

**SCIN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF MARYLAND
(Baltimore Division)**

In re: MICHAEL D. COHEN, M.D., P.A., ¹ Debtor.	Chapter 11 Case No.: 16-22231 (___)
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**AFFIDAVIT OF SHARI L. COHEN IN SUPPORT
OF FIRST-DAY MOTIONS**

I, **SHARI L. COHEN**, hereby state under penalty of perjury, that the following information is true and correct to the best of my knowledge, information and belief.

I. Background

A. Introduction

1. I am the wife of Michael D. Cohen, M.D. (“Dr. Cohen”). Dr. Cohen is the sole shareholder of Michael D. Cohen, M.D., P.A., (the “Debtor”), and I am responsible for the business administration of the Debtor’s medical practice. I am also the authorized representative of the Debtor in this case. I am fully familiar with the day-to-day operations, financial condition, books and records, and business affairs of the Debtor. I submit this Affidavit in support of the Debtor’s Chapter 11 petition, first-day motions listed on **Exhibit A** hereto (collectively, the “First-Day Motions”).

2. Except as otherwise indicated, all facts set forth in this Affidavit are offered to the best of my knowledge, information and belief, and are based upon my personal knowledge, my review of relevant documents, information provided to me by staff or professionals working with me or under my supervision, or my informed opinion based upon my experience and knowledge

¹ The last four digits of the Debtor’s tax identification number are 5175.

of the Debtor's business, operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein. I am authorized to submit this Affidavit on behalf of the Debtor.

3. To minimize any adverse effects on the business as a result of the commencement of the Debtor's Chapter 11 case, the Debtor has requested certain relief in the First-Day Motions. The First-Day Motions seek relief to: (a) approve the Debtor's use of the cash collateral of PNC Bank, National Association ("PNC Bank") and Manufacturers and Traders Trust Company ("M&T Bank"), which is needed to cover day-to-day operating expenses necessary to continue the operations of the Debtor's business; (b) maintain employee morale and confidence and to avoid disruption of the Debtor's relationships with its patients; and (c) establish certain other administrative procedures to promote a smooth transition into Chapter 11. Gaining and maintaining the support of the Debtor's employees, vendors, patients, and other key constituents, as well as maintaining the day-to-day operations of the Debtor's medical practice with minimal disruption will be critical to the Debtor's efforts in Chapter 11 and its ability to maximize the recovery prospects for all interested parties. The relief requested in the First-Day Motions is in the best interests of the Debtor and its creditors, and is necessary to avoid immediate and irreparable harm.

B. Overview of the Debtor's Medical Practice

4. The Debtor was formed as a corporation under the laws of the State of Maryland in 1996 to operate a medical practice led by Dr. Cohen's practice of plastic surgery. Dr. Cohen is a native of Maryland and a Board Certified plastic surgeon who completed his residency at Stanford Medical Center before returning to Maryland. Over the years, the practice grew and became a very successful practice, without controversy, which we operated under the name of

Cosmetic Surgery Center of Maryland. The practice also involves an entity we formed in 2005, known as Cosmetic Surgery Center of Maryland, LLC (“CSM”), an accredited surgery center. In addition, in 2005 we formed Cosmetic Organization for Practice Enhancement, LLC, now known as CMG Partners, LLC (“CMG”) to conduct the business administration of the practice.

5. With the success of the practice, Dr. Cohen and I developed a vision to expand the practice into a multispecialty center where patients could go for comprehensive wellness services in one place, with top-tier physicians complementing Dr. Cohen’s practice. In 2012, as plans for the new facility were being developed, Dr. Cohen and I were served with a lawsuit filed in the Circuit Court for Baltimore County by a former non-physician employee, Dawn Richardson, who claimed ownership and lost profits in a company known as Skin, Inc. (the “Richardson Litigation”). We never imagined how costly the Richardson Litigation would prove to be.

6. In June 2014, we opened our new 18,000 square-foot facility at our current location, with the plan to include with our cosmetic surgery practice dermatology, ophthalmology, podiatry and other medical practices under a new name, which is now Belcara Health. To open this new facility, the Debtor and its affiliates incurred substantial new debts for leasehold improvements and new medical equipment.

7. In addition to the Debtor’s medical practice, Belcara Health includes CSM, which runs the operating rooms located at the new location, Evalla, LLC, which provides accessories for ophthalmology patients, laser services for dermatology patients, and non-surgical services for patients’ face and body, and CMG, which continues to serve as the entity providing business administration services for the Debtor, as well as for CSM and Evalla. More recently, Belcara

Health also added additional physician practices through Clarkview Physicians, LLC (“CP”), for which Dr. Cohen is the sole shareholder.

