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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re:	Chapter 11 Proceedings
IAN-K, LLC, an Ohio limited liability company,	Case No. 2:18-bk-00002-MCW
Debtor.	
Address: 3150 N. 7 th St., Suite 100 Phoenix, AZ 85014	

EIN: xx-xxx4078

In re:	Chapter 11 Proceedings
J. TINA KEYHANI DDS-ORAL & MAXILLOFACIAL SURGERY, P.C., an Arizona professional corporation,	Case No. 2:18-bk-00003-DPC
Debtor.	
Address: 3150 N. 7 th St., Suite 100 Phoenix, AZ 85014	

EIN: xx-xxx4121

IAN-K, LLC AND J. TINA KEYHANI DDS-ORAL & MAXILLOFACIAL SURGERY, P.C.'S EMERGENCY MOTION FOR AUTHORIZATION TO USE CASH COLLATERAL

Ian-K, LLC, an Ohio limited liability company (“Ian-K”) and J. Tina Keyhani DDS-Oral & Maxillofacial Surgery, P.C., an Arizona professional corporation (“DDS”), debtors and debtors-in-possession herein, by and through their attorneys Aiken Schenk Hawkins & Ricciardi P.C., request this Court enter an order pursuant to Bankruptcy Code Section 363 and Rules 4001 and 9014 of the Federal Rules of Bankruptcy Procedure authorizing the use of cash collateral on an interim and final basis. A proposed preliminary budget for Ian-K is attached hereto as Exhibit “A”. A proposed preliminary budget for DDS is attached hereto as Exhibit “B”. This Motion is supported by the attached Memorandum of Points and Authorities.

802321.1

1 DATED this 20th day of January, 2018.

2 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

3
4 By 

5 D. Lamar Hawkins
6 Heather A. Macre
7 2390 E. Camelback Rd., Suite 400
8 Phoenix, Arizona 85016
9 Attorneys for Debtor

10 **MEMORANDUM OF POINTS AND AUTHORITIES**

11 **I. Jurisdiction and Venue**

12 1. This Court has jurisdiction over this Motion under 28 U.S.C. §§157 and 1344.

13 2. This matter constitutes a core proceeding within the meaning of 28 U.S.C.
14 §157(b)(2)(A) and (M).

15 3. Venue of this proceeding and the Motion is proper in the District of Arizona pursuant
16 to 28 U.S.C. §§1408 and 1409.

17 **II. Factual Background**

18 1. Ian-K, LLC, an Ohio limited liability company (“Ian-K”), filed a voluntary petition
19 under Chapter 11 of the Bankruptcy Code on January 2, 2018.

20 2. J. Tina Keyhani DDS-Oral & Maxillofacial Surgery, P.C., an Arizona professional
21 corporation (“DDS”), filed a voluntary petition under Chapter 11 of the Bankruptcy Code on
22 January 2, 2018.

23 3. Jaleh Tina Keyhani (“Keyhani”) filed a voluntary petition under Chapter 11 of the
24 Bankruptcy Code on January 2, 2018.

25 4. Ian-K, DDS and Keyhani shall be referred to collectively herein as the “Debtors.”

26 5. Because Ian-K and DDS are owned, operated and managed by Keyhani, the Debtors
27 are simultaneously filing a motion to have these cases jointly administered. In the best interest of
28 judicial time, the Debtors will request that the hearings regarding their cash collateral issues be held
at the same time as the motion on joint administration.

6. Ian-K is operated by Keyhani. Keyhani holds a 100% membership interest and is the

1 manager of Ian-K.

2 7. DDS is owned and operated by Keyhani. Keyhani is the sole shareholder and
3 President of DDS.

4 8. Keyhani is also an obligor on substantially all of the debts of Ian-K and DDS.

5 9. Ian-K is an Ohio limited liability company which is authorized to do business in
6 Arizona. Ian-K was formed for the purpose of owning certain commercial real properties located at
7 3150 N. 7th St., Suite 100, Phoenix, Maricopa County, AZ 85014 (APN 118-22-045) (the "Phoenix
8 Property") and 3100 N. Robert Rd., Prescott Valley, Yavapai County, AZ 86314 (APN 103-22-
9 063B) (the "Prescott Property"). Ian-K has no employees.

