

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

Case No. 17-23003-MAM  
Chapter 11

FLORIDA COSMETOGYNECOLOGY,  
PLLC,

Debtor-In-Possession.

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**MOTION TO EXTEND ORDER AUTHORIZING USE OF CASH COLLATERAL**

- Debtor is seeking authorization to continue to use the cash collateral of Merchant Cash and Capital, LLC, d/b/a Bizfi Funding.
- There is no provision for adequate protection as the cash collateral is not depreciating in value.
- The cash collateral is 9% of Debtor's proceeds and is used to operate its business.
- Debtor is requesting to use all of the cash collateral.
- Debtor has attached a Projected Budget (Exhibit "A") and Order (Exhibit "B") pursuant to the Court's Guidelines for Motion Seeking Authority to Use Cash Collateral and Motion Seeking Approval of Post-Petition Financing.

FLORIDA COSMETOGYNECOLOGY, PLLC (the "Debtor"), by and through undersigned counsel, files this *Motion to Extend Order Authorizing Use of Cash Collateral* (the "Motion"), and respectfully requests this Court to enter an order extending the authorization of the use of cash collateral to, and including, March 21, 2019, and, in support thereof, states as follows:

**Background**

1. On October 27, 2017, Debtor filed for voluntary relief under Chapter 11 of the

Bankruptcy Code.

2. On December 7, 2017, Debtor filed a Motion for Authority to Use Cash Collateral Nunc Pro Tunc to October 27, 2017 (DE 28), which was subsequently granted on an interim and final basis.

3. On February 2, 2018, the Court entered a Final Order Authorizing the Use of Cash Collateral to January 30, 2019 (DE 50).

4. On November 16, 2018, Debtor filed its Disclosure Statement (DE 79) and Plan of Reorganization (DE 80).

5. On January 24, 2019, a hearing on the Debtor's Disclosure Statement was held, which was approved, as amended (DE 86).

6. A hearing on the Debtor's Plan of Reorganization will be scheduled for March 21, 2019 at 1:30 p.m. (the "Confirmation Hearing").

7. The current order authorizing the use of cash collateral permits the use of cash collateral to January 30, 2019.

8. Counsel for Debtor has contacted Secured Creditor BizFi Funding (the "Secured Creditor") but received no response on whether Secured Creditor consents to an extension of the current order authorizing the use of cash collateral to the Confirmation Hearing.

9. Secured Creditor filed a proof of claim (no. 2-1), which is treated in Debtor's Plan of Reorganization.

10. Debtor respectfully requests an order extending the authorization of the use of cash collateral to, and including, the Confirmation Hearing.

#### **Legal Analysis**

11. Section 363 of the Bankruptcy Code provides for the use, sale or lease of property

in bankruptcy.

12. Pursuant to § 363(c)(2)(B) of the Bankruptcy Code, the Court may authorize the use of cash collateral only if the use accords with other provisions of § 363. *See In re George Ruggiere Chrysler-Plymouth, Inc. v. Ruggiere (In re George Ruggiere Chrysler-Plymouth, Inc.)* 727 F.2d 1017, 1019 (11th Cir. 1984).

13. The principal determination on authorizing the use of cash collateral is whether “adequate protection”, a term undefined by the Bankruptcy Code, is provided. *Id.*

14. Adequate protection payments are payments that are intended to protect against, and compensate for, a decrease in the value of a creditor’s collateral. *See In re Suncruz Casinos, LLC*, 298 B.R. 833 (Bankr. S.D. Fla. 2003).

15. Secured Creditor has an interest in property Debtor has and will acquire after the commencement of the case.

16. Pursuant to § 552(b)(1) of the Bankruptcy Code:

[I]f the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

17. Secured Creditor’s interest automatically attaches by force of § 552(b)(1) of the Bankruptcy Code. *See In re Barkley 3A Investors, Ltd.*, 175 B.R. 755 (Bankr. D. Kan. 1994).

18. Secured Creditor’s security interest, therefore, does not require adequate protection payments to protect against a decrease in the value of the collateral.

19. It is crucial that Debtor maintains access to the Cash Collateral to continue to

operate its business in the chapter 11 case.