8. In addition to the burden of the new debts relating to the Belcara Health facility, the Debtor, Dr. Cohen and I personally incurred enormous legal fees defending the Richardson Litigation, which drained us of cash we otherwise could have invested into Belcara Health.

9. In May 2016, after a jury trial, the Baltimore County court entered a judgment against Dr. Cohen, me personally, and the Debtor for the amount of \$ 1,275,000 based on unjust enrichment and *quantum meruit* (the “Richardson Judgment”). Although our counsel filed a motion to strike the jury verdict on which the judgment was based, the Baltimore County court denied that motion. On September 9, 2016, we filed a notice of appeal from the judgment entered in the Richardson Litigation.

10. Efforts to enforce the judgment by the plaintiff proved to be very disruptive. On August 26, 2016, Dr. Cohen and I filed a joint Chapter 11 petition. On September 12, 2016, the Debtor filed its own Chapter 11 petition. We intend to pursue our appeal from the Richardson Judgment while we also pursue the reorganization of the Debtor’s and our personal financial affairs.

C. Prepetition Banking Structure

11. In the ordinary course of business, the Debtor and CMG each maintain a single checking account (together, the “Bank Accounts”) at Wilmington Savings Fund Society, also known as WSFS Bank (the “Bank”). The Bank Accounts operate as part of the Debtor’s cash management system (the “Cash Management System”). Through the Bank Accounts, the Debtor collects, transfers, and disburses funds generated from its operations. Both of the Bank Accounts receive funds earmarked to the Debtor and pay for expenses of the Debtor. The Debtor’s

account directly receives all of the funds provided from insurance companies for services performed by the Debtor. Payments provided by the Debtor's patients are made out to "Belcara Health" and are deposited into the CMG account. To the extent the Debtor has direct, non-shared expenses, those expenses are paid directly from the Debtor's account. However, the Debtor also transfers funds from its account to the CMG account to help cover its shared expenses, such as rent.² The CMG account consists not only of money allocated to the Debtor, but also funds received from Evalla, CSM and CP. All of the shared expenses of the Debtor, Evalla, CSM and CP are paid from the CMG account, as well as some of the allocated expenses such as payroll. The Debtor and its affiliates on a weekly basis evaluate and allocate the funds maintained in the CMG account between the operating entities. Similar to the Debtor, Evalla, CSM and CP each maintain a separate bank account as well.

12. Up until approximately one week ago the Debtor and CMG maintained their bank accounts through M&T Bank. However, due to M&T Bank's recent setoff of the accounts maintained at M&T Bank, there are no longer any funds in those accounts, and those accounts are now closed. The Debtor and CMG opened the Bank Accounts after the setoff in order to continue their operations.

13. As of September 12, 2016, the Bank Accounts each had a balance of approximately \$170.

D. Prepetition Financing Structure

14. The Debtor's primary debt is owed to M&T Bank. In May 2013, CMG obtained a loan from M&T Bank, in the original principal amount of \$ 2,925,000.00, to fund the costs of

² The Debtor and its affiliates have various formulas to determine their shared expenses. For instance, the Debtor and its affiliates all operate out of the same location under one lease. The Debtor and its affiliates allocate rent based upon the percentage of the leased property each company uses.

leasehold improvements, equipment and furnishings for the new Belcara Health facility. The Debtor also is liable to M&T Bank for this loan under a Guarantee. As of the Petition Date, the amount owed to M&T Bank for this loan was approximately \$2,579,166.00. The Debtor is also a borrower under a Business Access Line of Credit with M&T Bank in the original principal amount of \$250,000. As of the Petition Date, the amount owed to M&T Bank for this loan was approximately \$250,000. As security for each of these loans, M&T Bank holds a security interest in all of the Debtor's assets, including inventory and accounts.

15. The Debtor also owes PNC Bank, as of the Petition Date, approximately \$202,603.34, which is secured by a blanket lien on the Debtor's assets. Upon information and belief, PNC Bank appears to be in the first-lien position, and M&T Bank appears to have a second-lien position.

16. The Debtor also has certain other debts to a few equipment vendors but those creditors, upon information and belief, do not have any interest in the Debtor's inventory, accounts or cash.

E. The Debtor's Need for Use of Cash Collateral

17. PNC Bank and M&T Bank are believed to be the only prepetition secured creditors that have a lien on the Debtor's cash and receivables. The Debtor requires the use of all available sources of working capital, including cash collateral, to operate in the ordinary course of business. The Debtor's ability to maintain business relationships with its vendors and patients, to pay for physicians and staff, and to otherwise fund its operations is essential to its continued viability. If the Debtor is unable to use cash collateral for such purposes, the recoveries for creditors would be greatly reduced since, under a "shut-down" scenario, the current and new patients would be lost and the value of the Debtor's estate would decline

dramatically. The use of cash collateral is thus critical to the Debtor's ability to maximize value for its creditors, in the best interest of the Debtor and its estate, and necessary to avoid immediate and irreparable harm to the Debtor, its creditors, and its assets, businesses, goodwill, reputation and staff.

