtor

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the automatic stay. Thus, to the extent that any action initiated against DOH and/or DASNY is considered to be an action against the Debtor, stay relief may not be required to proceed pursuant to 28 U.S.C. § 959(a).

were to agree to a plan of closure, then the Debtor could anticipate substantial debtor-in-possession financing to facilitate an orderly and planned closure of the Debtor's facilities. In fact, the DOH and DASNY agreed to provide the Debtor with $15 million for that purpose.

85. In the second cause of action, the Public Advocate describes how, against all odds, the Debtor managed to submit a working draft of its restructuring plan to the DOH. Per the DOH's requirement, the Debtor submitted the plan on July 9, 2013, and also per the DOH's requirement, the plan did not require any state funding.

86. Nevertheless, by letter dated July 19, 2013, the DOH summarily, arbitrarily, and capriciously rejected the restructuring plan because it was a working draft, and not a final product. The DOH also denied the Debtor permission to submit a final product. Instead, the DOH directed the Debtor to commence implementation of a closure plan.

87. In his third cause of action, the Public Advocate depicts how the DOH approved in principle the closure plan the Debtor ultimately filed within days after it was submitted, contrary to New York Public Health Law and Regulation § 401.3, which provides that "no medical facility shall discontinue operation or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the [New York State Health Commissioner] and his written approval obtained." 10 NYCRR § 401.3(g). The DOH's rapid approval – or more accurately, pre-approval – accordingly comprised a determination made arbitrarily and capriciously. This is particularly crucial as compliance with 10 NYCRR § 401.3(g) would afford the estate and DOH sufficient time to vet and potentially implement the operational restructuring proposed by the Foundation.

88. While the Public Advocate is not seeking any relief against the Debtor in the Article 78 Action, the Public Advocate is mindful of the 2010 decision in *St. Vincent's* and is

seeking relief from the automatic stay to the extent the Article 78 Action may have any potential effect on property of the Debtor's estate. In *St. Vincent's*, plaintiffs brought an action post-petition against the DOH seeking to enjoin the DOH from approving the closure of St. Vincent's Hospital. The plaintiffs did not seek relief from the automatic stay in the bankruptcy court prior to commencing the action and were found to have violated the automatic stay. 429 B.R. at 143-44.

89. Section 362(d) of the Bankruptcy Code provides that:

> [o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay –
>
> for cause,…

90. In addition, section 105(a) of the Bankruptcy Code provides that:

> [t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.

91. While the Bankruptcy Code does not define "cause," courts have articulated standards as to when cause exists to grant relief from the stay. Where a party seeks stay relief to commence or continue litigation in another forum, the courts consider the following factors enumerated by the Second Circuit in *Sonnax Industries, Inc. v. Tri Component Products Corp. (In re Sonnax Industries, Inc.*), 907 F.2d 1280 (2d Cir.1990) to determine if "cause" exists:

(1) whether relief would result in a partial or complete resolution of the issues;

(2) lack of any connection with or interference with the bankruptcy case;

(3) whether the other proceeding involves the debtor as a fiduciary;

(4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action;

(5) whether the debtor's insurer has assumed full responsibility for defending it;

(6) whether the action primarily involves third parties;

(7) whether litigation in another forum would prejudice the interests of other creditors;

(8) whether the judgment claim arising from the other action is subject to equitable subordination;

(9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor;

(10) the interests of judicial economy and the expeditious and economical resolution of litigation;

(11) whether the parties are ready for trial in the other proceeding; and

(12) the impact of the stay on the parties and the balance of harms.

Id. at 1286.

92. Not all factors are relevant to every case and the court need not assign them equal weight. *Id.* (reaching its holding after considering only four factors it deemed relevant); *Mazzeo v. Lenhart (In re Mazzeo),* 167 F.3d 139, 143 (2d Cir. 1999) (remanding with instructions to apply the *Sonnax* factors test and noting that not all of the factors may be relevant); *In re Touloumis,* 170 B.R. 825, 828 (Bankr. S.D.N.Y. 1994); *In re Anton,* 145 B.R. 767, 770 (Bankr. E.D.N.Y.1992). When applying these factors and considering whether to modify the automatic stay, the court should take into account the particular circumstances of the case, and ascertain what is just to the claimants, the debtor and the estate. *In re M.J. & K. Co., Inc.*, 161 B.R. 586, 590 (Bankr. S.D.N.Y.1993) (citing *City Ins. Co. v. Mego Int'l, Inc. (In re Mego Int'l, Inc.),* 28 B.R. 324, 326 (Bankr. S.D.N.Y. 1983)). Factors two, four, six, seven and twelve are particularly relevant in this case.

Factor Two: Lack Of Any Connection With Or Interference With The Bankruptcy Case

93. Allowing the Public Advocate to proceed with the Article 78 Action will not interfere with the administration of the Debtor's bankruptcy case. The Article 78 Action will be brought solely against third parties, the DOH, DASNY and certain representatives thereof and addresses actions taken by such state entities in violation of New York Public Health Law, Rules and Regulations. The Article 78 Action will not require the active involvement of the Debtor and will not require the Debtor to expend any estate resources to defend or otherwise participate in the proceeding.

