

IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION

<b>IN RE:</b>	<b>CHAPTER 11</b>
<b>THE KANE CLINICS LLC</b>	<b>CASE NO. 16-72304-lrc</b>
<b>Debtor.</b>	
<b>THE KANE CLINICS LLC</b>	
<b>Movant,</b>	
<b>v.</b>	<b>CONTESTED MATTER</b>
<b>SUNTRUST BANK, LIFTFORWARD, INC., and JP MORGAN CHASE BANK, NA,</b>	
<b>Respondents.</b>	

**MOTION REQUESTING ENTRY OF ORDER  
AUTHORIZING THE USE OF CASH COLLATERAL**

COMES NOW The Kane Clinics LLC (“Debtor”), and hereby files this “Motion Requesting Entry of Order Authorizing the Use of Cash Collateral” (the “Motion”). In support of the Motion, Debtor shows the Court as follows:

**Jurisdiction**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The statutory predicates for the relief requested herein is 11 U.S.C. §§ 105(a) and 363.

**Background**

2. On December 14, 2016 (the “Petition Date”), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (as amended, modified, or supplemented the “Bankruptcy Code”).

3. Debtor is a Georgia limited liability company. Debtor operates obstetrics and gynecological clinics (the "Business") with an emphasis on serving uninsured and underserved patients pursuant to leases or sub-leases on five premises as follows:

- (i) 2000 Clearview Ave Suite 111 Doraville Ga 30340
- (ii) 5161 Brook Hollow Suite 200 Norcross Ga 30071
- (iii) 275 Carpenter Drive Suite 102 Sandy Springs Ga 30328
- (iv) 1841 Chamblee Tucker Road Suite 1-4B Chamblee Ga 30341; and
- (v) 3780 Holcomb Bridge Road Suite D Norcross Ga 30092

4. The Chamblee Tucker premises is currently subleased to CIMA OBGYN Cv, LLC and CIMA Pediatrics Cv, LLC with Debtor serving as sub-landlord.

5. Maria Francis owns 100% of the membership interest in Debtor<sup>1</sup> and serves as Debtor's CEO. Maria Francis dedicates her full-time services to running the business and marketing sides of the Debtor. Ms. Francis' duties include (i) supporting front and back office daily functions, (ii) managing MDs, CNMs, and support staff, (iii) soliciting and marketing for new business, and (iv) managing budgets.

6. Ms. Francis' husband, Enrique Francis, serves as Debtor's President and dedicates his full-time services to running the business and marketing sides of the Debtor. Mr. Francis' duties include or have included (i) managing budgets, (ii) executing capital fundraising strategies for past expansions, (iii) maintaining relationships with associations, hospitals, the Latin American Chamber of Commerce, the Latin consulates and churches throughout Atlanta, and (iv) managing Debtor's information technology, including patient record policies.

7. The Debtor's medical services are provided by certified nurse midwives, physicians, and medical assistants.

---

<sup>1</sup> Ms. Francis owns 100% of the membership interest in CIMA OBGYN Cv, LLC and CIMA Pediatrics Cv, LLC.

8. Each of Debtor's clinics typically staffs 2 medical assistants, a front office person, 1-2 midwives, and a physician who is in the clinic once a week.

9. Debtor employs a total of 6 full-time midwives and 1 part-time midwife who rotate amongst the clinics.

10. The physicians are assigned to one clinic, but additionally perform rotations at Northside Hospital, with which Debtor is affiliated. The physicians serve one 24 hour rotation each week and one 72 hour rotation each month.

11. The Debtor does not perform surgical procedures at the clinics. Such are performed at Northside Hospital.

12. Debtor's expansion to the Chamblee Village location has contributed to Debtor's financial issues. Debtor expanded to the location based on the advice of a consultant who promised an outside investor. However, the outside investor never materialized resulting in a cash flow issue. The Chamblee Village location was conceived on the idea of half the premises operating an OBGYN practice and the other half operating a pediatric practice. However, the pediatric practice was not as profitable as anticipated and the investor never materialized. Currently the pediatric practice is not in operation, and Debtor is looking at the option of bringing in a third party pediatric practice to take over such space.

13. Debtor's business is focused on underserved populations and largely Hispanic patients. Many of the patients are self-pay or Medicaid patients. Debtor's lowest income months are November, December and January, as many patients forego medical services so as to have funds for the Holidays. Additionally, since the Presidential election, many self-pay clients have become nervous regarding immigration policies and have been shying away from seeking medical services. Accordingly, Debtor is working through a cash crunch, which should resolve itself in the early part of 2017.

14. Debtor has additionally learned that the transition to a new debtor in possession bank account will cause a 15 business day delay in receipt of Medicaid receivables.