II. First-Day Motions³

18. Concurrently with the filing of this Chapter 11 case, the Debtor filed three First-Day Motions. The Debtor anticipates that the Court will conduct a hearing soon after the commencement of this case (the "First-Day Hearing"), at which time the Court will hear the First-Day Motions.

19. An important and critical element to the success of this Chapter 11 case will be the entry of orders granting the relief requested in each of the First-Day Motions. Generally, the First-Day Motions are designed to facilitate: (a) the continuation of the Debtor's operations and service to its patients without interruption, and to approve on an interim basis the use of cash collateral; (b) maintenance of staff morale and confidence; and (c) establishment of certain other administrative procedures to promote a smooth transition into Chapter 11. The factual background in support of each First-Day Motion is provided below:

A. Debtor's Motion for an Order (A) Authorizing the Debtor's Interim and Final Use of Cash Collateral Pursuant to 11 U.S.C. §§ 361, 363 and 552, (B) Granting Adequate Protection, and (C) Scheduling Final Hearing Pursuant to 11 U.S.C. § 363(C)(2) and Fed.R.Bankr.P. 4001 (the "Cash Collateral" Motion").

20. By this motion, the Debtor is seeking interim approval of the use of cash collateral.

³ Capitalized terms not defined herein shall have the meaning ascribed to them in the respective First-Day Motions.

21. As of the Petition, the Debtor's books and records reflected accounts receivable in the gross amount of \$ 471,873 of which I estimate that approximately \$ 141,562 is collectible; and the Debtor has no inventory. Accordingly, including the bank account balance of \$170.48 as of today, the total estimated value of "cash collateral", as I understand its meaning, is approximately \$ 141,732.48 as of the Petition Date.

22. Immediate approval of the use of cash collateral, on an interim basis, is crucial to the Debtor's ability to continue its operations in the ordinary course of business. Without such interim approval, the Debtor would be forced to shut down its medical practice, as it would be unable to pay for physicians, staff, and other operating expenses, and expenses necessary to service its patients. In such an event, the Debtor, its creditors and estate would be deprived of any prospect of a successful Chapter 11 case.

23. To avoid such irreparable harm to the Debtor and the estate, the Debtor requests that the Court approve the use of cash collateral on an interim basis, pending entry of a final order, to (i) maintain the ongoing operations of the Debtor, and (ii) avoid immediate and irreparable harm and prejudice to the Debtor's estate and its creditors, patients, and other parties in interest.

B. Motion of Debtor and Debtor-In-Possession for Entry of an Order Authorizing Payment of Prepetition Wages, Compensation, Employee Benefits, Expense Reimbursements, and Related Items, and the Continuation of Certain Employment Policies in the Ordinary Course (the "Employee Motion").

24. By the Employee Motion, the Debtor seeks entry of an Order (i) authorizing, but not requiring, the Debtor to pay (a) prepetition payroll obligations and related items, (b) employee benefits, and (c) expense reimbursement, and (ii) authorizing applicable banks and

other financial institutions to honor such checks and transfers drawn on the Debtor and CMG's accounts relating to such payments.

25. CMG serves as a staffing company to the Debtor for the 14 non-physician staff members that do work for the Debtor. As explained more fully in the Cohen Affidavit, historically, the funds from the Debtor's patients are deposited directly into CMG's bank account, while the funds provided from insurance companies are deposited into the Debtor's bank account. The Debtor also regularly transfers funds from its bank account to CMG's bank account to cover shared expenses of the Debtor's affiliates and the payroll of the 14 non-physician staff members who do work for the Debtor, in accordance with an allocation based on the estimated portion of expenses allocable to each separate entity. As part of the Debtor and CMG's ordinary course of business, the Debtor prepays CMG for the services of the 14-non-physician staff members who do work for the Debtor.

26. CMG also pays three physicians, Dr. Adler, Dr. Martin and Dr. Cohen (together with the 14 non-physician staff members who do work for the Debtor, the "Employees"), who perform services for the Debtor.

27. The Debtor has both salaried and hourly employees. The Employees are paid bi-weekly on Fridays, and the pay covers the two-week period ending one week before the payment date. Physicians are paid on one Friday, and the remaining staff is paid on the other Friday. The non-physician staff will next be paid on September 16th, and the physicians will next be paid on September 23rd. The Employees are paid either by check or direct deposit.

