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9 Proposed counsel for Debtor and Debtor-In-Possession,
10 AAA Nursing Services Inc.

11 UNITED STATES BANKRUPTCY COURT
12 CENTRAL DISTRICT OF CALIFORNIA
13 SAN FERNANDO VALLEY DIVISION

14 In re) CASE NO.: 1:17-bk-12433-VK
15 AAA Nursing Services Inc,) Chapter 11
16 Debtor.) DEBTOR'S EMERGENCY MOTION FOR
17) AN ORDER AUTHORIZING INTERIM
18) USE OF CASH COLLATERAL;
19) MEMORANDUM OF POINTS AND
20) AUTHORITIES; DECLARATION OF
21) OMNIA KILANI IN SUPPORT THEREOF
22)
23) Date: TBD
24) Time: TBD
25) Place: 21041 Burbank Blvd., Courtroom 301
26) Woodland Hills, CA 91367
27) [Application For Order Setting Hearing on
28) Shortened Notice Filed Concurrently With
This Motion]

23 TO THE HONORABLE VICTORIA KAUFMAN, JUDGE OF THE UNITED STATES
24 BANKRUPTCY COURT, THE OFFICE OF THE UNITED STATES TRUSTEE, TO
25 DEBTOR'S SECURED CREDITORS, AND TO ALL OTHER INTERESTED PARTIES:
26

27 PLEASE TAKE NOTICE that on _____, 2017 at _____ in Courtroom 301 of the above-
28 entitled Bankruptcy Court located at 21041 Burbank Blvd., Woodland Hills, CA 91367, AAA
DEBTOR'S EMERGENCY MOTION FOR AN ORDER AUTHORIZING INTERIM USE OF CASH COLLATERAL
MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF OMNIA KILANI IN SUPPORT
THEREOF

1 Nursing Services Inc., the Debtor and Debtor-in-Possession (hereinafter the "Debtor"), in the
2 above-captioned Chapter 11 case, by and through its proposed counsel of record, will and does
3 hereby move the Court for an Order Approving the Emergency Interim Use of Cash Collateral of
4 the following secured creditors: (1) Internal Revenue Services ("IRS"); (2) Atlas General
5 Insurance Services, LLC ("Atlas"); and (3) Fora Financial ("Fora Financial"), collectively with
6 IRS and Atlas referred to as "Secured Creditors" as follows:
7

8 • Debtor's next payroll is due on Friday, September 22, 2017. The nature of
9 Debtor's business is a highly competitive one and involves a very high flight risk by the
10 employees in the event that wages are not timely paid. This will in turn result in an immediate
11 shortage in staff and an irreversible adverse impact on Debtor's revenues.
12

13 • Debtor's day-to-day operating expenses need to be paid in order for the business
14 to continue operating without interruption.

15 The Motion is based upon this Motion, the attached Declaration, all pleadings and
16 records on file in this case, and upon such other evidentiary matters as may be presented to the
17 Court regarding the Motion.
18

19 WHEREFORE, the Debtor respectfully requests that the Court enter its Order authorizing
20 the Debtor the emergency use of cash collateral on an interim basis on the terms and conditions
21 described in the Motion and the supporting budget, and granting such other and further relief as
22 is just and proper under the circumstances.
23

24 Dated: September 14, 2017

LAW OFFICES OF MICHAEL JAY BERGER

25
26 By: /s/ Michael Jay Berger

27 Michael Jay Berger, Proposed counsel for
28 AAA Nursing Services Inc.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION**

3 AAA Nursing Services Inc, the Debtor, Debtor-In-Possession (hereinafter the "Debtor"),
4 in the above-captioned Chapter 11 case, by and through its proposed counsel of record, Michael
5 Jay Berger, does hereby move the Court for an Order Approving the Emergency Use of Cash
6 Collateral of Secured Creditors as set forth herein.
7