Accordingly, Debtor does not anticipate receiving any additional Medicaid receivable payments until the week of January 9, 2017 and the attached budget anticipates receiving funds that would otherwise be received in December 2016 being received in January 2017.

14. Debtor's monthly income and expenses are detailed on the Budget attached as Exhibit "A" hereto.

15. On the Petition Date, Debtor had approximately \$5,000.00 in available cash, and approximately \$164,000.00 in outstanding Medicaid receivables and \$92,000.00 in collectable private insurance. The majority of Debtor's receivables are Medicaid. Debtor typically collects its Medicaid receivables 90-120 days out from invoice date.

16. Pursuant to Bankruptcy Code Sections 1107 and 1108, Debtor continues to operate its business as a debtor-in-possession. Debtor is currently a debtor-in-possession and seeking to restructure and reorganize and is taking any and all actions necessary to preserve, protect, and maximize the value of the estate and effectively reorganize.

17. In order to effectively reorganize, Debtor must have access to cash to pay the operating expenses of the Business including its employees, contractors and landlords. If Debtor does not have the authority to use its available cash to pay operating expenses of the Business, including insurance, taxes, wages, utilities and supplies of the Business, the going concern value will be significantly harmed and the estate and creditors will be negatively affected.

**Liens**

18. Upon information and belief, SunTrust Bank ("SunTrust") asserts (i) a lien upon and security interest in Debtor's right to payment for services rendered, accounts, and instruments which represent Cash Collateral as further described in the UCC Financing Statement recorded on October 30, 2013 in the records of Fulton County, Georgia and (ii) outstanding indebtedness of approximately \$472,000.00.

19. Upon information and belief, LiftForward, Inc. asserts a (i) second priority lien in Debtor's Cash Collateral pursuant to the UCC Financing Statement recorded on January 27, 2015 in the records of Coweta County, Georgia and (ii) outstanding indebtedness of approximately \$330,000.00.

20. Upon information and belief, JP Morgan Chase Bank, NA asserts (i) a third priority lien in Debtor's Cash Collateral pursuant to the UCC Financing Statement recorded on March 19, 2015 in the records of Barrow County, Georgia; and (ii) outstanding indebtedness of approximately \$249,363.67.

21. Upon information and belief, Sun Trust asserts (i) a fourth priority lien in Debtor's Cash Collateral pursuant to the UCC Financing Statement recorded on April 19, 2016 in the records of Fulton County, Georgia and (ii) outstanding indebtedness of approximately \$1,125,000.00.

22. Debtor is not aware of any other asserted liens or security interest against Debtor's Cash Collateral.

**Relief Requested**

23. By this Motion, Debtor requests that the Court enter an order authorizing Debtor's use of cash collateral. A proposed Interim Cash Collateral Order is attached hereto as Exhibit "B". Debtor requires the ability to carry on its regular business activities, including paying for its employees force on December 31, 2016 and carrying other operating costs such as purchasing weekly inventory and paying lab fees. Simultaneously with this Motion, Debtor is

filing a Motion for Expedited Hearing, requesting the Court hold an interim hearing on this Motion on or by Thursday, December 22, 2016.

**Basis for Relief**

24. Section 363(c)(2) provides that a debtor in possession may not use Cash Collateral unless an entity that has an interest in such cash collateral consents or the court approves the use of such cash collateral. Section 363(p) provides that at a hearing on the use of cash collateral, the entity asserting an interest in the cash collateral has the burden of proof on the issue of the validity, priority, or extent of such interest. Rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than 14 days after service of the motion, but the Court may authorize the use of cash collateral prior to a final hearing as necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

25. Debtor requests the Court enter an Order authorizing Debtor to use Cash Collateral generated from the business as required in Debtor's business judgment, provided Debtor shall not pay any amounts unless actually incurred..

26. Debtor has an immediate need to continue the operation of the business and to protect the interests of the estate. Without the use of Cash Collateral and the ability to operate, Debtor will not be able to retain its employees and service its patients which are necessary to the continuity of Debtor's operations and effective reorganization.

27. The entry of an Order granting Debtor's Motion to use Cash Collateral will minimize disruption of the Debtor's Business and is in the best interests of Debtor's estate and its creditors. Therefore, it is in the interest of no one for any interruption to occur during Debtor's reorganization.

28. Notice pursuant to Federal Rule of Bankruptcy Procedure 4001(b) is being sent to all parties required by such rule. Specifically, notice of this Motion and any hearing thereon

shall be provided to each Respondent, the United States Trustee and Debtor's 20 largest unsecured creditors.