Factor Four: Whether A Specialized Tribunal With The Necessary Expertise Has Been Established To Hear The Cause Of Action

94. The Public Advocate seeks to bring the Article 78 Action in the Supreme Court of the State of New York, Kings County. While not a specialized tribunal, an Article 78 Action is a specific New York state law vehicle for bringing actions against New York administrative agencies, public bodies or officers. The Article 78 Action involves solely issues of New York state law and regulations.

Factor Six: Whether The Action Primarily Involves Third Parties

95. The Article 78 Action involves exclusively third parties, the DOH, DASNY and certain representatives thereof and addresses actions taken by such parties to the detriment of the Debtor and the critical public interest of providing medical care to the Central Brooklyn community. In particular, the Article 78 Action will seek to redress the arbitrary and capricious actions taken by the DOH and DASNY that have forced the Debtor to file the Closure Motion in violation of New York Public Health Law and Regulation § 401.3.

Factor Seven: Whether Litigation In Another Forum Would Prejudice The Interests Of Other Creditors

96. There is no evidence currently before the Court that granting the Public Advocate's request for relief from the automatic stay will prejudice the interests of creditors in the Debtor's bankruptcy case. The Debtor has not filed a plan of reorganization or provided any source of recovery to the unsecured creditors in this case. To the contrary, the Debtor has effectively thrown in the towel in the face of pressure by the DOH and DASNY and filed the Closure Motion. The sole possible source of funding for creditors as described in the Second Supplement to the Closure Motion is the $15 million debtor-in-possession financing (the "Proposed DIP Financing") contingent upon the implementation of the Closure Plan. The Proposed DIP Financing is, in essence, an exit facility. In sum, there are too many variables and contingencies contained in the Proposed DIP Financing to be able to determine potential creditor recoveries (other than DASNY) at this time, if any.

97. On the other hand, the Article 78 Action would safeguard the interests of the Debtor's estate (including the interests of the various creditor contingencies) by seeking to enjoin the DOH and DASNY from taking unlawful, arbitrary and capricious actions that, if allowed to succeed, will have a catastrophic effect on the borough of Brooklyn and the Debtor's estate. This is particularly critical in light of the Foundation's efforts to develop both an operational restructuring plan and its motion to terminate exclusivity in order to proceed with its own Chapter 11 plan, as described above. The injunction sought by the Public Advocate through the Article 78 Action would pave the way for the Foundation to move forward with a plan to save the hospital and provide a recovery to the Debtor's creditors.

Factor Twelve: Impact Of The Stay On The Parties And The Balance Of Harms

98. The balance of the harms weighs heavily in favor of granting the Public Advocate relief from the automatic stay to pursue the Article 78 Action. As discussed above, the Article 78 Action does not assert any direct claims against or otherwise directly involve the Debtor or property of the Debtor's estate. However, if successful, the Article 78 Action will serve both the public interest and the specific interest of the Debtor and the Debtor's estate by enjoining the DOH and DASNY from taking steps to force the Debtor to shut its doors in contravention of New York Public Health Law and Regulations.

99. As discussed in detail in the Closure Motion, the Debtor allegedly went to great pains to propose a restructuring plan to the DOH under tremendous constrains promulgated by the DOH and filed the Closure Motion in the face of a refusal to fund by DASNY and the direction of the DOH. While the Debtor is alleged to be constrained from seeking alternative remedies by the provisions of the Cash Collateral Order, the Article 78 Action presents an alternative path to protect the interests of the public and the Debtor's estate because the Public Advocate and other parties, including the Foundation, are not restrained from taking action in opposition to the closure under the Cash Collateral Order. Moreover, under the Cash Collateral Order, the Debtor currently has use of its cash collateral until, at a minimum, September 13, 2013. Should the Court lift the automatic stay to permit the Public Advocate to initiate the Article 78 Action, such filing will not violate the Cash Collateral Order, as the Debtor would still be pursuing the closing (which the continued use of cash collateral is predicated upon).

100. For these reasons, there is no question that "cause" exists to lift the automatic stay pursuant to section 362(d) of the Bankruptcy Code to permit the Public Advocate to initiate the Article 78 Action. Therefore, the Cross-Motion should be granted.

CONCLUSION

101. The relief that the Public Advocate seeks is vital to save IMC, which serves hundreds of thousands of patients each year, often providing vital live saving services that would otherwise be more difficult if not impossible to obtain. There is minimal downside to halting, at least temporarily, the closure of IMC, but the upside is life itself. Thus, a balancing of the equities, as well as common sense and the law dictate that the court allow IMC to stay open so that the Foundation can propose and implement its restructuring plan and keep IMC open. Accordingly, the Public Advocate respectfully asks this court to deny the Closure Motion and grant the Cross Motion in all respects.