20. Debtor requests use of the cash collateral to continue to operate.

21. Further, Debtor has proposed a Plan of Reorganization that treats the secured claim filed by Secured Creditor, and no objection has been filed to that claim.

**WHEREFORE** Debtor requests this Court to enter an order extending the authorization of the use of cash collateral to, and including, March 21, 2019, without a provision for adequate protection, and for any further relief this Court deems proper.

Dated: January 30, 2019

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By: /s/ Chad Van Horn, Esq.  
Chad Van Horn, Esq.  
Florida Bar No. 64500

**Florida Cosmetogynecology, PLLC (17-23003-MAM)**  
**Proposed Budget (February 2019 to March 2019)**

		Feb-19	Mar-19
<b>INCOME</b>	Total Receipts	\$26,400.00	\$26,400.00
<b>DISBURSEMENTS</b>	Advertising	\$0.00	\$0.00
	Bank Charges	\$0.00	\$0.00
	Contract Labor	\$0.00	\$0.00
	Fixed Asset Payments	\$0.00	\$0.00
	Insurance	\$815.00	\$815.00
	Inventory Payments	\$0.00	\$0.00
	Leases	\$0.00	\$0.00
	Manufacturing Supplies	\$0.00	\$0.00
	Office Supplies	\$440.00	\$440.00
	Payroll	\$3,650.00	\$3,650.00
	Professional Fees	\$0.00	\$0.00
	Rent	\$4,845.00	\$4,845.00
	Repairs & Maitenance	\$45.00	\$45.00
	Secured Creditor Payments	\$0.00	\$0.00
	Taxes Paid - Payroll	\$680.00	\$680.00
	Taxes Paid - Sale & Use	\$0.00	\$0.00
	Taxes Paid - Other	\$0.00	\$0.00
	Telephone	\$120.00	\$120.00
	Travel & Entertainment	\$430.00	\$430.00
	U.S. Trustee Quarterly Fees	\$0.00	\$0.00
	Utilities	\$545.00	\$545.00
	Vehicle Expenses	\$1,630.00	\$1,630.00
	Other Operating Expenses	\$7,455.00	\$7,455.00
	Officer Draw	\$4,540.00	\$4,540.00
	Gross Disbursements	\$25,195.00	\$25,195.00
	Receipts - Disbursements	\$1,205.00	\$1,205.00

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF FLORIDA  
FORT LAUDERDALE DIVISION**  
www.flsb.uscourts.gov

In re:

Case No.: 19-10417-RBR  
Chapter 11

BOCA HEALTH & FITNESS, LLC  
d/b/a Dale's Raw Foods,

Debtor-in-Possession.

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**ORDER EXTENDING AUTHORIZATION OF  
USE OF CASH COLLATERAL TO MARCH 21, 2019**

**THIS MATTER** came before the Court on DATE at 1:30 p.m. upon Debtor's *Motion to Extend Order Authorizing Use of Cash Collateral* (DE XX) (the "Motion"). The Court, having reviewed the Motion and heard argument of counsel, finds that good cause exists to grant the Motion.

**IT IS THEREFORE ORDERED:**

1. The Motion is **GRANTED**.
2. Debtor is authorized to use the cash collateral referenced in the Motion.

3. Subject to the provisions of this Order, Debtor is authorized to use cash collateral in accordance with the budget, a copy of which is attached hereto as Exhibit "A" (the "Projected Budget"), so long as the aggregate of all expenses of the Debtor do not exceed the amount in the Projected Budget for the Debtor by a ten (10%) percent variance ("Variance").

4. A copy of this Order shall be served on the Notice Parties within three (3) business days from entry.

5. There shall be a carve-out in the budget for the inclusion of fees due the Clerk of Court or the U.S. Trustee pursuant to 28 U.S.C. § 1930.

6. This Order is without prejudice to the rights of the parties to seek any further or different relief, or modification of this Interim Order, including, but not limited to, relief from the automatic stay.

7. Except as expressly provided herein, the rights, claims, and interests of the Debtor, any prepetition lender, and all other parties in interest are hereby reserved.

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Submitted by:  
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*(Chad Van Horn, Esq. is hereby directed to provide a conformed copy of this Order to all parties-in-interest and to file a Certificate of Service as to same.)*