29. A proposed interim cash collateral order is attached hereto as Exhibit "B."

WHEREFORE, for all of the above reasons, Debtor requests that the Court:

a) authorize the Debtor to pay the expenses and other expenditures reasonably necessary for the continued operation of the Debtor's Business to avoid immediate and irreparable harm to the estate in Debtor's business judgment on the terms in this Motion; and

b) grant the Debtor such other and further relief as may be just and equitable.

RESPECTFULLY SUBMITTED this 16<sup>th</sup> day of December, 2016.

**JONES & WALDEN, LLC**

/s/ Leslie M. Pineyro

Leslie M. Pineyro

Georgia Bar No. 969800

Proposed Attorney for Debtor

21 Eighth Street, NE

Atlanta, Georgia 30309

(404) 564-9300

(404) 564-9301 Facsimile

lpineyro@joneswalden.com

## **Exhibit “A”**



The Kane Clinics, LLC  
Budget

	12/16-12/31	Jan-17	Feb-17	Mar-17	Apr-17
Gross Receipts	\$85,160	\$275,000	265,000	265,000	265,000
Operating Expenses					
Advertising	0	0			
Alarm	183	365	365	365	365
Answering Service	500	1,000	1,000	1,000	1,000
Automobile	1,636	1,636	1,636	1,636	1,636
Bank Charges	180	360	360	360	360
Business Licenses	0	3,000	0	0	0
Contract Labor-Doctors (1099)	6,000	23,000	23,000	23,000	23,000
Computer & Internet	0	17,400	11,600	11,600	11,600
Credit Card Fees	600	1,200	1,200	1,200	1,200
Dues & Subscriptions	150	300	300	300	300
Health Insurance	4,000	4,000	4,000	4,000	4,000
Insurance	0	10,000	10,000	10,000	10,000
Lab Fees	0	39,000	26,000	26,000	26,000
Lease-Copier	856	856	856	856	856
Payroll			0	0	0
Officers	3,000	8,000	15,000	15,000	15,000
Midwives	24,285	48,570	48,570	48,570	48,570
Admin	35,311	70,622	70,622	70,622	70,622
Payroll Taxes	5,945	13,890	14,077	14,077	14,077
Postage & Delivery	50	100	100	100	100
Professional fees	0	3,750	3,000	1,000	1,000
Rent	0	21,445	24,240	24,240	24,240
Repairs & Maintenance	400	800	800	800	800
Shredding	80	160	160	160	160
Storage	346	692	692	692	692
Taxes & Licenses	0	0	0	100	100
Telephone	1,550	3,100	3,100	3,100	3,100
Utilities	0	850	850	850	850

Total Expenses	85,072	274,096	261,528	259,628	259,628
Cash Surplus(Deficit)	89	904	3,472	5,372	5,372

## **Exhibit “B”**

**IN THE UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**IN RE:**

**THE KANE CLINICS LLC**

**Debtor.**

**THE KANE CLINICS LLC**

**Movant,**

**v.**

**SUNTRUST BANK, LIFTFORWARD, INC.,  
AND JP MORGAN CHASE BANK, NA  
Respondents.**

**CHAPTER 11**

**CASE NO. 16-72304-lrc**

**CONTESTED MATTER**

**INTERIM ORDER GRANTING DEBTOR'S MOTION REQUESTING  
AUTHORIZATION TO USE CASH COLLATERAL AND SCHEDULING  
FINAL HEARING ON THE DEBTOR'S REQUEST TO USE CASH COLLATERAL**

THIS MATTER came before the Court on \_\_\_\_\_ for hearing on the Debtor's *Motion Requesting Entry of Order Authorizing the Use of Cash Collateral*, filed on December 16, 2016 (the "Motion"). The Court, having considered the Motion, the Budget filed by the Debtor, the presentation of counsel and all other matters of record, finds as follows:

A. On December 14, 2016 (the "Petition Date"), Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Northern District of Georgia, Atlanta Division, commencing this Bankruptcy Case (the "Case").

B. Since the Petition Date, Debtor has operated as a debtor-in-possession under Sections 1107 and 1108 of the Bankruptcy Code.

C. Debtor is a Georgia limited liability company.

D. Debtor operates obstetrics and gynecological clinics (the "Business") with an emphasis on serving uninsured and underserved patients pursuant to leases or sub-leases at five premises.

E. Upon information and belief, the Respondents may assert an interest in Debtor's Cash Collateral as detailed in the Motion. Debtor asserts that based upon a review of records and financing statements, it does not appear that any other party asserts an interest in Debtor's Cash Collateral.

F. Debtor shows that it requires the use of Cash Collateral to pay its labor force, purchase inventory and pay its other operating expenses.

G. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This case is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Notice has been properly given in light of the circumstances in order to avoid irreparable harm to the Debtor's estate.