WAIVER OF MEMORANDUM OF LAW

102. This Cross-Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated, and a discussion of their application to the Cross-Motion.

103. The Public Advocate therefore submits that the Cross-Motion satisfies Local Rule 9013-1(a).

NOTICE

104. Notice of the Cross-Motion will be provided in accordance with the Order Shortening Time to be entered by the Court in connection with the Cross-Motion. The Public Advocate's reasons for his request to shorten time and limit notice requirements in connection with the Cross-Motion are set forth with specificity in the Public Advocate's accompanying motion seeking the same. The Public Advocate is seeking to shorten time and limit notice because the Debtor has obtained a hearing date on the Closure Motion of August 26, 2013, and

seeks to have the Cross-Motion heard on that same day. The Public Advocate therefore submits that such notice is good and sufficient, and no other or further notice is necessary or required.

NO PRIOR REQUEST

105. No prior request for the relief sought herein has been made by the Public Advocate to this or any other Court.

WHEREFORE, the Public Advocate respectfully requests that the Court enter an order granting the relief requested herein and such other and further relief as this Court deems just and proper.

Dated: August 19, 2013
New York, New York

Respectfully submitted,

/s/ *Edward E. Neiger*
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Attorneys for Bill de Blasio, Individually and in his capacity as the Public Advocate for the City of New York

EXHIBIT A

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS

BILL DE BLASIO, Individually, and in his capacity as the Public Advocate for the City of New York Petitioner, For a Judgment Pursuant to Article 78 of the Civil Practice Law and Rules, -against- NEW YORK STATE DEPARTMENT OF HEALTH, DORMITORY AUTHORITY OF THE STATE OF NEW YORK, NIRAV R. SHAH, as Commissioner of the New York State Department of Health and PAUL T. WILLIAMS, JR., as President and Chief Executive Officer of the Dormitory Authority of the State of New York, Respondents.	Index No. **VERIFIED PETITION**

BILL DE BLASIO, as and for his Verified Petition, alleges as follows:

1. Petitioner, Bill de Blasio ("de Blasio"), in his official capacity as Public Advocate for the City of New York and in his individual capacity as a citizen of Kings County, New York, has commenced this proceeding pursuant to CPLR 7803 for a judgment directing and compelling Respondents, (i) the New York State Department of Health ("DOH"), (ii) the Dormitory Authority of the State of New York ("DASNY"), (iii) Nirav R. Shah ("Shah"), Commissioner of DOH, and (iv) Paul T. Williams, Jr. ("Williams"), President and Chief Executive Officer of DASNY, (collectively, "Respondents"), to cease any and all action on their part and on the part of all persons whomever, known or unknown, acting on Respondents' behalf or in concert with Respondents or any one of them, to take any action, by any manner or means, that would

interfere with the provision to the public of mental, medical or healthcare services or otherwise resulting in the termination of operations of Interfaith Medical Center ("Interfaith").

PRELIMINARY STATEMENT

2. New York City is facing an epidemic of hospital closures that has resulted in a profound healthcare crisis. Despite this, the New York State Department of Health ("DOH") recently ordered the closure of Interfaith, a central Brooklyn hospital that serves 250,000 patients each year. The closure of Interfaith would have dire consequences for the health and safety of the central Brooklyn community and New York City's healthcare system. If Interfaith is forced to close, nearby hospitals will become increasingly and dangerously stressed. Brooklyn residents are already underserved by the City's healthcare system and will face even longer waits, longer ambulance rides, and inadequate facilities—all of which are potentially life-threating.

3. Despite this deepening healthcare crisis, the DOH has increasingly taken an unreasonable and arbitrary approach to its hospital closure approval process. Contrary to its mandate to promote public health and safety, the Department of Health has approved the closure of Interfaith in a haphazard and irresponsible manner. DOH gave Interfaith just eight business days to submit a comprehensive restructuring plan and just one weekend to complete a second draft based on dramatically different parameters. Inconsistent with its own instructions, DOH then ordered the closure of Interfaith before it was able to submit a final restructuring plan and long before the end of the statutory 90 day waiting period. Amazingly, all of this DOH action has taken place as Interfaith is engaged in ongoing Chapter 11 bankruptcy proceedings, only at the conclusion of which could DOH truly be able to assess the long-term viability of the hospital.

The Public Advocate has an important interest in ensuring the continued operation of Interfaith and the delivery of healthcare services to all New York City residents.

JURISDICTION AND VENUE

4. Pursuant to CPLR Sections 7804(b) and 506(b), venue in the Supreme Court in Kings County is proper as Kings County is the judicial district wherein Petitioner resides and Interfaith is situated.

5. As the subject of this proceeding arises under the laws and regulations promulgated by the State of New York, this Court has subject matter jurisdiction.

PARTIES

Petitioner

6. Petitioner de Blasio brings this proceeding in both his official capacity as Public Advocate and as an individual. De Blasio and his family reside at 442 11th Street, Brooklyn, New York, in the county where Interfaith and its clinics provide medical services. In accordance with the New York City Charter, as Public Advocate Mr. de Blasio is the second-highest ranking official in New York City government. Mr. de Blasio was elected by the electorate of all five (5) boroughs of the City of New York.

