

**UNITED STATES BANKRUPTCY COURT
Northern District of Florida
Pensacola Division**

IN RE: SANTA ROSA ANIMAL HOSPITAL,
P.A.,

Debtor-in-Possession.

Bankruptcy Case No. 16-31051-JCO

Chapter: 11

Judge: Jerry C. Oldshue, Jr.

**DEBTOR'S EMERGENCY MOTION FOR AN ORDER (1) AUTHORIZING USE OF CASH
COLLATERAL ON AN INTERIM BASIS AND (2) SETTING A HEARING ON FINAL USE
OF CASH COLLATERAL**

COMES NOW Debtor-in-Possession SANTA ROSA ANIMAL HOSPITAL, P.A. (the “Debtor”), by and through its undersigned counsel, files this Emergency Motion for an Order (1) Authorizing Use of Cash Collateral on an Interim Basis and (2) Setting a Hearing on Final Use of Cash Collateral (the “Motion”) and respectfully shows the Court as follows:

1. On or about November 9, 2016 (the “Petition Date”) the Debtor filed a petition for relief under Chapter 11 of Title 11 of the United States Bankruptcy Code, 11 U.S.C. §§101 *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Northern District of Florida, Pensacola Division (the “Bankruptcy Court”).
2. The Debtor is authorized to continue in possession of its property and operate its business.
3. The Debtor is a Professional Association organized under the laws of the State of Florida. The Debtor was established in 2005 as a veterinary practice with its principal place of business is located at 3906 US Highway 98 West, Suite 23, Santa Rosa Beach, FL 32459.
4. The Debtor is a “Small Business Debtor” pursuant to Bankruptcy Code §1121.

5. This Court has jurisdiction over this Motion under 28 U.S.C. § 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

6. Pursuant to Bankruptcy Rule 4001(b)(1), the Motion is a contested matter governed by Bankruptcy Rule 9014.

7. The authority for the relief requested herein is Bankruptcy Code §363(c)(2).

8. The Debtor operates a veterinary practice in Santa Rosa Beach, Florida, serving clients from Okaloosa to Bay Counties.

9. Bank of America, N.A. (“Bank of America”), one of the Debtor's creditors, has asserted that it holds a security interest in the Debtor's assets, including equipment, furnishings, goods and inventory, deposit accounts, accounts receivable and other assets, pursuant to certain UCC filings, which are attached, hereto as consolidated Exhibit A.

10. The Debtor’s use of the cash collateral is essential to the continuing operation of its business, to maintain the value of the estate and for an effective reorganization.

11. The Debtor seeks interim authorization to use cash collateral in accordance with the budget attached hereto as Exhibit “B” (the “Budget”), pending a final hearing (hereinafter, the period for which interim relief is sought is referred to as the “Interim Period”). The Debtor proposes to use cash collateral for general and administrative expenses as set forth in the Budget. The expenses incurred by the Debtor and for which cash collateral will be used will all be incurred in the normal and ordinary course of the Debtor’s business.

12. Under Bankruptcy Code § 362(c)(2), the Debtor is entitled to use Cash Collateral as long as the holders of the liens therein are adequately protected.

13. Bankruptcy Code Section 363(o) provides that 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, and the debtor-in-possession has the burden of proof on the issue of adequate protection. Bankruptcy rule 4001(b)(2) provides that the Court may not hold a final hearing on a motion to use cash collateral earlier than fifteen (15) days after service of the motion, but 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.

14. The Debtor requests authority to use cash collateral for the purpose of avoiding immediate and irreparable harm to the estate.

15. The authority to continue using cash collateral should continue until the Court rules on the Debtor's request following a final hearing.

16. The Debtor is willing to provide adequate protection to Bank of America, per Bankruptcy Code §361, for the use of cash collateral as follows:

- a) The Debtor shall make adequate protection payments to Bank of America in the amount \$69.47 per month, representing accruing interest (at the rate of 5%) on the value of the Debtor's assets subject to Bank of America's alleged secured claim, which the Debtor asserts is \$16,361.04.
- b) The Debtor shall also grant Bank of America a replacement lien in post-petition accounts and accounts receivable, in the same order of priority as existed pre-petition for Bank of America. The continuing and/or future lien on the Debtor's accounts and accounts receivable shall be subject to the proposed order allowing the use of cash collateral as described, herein.