10 10. DDS was formed on October 15, 2001 for the purpose of providing dental services,
11 specializing in oral and maxillofacial surgery. DDS has 2 full-time employees and 1 part-time
12 employee (not including Keyhani).

13 11. Dr. Keyhani was born in Pittsburgh, Pennsylvania and grew up in Europe and Asia.
14 She completed her undergraduate training at Ohio State University and continued on to earn her
15 Doctorate of Dental Surgery from Ohio State University College of Dentistry in Columbus, Ohio.
16 After graduating cum laude, she was inducted into the Omicron Kappa Upsilon National Dental
17 Honor society. She then was accepted to the University of Texas in Houston, world famous Center
18 of Health Science. In 1997 she completed her residency training in the field of Oral & Maxillofacial
19 Surgery at the University of Texas, the largest medical center in the world, and entered private
20 practice. She was in private practice in Houston Texas for four years before moving to Phoenix in
21 2001, becoming the first female Board Certified Oral & Maxillofacial Surgeon in the state of
22 Arizona. Practicing successfully in central Phoenix since March 2002, Dr. Keyhani is a member of
23 the National Association for Female Executives, the American Dental Association and a fellow of
24 the American Association of Oral & Maxillofacial Surgeons.

25 12. DDS leases the Phoenix Property from Ian-K.

26 13. Keyhani had spoken with Tylor More about the prospect of his involvement in the
27 administration of DDS. Her objective was to minimize the time she spent on administration of DDS
28 so that she could focus her time more on caring for patients and providing the means for the income

1 to DDS. Keyhani further had issues because she wanted to qualify for a refinance of the mortgage
2 of her personal residence, and she needed to receive a W-2 salary to help in that process, and pay off
3 her credit cards in order to increase her credit score. The idea was that Tylor and his company CB
4 101 would infuse \$300,000 in capital into DDS to provide the means for that effort. Tylor was only
5 in the position of working on this effort for 5 months, and he left in April 2016, at which time
6 Keyhani took back the administration of the practice. DDS is working on a forensic accounting of
7 what happened during the time that Tylor was involved in the practice. As best as Keyhani can tell
8 so far, Tylor and CB 101 contributed almost no capital, Tylor used other's money for what little was
9 contributed in capital, and Tylor and CB 101 improperly took back out of the practice almost as
10 much as they contributed to the practice. The forensic accounting efforts are ongoing. Tylor made
11 various demands, and coerced Keyhani to sign various documents in support of what was supposed
12 to be a benefit to DDS, but in the end Tylor left the accounting of the practice in shambles and
13 Keyhani has been putting the pieces back together ever since and trying to figure out if DDS or Ian-
14 K actually owe Tylor or CB 101 anything or actually owe some other third parties funds for money
15 that they loaned. During the time of Tylor's involvement, he transferred title of the real property
16 owned by Ian-K to himself, but later rescinded that transfer. Documents were executed to create a
17 line of credit which appears to have never been properly funded and indeed Tylor and CB 101 may
18 have removed from DDS as much as they funded into DDS. During this time Keyhani began to
19 receive numerous calls from vendors stating that bills were not being paid. On several occasions
20 Keyhani requested a list of all of the capital contributions Tylor and CB 101 made into DDS, and
21 only a smattering of inarticulate documents and information was provided. During Tylor's
22 administration efforts, the bank accounts were over drawn by approximately \$7000. Lawsuits were
23 threatened by various creditors. In essence during five months of managing the practice, Tylor took
24 a profitable practice and drove it into disaster which is now culminating in the need to seek
25 bankruptcy relief. To add insult to injury, Tylor and CB 101 pursued a foreclosure of the real
26 property owned by Ian-K, when Tylor and CB 101 provided no benefit or funds to Ian-K. It appears
27 that Tylor's efforts were merely a scheme to obtain the real property owned by Ian-K. DDS and Ian-
28 K will continue to investigate these issues during the bankruptcy process and bring whatever

1 litigation is appropriate based upon the findings.

2 14. The Debtors are operating their businesses and managing their assets as debtors-in-
3 possession in accordance with 11 U.S.C. §§1107 and 1108.

4 15. The projected post-petition income and expenses of Ian-K and DDS are identified in
5 the budgets (the "Budgets") attached hereto and incorporated herein as Exhibit "A" and Exhibit "B".

