

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
WEST PALM BEACH DIVISION

IN RE: CASE NO. 17-14765-PGH  
LUIS A. VINAS, MD, PA., Chapter 11  
Debtor.

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**DEBTOR'S FIFTH MOTION FOR  
AUTHORITY TO USE CASH COLLATERAL**

**Bankruptcy Rule 4001(b)(1)(B) Summary**

**By this Motion, the Debtor seeks the entry of a final order approving the use of cash collateral. The purpose of the relief sought is to enable the Debtor to have access to cash to effectuate a successful reorganization of the Debtor's business, but on a more immediate basis, to have access to cash to pay the expenses it incurs on a day-to-day basis in the ordinary course of business. The Debtor proposes to use cash collateral in the amounts set forth in the attached Budget for (30) days or such additional time as the Court may allow pending further order of the Court. The material provisions of the proposed use of cash collateral are set forth in pages (3) of this Motion, as reflected in the proposed Budget attached hereto as Exhibit B.**

Luis A. Vinas, MD, PA (the "Debtor"), by and through its undersigned counsel, files this Fifth Motion for Authority to Use Cash Collateral pursuant to 11 U.S.C. § 363(c) (the "Motion") generated from the Debtor's receipts for operations in order to continue the Debtor's business and preserve the value of the estate and says:

**Jurisdiction and Venue**

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A). Venue is proper in this Court under 28 U.S.C. § 1408.

**Local Rules and Federal Rules of Bankruptcy Procedure Disclosures**

2. The following disclosures are provided in conformance with the requirements of F.R.B.P. 4001(B), Local Rules 40001-2, 9013-1(F) and (G), and the Guidelines for Motions Seeking Authority to Use Cash Collateral and Motions Seeking Approval of Postpetition Financing propounded by the Bankruptcy Court for the Southern District of Florida.

3. The proposed form of order is attached as Exhibit A.

4. The names of the entities who may claim an interest in cash collateral: King's Cash Group ("KGC"); LG Funding LLC ("LG"); Pearl Capital Ravis Ventures ("Pearl"); Bank United ("BU") and On Deck Capital ("On Deck") (collectively the "Secured Claimants").

5. The purpose for the use of the cash collateral is to continue to operate the Debtor's plastic surgery business, to allow for the recovery of existing accounts receivables and conversion to cash of existing receivables and for the expenditures of pre-petition receivables and post-petition receipts.

6. The material terms of the use of cash collateral are as follows:

The Debtor will continue to use its cash on hand and any cash generated from the recovery of any receivable until such time as KGC, LG, Pearl, Bank United and On Deck are either paid in full, a plan is confirmed, the case is dismissed, or further order of the Court.

No additional liens, other than replacements liens, in the cash, will be provided to the Secured Claimants. Adequate protection will be provided by the increase in value of collateral (i.e. the realization of the accounts receivable) by virtue of the continued orderly operations of the business, and monthly interest payments as reflected in the budget.

7. Use of cash shall be done in accordance with the attached Budget. See Exhibit B. A deviation of more than 10% on any line item or in the overall budget shall

require either written lender consent or Court approval. For emergency expenditures necessary for the safety of patients, not included in the budget or in excess of the deviation, the Debtor shall only need to provide notice to the Secured Claimants.

8. The basis upon which the Secured Claimants are entitled to assert a security interest in cash collateral is the recordation of UCC-1's, asserting security interests in, among other things, the Debtor's accounts and deposit accounts.

9. The Debtor generates revenue from its operation of the medical practice specializing in cosmetic surgery procedures and skin care. Most of the fees and charges for procedures and services are reimbursed through various health care providers whose contracts and practices provide for a variety of reimbursement rates and schedules and direct payments from the patients' themselves, otherwise known as "private pay." On the Petition Date, the Debtor had approximately \$378,689.81 in outstanding accounts receivables. Of that sum, \$328,890.43 was due from patients directly and \$49,799.38 was due from insurance providers.

10. Upon information and belief, the amount due to KGC on the Petition Date was \$18,473.10; the amount due to LG on the Petition Date was \$8,325.00; the amount to due to Pearl on the Petition Date was \$146,900.0; the amount due to BU was \$709,747.23; and the amount due to On Deck was \$4,856.00.

### **Background**

10. On April 17, 2015 (the "Petition Date"), the Debtor filed its voluntary petitions for relief under chapter 11 of the Bankruptcy Code, 11 U.S.C. §§ 101 *et seq.*

**Cash Collateral**

11. In the ordinary course of business, the Debtor operates a medical practice which provides cosmetic surgery and skin care to its customers. The Debtor leases its business premises, which is located at 550 S Quadrille Avenue, Suite 100, West Palm Beach, FL 33401. The revenues derived from the practice are used to fund the Debtor's operations. Due to the number of health care contracts the Debtor's patients have, it is impossible to project the anticipated cash receipts in the next ninety (90) days due to the variances in the respective contracts' reimbursement schedules. On the Petition Date, the Debtor had approximately \$12,000.00 in cash on hand and \$378,689.81 in accounts receivables. These funds and those received post-petition are the cash for which authority is sought.

12. The Debtor believes that the cash constitutes "cash collateral" as that term is defined in the Bankruptcy Code. See 11 U.S.C. § 363(a) (defining "cash collateral" as "Cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in which the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents or profits of property and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels or other lodging properties subject to a security interest as provided in section 552(b) of the this title, whether existing before or after the commencement of a case under this title.")

13. Through this Motion, the Debtor seeks to utilize the cash collateral, i.e., the cash and receipts in the manner set forth in the Budget, in order to maintain its business.

