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10 *Attorneys for Debtor*  
11 WHAA, LLC

12 UNITED STATES BANKRUPTCY COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 RIVERSIDE DIVISION

15 In re: ) Case No. 6:17-bk-14661-MW  
16 )  
17 ) Chapter 11  
18 )  
19 WHAA LLC, ) **NOTICE OF MOTION AND MOTION**  
20 ) **TO APPROVE STIPULATION FOR**  
21 ) **CASH COLLATERAL;**  
22 ) **MEMORANDUM OF POINTS AND**  
23 Debtor. ) **AUTHORITIES; DECLARATION OF**  
24 ) **HENRY WALLACH IN SUPPORT**  
25 ) **THEREOF**  
26 )  
27 ) Date: November 7, 2017  
28 ) Time: 2:00 p.m.  
29 ) Place: U.S. Bankruptcy Court  
30 ) Courtroom 225  
31 ) 3420 12<sup>th</sup> Street, Riverside, CA  
32 ) or  
33 ) Courtroom 6C  
34 ) 411 N. 4<sup>th</sup> Street, Santa Ana, CA  
35 )

36 **TO THE HONORABLE MARK WALLACE, UNITED STATES**  
37 **BANKRUPTCY JUDGE; ALTA PACIFIC BANK; TMC FINANCING; SAN**  
38 **BERNARDINO COUNTY TAX COLLECTOR; AND ALL CREDITORS AND**  
39 **PARTIES IN INTEREST:**

PLEASE TAKE NOTICE that on November 7, 2017, at 2:00 p.m., or as soon thereafter as the matter may be heard, in Courtroom 225 of the above-entitled Court located 3420 12<sup>TH</sup> Street, Riverside, California or in Courtroom 6C located at 411 North 4<sup>th</sup> Street, Santa Ana, California, to determine, WHAA LLC, the Debtor (hereinafter the "Debtor"), in the above-captioned Chapter 11 case, shall, and does hereby, move the Court for an Order approving the use of cash collateral pursuant to a Stipulation reached between the Debtor and Alta Pacific Bank, and TMC Financing, as set forth herein. The Stipulation is attached hereto as **Exhibit "A."** The required STATEMENT REGARDING CASH COLLATERAL OR DEBTOR IN POSSESSION FINANCING [FRBP 4001; LBR 4001-2] is attached hereto as **Exhibit "B."** The proposed form of Order as required by FRBP 4001(1) is attached hereto as **Exhibit "C."**

The basis for the Motion is FRBP 4001(d) and that the use of cash collateral will preserve the estate assets for the benefit of this estate and the creditors, specifically including the secured creditors.

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

PLEASE TAKE FURTHER NOTICE that pursuant to *Local Bankruptcy Rule 9013-1*, any party opposing the relief sought by the Motion must file a written opposition setting forth the facts and law upon which the opposition is based and must appear at the hearing on the Motion. Any factual allegations set forth in such written response must be supported by competent and admissible evidence.

Any response or opposition to the Motion must be filed with the Court and served on Debtor's counsel, the Office of the U.S. Trustee, and any other required parties in interest, **at least fourteen (14) days prior to the scheduled hearing date on the Motion** (not excluding Saturdays, Sundays or legal holidays).

1 Pursuant to *Local Bankruptcy Rule 9013-1*, any response not timely filed and  
2 served may be deemed by the Court to be consent to the granting of the relief requested by  
3 the Motion.

4 WHEREFORE, the Debtor respectfully requests that the Court enter its Order  
5 authorizing the Debtor to use cash collateral on the terms and conditions described in the  
6 Motion and the exhibits thereto, and granting such other and further relief as is just and  
7 proper under the circumstances.

8 Dated: October 10, 2017

**SIMON RESNIK HAYES LLP**

9  
10 By: /s/ M. Jonathan Hayes

**M. Jonathan Hayes**  
*Attorneys for Debtor*  
WHAA LLC



**MEMORANDUM OF POINTS AND AUTHORITIES**  
**I. INTRODUCTION**

WHAA LLC ("the Debtor"), Debtor in the above-referenced Chapter 11 case, commenced its bankruptcy case by filing a voluntary petition under Chapter 11 on June 2, 2017. The Debtor is operating its business and managing its financial affairs as a Debtor-in-Possession pursuant to §§1107 and 1108 of the Bankruptcy Code.