8 **II. STATEMENT OF FACTS**

9 AAA Nursing Services Inc (the "Debtor") filed its petition under Chapter 11 of the
10 Bankruptcy Code on September 12, 2017 (the "Petition Date") and is presently operating as a
11 debtor-in-possession. Debtor owns and operates AAA Nursing Services Inc which is located at
12 22148 Sherman Way, Ste. 203, Canoga Park, California 91303.
13

14 The Debtor does not own any real property. The Debtor currently and historically
15 generates income from providing skilled nursing care to patients at their residences. Due to the
16 competitive nature of this healthcare business, it must pay its employees and daily operating
17 expense on a timely basis in order to retain its employees, patients and bring in additional
18 revenue. Thus, the Debtor seeks this Court's order authorizing emergency interim use of the cash
19 collateral to pay for payroll and for day to day operating expenses.
20

21 **ADEQUATE PROTECTION**

22 The principal liability of the Debtor is the obligation owed to the Internal Revenue
23 Services (the "IRS") for unpaid payroll taxes in the secured amount of approximately
24 \$255,482.02 and priority unsecured amount of approximately \$125,805.24. Corporation Service
25 Company, as representative of creditor Fora Financial ("Fora Financial") has a UCC-1 filing
26 with the California Secretary of State (Filing No.: 15-7496598600; Filing Date: 11/24/2015) for
27
28

1 \$18,191.50. Atlas General Insurance Services, LLC (“Atlas”) has a Notice of Judgment Lien
2 filed with the California Secretary of State on March 13, 2017, Filing No.: 17-7575109850 in the
3 amount of \$39,506.31.

4 The Debtor’s business is the Debtor’s primary asset. The asset is well managed and is
5 generating positive cash flow. Moreover, the Debtor’s recent operating results and future
6 projections indicate that this trend will continue and improve over the next year, providing ample
7 adequate protection to the Secured Creditor’s interest. Debtor seeks the emergency use of cash
8 collateral for the payment of payroll and daily operating expenses. Debtor agrees to make
9 adequate protection payments in the amount of \$2,000.00 per month to the IRS while the Debtor
10 formulates its chapter 11 reorganization plan.
11
12

13 **III. PROPOSED USE OF CASH COLLATERAL**

14 **A. Debtor seeks the Emergency Use of Cash Collateral**

15 This Motion is filed due to the nature of the Debtor’s business. The Debtor’s business
16 must provide its clients with the highest quality of service. The failure to provide clients with the
17 highest quality of service on a continuous basis will result in irreparable reputational damage,
18 revenues and asset values. To provide this level of service, the Debtor requires the immediate
19 use of all cash and cash equivalents on hand and hereafter generated, whether the same
20 constitutes Cash Collateral, or not.
21
22

23 **B. The Court Should Authorize the Debtor’s Use of the Cash Collateral**

24 As a general matter, a Debtor-in-Possession is permitted to use property of the estate in
25 the ordinary course of business without the need for notice or a hearing. 11 U.S.C. Section
26 363(c)(1). However, a Debtor’s use of cash collateral is an exception to this general Rule.
27 Section 363 c (2) provides in pertinent part:
28

1 “The [debtor in possession] may not use, sell, or lease cash collateral... unless

2 (A) Each entity that has an interest in such cash collateral consents: or

3 (B) The court, after notice and hearing, authorizes such use,

4 Sale or lease in accordance with the provisions of this section.”

5 Courts have consistently held that it is appropriate for a Chapter 11 Debtor to use a
6 secured creditor’s cash collateral for reasonable period of time for the purpose of maintaining
7 and operating its property. *See MBank Dallas, N.A. v. O’Connor (In re O’Connor)*, 808 F. 2d
8 1393, 1397 (10th Cir.1987). In Addition, where, as here, the Debtor is operating a business, it is
9 extremely important that use of cash collateral be allowed in order to facilitate the goal of
10 reorganization: “the purpose of Chapter 11 is to rehabilitate debtors and generally access to cash
11 collateral is necessary to operate a business. “ *In re Dynaco Corporation*, 162 B.R. 389, 394
12 (Bankr. D.N.H. 1993), quoting *In re Stein*, 19 B.R. 458, 459 (Bankr. E.D. Pa. 1982).