Respondents

7. Respondent DOH is a public agency of the State of New York established pursuant to Article 2 of the New York Public Health Law. DOH supervises all hospitals operating within the State of New York and adopts rules and regulations for that purpose. One of DOH's responsibilities is to evaluate hospital applications to reduce bed capacity or for closure.

8. Respondent Shah is the Commissioner of DOH. Shah is responsible for the overall management of DOH's hospitals and other healthcare facilities.

9. Respondent DASNY is a public agency of the State of New York established pursuant to Article 8 of the New York Public Health Law. DASNY provides financing and construction services to public and private universities, not-for-profit healthcare facilities and other institutions which serve the public good. DASNY's mission is to "deliver exceptional service and professional expertise on every financing and construction project for our clients and the public, in a cost effective manner, while advancing the policy goals of New York State."[1]

10. Respondent Williams is the President and Chief Executive Officer of DASNY. Williams is responsible for the overall management of DASNY's administration and operations.

RELEVANT LEGAL AUTHORITIES

New York Public Health Care Law, and Rules and Regulations Thereunder

11. In New York, hospitals are required to obtain and maintain operating certificates and satisfy all of the requirements for the same set forth in the Public Health Law and Regulations. These Regulations (10 NYCRR § 401.3 (e)), provide that "no medical facility shall discontinue operation or surrender its operating certificate unless 90 days' notice of its intention to do so is given to the **[New York State Health Commissioner]** and his written approval obtained." (Emphasis added.)

12. The Regulations (10 NYCRR § 401.3 (e)) also provide that "to reduce the hospital operation from the certified bed capacity to a specified lesser bed capacity, the operator shall obtain prior written approval from the New York State Department of Health, show satisfactory cause for the requested reduction and maintain for the reduced number of patients or residents the required services and personnel." In addition, "[n]o medical facility shall discontinue

[1] www.dasny.org/misc/mission/index.php

operation or surrender its operating certificate whether voluntarily or pursuant to judicial or administrative proceedings without first obtaining the commissioner's written approval of a plan for the maintenance, storage and safekeeping of its patients' medical records. The plan shall provide adequate safeguards for these records, make them accessible to the patients and their physicians, and may provide for their ultimate disposition."

13. The Regulations' purpose is to ensure accessible medical care is available to all residents and visitors of the State of New York.

Article 78

14. In accordance with CPLR Section 7803, the Supreme Court may determine "(1) whether the body or officer failed to perform a duty enjoined upon it by law; . . . (2) whether the body or officer proceeded, is proceeding or is about to proceed without or in excess of jurisdiction; or (3) whether a determination was made in violation of lawful procedure, was affected by an error of law or was arbitrary and capricious or an abuse of discretion . . . ."

15. Petitioners believe that DOH's direction to Interfaith to (a) submit a closure plan for the hospital, (b) divert ambulances from Interfaith to other medical and mental care facilities, (c) deny admission or re-admission of patients and (d) transfer Interfaith's clinics to other hospital or healthcare facilities are both "arbitrary and capricious and an abuse of discretion."

FACTS

Interfaith Medical Center

16. Interfaith operates a hospital and sixteen (16) medical and mental health clinics located in Central Brooklyn, serving over two hundred fifty thousand (250,000) patients annually. Central Brooklyn is a densely populated urban area, comprising the neighborhoods of

Crown Heights, Flatbush, Bedford Stuyvesant, and Prospect Lefferts Gardens. 31% percent of Central Brooklyn residents are at or below the Federal poverty line; 21% are uninsured; and 29% are without a primary healthcare provider. The U.S. Department of Health and Human Services ("HHS") has designated a large part of Central Brooklyn a Health Professional Shortage Area.[2]

17. Interfaith operates a 287-bed short stay acute care hospital. The 287 beds are distributed among the various healthcare areas as follows:

BED TYPE	**NUMBER (#)**
Chemical Dependence/Rehab	20
Chemical Dependence/Detox	20
Intensive Care	13
Med/Surg	104
Pediatric	10
Psychiatric	120
Total Beds	**287**

18. Interfaith also maintains a broad range of community based healthcare programs and services. These programs consist of the following:

1. Behavioral Health Program – Child and Adolescent Clinic
2. Center for Mental Health
3. Chemical Dependence Outpatient Services (CDOS)
4. Intensive Psychiatric Rehabilitation Therapy Program (IPRT)
5. Mobile Crisis Team
6. Partial Hospital Program

19. In addition to the 287-bed acute care hospital and community based programs and services mentioned above, Interfaith provides emergency services through its Emergency Department (the "ED") totaling approximately 50,000 visits per year. Most of the aforesaid visits are "treat and release" patients emanating from Interfaith's immediately surrounding zip codes (11233, 11213, 11216, 11221 and 11238). However, the ED is the locus for ambulatory

[2] A Health Professional Shortage Area is an area that has shortages of primary medical care, dental, or mental health providers. See http://hpsafind.hrsa.gov/HPSASearch.aspx (retrieved 8/19/2013).

community care and the triage of behavioral health diagnoses. Approximately 13% of patients from Interfaith's primary service area have sought emergency care in the ED.