For the reasons stated on the record, and the Court being otherwise informed, it is hereby ORDERED that:

1. The aforesaid findings, enumerated in paragraphs A through G above, are hereby incorporated into this Order as if fully set forth herein.

2. For as long as the Debtor faithfully performs its obligations under this Order and until 11:59 p.m. EST on the date of the Final Hearing (as defined herein); or as extended by the

Court or consent of the parties, the Debtor shall have the right to use the Cash Collateral on an interim basis, subject to the terms of this Order.

3. Debtor is authorized to use Cash Collateral generated from the Business as reasonably required in the ordinary course of Debtor's business and in Debtor's business judgment and for other amounts allowed or awarded pursuant to orders entered by this Court after appropriate notice and hearing, except further provided that, Debtor shall not pay any amounts unless actually incurred.

4. To the extent provided by 11 U.S.C. §361(2), as adequate protection for the Debtor's use of Cash Collateral pursuant to this Order, Respondents shall have a replacement lien and security interest in all property acquired by Debtor after the Filing Date as to which such Respondent held valid and perfected liens or security interests in pre-petition collateral, including Cash Collateral, on the Filing Date consisting of (i) the same type and nature of property or (ii) the proceeds of such Respondent's pre-petition collateral to the extent of any diminution in value of such pre-petition collateral as a result of the use of Cash Collateral such liens being to the same validity and priority as the liens that Respondents held on the Filing Date in such pre-petition collateral. Notwithstanding anything to the contrary, the replacement security interest and liens granted herein shall not extend to any recoveries resulting from avoidance actions brought pursuant to the Bankruptcy Code or from settlements of potential avoidance power claims asserted on behalf of the estate.

5. This Order shall constitute an interim order for the authorization to use the Cash Collateral pursuant to Section 363 of the Bankruptcy Code and Fed.R.Bankr.P. 4001(b)(2). Any person who objects to the relief provided herein on a final basis:

- a. **Must file** a written objection, stating the grounds therefor, on or by January 15, 2017<sup>1</sup> ("Objection Deadline"):

---

<sup>1</sup> The deadline for filing objections electronically through the Court's electronic case filing system shall be 11:59:59 p.m. The deadline for filing objections manually with the Clerk's office shall be 4:00 p.m.

Clerk, U.S. Bankruptcy Court

- b. **Must serve** a copy of said objection on Debtor's counsel so that such written objection is received by Debtor's counsel by the Objection Deadline at the following address:

Leslie M. Pineyro, Esq.  
Jones & Walden, LLC  
21 Eighth Street, NE  
Atlanta, GA 30309

- c. **Must advocate** the objection at the Final Hearing. If objections are timely filed and served by the Objection Deadline in accordance with this Order, a Final Hearing shall be held on the **7th day of February, 2017 at 10:15 a.m. in Courtroom 1204, U.S. Courthouse, 75 Ted Turner Drive S.W., Atlanta, GA 30303**. Any objection not timely filed, served and advocated at the hearing shall be deemed waived. If no objection is filed as set forth above by the Objection Deadline, this Order and the relief granted herein shall thereupon stand APPROVED on a final basis without further notice or hearing.

6. This Order is without any prejudice to Respondents, including but not limited to their rights to seek relief from the stay or dismissal of this Case, and contest the nature, extent, validity or priority of any lien or security interest, and the entry of this Order is not to be interpreted as an agreement by Respondents to support or accept final use of the Cash Collateral, the filing of the Debtor's bankruptcy petition, any plan of reorganization or disposal of assets under Section 363 of the Bankruptcy Code, or any other proposed treatment of Respondents' asserted claim(s).

7. This Order is also entered without prejudice to the claims, rights, and actions that: (A) Debtor may have to challenge the nature, validity, or extent of the liens or debts asserted by Respondents; and (B) Respondents may assert in any action by Debtor to challenge the nature, validity, or extent of the liens or debts it may assert.

8. Notwithstanding anything to the contrary within Bankruptcy Rule 4001(b)(2) or any other rule of similar import, this Order shall be effective immediately upon its entry.

**[End of Order]**

**Prepared and presented by:**  
JONES & WALDEN, LLC

*/s/ Leslie M. Pineyro*  
Leslie M. Pineyro (GA Bar No. 969800)  
21 Eighth Street  
Atlanta, GA 30309  
(404) 564-9300 Telephone  
(404) 564-9301 Facsimile  
*Proposed Counsel for the Debtor*

**Order Reviewed By:**

**Distribution List:**

Leslie, M. Pineyro, Jones & Walden, LLC, 21 Eighth Street, Atlanta, GA 30309

Office of the US Trustee, 362 Richard B. Russell Building, 75 Ted Turner Drive SW, Atlanta, GA 30303