14 The Debtor should be authorized to use the Cash Collateral to issue payroll and operate
15 its business because the continued operations and the concomitant use of the Cash Collateral will
16 preserve the value of the Cash Collateral and of the business for the benefit of the estate and the
17 IRS.

19 **C. Secured Creditors’ Interests Are Adequately Protected by the Value of Debtor’s**

20 **Assets and IRS’ Interest Is Adequately Protected By The Payment Debtor Proposes to Make to**

21 **The IRS**

22 Pursuant to § 363 c (2), the Court may authorize the Debtor to use a secured creditor’s
23 cash collateral if the Court determines that the secured creditor is adequately protected. *Pistole*
24 *v. Mellor (In re Mellor)*, 734 F 2d 1396, 1400 (9th Cir. 1984). See also *O’Connor*, supra, 808
25 F.2nd at 1398; *McCombs Properties VI. Ltd. v First Texas Savings Association (In re McCombs*
26 *Properties VI, Ltd.)*, 88 B.R. 261, 265 (Bankr. C.D. Cal.1988). In ordinary circumstances, a
27
28

1 secured creditor is to be protected against a decrease in value which directly affects the secured
2 creditor's interest in its collateral. See *United Savings Association of Texas v. Timbers of*
3 *Inwood Forest Associates, Ltd.*, 484 U.S. 365, 108, S. Ct. 626, 630, (1988): Section 506 (a) of
4 the Bankruptcy Code "Limit(s) the secured status of a creditor (i.e., the secured creditor's claim)
5 to the lesser of the [allowed amount of the] claim or the value of the collateral." *McCombs*,
6 supra, 88 B.R. at 266.

7
8 As a general rule, a Debtor may use cash collateral *where such use would enhance or*
9 *preserve the value of the collateral.* *McCombs*, supra, 88 B.R. at 267. The Debtor must pay its
10 payroll and day to day operating expenses timely for its employees to work and for the business
11 to generate profit for the Debtor, which will ultimately be used in formulating a chapter 11
12 reorganization plan. Unless the Debtor is permitted to use cash collateral for the payroll and day
13 to day operating expense, the Debtor will be at risk of losing its current employees and possibly
14 jeopardizing the Debtor's plan of reorganization.

15
16 **D. In Determining Adequate Protection, The Court Should Promote Reorganization.**

17
18 In determining adequate protection, Courts have stressed the importance of promoting a
19 Debtor's reorganization. In *In re O'Connor*, supra, the Tenth Circuit stated:

20 "In this case, Debtors, in the midst of a Chapter 11 proceeding, have proposed to deal
21 with cash collateral for the purpose of enhancing the prospects of reorganization. This quest is
22 the ultimate goal of Chapter 11. Hence, the Debtor's efforts are not only to be encouraged, but
23 also their efforts during the administration of the proceeding are to be measured in light of that
24 quest. Because the ultimate benefit to be achieved by a successful reorganization inures to all
25 the creditors of the estate, a fair opportunity must be given to the Debtor to achieve that end.
26 Thus, while interests of the secured creditor whose property rights are of concern to the court, the
27
28

1 interests of all other creditors also have bearing upon the question of whether use of cash
2 collateral shall be permitted during the early stages of administration.” 808 F 2nd at 1937.

3 In order to promote the Debtor’s reorganization, the Court should grant the relief
4 requested herein. The Debtor has demonstrated that the emergency use of cash collateral as
5 proposed by the Debtor to pay for payroll and its day-to-day operating expenses will benefit the
6 Debtor’s estate and the creditors, including the Secured Creditors, since Debtor will continue to
7 generate income necessary for proposing a feasible reorganization plan. As such, a successful
8 reorganization depends upon the use of cash collateral as proposed herein.
9