20. Interfaith's 120 Psychiatric beds represent approximately 13% of the psychiatric beds in Brooklyn. On average, approximately 95.7% of those beds are occupied, leaving excess capacity of only 5.1 beds. Interfaith's daily census of 114.9 Psychiatric beds occupied daily represents 14% of the psychiatric beds occupied in the Borough. The chart set forth below provides a broader picture of the psychiatric beds available and their occupancy rates, numbers, location and excess capacity:

	2011 AVG Daily CENSUS	BEDS	OCCUPANCY	EXCESS CAPACITY
Brookdale Hospital Medial Center	62.6	67	93.4%	4.4
Kingsbrook Jewish Medical Center	31.7	33	96.1%	1.3
Lutheran Medical Center	35.0	35	100.0%	0.0
Maimonides Medical Center	60.5	70	86.5%	9.5
Coney Island Hospital	56.6	64	88.4%	7.4
Kings County Hospital Center	195.8	205	95.5%	9.2
Woodhull Medical & Mental Health Center	124.8	133	93.8%	8.2
New York Methodist Hospital	42.7	50	85.3%	7.3
University Hospital of Brooklyn	45.9	73	62.9%	27.1
Long Island College Hospital	39.9	39	102.2%	(0.9)
Interfaith Medical Center	**114.9**	**120**	**95.7%**	**5.1**
Total Kings County	810.4	889	91.2%	78.6

The closure of Interfaith would result in an immediate undersupply of approximately 41.4 beds in Brooklyn, which will be exacerbated by the closing of Long Island College Hospital and result in a psychiatric bed shortage of approximately 81 beds in Kings County.

21. Interfaith maintains 40 beds for patients with substance abuse and chemical dependence problems. These 40 beds represent approximately 33.33% of the Chemical Dependence bed capacity in Kings County. The average daily census of Chemical Dependence

beds through the first half of 2013 was 29.4 patients per day. The allocation of Chemical Dependence beds in use amongst hospitals in Brooklyn is set forth below:

INPATIENT CHEMICAL DEPENDENCE BEDS

	DETOX	REHAB
Brooklyn Hospital	10	-
Coney Island	15	-
Kings County	30	-
Lutheran	8	-
Woodhull	21	-
INTERFAITH	**20**	**20**
Total Chemical Dependence	104	20

22. Interfaith also maintains a behavioral health program. In 2012, there were 94,000 visits to Interfaith's Behavioral Health clinics. The 94,000 clinic visits break down as follows:

BEHAVIORAL HEALTH CLINIC VISITS

	2011	**2012**
Chemical Dependence OP Services	6,377	4,865
Center for Mental Health	24,609	24,569
Crisis Outreach Response System	10,701	8,578
Mentally-Ill Chemical Abuser	4,576	4,598
Intensive Psych Rehab Therapy	2,431	2,100
Partial Hospital Program	3,780	2,870
Behavioral Health Program - Adult	9,501	5,502
Behavioral Health Program - Child & Adolescent	2	0
Continuing Day Treatment Program	20,165	18,850
Methadone Maintenance Treatment Program	0	22,072
Total Behavioral Health Clinics	**82,142**	**94,004**

CHAPTER 11 CASE

Events Leading to Commencement of INTERFAITH's Chapter 11 Case

23. Interfaith is the primary acute care provider to its community, therefore Central Brooklyn's need for Interfaith's healthcare services is critical. Accordingly, Interfaith fulfills a vital mission in its community. In his May 7, 2013, letter to HHS Secretary Kathleen Sebelius, Governor Cuomo described Interfaith and other Brooklyn hospitals in danger of closing as "essential components of the health care services system in Brooklyn." Governor Cuomo also stated that if those hospitals close, "the outcome will be disastrous," and, "[a]ccess to care will be compromised and the remaining health care providers in the borough will be destabilized."

General Background

24. On December 2, 2012, Interfaith filed a voluntary petition for relief under Chapter 11 of the U.S. Bankruptcy Code. Interfaith continues to manage its business as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

25. Interfaith operates in an increasingly challenging environment. Medicaid reimbursement rates for hospitals such as Interfaith repeatedly have been cut, including cuts of approximately 40% from 2010 to 2012. Also, approximately 33% of Interfaith's adult patients are uninsured, particularly undocumented immigrants. Meanwhile, the costs of providing medical care for Interfaith and other hospitals have continued to increase significantly.

26. Beyond cost cutting, one alternative strategy pursued by Interfaith was to seek a new business relationship with one or more other hospitals. As a result, in February 2012, Interfaith and The Brooklyn Hospital Center ("BHC") developed and submitted an application to DOH for a HEAL 21 grant in order to fund the development and implementation of a cohesive

health system for North/Central Brooklyn.[3] Unfortunately, no funds have come to Interfaith from any HEAL 21 grant.