17. Adequate protection is meant to assure that the value of the secured creditor's collateral does not suffer a decline by the proposed use of that collateral. *See, e.g., United Savings Ass'n v. Timbers of Inwood Forest Assoc., Ltd.*, 484 U.S. 365 (1988). When a secured creditor is threatened with a potential decline in the value of its collateral, the Bankruptcy Code provides that the Debtor

must provide the creditor with adequate protection. What constitutes adequate protection must be evaluated on a case-by-case basis. *In re Swedeland Dev. Group., Inc.*, 16 F.3d 552, 564 (3rd Cir. 1994); *In re Martin*, 761 F.2d 472, 476 (8th Cir. 1985). Courts have noted that “the essence of adequate protection is the assurance of the maintenance and continued recoverability of the lien value during the interim between the filing . . . and the confirmation.” *In re Arrieens*, 25 B.R. 79, 81 (Bankr. D. Or. 1982). The focus of the requirement is to protect a secured creditor from diminution in value during the use. See *In re Kain*, 86 B.R. 506, 513 (Bankr. W.D. Mich. 1988); *In re Becker Indus. Corp.*, 58 B.R. 725 (Bankr. S.D. N.Y. 1986).

18. The Debtor’s requested use of cash collateral as set forth in the Budget and the protections proposed to be afforded in this Motion, in light of the circumstances are reasonable, appropriate, and sufficient to satisfy “adequate protection.” The continued operation of the Debtor’s business will preserve its going-concern value.

19. It is well established that a bankruptcy court, where possible, should resolve issues in favor of preserving the business of the debtor as a going concern. See *In re George Ruggiere Chrysler-Plymouth, Inc.*, 727 F.2d 1017, 1019 (11th Cir. 1984) (recognizing a debtor’s “compelling need” to use cash collateral, and the congressional policy “favoring rehabilitation over economic failure.”).

20. The Debtor shows that immediate and irreparable harm will occur to the Estate unless it is authorized to use cash collateral in that it will be unable to meet its ongoing business obligations and would be required to cease business operations.

21. The Debtor requires the use of cash collateral to meet payroll, pay rent, maintain equipment and to purchase necessary medications and materials to provide veterinary services to its clients.

22. The urgent need to preserve the Debtor's business and avoid immediate and irreparable harm to the estate, as set forth in the Motion, makes it imperative that the Debtor be authorized to use cash collateral pursuant to the terms and conditions offered herein, pending a final hearing.

23. At this stage of the Chapter 11 case, it is critical that the Debtor maintain the confidence of its employees and the safety of the animals under its care. Continued use of cash collateral is essential to the Debtor's ability to achieve these aims. The denial of interim use of cash collateral for these purposes would result in the termination of the Debtor's operations, irreparably damaging the going-concern value of the Debtor's business and cause substantial prejudice to the Debtor's estate, its creditors, and employees and jeopardizing the health and welfare of the animals in the Debtor's care.

24. The Debtor further requests that the Court schedule a final hearing on cash collateral use and, following such hearing, enter a final order authorizing cash collateral use.

WHEREFORE, Debtor requests that the Court (i) set an expedited interim hearing on this matter, (ii) enter an order granting this Motion on an interim basis at the conclusion of such hearing; (iii) schedule a final hearing on the Motion; (iv) grant the relief requested in this Motion on a final basis following such hearing; (v) approve the adequate protections measures proposed, herein, including the amount of the adequate protection payments, and (vi) for such other relief as is just and proper.

Respectfully submitted this
16th day of November, 2016

ZALKIN REVELL, PLLC

/s/ Natasha Z. Revell

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Proposed Counsel for Debtor-in-Possession

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing:

DEBTOR'S EMERGENCY MOTION FOR AN ORDER (1) AUTHORIZING USE OF CASH COLLATERAL ON AN INTERIM BASIS AND (2) SETTING A HEARING ON FINAL USE OF CASH COLLATERAL

was served on the following parties by either electronic mail through the Courts CM/ECF system or by standard first class mail on the 16th day of November, 2016.

Parties who are currently on the list to receive email notice/service for this case:

- United States Trustee USTPRegion21.TL.ECF@usdoj.gov
- Jason Egan, Esq. Jason.H.Egan@usdoj.gov

Manual Service Parties:

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