The Debtor is a California limited liability company formed in 2009. WHAA LLC owns two commercial buildings located at 5494 Arrow Highway, Montclair, California and 5512 Arrow Highway, Montclair, California.

This case is affiliated with Debtor BioData Medical Laboratories, Inc. ("BioData") filed on November 28, 2016. BioData is the tenant that occupies the commercial buildings owned by WHAA. Henry Wallach and Akemi Uomoto are 50% shareholders of both WHAA and BioData. BioData was filed as a chapter 11 case but it has been converted to chapter 7. The BioData laboratory was being operated by the trustee, Todd Frealy.

WHAA fell behind on its mortgage as a result of BioData's inability and inconsistency in paying rent and filed chapter 11 to prevent a foreclosure. WHAA asserts that there is significant equity in the properties. It has retained a broker to sell both properties.

The BioData lab was recently sold by the Chapter 7 Trustee to Healthquest Clinical Laboratory, Inc. concurrent with the sale, the Debtor entered into a three month lease of the 5494 Arrow Highway building at \$13,000 per month. That rent is acknowledged to be the cash collateral of Alta Pacific Bank and TMC Financing.

The Debtor and Alta Pacific Bank and TMC Financing have entered into a very limited Stipulation permitting the Debtor to use a portion of the cash collateral to pay the commercial insurance, the property tax payment due in December and two adequate protection payments to Alta Pacific Bank. The Stipulation is attached hereto as **Exhibit "A."**

1 This Motion prays that the Court approve that Stipulation pursuant to FRBP  
2 4001(d).

3  
4 **II. STATEMENT OF FACTS**

5 **A. Overview of the Debtor and the Obligations.**

6 The Debtor owes secured creditor Alta Pacific Bank approximately \$680,000 and  
7 TMC Financing (SBA) approximately \$487,000 for both Properties. It also owes the San  
8 Bernardino Tax Collector ("Tax Collector") approximately \$140,000 for both properties.  
9 Alta Pacific Bank and TMC Financing also have personal guarantees of the Debtor's  
10 primary shareholders Henry Wallach and Akemi Uomoto.

11 **B. Proposed Use of Cash Collateral.**

12 The Debtor proposes that it use the cash collateral to pay the allowed expenses  
13 pursuant to the Debtor's budget. The Debtor believes that the expenses described in the  
14 budget attached to **Exhibit "A"** (the "Budget") represent those expenses that the Debtor  
15 must pay in October, November and December, 2017 in order to maintain its business  
16 operations.

17 It is in the best interest of the estate and its creditors to maintain property insurance  
18 and the pay the property tax payments as they come due. In addition, the adequate  
19 protection payments to Alta Vista will inure to the benefit of both secured creditors.  
20

21 **III. ADEQUATE PROTECTION**

22 The Debtor believes Alta Pacific Bank and TMC Financing are adequately  
23 protected by the real properties. Notwithstanding that, the Debtor proposes to pay Alta  
24 Pacific Bank the mortgage due on each building (5494 Arrow Highway - \$4,331 and 5512  
25 Arrow Highway - \$2,251) in October and November of 2017.

26 The Debtor will continue to be bound by the terms and conditions set forth in the  
27 prepetition agreements except as specifically modified herein. This shall not constitute a  
28



modification of the liens granted to Alta Pacific Bank by the Debtor pursuant to the various agreements between the parties and various perfection documents.

#### IV. DISCUSSION

##### A. The Court Should Authorize The Debtor's Use of the Cash Collateral.

As a general matter, a debtor-in-possession is permitted to use property of the estate in the ordinary course of business without the need for notice or a hearing. 11 U.S.C. Section 363(c)(1). However, a debtor's use of cash collateral is an exception to this general rule. Section 363(c)(2) provides in pertinent part:

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

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(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section."

11 U.S.C. Section 363(c)(2).

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

In order to promote Debtor's reorganization, the Court should grant the relief requested herein. The Debtor has demonstrated herein that the use of the cash collateral as

1 proposed by the Debtor will preserve the building for the benefit of this estate and the  
2 creditors, specifically including the two secured creditors.

