

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY No.: 17-32654

CareFocus Corporation,

Chapter 11

Debtor.

**NOTICE OF EXPEDITED HEARING
AND MOTION FOR APPROVAL
OF USE OF CASH COLLATERAL
AND FOR ADEQUATE PROTECTION**

**TO: THE DEBTOR, THE UNITED STATES TRUSTEE, AND OTHER PARTIES IN
INTEREST AS SPECIFIED IN LOCAL RULE 9013.3.**

1. CareFocus Corporation (hereinafter "Debtor"), the Debtor-In-Possession in the above-referenced proceeding, moves the Court for expedited relief and gives notice of hearing.

2. The Court will hold an expedited hearing on the Debtor's motion at 1:30 p.m. on Tuesday, August 22, 2017, before the Honorable William J. Fisher, in Courtroom 2B, United States Courthouse, 316 North Robert Street, St. Paul, MN 55101, or as soon thereafter as counsel can be heard. A final hearing on the Debtor's motion for Use of Cash Collateral and for Adequate Protection is set for 11:15 a.m. on Tuesday, September 19, 2017, before the Honorable William J. Fisher, in Courtroom 2B, United States Courthouse, 136 North Robert Street, St. Paul, MN 55101.

3. Any response to the Expedited Hearing and Motion shall be filed and served not later than 2 hours prior to the August 22, 2017 hearing date. Any response to the September 19, 2017 Final Hearing on the Debtor's Motion shall be filed and served not later than Thursday, September 14, 2017, which is five days prior to the hearing date. **THE COURT MAY ALSO GRANT THE DEBTOR'S MOTIONS, INCLUDING FINAL APPROVAL OF ANY ADEQUATE PROTECTION AGREEMENTS WITHOUT A**

FURTHER HEARING UNLESS AN APPROPRIATE OBJECTION IS INTERPOSED IN ACCORDANCE WITH THE RULES.

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Bankruptcy Rule 5005 and Local Rule 1070-1. This is a core proceeding. The case is now pending in this Court, having been filed on August 18, 2017.

5. This motion arises under 11 U.S.C. §§363 and 361, together with Bankruptcy Rule 4001(c) and Local Rule 4001-2. The Debtor seeks an expedited Hearing on its Motion to use cash collateral.

6. The Debtor previously filed chapter 11 reorganization pleadings in 2010 and 2013. Both cases were filed because of the Debtors failure to make timely payments of State and Federal withholding taxes and timely payments of State Unemployment taxes. The Debtor proposed Plans of Reorganization in both cases, which Plans of Reorganization were confirmed by this Court. The 2010 and 2013 cases were previously closed by Court Orders. The present case filed is due to set-offs made against the Debtor by the US States Department of Treasury. In the last eight to nine weeks, the Department of Treasury has set-off funds payable to the Debtor by the Veterans Administration and retained those funds. The amount is in excess of \$104,000. That has caused the Debtor to experience extreme cash flow problems and default on payments to the Internal Revenue Service, the MN Department of Revenue and the MN Department of Economic Security.

7. The Debtor's pre-bankruptcy assets are subject to tax liens in favor of the IRS. The IRS is owed approximately \$130,000 to \$140,000. This sum consists of taxes being paid on an installment basis pursuant to the Debtor's earlier Chapter 11 cases.

8. A four week cash projection and use of funds statement is marked as **Exhibit 1** and is attached to the Rule 4001-2 Statement which is attached as **Exhibit A** this motion. **Exhibit 1** shows the proposed uses of cash between the expedited hearing and the final hearing on this Motion. A Balance Sheet and Income Statement are attached as **Exhibits 2 and 3** to the Rule 4001-2 Statement or will be filed with the Court prior to the preliminary hearing on this motion.