28. As of the Petition Date, the aggregate amount of accrued wages and commissions that remain unpaid to the Debtor's Employees is approximately \$49,500 (the "Prepetition Payroll Obligations" or "Unpaid Wages").

29. I am advised that the Unpaid Wages and Employee Benefits that the Debtor seeks to pay with respect to the Unpaid Wages and Reimbursable Expenses are entitled to priority status under Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, to the extent they do not exceed \$12,475.00 per Employee. The Debtor would therefore be required to pay these claims in full in order to confirm a plan of reorganization.

30. The Debtor also offers medical insurance coverage to the Employees. The Debtor's insurance plans are administered by CareFirst Blue Cross. Depending on the policy chosen by the Employees, either the Debtor pays all of the premiums under these plans, or the premiums are paid partially by the Debtor and partially by the Employees. These amounts are all funded as part of payroll. The Debtor owes approximately \$9,950 to CareFirst Blue Cross, the fees for which have been incurred in the past month.

31. The majority of the Debtor's Employees rely exclusively on their compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. Consequently, these Employees would be exposed to significant hardship if the Debtor was not permitted to honor obligations for unpaid compensation, benefits, and reimbursable expenses. Moreover, if the Debtor was unable to satisfy such obligations, morale and loyalty would be jeopardized at a time when Employee support is critical. In the absence of such payments, I believe the Employees would seek alternative employment opportunities, thereby hindering the Debtor's ability to meet its customer obligations, and likely diminishing creditors' confidence in the Debtor. In addition, the loss of valuable Employees who have relationships with customers and vendors, and the recruiting efforts that would be required to replace such Employees, would be a massive and costly distraction at a time when the Debtor should be focusing on stabilizing its operations.

32. In addition, the Debtor requests that all applicable banks and other financial institutions be authorized and directed to receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtor related to the Employee Wages and Benefits and the Reimbursable Expenses, whether such checks were presented or fund transfer requests were submitted prior to or after the Petition Date. The Debtor represents that these checks are drawn on identifiable bank accounts. Accordingly, checks other than those for the Prepetition Payroll Obligations, Employee Benefits, and the Reimbursable Expenses will not be honored inadvertently.

33. In sum, the Employees' skills, relationships with customers, and their knowledge and understanding of the Debtor's operations and customer relations are essential to the continued operations and reorganization of the Debtor's business. Without the continued services of the Employees, an effective reorganization of the Debtor would not be possible.

C. Motion of the Debtor and Debtor-In-Possession for an Order Authorizing Debtor to Continue Use of Cash Management System and Existing Bank Accounts ("Cash Management Motion").

34. By the Cash Management Motion, the Debtor respectfully requests the entry of an Order authorizing the Debtor to continue using its existing Cash Management System and Bank Accounts.

The Debtor's Cash Management System and Bank Accounts

35. As stated more fully above, in the ordinary course of business, the Debtor and CMG maintain the Bank Accounts that comprise their Cash Management System.

36. Through the Bank Accounts, the Debtor and CMG collect, transfer, and disburse funds generated from the Debtor's revenues and incoming payments. The Debtor routinely deposits, withdraws, and otherwise transfers funds between the Bank Accounts.

37. The Debtor's Cash Management System and Bank Accounts are significant aspects of the Debtor's ordinary course, essential business practices.

38. The Debtor's ability to manage collections and track receipts and disbursements using its existing Bank Accounts and centralized Cash Management System is critical to its operations. During the pendency of the bankruptcy case, the Debtor intends to fund operations from existing cash and postpetition revenues, all of which revenues will run through its Cash Management System.

39. If the Debtor was required to close its bank account and terminate the Cash Management System immediately, I believe that it would be difficult to establish the required bank accounts promptly and a new cash management system to fulfill the Debtor's business needs. I also believe the disruption to the ordinary financial affairs of the Debtor would be prejudicial to the Debtor's estate.

40. It is my belief that, absent authorization to continue to use the Debtor's existing Bank Accounts and Cash Management System in the ordinary course of business, significant and unnecessary disruption to the Debtor's business will occur.

III. Conclusion

41. Approval of the First-Day Motions filed by the Debtor is crucial to the Debtor's ability to continue its business. Without the relief requested, the Debtor would be forced to cease operations and would be unable to pursue its reorganization efforts. The requested relief will also assist the Debtor in maintaining employee morale, retaining employees and establishing certain other administrative procedures to promote a smooth transition into, and eventually out of, Chapter 11.

Executed on September 12, 2016

/s/ Shari L. Cohen

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