27. According to the Debtor, Interfaith entered into a Memorandum of Understanding (the "MOU") with BHC with the intention to improve the provision of health care to the Central Brooklyn community. BHC agreed in the MOU that there would be commercially reasonable, good faith efforts to maintain Interfaith as a general hospital with inpatient services. The MOU also included a provision precluding Interfaith from soliciting alternative transactions while BHC performed its due diligence. Those provisions were included despite Interfaith's strong insistence on better protections for Interfaith largely because DOH (and DASNY) required that Interfaith enter into the BHC MOU at that time. On March 22, 2013, the Bankruptcy Court approved Interfaith's entry into the BHC MOU.

28. However, a transaction with BHC never came to fruition. In response, the Debtor states that it developed a proposed draft business plan that would form the basis for a stand-alone restructuring of Interfaith.

29. The Debtor also states that Interfaith had an agreement for DOH (through DASNY) to provide Interfaith with debtor-in-possession financing from New York State to help Interfaith continue its operations while a comprehensive restructuring blueprint for many of Brooklyn's hospitals was being developed. DOH later withdrew its approval of that financing.

Other DOH Actions

30. Debtor's management company provided senior management personnel to Interfaith for over 20 years. During that time period, DOH never raised an objection to this

[3] The purpose of HEAL NY grants is to improve primary and community-based care, eliminate excess bed capacity, and reduce overreliance on in-patient care in hospitals and nursing homes. See http://www.health.ny.gov/technology/efficiency_and_affordability_law/

arrangement. After Interfaith filed for Chapter 11 Bankruptcy in December 2012, however, DOH, for the first time, objected to this long-standing arrangement. DOH ultimately did not approve of the operative management contract and the agreement was subsequently cancelled. The management firm**,** in an effort to help sustain Interfaith, voluntarily released its employees from any non-compete agreements and Interfaith hired the same senior management team.

31. The only management change at Interfaith resulting from the termination of that contract was the eventual replacement of Interfaith's Chief Restructuring Officer ("CRO"). After the new CRO was in place, DOH withdrew its approval of the debtor-in-possession bridge financing for Interfaith that previously had been approved to help fund Interfaith's development of and path to a restructuring plan. That loss of needed financing left little time for Interfaith to develop the restructuring plan for which it had been retained.

32. Not long thereafter, at a meeting with Interfaith representatives on June 25, 2013, and by letter, dated June 25, 2013, DOH said it would only consider a restructuring plan that would enable Interfaith to operate without future State funding. The plan had to be submitted by July 9, 2013.

33. Even though this was the first time DOH had required Interfaith to submit a restructuring plan without any future State funding whatsoever, DOH gave Interfaith only two (2) weeks to submit the Plan. This period of time was bifurcated by the five (5) day 4th of July weekend. Moreover, DOH imposed the requirement of no State funding despite the fact that Interfaith's financial plight is one of the reasons Governor Cuomo gave to HHS to grant New York a $10 billion Medicare waiver for Interfaith.

34. Despite its insistence that a restructuring plan not include any State funds, DOH stated that if Interfaith were to agree to a plan of closure, the State would provide Interfaith with

$15 million in debtor-in-possession financing to facilitate an orderly and planned closure of Interfaith's facilities.

35. On July 9, 2013, Interfaith provided DOH with a working draft of a proposed restructuring plan that did not include any State funding.

36. By letter dated July 19, 2013, DOH told Interfaith: (a) its proposed restructuring plan was not accepted based on various DOH findings; (b) Interfaith's plan could not be resubmitted; and (c) Interfaith must commence implementation of a closure plan. DOH required Interfaith to make substantial revisions to its draft closure plan by July 22, 2013 (later extended to July 25, 2013).

37. The Debtor alleges that by letter dated July 22, 2013, IMC advised DOH of certain errors in DOH's July 19 letter with respect to bases for rejection of IMC's restructuring plan, clarified various other points raised by DOH, confirmed IMC's restructuring plan was a discussion document subject to revision, and requested a meeting with DOH.

38. According to the Debtor, DOH did not formally respond to Interfaith's July 22 letter. In addition, on July 24, 2013, DASNY advised Interfaith that, among other things: (a) based on DOH's July 19, 2013 letter to Interfaith, "DASNY believes that there is no viable prospect of any additional funding [for Interfaith] coming from the State of New York or any other source, other than in connection with a prompt closure of Interfaith"; (b) "DASNY's consent to continued use of cash collateral starting on Monday, July 29, 2013, is expressly conditioned on Interfaith's agreement to implement the closure plan and use cash collateral based solely on the closure budget"; (c) DASNY expects, "in connection with DASNY's consent to use cash collateral that Interfaith will file [a] closure motion prior to Monday, July 29, 2013"; and (d) DASNY believes "Interfaith should as soon as practicable send out WARN notices to all of its

affected employees; and [DASNY is] adding that as a requirement in the proposed Cash Collateral Order."