6 16. Wells Fargo Bank N.A. ("Wells Fargo"), Amanda Modesta-Keyhani ("Modesta-
7 Keyhani"), Itria Ventures ("Itria") and On Deck ("On Deck") (collectively, referred to herein as the
8 "Secured Creditors") may claim liens on the assets and receivables of Ian-K and DDS. The Debtors
9 believe the Secured Creditors may claim the revenue generated by the operation of the Debtors'
10 businesses is its "cash collateral" as defined in 11 U.S.C. §363. The Debtors have not had sufficient
11 time to determine the validity, priority, enforceability, and/or extent of the claimed liens. In
12 addition, no formal creditors committee has yet to be formed. Accordingly, the Debtors do not take
13 a position regarding those issues as part of this emergency motion and reserve all rights with respect
14 thereto. For purposes of this motion, the Debtors assume all claimed liens are valid and enforceable,
15 but expresses no position as to the priority of such liens. Secured Creditors have the burden of proof
16 to establish validity of their purported "interests" in cash collateral under §363(p)(2).

17 17. The Debtors propose to use revenue from Ian-K and DDS to pay operating expenses
18 in accordance with their Budgets based upon actual operations.

19 18. It is crucial for the Debtors to have the use of the cash collateral to continue to
20 provide critical services to patients and to pay employees and pay other ordinary and necessary
21 operating expenses in order to avoid (a) disruption of their work force, (b) maintain customer
22 relations and loyalty, (c) maintain their market presence and (d) preserve the going concern value of
23 the Debtors and their estates while the Debtors formulate and implement a plan of reorganization.

24 19. As and for adequate protection for the limited use of cash collateral as set forth in the
25 Budgets, the Debtors offer post-petition replacement liens to the Secured Creditors on their
26 inventory, accounts, and contract rights in accordance with 11 U.S.C. §§361(2) and 552(b): (a) to the
27 extent of cash collateral actually expended; (b) on the same assets and in the same order of priority
28 as currently exists between the Debtors and the Secured Creditors; and (c) with the Debtors' full

1 reservation of rights with respect to the issues set forth above. Further, as reflected in the Budgets,
2 the Debtors will also make adequate protection payments to each of the Secured Creditors going
3 forward until such time as the parties can work out a longer term resolution of their claims.

4 20. The Debtors believe that their business operations and reorganization efforts will
5 suffer immediate and irreparable harm if they are not allowed to use cash collateral.

6 **III. POINTS AND AUTHORITIES**

7 11 U.S.C. §363(c)(2) of the Bankruptcy Code permits the use of cash collateral only upon
8 consent of the party claiming an interest in cash collateral or with court authority after a notice and a
9 hearing. Section 363(e) conditions the use of cash collateral on the debtor providing adequate
10 protection of the interest at stake.

11 Section 361 of the Bankruptcy Code provides that where adequate protection is required to
12 be furnished, it must protect a secure entity against any use of collateral that results in a decrease in
13 the value of such entity's interest in such collateral. See United Savs. Ass'n Timbers of In-wood
14 Forest Ass'n Ltd. 44 U.S. 365, 369-73, 108 S. Ct. 626 (1988) (the "interest in property" entitled to
15 protection is "the value of the collateral" that secures such claim); In re Kain, 96 B.R. 506, 513
16 (Bankr. W.D. Mich. 1988); General Elec. Mortgage Corp. v. South Village, Inc. (In re South
17 Village), 25 B.R. 987, 989-90 & n. 4 (Bankr. D. Utah 1982).

18 The Secured Creditors will be adequately protected as follows:

19 By the Debtors' continuation and preservation of the on-going concern value of the
20 businesses. See, e.g., In re Erie Hilton Joint Venture, 125 B.R. 140, 149 (Bankr. W.D. Pa. 1991)
21 ("Preservation of the going-concern value of the business can constitute a benefit to the secured
22 creditor."); In re Princeton Square Assocs., 201 B.R. 90-96 (Bankr. S.D.N.Y. 1996) ("[T]his court
23 concludes that no monetary protection is required to be provided by the debtor in possession to the
24 secured creditor to the extent that the rents are applied for the maintenance of the property in the
25 manner a receiver would apply the rents.").