9. The Debtor will suffer irreversible and irreparable harm if it is not able to use cash collateral. The expenditures the Debtor proposes to make between the preliminary hearing on the Debtor's Motion and the Final Hearing are approximately \$254,000. The bulk of these funds are two payrolls due August 25, 2017 and September 8, 2017. Each of the payrolls, as a gross expenditure, is in the approximate amount of \$113,000 which is \$104,00 in gross wages and approximately \$9,00 for employer related taxes associated with each payroll. If the Debtor is unable to make its payroll it will not be able to operate its business. In addition, The Debtor needs to spend approximately \$8,670 for insurance payments for workers' compensation and health insurance. Those insurance payments are described in the Debtor's cash flow projections. The Debtor anticipates generating revenues in the amount of \$294,529 between the date of the case filing and the date of the final hearing on the Motion for cash collateral. The Debtor's assets will be increasing by approximately \$40,000 during the requested interim use of cash collateral. They will not erode.

10. Pursuant to applicable rules, the Debtor reserves the right to call the Officers of the Debtor in support of this motion.

11. On an interim basis, the Debtor proposes to grant a replacement lien to the Internal Revenue Service in the Debtor's cash collateral and assets, which replacement lien shall have the same priority, dignity and effect as the pre-petition lien held by that creditor. In addition, the Debtor does not intend nor is seeking to encumber any bankruptcy causes of action.

12. By making this Motion, the Debtor is not seeking to cross collateralize any pre-petition debt with post-petition collateral. The Debtor is not admitting the validity perfection or amount of any pre-petition secured claim or waiving any right with respect thereto. The relief sought does not grant a lien on the Debtor's avoidance claims or bankruptcy causes of action as enumerated under the Bankruptcy Code. This Motion does not propose to secure pre-petition debt with post-petition loans or otherwise attempt to roll a pre-petition obligation into a post-petition obligation. This Motion does not deal with or carve out fees for any professionals. This Motion does not propose to prime any debt of the Debtor nor does this Motion provide automatic summary relief from the automatic stay to any creditor. The Debtor is simply proposing to use cash collateral to pay essential operating expenses and grant a replacement lien in the Debtor's assets to its secured creditors, which replacement lien would have the same priority, dignity and effect as pre-petition lien held by said creditor, all pending the final hearing on the Debtor's Motion.

WHEREFORE, the Debtor, through its undersigned attorney, respectfully moves the Court for an Order granting the Debtor's Motion for expedited relief and granting the Debtor's Motion authorizing it to use cash collateral and authorizing the Debtor to grant a

replacement lien to the Internal Revenue Service, which replacement lien will have the same priority, dignity and effect as the pre-petition lien held by said creditor, and for such other and further relief as the Court may deem just and equitable.

STEVEN B. NOSEK, P.A.

Dated: August 18, 2017.

/e/ Steven B. Nosek
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Attorneys for Debtor

VERIFICATION

I, Adewale Koleosho, Chief Executive Officer of the Debtor named in the foregoing pleading, declare under penalty of perjury that the foregoing pleading is true and correct according to the best of my knowledge, information and belief.

Dated: 8-18, 2017.



Adewale Koleosho, Chief Executive Officer

EXHIBIT A

RULE 4001-2 STATEMENT

The Debtor has filed a partial set of Schedules and asks the Court to take judicial notice thereof. A four-week budget is attached as **Exhibit 1**. A Balance Sheet and the Profit & Loss Statement will be filed prior to the August 22, 2017 hearing date as **Exhibit 2** **Exhibit 3**.

The undersigned verifies under penalty of perjury that the information contained in this pleading is true and correct according to the best of his knowledge information and belief.

Dated: August 18, 2017.