10 **V. CONCLUSION**

11 WHEREFORE, the Debtor respectfully requests that the Court enter its Order authorizing
12 the interim use of cash collateral on the terms and conditions described in the Motion and the
13 supporting budget, and granting such other and further relief as is just and proper under the
14 circumstances.
15

16
17 Dated: September 14, 2017

LAW OFFICES OF MICHAEL JAY BERGER

18
19
20 By: 

21 Michael Jay Berger, Proposed Counsel for
22 AAA Nursing Services Inc.
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DECLARATION OF OMNIA KILANI

1
2 I, Omnia Kilani, declare as follows:

3 I am the President of the Debtor in this Bankruptcy proceeding.

4 1. I make this declaration my own personal knowledge and would so testify.

5 2. AAA Nursing Services Inc, the Debtor, Debtor-In-Possession (hereinafter the
6 “Debtor”), in the above-captioned Chapter 11 case, by and through its proposed counsel of
7 record, Michael Jay Berger, does hereby move the Court for an Order Approving the Emergency
8 Interim Use of Cash Collateral of the following secured creditors: (1) Internal Revenue Services
9 (“IRS”); (2) Atlas General Insurance Services, LLC (“Atlas”); and (3) Fora Financial (“Fora
10 Financial”), collectively with IRS and Atlas referred as “Secured Creditors.”
11

12 3. Debtor filed its petition under Chapter 11 of the Bankruptcy Code on September
13 12, 2017 (the “Petition Date”) and is presently operating as a debtor-in-possession. Debtor owns
14 and operates AAA Nursing Services Inc which is located at 22148 Sherman Way, Ste. 203,
15 Canoga Park, California 91303.
16

17 4. The Debtor does not own any real property. The Debtor currently and historically
18 generates income from providing skilled nursing care to patients at their residences. Due to the
19 competitive nature of this healthcare business, it must pay its employees and daily operating
20 expense on a timely basis in order to retain its employees, patients and bring in additional
21 revenue.
22

23 5. The principal liability of the Debtor is the obligation owed to the Internal
24 Revenue Services (the “IRS”) for unpaid payroll taxes in the secured amount of approximately
25 \$255,482.02 and priority unsecured amount of approximately \$125,805.24. Corporation Service
26 Company, as representative of creditor Fora Financial (“Fora Financial”) has a UCC-1 filing
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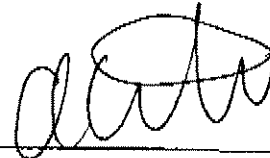
1 with the California Secretary of State (Filing No.: 15-7496598600; Filing Date: 11/24/2015) for
2 \$18,191.50. Atlas General Insurance Services, LLC ("Atlas") has a Notice of Judgment Lien
3 filed with the California Secretary of State on March 13, 2017, Filing No.: 17-7575109850 in the
4 amount of \$39,506.31.

5
6 6. The Debtor's business is the Debtor's primary asset. The asset is well managed
7 and is generating positive cash flow. Moreover, the Debtor's recent operating results and future
8 projections indicate that this trend will continue and improve over the next year, providing ample
9 adequate protection to the Secured Creditor's interest. Debtor seeks the emergency use of cash
10 collateral for the payment of payroll and daily operating expenses. Debtor agrees to make
11 adequate protection payments to IRS while the Debtor formulates its chapter 11 reorganization
12 plan.
13

14 7. The Debtor's proposed six-month projected budget is attached hereto as Exhibit I.

15 I declare under penalty of perjury under the laws of the United States of America that the
16 foregoing is true and correct. Executed on this 14th day of September 2017, in Canoga Park,
17 California.
18

