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6 **UNITED STATES BANKRUPTCY COURT**
7 **DISTRICT OF ARIZONA**

8 In re:

9 PARADISE MEDSPA, PLLC

10 Debtor.

In Proceedings Under Chapter 11

Case No. 2:16-bk-13065-MCW

11 **MOTION FOR INTERIM ORDER**
12 **AUTHORIZING USE OF CASH**
13 **COLLATERAL AND DETERMINING**
14 **SUFFICIENCY OF ADEQUATE**
15 **PROTECTION**

15 Paradise Medspa, PLLC, the debtor-in-possession in the above-captioned Chapter 11
16 case (“**Debtor**”), files this motion (“**Motion**”) seeking entry of an interim order authorizing the
17 Debtor to utilize funds that may constitute cash collateral of certain prepetition lenders as set
18 forth below, and determining that such lenders are adequately protected. This Motion seeks
19 immediate entry of an order granting the relief requested herein on an emergency basis under
20 Local Bankruptcy Rule 9013(h) in order to avoid immediate and irreparable harm to the
21 Debtor’s estate.

22 This Motion is supported by the entire record before the Court, by the Declaration of
23 Rebecca Weiss in Support of First Day Motions (the “**Declaration**”) filed contemporaneously
24 with this Motion, and by the following memorandum of points and authorities.

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. JURISDICTION AND BACKGROUND**

3 1. On November 15, 2016 (the “**Petition Date**”), the Debtor filed its voluntary
4 petition in this Court for relief under Chapter 11 of Title 11 of the United States Code.¹

5 2. The Debtor continues to operate its business and manage its assets as a debtor-
6 in-possession under 11 U.S.C. §§ 1107 and 1108.

7 3. This Court has jurisdiction over this case under 28 U.S.C. §§ 157 and 1334.
8 The relief requested herein constitutes a core proceeding under 28 U.S.C. § 157(b)(2)(A),
9 (M).

10 4. The Debtor is an Arizona professional limited liability company with its
11 principal operations in Maricopa County, Arizona. Accordingly, venue for the Debtor’s
12 chapter 11 case is proper in this District under 28 U.S.C. §§ 1408 and 1409.

13 5. The statutory predicates for the relief requested in this Motion are 11 U.S.C. §§
14 105(a); 361(1), (2) & (3); and 363(b)(1); and Rules 2002(a)(2), 4001(b) and 6003(b).

15 6. No trustee or examiner has been appointed in this case, nor has an official
16 committee of unsecured creditors been established.

17 **a. Background Facts Concerning the Debtor**

18 7. Paradise Medspa, PLLC (“PM” or “Debtor”) was formed in 2007. Also in 2007,
19 PM formed a separate entity, Paradise Medspa & Wellness, PLLC (“PMW”). Rebecca Weiss
20 is the sole member of PM and PM is the sole member of PMW. PM formed PMW to serve as a
21 party to a joint venture with Paradise Wellness, PLLC (“PW”), a separate entity not affiliated
22 with PM or PM’s member, Rebecca Weiss. PMW opened for business in 2008 and has been
23 operating since that time. The joint venture between PMW and PW does business as Paradise
24 Medspa & Wellness.

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26 ¹ Unless otherwise indicated, all chapter and section references in this Motion are to
27 Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.* All “Rule” references are to the Federal Rules
of Bankruptcy Procedure.

1 8. The vision of PMW was to help patients look and feel their very best. PMW's
2 general goal is to provide safe and effective cosmetic and wellness services with an eye on
3 outstanding customer service. Over the past eight years, PMW has built a successful practice
4 with a very loyal clientele. PMW has an excellent reputation in Phoenix and the surrounding
5 areas and has successfully helped thousands of patients achieve their cosmetic and wellness-
6 related goals. PM continues to serve as the member for PMW.

7 9. PMW currently employs ten staff members. PMW plays an active role in the
8 Phoenix community by supporting various local organizations, including several women and
9 children's shelters.

10 10. In 2014, due to space constrains in PMW's current office condo, it became
11 obvious to PM and PMW that PMW needed to expand its practice to a new facility. The office
12 condo where PMW operates is owned by Paradise Property Management, LLC ("PPM"). Due
13 to an existing SBA loan entered into by PM and PPM, and as a result of the collapse of the real
14 estate market in 2008, PPM was unable to sell the office condo in an effort to relocate to a
15 larger medical facility. PM, therefore, made the decision to expand PMW's business by
16 forming a second office location in Scottsdale. In doing so, Rebecca Weiss formed The Manor
17 Medical Spa, PLLC ("MMS"). Rebecca Weiss is the sole member of MMS.

18 11. Unfortunately, expansion into another part of town (through MMS) proved
19 difficult on PMW's business and resulted in division of PM operations and dilution of PM and
20 PMW's brands.

21 12. PM's goal at this point is, together with PMW, reorganize PMW's business
22 affairs and focus on improving operations at the Phoenix location. In addition, a major goal is
23 to reorganize PM's obligations owed to secured creditors and evaluate options for leases under
24 the Bankruptcy Code.

25 13. The Debtor proposes to operate according to the budget attached to this Motion
26 as **Exhibit A**.