14. The Debtor's request for the use of the Secured Claimants cash collateral is meant to cover the Debtor's essential expenses contained in the budget, and to ensure successful operations to allow the Debtor to achieve a reorganization. Those expenses include payment of wages, supplies, food, pharmaceutical products and the payment of the claims of vendors for other services or products that are necessary to operate the Debtor's practice. The Debtor requests the use of the cash collateral through the time the Secured Claimants are paid in full or until the Debtor emerges from chapter 11, whichever occurs first.

15. The Secured Claimants have not consented to the Debtor's use of cash collateral.

16. Unless authorized to use the cash received in the ordinary course of business, the Debtor will be unable to remain in business and provide the necessary services and care for the patients whose health and safety is dependent upon the ability to provide the necessary care. These expenditures also must be made to maintain compliance with the various regulatory and licensing agencies who have authority over the Debtors' affairs. In addition, the estate is administratively insolvent. Therefore, in the absence of the ability to spend and reorganize, all creditors will receive less than their allowed claims and most will receive no distribution at all.

17. As adequate protection for the use of the cash collateral, the Debtor shall, with the Court's permission, grant the Secured Claimants a continuing lien on cash and other receivables. In addition, by remaining a going concern the Debtor will be able to collect its existing accounts receivable and will be a benefit to the other creditors of the Debtor's estate. Finally, the Debtor will be able maintain operations and therefore

generate new and future receivables all of which will provide adequate protection for the use of its cash collateral.

**Argument and Citation of Authority**

The Debtor seeks authorization to use cash collateral pursuant to 11 U.S.C. § 363(c)(2)(B).

As adequate protection for the use of cash collateral is meant to ensure that any diminution in the value of the collateral is protected and offset by something of equal value. See *United Savings Ass'n v. Timbers of Inwood Forest Assocs, Ltd.*, 484 U.S. 372, 282 (1988). See also, *In re Delta Resources*, 54 F.3d 722, 729 (11<sup>th</sup> Cir. 1995); *In re Carbone Companies, Inc.*, 395 B.R. 631, 635 (Bankr.D. Ohio 2008) (“the test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral.”(citing *In re Gasel Transp. Lines, Inc.*, 326 B.R. 683 (6<sup>th</sup> Cir. BAP 2005)). For example, if it is anticipated that the use of cash collateral will diminish, then the secured creditor must be provided with something that can reasonably assure it that this loss will be made up in some way.

Adequate protection need take no particular form. Periodic cash payments to the secured creditor in the amount of the anticipated diminution is a common method.<sup>1</sup> Providing additional collateral aside from the cash collateral may be sufficient. See e.g., *In re YL West 87<sup>th</sup> Holdings I, LLC.*, 423 B.R. 421, 442 (Bankr.S.D.N.Y. 2010)(noting cases in which bankruptcy courts have considered continued building and improvements to real property as adequate protection were made in the context that the Debtor provided additional collateral as adequate protection.). Furthermore, the fact that cash collateral

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<sup>1</sup> In *Delta Resources*, the court approved monthly payments to an equipment lessor to compensate for depreciation of the equipment through use by the debtor during the pendency of the case.

will be used to generate new sales that will generate new receivables is the typical scenarios. So long as the court is satisfied that the debtor will not operate at a cash loss during the period of the use of cash collateral, such provisions are routinely accepted. See e.g., *In re Carbone Companies, supra*.

In this case, the cash collateral is the revenue from the services, whether they be surgical or non-surgical to patients and other receipts from the sale of ancillary products and services. The Debtor will use this revenue to the extent necessary to remain a going concern and to continue to generate receivables. As the Debtor's business stabilizes in chapter 11 it is reasonably anticipated that the Debtors will become more profitable thereby increasing the available cash to repay the Secured Claimants and the Debtors' other creditors. The use of this cash collateral will directly improve the Secured Claimants' collateral value by the increase in collections and the generation of new business, this is in excess of the cash currently on hand and the value of the receivables in a liquidation. The Debtor submits that this additional value-the generation of new accounts receivable and a higher recovery on current receivables constitutes adequate protection for the Lender's lien on the cash collateral. The Debtor also proposes to grant the Secured Claimants a continuing lien on cash to replace the cash being used in operations on the same priority, if any, that the Secured Claimants had prior to the Petition Date.

Notice of this motion was served in compliance with F.R.B.P. 4001(b), upon the Secured Claimants, the Office of the United States Trustee, the Internal Revenue Service, the persons and/or entities in the list of 20 largest unsecured creditors of the Debtor, as no unsecured creditors' committee has been appointed and the remaining creditors.

A proposed order authorizing the Debtor's use of cash collateral is attached as Exhibit A. The proposed budget through September 30, 2017 is attached as Exhibit B.

WHEREFORE, the Debtor respectfully requests that the Court enter an Order authorizing the Debtor's use of cash collateral consistent with the form of the attached proposed order and granting the Debtor the authority to use the cash collateral from August 31, 2017 through September 30, 2017 or such other time the Court may order and such other and further relief as may be proper and just.

***I Hereby Certify** that I am admitted to the Bar of the United States District Court for the Southern District of Florida and I am in compliance with the additional qualifications to practice set forth in Local Rule 2090-1(A).*

Dated this 16<sup>th</sup> day of August, 2017.

/s/ Nicholas B. Bangos  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished electronically via NEF to all users registered with the Court's CM/ECF service who are entitled to receive notice electronically and by U.S. Mail, First Class, on the 16<sup>th</sup> day of August, 2017 to the creditors so indicated on the attached service list.

/s/ Nicholas B. Bangos  
Attorney