19
20 AAA Nursing Services Inc

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22 

23
24 Omnia Kilani, its President

EXHIBIT 1

Projected Six-Month Income and Expenses	Oct-17	Nov-17	Dec-17
Income generated by AAA Nursing Services Inc	\$158,000.00	\$155,000.00	\$158,000.00
Total Gross Income	\$158,000.00	\$155,000.00	\$158,000.00
Expense			
Advertising and Promotions	\$2,100.00	\$2,100.00	\$1,800.00
Business Gifts	\$1,500.00	\$1,000.00	\$750.00
Computer and Internet Expenses (2 medical software)	\$1,427.00	\$1,400.00	\$1,400.00
Insurance Expense (malpractice and liability)	\$740.00	\$750.00	\$740.00
Meals and Entertainment	\$2,500.00	\$2,500.00	\$3,100.00
Office Supplies (papers, toner, folders, packages, Briggs forms, etc)	\$1,100.00	\$1,400.00	\$1,000.00
Payroll	\$101,000.00	\$95,000.00	\$100,000.00
Payroll Expenses (worker's comp and payroll taxes)	\$29,750.00	\$27,750.00	\$29,500.00
Postage and Delivery	\$500.00	\$400.00	\$400.00
Professional Fees (bankruptcy counsel - subject to court approval)			
Rent Expense + CAM	\$3,190.00	\$3,190.00	\$3,190.00
Telephone Expense	\$422.00	\$422.00	\$422.00
Travel Expense (mileage for in-house visits paid to nurses)	\$1,300.00	\$1,500.00	\$1,400.00
Utilities (water and power, gas company, trash and shredding)	\$550.00	\$500.00	\$511.00
IRS (Adequate Protection Payment)	\$2,000.00	\$2,000.00	\$2,000.00
Notice of Insider Compensation (Debtor's principal and spouse - \$4k/each)	\$8,000.00	\$8,000.00	\$8,000.00
Total Expense	\$156,079.00	\$147,912.00	\$154,213.00
Net Ordinary Income	\$1,921.00	\$7,088.00	\$3,787.00
Net Income	\$1,921.00	\$7,088.00	\$3,787.00

Jan-18	Feb-18	3-18
\$160,000.00	\$165,000.00	\$150,000.00
\$160,000.00	\$165,000.00	\$150,000.00
\$1,950.00	\$2,000.00	\$2,200.00
\$1,000.00	\$800.00	\$1,000.00
\$1,427.00	\$1,400.00	\$1,427.00
\$750.00	\$740.00	\$750.00
\$2,500.00	\$2,000.00	\$2,000.00
\$1,250.00	\$1,100.00	\$1,500.00
\$102,000.00	\$104,000.00	\$93,000.00
\$30,000.00	\$31,500.00	\$26,000.00
\$500.00	\$400.00	\$500.00
	\$4,000.00	\$4,000.00
\$3,190.00	\$3,190.00	\$3,190.00
\$422.00	\$422.00	\$422.00
\$1,200.00	\$1,300.00	\$1,340.00
\$500.00	\$525.00	\$500.00
\$2,000.00	\$2,000.00	\$2,000.00
\$8,000.00	\$8,000.00	\$8,000.00
\$156,689.00	\$163,377.00	\$147,829.00
\$3,311.00	\$1,623.00	\$2,171.00
\$3,311.00	\$1,623.00	\$2,171.00

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:
9454 Wilshire Blvd., 6th Fl., Beverly Hills, CA 90212

A true and correct copy of the foregoing document entitled (*specify*): **Debtor's Emergency Motion for an Order Authorizing Interim Use of Cash Collateral; Memorandum of Points and Authorities; Declaration of Omnia Kilani in Support Thereof** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) 9/15/2017, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Attorney for Debtor: Michael Jay Berger michael.berger@bankruptcypower.com,
yathida.nipha@bankruptcypower.com;michael.berger@ecf.inforruptcy.com

U.S. Trustee: Russell Clementson russell.clementson@usdoj.gov

United States Trustee (SV) ustpreion16.wh.ecf@usdoj.gov

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) 9/15/2017, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Honorable Victoria S. Kaufman
United States Bankruptcy Court
Central District of California
21041 Burbank Boulevard, Suite 354 / Courtroom 301
Woodland Hills, CA 91367

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

9/15/2017
Date

Peter Garza
Printed Name

/s/ Peter Garza
Signature

This form is mandatory. It has been approved for use by the United States Bankruptcy Court for the Central District of California.