1 **b. Pre-petition Debt and Security Interests**

2 14. The Debtor has an outstanding obligation owed to Ready Cap Lending (the
3 **“Ready Cap Loan”**). The Ready Cap Loan is evidenced by a Promissory Note entered into on
4 October 16, 2007 between PPM and PM, as Borrowers, Rebecca Weiss-Glasow and Gregory
5 C. Glasow, as Guarantors, and CIT Small Business Lending Corporation, a Delaware
6 corporation, as the Lender (the “Note”). As evidenced by the UCC-1 recorded on October 18,
7 2007, and later renewed on August 7, 2012, Ready Cap has a perfected lien on PM’s and
8 PPM’s equipment and other identifiable proceeds as more thoroughly described in the UCC-1
9 (“Collateral”). A copy of the Note and UCC-1 are attached hereto as **Exhibit B** and **Exhibit C**.
10 Ready Cap is the assignee of the Note pursuant to an Assignment recorded on July 3, 2014 and
11 may assert a perfected security interest in the Collateral. A copy of the Assignment is attached
12 hereto as **Exhibit D** and is incorporated herein by reference.

13 15. As of the Petition Date, the approximate amount outstanding under the Ready
14 Cap Loan was approximately \$910,133.00. The payments to Ready Cap are current through
15 November 2016.

16 **II. RELIEF REQUESTED**

17 This Motion is brought to authorize the Debtor’s immediate use of cash collateral in the
18 ordinary course of the Debtor’s business, in order to avoid irreparable harm to the Debtor’s
19 estate. Accordingly, this Motion seeks entry of an order: 1) authorizing the Debtor to use cash
20 collateral pursuant to 11 U.S.C. § 363(c)(2) in accordance with the proposed budget attached to
21 this Motion as **Exhibit A** on an interim basis pending future approval by the Court; and 2)
22 finding that the Ready Cap is adequately protected by virtue of replacement lien the Debtor
23 proposes to grant Ready Cap to the same priority and extent of the value of Ready Cap’s
24 interest in the Collateral.

25 **III. LEGAL ANALYSIS**

26 The Debtor’s use of estate property is governed by 11 U.S.C. § 363. Under 11 U.S.C.
27 § 363(c)(1), a debtor ...“may enter into transactions, including the sale or lease of property of
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1 the estate, in the ordinary course of business, without notice or a hearing, and may use property
2 of the estate in the ordinary course of business without notice or a hearing.” In addition, under
3 11 U.S.C. § 363(c)(2)(A), (B), a debtor-in-possession may use cash collateral either with the
4 consent of the secured party or by order of the Court so long as 11 U.S.C. §§ 363(e) and (p)
5 have been adhered to and the debtor has met its burden for providing adequate protection to the
6 secured lender.

7 Any party asserting an interest in cash collateral has the burden of proof on the
8 validity, priority, or extent of any such interest. 11 U.S.C. § 363(p). Once this burden is
9 met, the Court must ensure that the secured party's interest in cash collateral is adequately
10 protected. Adequate protection does not increase the secured party's bundle of rights under
11 state law; rather, a court must tailor the amount or method of adequate protection so as to
12 prevent any diminution in value to the secured creditor's collateral. *See In re Am. Mariner*
13 *Indus., Inc.*, 734 F.2d 426, 435 (9th Cir. 1984) (overruled on other grounds by *United Say.*
14 *Ass'n of Tex. V. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365 (1988)). Moreover,
15 if the value of the creditor's rights is not likely “to diminish during the time of use,”
16 adequate protection need not be provided. *See In re McCombs Props. VI, Ltd.*, 88 B.R. 261,
17 266 (Bankr. C.D.Cal. 1988).

18 Here, the Debtor’s access to working capital and liquidity through the use of Ready
19 Cap’s Collateral is vital to the ongoing operations of the Debtor’s business. In operating a
20 medical spa, the Debtor must transact business with key suppliers and fulfill other business
21 obligations continuously, and in many cases on a day-to-day basis. Any delay in the Debtor’s
22 ability to access cash would immediately thwart the Debtor’s operations. Indeed, if the Debtor
23 is not permitted to use the Collateral, it would cause irreparable harm to the Debtor’s business
24 operations and render impossible the Debtor’s ability to successfully reorganize.

25 As adequate protection, the Debtor proposes to provide Ready Cap with a replacement
26 lien to the same priority and extent of the value of Ready Cap’s interest in the Debtor’s interest
27 in the Collateral. Additionally, Debtor proposes to pay Ready Cap \$6,155.00 a month as
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1 adequate protection to be applied to the outstanding principal. As set forth in Exhibit A, the
2 Debtor's proposed use of the Collateral is for ordinary and necessary operating expenses. Use
3 of Ready Cap's cash collateral for ongoing operations only serves to enhance the value of
4 Ready Cap's security interest. For this reason, the Debtor believes that the proposed adequate
5 protection is more than sufficient to protect Ready Cap's interests in the Collateral.

6 WHEREFORE, based on the foregoing, in order to avoid irreparable harm to the
7 Debtor's estate, the Debtor hereby requests that the Court enter an order substantially in the
8 form attached to this Motion: 1) authorizing the Debtor to use cash collateral pursuant to 11
9 U.S.C. § 363(c)(2)(B) in accordance with the proposed budget attached to this Motion as
10 **Exhibit A** on an interim basis pending future final approval by the Court; and 2) finding that
11 Ready Cap is adequately protected by virtue of replacement liens the Debtor proposes to grant
12 Ready Cap to the same priority and extent of the value of Ready Cap's interest in the
13 Collateral.

14 DATED: November 16, 2016.

15 **NUSSBAUM GILLIS & DINNER, P.C.**

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17 */s/ Randy Nussbaum*
18 Randy Nussbaum
19 *Proposed Counsel to the Debtor*
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