39. Conceding to the demands of DOH and DASNY, on July 30, 2013, the Debtor filed the Closure Motion seeking Court approval of the Closure Plan. In connection therewith, Interfaith authorized the distribution of WARN notices to all of Interfaith's employees to the extent, if any, such notices potentially are required by applicable law based on the impact of the Closure Plan.

40. Until the Closure Plan is approved by the Bankruptcy Court, Interfaith is continuing its normal operations while preparing to implement the Closure Plan. The closure of Interfaith will have a significant impact on other medical facilities in Brooklyn, and, indeed, in the entire City of New York, as they will need to absorb Interfaith's emergency room volume, inpatient medical/surgical and inpatient psychiatric admissions.

41. The potential closure of Interfaith would have a profound effect upon city services. First, it will have a direct and damaging effect upon ambulance services. In New York City, the primary provider of pre-hospital care in the five boroughs is the New York City Fire Department ("FDNY"). The Public Advocate has already received complaints regarding the imminent closure of Interfaith. Specifically, the closure of Interfaith will result in the diversion of ambulances and diminished city services because New York City residents serviced by FDNY ambulances will experience (1) longer transit times en route to remaining hospitals when they could otherwise have been delivered to Interfaith; (2) longer delivery times once an ambulance eventually reaches a different hospital; and (3) slower turnover of emergency vehicles and delays in servicing subsequent emergency calls because the FDNY vehicles are forced to make fewer overall trips

42. In addition, the permanent closure of Interfaith will have a grave impact on city services provided to city residents by the New York City Health and Hospitals Corporation ("HHC"). HHC is a city agency that operates six medical centers in the borough of Brooklyn. HHC already operates on a tight budget and the permanent closure of Interfaith will force more city residents to seek medical care at HHC hospitals. That increase in the number of patients seeking care at HHC hospitals will inevitably increase the burden on HHC and yield longer wait times and diminished services. With the loss of Interfaith, HHC facilities, such as Kings County Hospital Center (located just 1.8 miles from Interfaith), can expect a permanent strain on both emergency and non-emergency services with no foreseeable relief.

FIRST CAUSE OF ACTION
(Against All Respondents)

ARTICLE 78
Agencies' Decision to Alter the Requirements for Restructuring Plan Without Warning or Providing Reasonable Time for Submission Is Arbitrary, Capricious, and Contrary to Law

43. Petitioner re-alleges each and every allegation contained in paragraphs 1 – 42 herein.

44. On June 25, 2013, DOH informed Interfaith that it would only accept a restructuring plan that would enable Interfaith to operate without state aid.

45. Before June 25, 2013, Interfaith had never been required to form a restructuring plan without state aid. DOH only provided Interfaith two (2) weeks to submit a restructuring in accordance with the altered requirements. Respondents' decision to alter the requirements for a restructuring and failure to provide reasonable time to submit the plan was arbitrary, capricious, and contrary to law pursuant to Article 78 of the CPLR.

SECOND CAUSE OF ACTION
(Against All Respondents)

ARTICLE 78
Agency's Denial of Restructuring Plan Based Solely on a Working Draft Is Arbitrary, Capricious, and Contrary to Law

46. Petitioner re-alleges each and every allegation contained in paragraphs 1 – 42 herein.

47. On July 9, 2013, Interfaith submitted a working draft of its restructuring plan to DOH.

48. By letter dated July 19, 2013, DOH rejected the restructuring plan, stating that Interfaith could not resubmit a full restructuring plan and it must commence implementation of a closure plan.

Respondents' denial of the restructuring plan based on a working draft was arbitrary, capricious, and contrary to law pursuant to Article 78 of the CPLR.

THIRD CAUSE OF ACTION
(Against DOH Respondents)

ARTICLE 78
Agency Determinations that Ignore and Violate Regulations are Arbitrary, Capricious, And Contrary to Law

49. Petitioner re-alleges each and every allegation contained in paragraphs 1 - 42 herein.

50. Pursuant to 10 NYCRR 401.3(g), "no medical facility shall discontinue operation or surrender of its operating certificate unless 90 days' notice of its intention to do so is given to the [New York State Health Commissioner] and his written approval obtained." DOH approved aspects of Interfaith's closure plan just days after the closure plan was submitted. DOH's approval was therefore arbitrary, capricious, and contrary to law.

NO PRIOR APPLICATIONS

51. No prior application for this or any similar relief has been made in this Court.

PRAYER FOR RELIEF

WHEREFORE, Petitioner respectfully requests that this Court grant a judgment as follows:

(a) Under CPLR 6313 and Public Health Law 2801(c), temporarily restraining Respondents—and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, or any of them in any manner or by any means—from by taking any action, other than those based on existing medical standards of care, to (a) divert ambulances, (b) divert patients, (c) prevent or inhibit doctors or other medical professionals from using their best medical judgment in rendering patient care, (d) deprive doctors or other medical professionals of resources in rendering patient care, (e) restrain services or hours of operation, (f) take any action concerning the provision of medical and emergency care of community members other than those required by existing medical standards of care at Interfaith and/or (g) enjoin DOH and DASNY from taking any actions to diminish services provided at Interfaith, including but not limited to enjoining DOH and DASNY from halting the funding of Interfaith.