3 In order to promote Debtor's reorganization, the Court should grant the relief  
4 requested herein. Debtor has demonstrated that the use of cash collateral as proposed by it  
5 will preserve the property for the benefit of this estate and the creditors, specifically  
6 including Alta Pacific Bank.

7 **B. FRBP 4001(d) Provides for Approval of this Stipulation**

8 FRBP 4001(d) provides:

9 (d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or  
10 Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection,  
11 Use of Cash Collateral, and Obtaining Credit.

12 (1) Motion; Service.

13 (A) Motion. A motion for approval of any of the following shall be  
14 accompanied by a copy of the agreement and a proposed form of order:

15 (i) an agreement to provide adequate protection;

16 (ii) an agreement to prohibit or condition the use, sale, or lease of  
17 property;

18 (iv) an agreement to use cash collateral; or  
19

20 (B) Contents. The motion shall consist of or (if the motion is more  
21 than five pages in length) begin with a concise statement of the relief  
22 requested, not to exceed five pages, that lists or summarizes, and sets out the  
23 location within the relevant documents of, all material provisions of the  
24 agreement. In addition, the concise statement shall briefly list or summarize,  
25 and identify the specific location of, each provision in the proposed form of  
26 order, agreement, or other document of the type listed in subdivision  
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1 (c)(1)(B). The motion shall also describe the nature and extent of each such  
2 provision.

3 (C) Service. The motion shall be served on: (1) any committee elected  
4 under §705 or appointed under §1102 of the Code, or its authorized agent, or,  
5 if the case is a chapter 9 municipality case or a chapter 11 reorganization  
6 case and no committee of unsecured creditors has been appointed under  
7 §1102, on the creditors included on the list filed under Rule 1007(d); and (2)  
8 on any other entity the court directs.

9 (2) Objection. Notice of the motion and the time within which objections  
10 may be filed and served on the debtor in possession or trustee shall be mailed to the  
11 parties on whom service is required by paragraph (1) of this subdivision and to such  
12 other entities as the court may direct. Unless the court fixes a different time,  
13 objections may be filed within 14 days of the mailing of the notice.

14 (3) Disposition; Hearing. If no objection is filed, the court may enter an order  
15 approving or disapproving the agreement without conducting a hearing. If an  
16 objection is filed or if the court determines a hearing is appropriate, the court shall  
17 hold a hearing on no less than seven days' notice to the objector, the movant, the  
18 parties on whom service is required by paragraph (1) of this subdivision and such  
19 other entities as the court may direct.  
20

## 21 **V. CONCLUSION**

22 WHEREFORE, Debtor respectfully requests that the Court enter its Order  
23 approving the attached Stipulation and authorizing the Debtor to use cash collateral on the  
24 terms and conditions described herein and the exhibits thereto, and granting such other and  
25 further relief as is just and proper under the circumstances.  
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1 Dated: October 10, 2017  
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**SIMON RESNIK HAYES LLP**

4 By: /s/ M. Jonathan Hayes  
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**M. Jonathan Hayes**  
*Attorneys for Debtor*  
WHAA, LLC.  
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**DECLARATION OF HENRY WALLACH**

I, HENRY WALLACH, declare as follows:

1. I am the managing member of WHAA LLC, the Debtor and Debtor-in-Possession ("Debtor") in the above captioned bankruptcy. I have personal knowledge of the facts set forth herein and, if called as a witness, I could and would competently testify thereto.

2. The Debtor filed its Chapter 11 Petition on June 2, 2017. The Debtor is operating its business and managing its financial affairs as a DIP pursuant to Section 1107 and 1108 of the Bankruptcy Code.

3. The Debtor's sole assets are two commercial buildings commonly described as 5494 Arrow Highway and 5512 Arrow Highway, in Montclair, California (jointly the "Properties") which are the subject of this case. I believe there is significant equity in the properties. We have retained a broker to sell both properties.

4. The BioData lab was recently sold by the Chapter 7 Trustee to Healthquest Clinical Laboratory, Inc. concurrent with the sale, the Debtor entered into a three month lease of the 5494 Arrow Highway building at \$13,000 per month. The rent is being deposited into the Debtor in Possession bank account.

5. I have reviewed the Stipulation with Alta Pacific Bank and TMC Financing and believe that it is in the best interests of the Debtor and the creditors.

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

Executed on October 10, 2017, at Montclair, California.