26 By any equity cushion in the value of the business. See In re Mellor, 734 F.2d 1396, 1400
27 (9th Cir. 1984); In re Patrician St. Joseph Ltd. Partnership, 169 B.R. 669, 676 (D. Ariz. 1994) (citing
28 Mellor and recognizing "[a] classic method of finding adequate protection is the existence of an
equity cushion [and that] and equity cushion standing alone can provide evidence of adequate

1 protection for a secured claim”).

2 By the replacement lien in Debtors’ assets. See In re Waste Conversion Technologies, Inc.,
3 205 B.R. 1004 D. Conn. 1997); In the Matter of Pursuit Athletic Footwear, Inc., 193 B.R. 713
4 (Bankr, Del. 1996); In re International Design & Display Group, Inc., 154 B.R. 362 (Bankr. S.D.
5 Fla. 1993).

6 Finally, by making adequate protection payments as set forth in the Budgets.

7 The Secured Creditors are protected by Ian-K and DDS’ proposed use of cash to maintain the
8 operation of their businesses. In McCombs, supra, the Court held that:

9
10 Even if there was no equity cushion, I am not convinced that gross rents will
11 diminish over the foreseeable future and this is the risk requiring protection ...
12 debtor has committed to use the cash collateral to pay operating expenses and
13 improve and maintain the property with any excess income going to First Texas.
By dedicating cash collateral for these purposes, Debtor has substantially
eliminated the risk of diminution of First Texas’ interest in cash collateral. The
more likely scenario is that cash collateral will increase.

14 The Debtors’ proposed use of the income to maintain the businesses by paying for
15 maintenance, repairs, insurance, taxes and the like protects the Secured Creditors’ interests and
16 reduces the possibility that the businesses will decrease in value.

17 Finally, the Debtors are in the best position to operate their business. By allowing the
18 Debtors to use cash collateral to continue and increase their businesses, the Secured Creditors will
19 have a greater assurance of recovering their claims. Moreover, immediate interim approval of the
20 use of cash collateral under Bankruptcy Rule 4001 (a) is appropriate. See In re Center Wholesale
21 Inc., 759 F.2d. 1440, 1449 fn. 21 (9th Cir. 1985).

22 In conclusion, because the Debtors will be using cash collateral in the operation of their
23 businesses, and because the Debtors will be in the best position to increase usage thereby producing
24 income to continue to service debt to the Secured Creditors, the use of cash collateral should be
25 granted.

26 WHEREFORE, Ian-K, LLC and J. Tina Keyhani DDS-Oral & Maxillofacial Surgery, P.C.
27 respectfully request:

- 28 1. Entry of an order authorizing its use of cash collateral in accordance with the Budgets

1 attached hereto as Exhibit "A" and Exhibit "B" based upon actual operations for the interim period,
2 subject to a continuance upon request of the Debtors at or before the hearing on this matter; and
3 Entry of an order authorizing use of cash collateral in accordance with the Operating Budgets
4 attached hereto as Exhibit A and Exhibit B.

5 2. Granting such other relief as the Court deems just and proper.

6 DATED this 2nd day of January, 2018.

7 AIKEN SCHENK HAWKINS & RICCIARDI P.C.

8
9 By 

10 D. Lamar Hawkins
11 Heather A. Macre
12 2390 E. Camelback Rd., Suite 400
13 Phoenix, Arizona 85016
14 Attorneys for Debtor

15 COPY of the foregoing mailed, or served
16 via electronic notification* or fax** or if so marked,
17 this 2nd day of January, 2018, to:

18 Office of the U.S. Trustee* ustpregion14.px.ecf@usdoj.gov
19 230 N. First Ave., Ste. 204
20 Phoenix, AZ 85003-1706

21 CB 101, LLC
22 c/o Galbut & Galbut, PC
23 2425 E. Camelback Rd., Ste. 1020
24 Phoenix, AZ 85016

25 CB 101, LLC
26 2670 E. Valencia St.
27 Gilbert, AZ 85296

28 Degnan Law, PLLC
1212 E. Osborn Rd., Ste. 116
Phoenix, AZ 85014

Amanda Modesta-Keyhani
3227 E. Georgia Ave.
Phoenix, AZ 85018

Itria Ventures
462 7th Ave. Fl. 20
New York, NY 10018

On Deck
901 N. Stuart St., Ste. 700
Arlington, VA 22203

1 Wells Fargo Bank, N.A.
SBA Lending
2 2355 E. Camelback Rd., Ste. 250
Phoenix, AZ 85016
3

4 Wells Fargo Bkg Support Group
MAC D4004-03A
PO Box 202902
5 Dallas, TX 75320

6 Wells Fargo Bank, N.A.
SBA-BBG Loan Ops-Recorded Docs
7 PO Box 659713
San Antonio, TX 78265

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EXHIBIT A

Ian-K, LLC

	Jan-18	Feb-18	Mar-18
Income			
Rent & Occupancy - Phoenix Office	3,400.00	3,400.00	3,400.00
Rent & Occupancy - Prescott Office	1,500.00	1,500.00	1,500.00
Total Income	\$ 4,900.00	\$ 4,900.00	\$ 4,900.00
Expenses			
Mortgage - Phoenix Office	3,220.00	3,220.00	3,220.00
Mortgage - Prescott Office	1,160.00	1,160.00	1,160.00
Property Insurance - Phoenix Office	340.00	340.00	340.00
Property Insurance - Prescott Office	100.00	100.00	100.00
Property Taxes - Phoenix Office	0.00	0.00	0.00
Property Taxes - Prescott Office	0.00	0.00	0.00
Professional Fees (Attorneys / Accountants)	0.00	0.00	0.00
US Trustee's Fees	0.00	0.00	0.00
Total Expenses	\$ 4,820.00	\$ 4,820.00	\$ 4,820.00
 Net Income	 \$ 80.00	 \$ 80.00	 \$ 80.00

EXHIBIT B

J. Tina Keyhani DDS-Oral & Maxillofacial Surgery,

	Jan-18	Feb-18	Mar-18
Total Income	\$ 32,000.00	\$ 32,000.00	\$ 32,000.00
Expenses			
Automobile	20.00	20.00	20.00
Continued Education	1,295.00	0.00	0.00
Dues & License	0.00	0.00	0.00
Food & Entertain.	100.00	100.00	100.00
Meetings & Conf.	0.00	0.00	0.00
Total Continued Education	\$ 1,395.00	\$ 100.00	\$ 100.00
Supplies			
Office Supplies	390.00	390.00	390.00
Professional Supplies	1,880.00	1,880.00	1,880.00
Total Supplies	\$ 2,270.00	\$ 2,270.00	\$ 2,270.00
Utilities	800.00	800.00	800.00
Equipment Lease	0.00	0.00	0.00
Interest	50.00	50.00	50.00
Internet	80.00	80.00	80.00
Maint. & Repair	660.00	660.00	660.00
Rent & Occupancy - Phoenix Office	3,400.00	3,400.00	3,400.00
Rent & Occupancy -PV Office	1,500.00	1,500.00	1,500.00
Telephone	600.00	600.00	600.00
Total Rent & Facility Costs	\$ 7,090.00	\$ 7,090.00	\$ 7,090.00
Employee Costs			
Casual Labor	0.00	0.00	0.00
Payroll Expenses	35.00	35.00	35.00
Payroll Tax Expenses	720.00	720.00	720.00
Staff Salaries	3,370.00	3,370.00	3,370.00
Total Employee Costs	\$ 4,125.00	\$ 4,125.00	\$ 4,125.00
Insurance	0.00	0.00	0.00
Overhead Insurance	0.00	0.00	0.00
Professional Liability Ins.	6,500.00	0.00	0.00
Workers' Compensation	66.00	66.00	66.00
Total Insurance	\$ 6,566.00	\$ 66.00	\$ 66.00
Marketing & Advertising	1,300.00	1,300.00	1,300.00
Postage & Delivery	180.00	180.00	180.00
Total Marketing & Advertising	\$ 1,480.00	\$ 1,480.00	\$ 1,480.00
Miscellaneous and Other Expenses	0.00	0.00	0.00
Bank Charges	100.00	100.00	100.00
Subscriptions, Software Programs	260.00	260.00	260.00
Total Miscellaneous and Other Expenses	\$ 360.00	\$ 360.00	\$ 360.00
Professional Fees (Attorneys / Accountants)	\$ 2,000.00	\$ 6,000.00	\$ 6,000.00
US Trustee's Fees	0.00	0.00	0.00
Dr. Keyhani Salary	6,000.00	6,000.00	6,000.00
Total Expenses	\$ 31,286.00	\$ 27,491.00	\$ 27,491.00
Operating Profit	\$ 714.00	\$ 4,509.00	\$ 4,509.00