Adewale Kolesho, CEO

CAREFOCUS CORPORATION
CASHFLOW STATEMENT
NEXT FOUR WEEKS

INCOME

MEDICAL ASSISTANT	\$	144,703	
UCARE		20,008	
MEDICAL ASSISTANT		61,672	
VA		38,620	BEING LEVIED BY TREASURY
HEALTH PARTNERS		17,750	
BCBS		2,563	
PRIVATE PAY		9,213	

TOTAL	\$	294,529	
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PAYROLL PLUS PAYROLL TAXES	\$	226,000	
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GROSS MARGIN	\$	68,529	
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OPERATING EXPENSES

LIFE INSURANCE	1,300	
HEALTH INSURANCE	4,400	
DENTAL INSURANCE	235	
GROUP LIFE	195	
OTHER INSURANCE	1,038	
RENT	2,750	
UTILITIES	950	
TELEPHONE	1,300	
CELL PHONES	150	
WORKERS COMPENSATION	4,270	
MILEAGE	4,000	
ACCOUNTING	3,000	
OFFICE EXPENSE	3,600	
OTHER MISC	1,000	
TOTAL	<u>28,188</u>	

NET PROFIT BEFORE TAXES	<u>\$</u>	<u>40,341</u>	
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY Case No.: 17-32654

CareFocus Corporation,

Chapter 11

Debtor.

Memorandum of Law

CareFocus Corporation (“Debtor”) submits this Memorandum of Law in support of its Motion for an Order Authorizing Use of Cash Collateral (“Motion”).

I. STATEMENT OF FACTS

The Debtor relies on the verified statement of facts and Local Rule 4001-2 statement contained in the Motion and incorporates the same herewith.

II. STATEMENT OF LAW AND DISCUSSION

Section 363(c)(2) of the Bankruptcy Code provides that a debtor in possession may use cash collateral only with the secured creditor's consent or if the court, after notice and a hearing, so orders. Section 363(e) of the Bankruptcy Code provides that the court must provide the secured creditor with adequate protection of its interest upon request of the creditor. The Eighth Circuit Court of Appeals has discussed the issue of adequate protection in the following terms:

In any given case, the bankruptcy court must necessarily (1) establish the value of the secured creditor's interest, (2) identify the risks to the secured creditor's value resulting from the debtor's request for use of cash collateral, and (3) determine whether the debtor's adequate protection proposal protects values as nearly as possible against risks to that value consistent with the concept of indubitable equivalence.

In re Martin, 761 F.2d 472, 476-77 (8th Cir. 1985).

Based on the facts alleged in the Motion, the Internal Revenue Service's interest in the collateral is adequately protected by the Debtor's offer. The Debtor's cash collateral since the filing date will stay the same and not decrease demonstrating further adequate protection.

Usually, in a Chapter 11, the risk to a secured creditor's interests in cash collateral is that the Debtor will use all of the collateral and not generate sufficient post-petition collateral to replace the used collateral. That is not a concern here, as the collateral will not decrease during the pendency of this case.

The Debtor has set forth how the value of its assets will remain the same and not decrease between the Filing Date and the dates through which the Debtor seeks use of cash collateral. The Debtor has further set forth its necessary budget. Pursuant to the Debtor's budget, the collateral position of the secured creditors does not adversely change in a material way during the period of the proposed use of cash collateral.

The Debtor's offer to the secured creditor as adequate protection of its interests is the offer of adequate protection described in the Motion. Based on the facts and circumstances of this case, the offer of adequate protection adequately protects the secured creditor from any risks to its collateral from the Debtor's use of the same.

The Court should grant the motion of the Debtor authorizing the use of cash collateral. The Debtor has immediate need to use cash collateral in which the secured creditor has an interest. The Debtor's use of cash collateral during the pendency of this case poses a nominal risk to the interest of the secured creditor. The secured creditor will be adequately protected by the granting of a post-petition lien with the same status, dignity and priority as existed in the cash collateral prior to the filing of the Debtor's petition, by the carrying of insurance for the full replacement value of the collateral, by continuing to operate and to generate replacement

collateral and by any other form of protection contained in the offer of adequate protection described in the Motion.

The Debtor requests an order authorizing use of cash collateral so that the Debtor may meet the ordinary expenses of operating the Debtor's business in accordance with the budget attached to the Debtor's Rule 4001-2 Statement.