Henry Wallach  
*Declarant*

## 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: 535 N. Brand Blvd., Suite 260, Glendale, CA 91203

A true and correct copy of the foregoing document entitled: **NOTICE OF MOTION AND MOTION TO APPROVE STIPULATION FOR CASH COLLATERAL; MEMORANDUM OF POINTS AND AUTHORITIES; DECLARATION OF HENRY WALLACH 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 October 11, 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:

Everett L. Green - [Everett.l.green@usdoj.gov](mailto:Everett.l.green@usdoj.gov)  
Abram Feuerstein - [Abram.s.feuerstein@usdoj.gov](mailto:Abram.s.feuerstein@usdoj.gov)  
United States Trustee (Riverside) - [ustpreion16.rs.ect@usdoj.gov](mailto:ustpreion16.rs.ect@usdoj.gov)  
Margarit Kazaryan - [kazaryanlaw@gmail.com](mailto:kazaryanlaw@gmail.com)  
Barry S. Glaser - [bglaser@swesq.com](mailto:bglaser@swesq.com)  
Scott Talkov - [stalkov@rhlaw.com](mailto:stalkov@rhlaw.com)  
David Wiseblood - [dwiseblood@wisebloodlaw.com](mailto:dwiseblood@wisebloodlaw.com)  
Sean Topp - [stop@swesq.com](mailto:stop@swesq.com)  
M. Jonathan Hayes - [jhayes@srhlawfirm.com](mailto:jhayes@srhlawfirm.com)

☐ Service information continued on attached page

### **2. SERVED BY UNITED STATES MAIL:**

On October 11, 2017 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.

Honorable Mark S. Wallace  
United States Bankruptcy Court  
Central District of California  
411 West Fourth Street, Room 6135  
Santa Ana, CA 92701-4593  
BY PRIORITY OVERNIGHT

☒ Service information continued on attached page



**3. SERVED BY OVERNIGHT MAIL AND EMAIL** (state method for each person or entity served):

Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on \_\_\_\_\_ 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.

☐ Service information continued on attached page

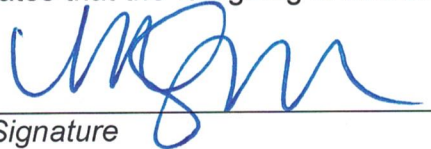
I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

10/11/17

*Date*

MARGARIT KAZARYAN

*Printed Name*



*Signature*

**MAILING LIST**

Alta Pacific Bank c/o Lambert & Rogers APLC 359 West Madison Ave., Suite 100 El Cajon, CA 92020	Lucas, Horsfall, Murphy & Pindroh 100 E. Corson Street, Suite 200 Pasadena, CA 91103
Arrow Highway Building Owners Assn 733 W. Monticello St Ontario, CA 91762	San Bernardino County Tax Collector 168 West Hospitality Lane San Bernardino, CA 92415
Biodata Medical Laboratories 5494 Arrow Highway Montclair, CA 91763	State Board of Equalization Account Information Group, MIC: 29 P.O. Box 942879 Sacramento, CA 94279
Employment Development Department Bankruptcy Group MIC 92E P. O. Box 826880 Sacramento, CA 94280	TMC Financing for U.S. Small Business Administration 1720 Broadway, 3 <sup>rd</sup> Floor Oakland, CA 94612
Franchise Tax Board Bankruptcy Section, MS: A-340 P. O. Box 2952 Sacramento, CA 95812	David M. Wiseblood Law Offices of David M. Wiseblood 601 Montgomery Street, Suite 2000 San Francisco, CA 94111
Internal Revenue Service P.O. Box 7346 Philadelphia, PA 19101	TriCore Reference Lab. Attn: Kent Gordon 1001 Woodward Place NE Albuquerque, NM 87102
Reid & Hellyer APC PO Box 1300 Riverside, CA 92502-1300	M. Jonathan Hayes, Esq. SIMON RESNIK HAYES LLP 15233 Ventura Blvd., Suite 250 Sherman Oaks, CA 91403
Barry S. Glaser, Esq. Steckbauer Weinhart LLP 333 S. Hope Street, Suite 3600 Los Angeles, CA 90071	Honorable Mark S. Wallace United States Bankruptcy Court Central District of California 411 West Fourth Street, Room 6135 Santa Ana, CA 92701-4593

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