(b) Entering an Order to Show Cause why a Preliminary Injunction should be not be granted enjoining Respondents—and all other persons whomsoever, known or unknown, acting in their behalf or in concert with them, or any of them in any manner or by any means—from by taking any action, other than those based on existing medical standards of care, to (a) divert ambulances, (b) divert patients, (c) prevent or

inhibit doctors or other medical professionals from using their best medical judgment in rendering patient care, (d) deprive doctors or other medical professionals of resources in rendering patient care, (e) restrain services or hours of operation, and/or (f) take any action concerning the provision of medical and emergency care of community members other than those required by existing medical standards of care at Interfaith and/or (g) enjoin DOH and DASNY from taking any actions to diminish services provided at Interfaith, including but not limited to enjoining DOH and DASNY from halting the funding of Interfaith.

(c) Declaring that Respondents acted in a manner that was arbitrary, capricious, an abuse of discretion, and in violation of law;

(d) Awarding Petitioner reasonable costs and attorneys' fees incurred through his necessary retention of outside counsel; and

(e) Granting such other and further relief as the Court deems just and proper.

Dated: August ___, 2013

New York, New York

By: _____

Attorneys for Petitioner

VERIFICATION

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BILL DE BLASIO, Public Advocate for the City of New York, being duly sworn, deposes and says: I am the petitioner in the within proceeding; I make this verification pursuant to CPLR 3020(d); I have read the foregoing petition and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

Date: August ___, 2013

New York, New York

_____

BILL DE BLASIO

Sworn to before me this
____ day of August, 2013.

_____

Notary Public

EXHIBIT B

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In re:	:	
	:	Chapter 11
INTERFAITH MEDICAL CENTER, INC.,	:	
	:	Case No. 12-48226 (CEC)
Debtor.	:	

ORDER GRANTING CROSS-MOTION OF BILL DE BLASIO FOR ENTRY OF AN ORDER (I) PURSUANT TO FED. R. BANKR. P. 2018(a) AUTHORIZING BILL DE BLASIO TO PERMISSIVELY INTERVENE IN THE DEBTOR'S CHAPTER 11 CASE, AND (II) PURSUANT TO SECTIONS 362(d) AND 105 OF THE BANKRUPTCY CODE, FED. R. BANKR. P. 4001, AND LOCAL BANKRUPTCY RULE 4001-1 FOR RELIEF FROM THE AUTOMATIC STAY TO PERMIT BILL DE BLASIO TO INITIATE A NEW YORK STATE COURT ACTION AGAINST NON-DEBTORS

THIS MATTER having been brought before the Court upon the cross-motion (the "Cross-Motion") filed by Bill de Blasio, individually and in his capacity as the Public Advocate for the City of New York (the "Public Advocate") for entry of an order (I) pursuant to Fed. R. Bankr. P. 2018(a) authorizing the Public Advocate to permissively intervene in the Debtor's Chapter 11 case, and (II) pursuant to sections 362(d) and 105 of the Bankruptcy Code, Fed. R. Bankr. P. 4001 and Local Bankruptcy Rule 4001-1 for relief from the automatic stay to permit the Public Advocate to initiate a state court action against non-debtors; and the Court having jurisdiction to consider the Cross-Motion and the relief requested therein; and consideration of the Cross-Motion and the relief requested therein being a core proceeding; and venue being proper; and due and proper notice of the Cross-Motion having been provided pursuant to the Order Shortening Time entered on _____, 2013, and it appearing that no other or further notice need be provided; and this Court having reviewed the Cross-Motion and determined that the relief requested is necessary and in the best interest of the Debtor's estate,

creditors, and other parties in interest; and this Court having determined that the legal and factual bases for the relief sought establish just cause for the relief granted herein, and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The Cross-Motion is granted as provided herein.

2. The Public Advocate is granted standing as a party-in-interest in this Chapter 11 case for all purposes pursuant to section 1109(b) of the Bankruptcy Code.

3. The Public Advocate is granted intervenor status in this Chapter 11 case for all purposes pursuant to Bankruptcy Rule 2018(a).

4. The automatic stay is lifted pursuant to section 362(d) of the Bankruptcy Code to permit the Public Advocate to file and prosecute the New York state court Article 78 Action (as defined in the Cross-Motion).

5. Notice of the Cross-Motion, as set forth in the Order Shortening Time Period For Notice of the Motion, satisfies Bankruptcy Rule 6006 and Local Rule 6006-1.

6. Any and all objections to the Cross-Motion are overruled for all purposes;

7. This Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution of effectiveness of this Order.

8. This Court shall retain jurisdiction with respect to all matters arising from or related to this Order.