III. CONCLUSION

For the foregoing reasons, the Court should approve the Debtor's use of cash collateral on an interim and final basis as provided in the Motion.

STEVEN B. NOSEK, P.A.

Dated: August 18, 2017.

/e/ Steven B. Nosek
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**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

BKY No.: 17-32654

Chapter 11

**CareFocus Corporation,
Debtor.**

CERTIFICATE OF SERVICE

I hereby certify that on August 18, 2017, I caused a copy of **Notice of Expedited Hearing and Motion for Approval to Use Cash Collateral and for Adequate Protection; Verification; Exhibits; Memorandum of Law; Proposed Order** to be filed electronically with the Clerk of Court through ECF, and that ECF will send an e-notice of the electronic filing to the following:

US Trustee: ustpreion12.mn.ecf@usdoj.gov, ecfbkup@comcast.net

I further certify that I caused a copy of the **Notice of Expedited Hearing and Motion for Approval to Use Cash Collateral and for Adequate Protection; Verification; Exhibits; Memorandum of Law; Proposed Order** to be faxed and/or emailed and/or mailed by US Mail to the following:

CareFocus Corporation 2429 University Avenue West Suite 200 St. Paul MN 55114-1541 akoleosho@carefocuscorp.net	IRS District Director Room 320 Stop 5700 30 7 th Street E #1222 St. Paul MN 55401 No Fax or Email	MN Dept of Revenue 551 Bankruptcy Sections PO Box 64447 St. Paul MN 55164 Mdor.bkysec@state.mn.us
Internal Revenue Services Centralized Insolvency Office PO Box 7346 Philadelphia PA 19101-7346 No Fax or Email	US Attorney 300 South 4 th Street #600 Minneapolis MN 55415 Fax: 612-664-5788	Internal Revenue Service Eileen Barr 30 E 7th Street, #1222 Saint Paul MN 55101 Fax: 1-855-802-9441
Minnesota Revenue 600 North Robert Street Saint Paul MN 55146-6553	Minnesota Unemployment Ins PO Box 64621 Saint Paul MN 55164-0621 Fax: 651-297-5283	New Wine Church 810 - 31st Street W Minneapolis MN 55408 info@nwcmpls.com
US Dept. of The Treasury Bureau of the Fiscal Services PO Box 830794 Birmingham AL 35283-0794 Fax: 1-855-292-9700	US Dept. of The Treasury Debt Management Services PO Box 979101 St. Louis MO 63197-9000	US Dept. of The Treasury Bureau of the Fiscal Services PO Box 1686 Birmingham AL 35201-1686

Dated this 18th day of August, 2017.**STEVEN B. NOSEK, P.A.**/e/ Steven B. Nosek

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ATTORNEYS FOR DEBTOR

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA**

In Re:

**BKY No.: 17-32654
Chapter 11 Case**

CareFocus Corporation,

Debtor.

INTERIM ORDER

The Motion of CareFocus Corporation ("Debtor") for an Order granting interim use of cash collateral and to grant adequate protection hearing came on for expedited hearing before the undersigned on the 22nd day of August, 2017. Appearances were noted.

IT IS HEREBY ORDERED:

1. The Debtor's Motion for expedited hearing is granted.
2. The Debtor is authorized to use cash collateral on an interim basis in the amounts of and consistent with the cash flow projections; and
3. The Debtor is authorized to grant a replacement lien to Internal Revenue Service on all assets of the Debtor-In-Possession to the extent of use of cash collateral, which replacement liens shall have the same priority, dignity and effect as the pre-petition lien held by said creditor. Assets excluded from the replacement lien are the Debtor's bankruptcy causes of action; and
4. No additional steps need to be taken to perfect the replacement lien authorized herein; and
5. A further hearing on the motion for an order authorizing the use of cash collateral shall be held on September 19, 2017 at 11:15 a.m.

Dated:

**William J. Fisher
United States Bankruptcy Judge**