

**IN THE UNITED STATES BANKRUPTCY COURT
 FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

IN RE:) BANKRUPTCY CASE NO. 17-20368-
) TPA
 Lyneil Mitchell Physical Therapy, P.C. d/b/a)
 Revolution Physical Therapy,) CHAPTER 11
)
 Debtor.)
 _____)
) Related to Doc. No. 13 & 16
 Lyneil Mitchell Physical Therapy, P.C. d/b/a)
 Revolution Physical Therapy,) Hearing Date & Time: February 16, 2017
) @ 3:30 p.m.
 Movant,)
)
 v.)
)
 Ameriserv Financial Bank,)
)
 Respondent.)

Interim
CONSENT ORDER AUTHORIZING USE OF CASH COLLATERAL

AND NOW, this 22nd day of February, 2017, upon consideration of the Debtor's Expedited Motion for Authorization to Use Cash Collateral (at Doc No. 16) and Emergency Motion for Entry of Order Authorizing Debtor to Pay Prepetition Wages, Salaries, Employee Benefits and Taxes (at Doc No. 13), and upon the consent and stipulation of the Debtor and Ameriserv Financial Bank ("Ameriserv"), the following is hereby STIPULATED AND AGREED TO BY AND BETWEEN THE DEBTOR AND AMERISERV:

1. On February 1, 2017 ("Filing Date"), the Debtor commenced the present Chapter 11 case under the United States Bankruptcy Code.

2. On February 9, 2017, the Debtor filed the present Emergency Motion for Entry of Order Authorizing Debtor to Pay Prepetition Wages, Salaries, Employee Benefits and Taxes at Doc No. 13 ("Motion to Pay Prepetition Wages").

3. On February 9, 2017, the Debtor also filed the present Expedited Motion for Authorization to Use Cash Collateral ("Cash Collateral Motion") at Doc No. 16.

4. An initial hearing is scheduled before the Court on February 16, 2017 addressing, *inter alia*, both the Motion to Pay Prepetition Wages and the Cash Collateral Motion.

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1334. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2). Venue of the Chapter 11 Case and the Motion in this District is proper pursuant to 28 U.S.C. §§1408 and 1409.

6. The Debtor is obligated to Ameriserv as follows:

(i) On or about October 6, 2014, Ameriserv extended to the Debtor a certain working capital Line of Credit revolving loan pursuant to the terms of a certain Business Loan Agreement dated October 6, 2014 by and between the Debtor and Ameriserv and evidenced by the terms of a certain Promissory Note dated October 6, 2014 executed and delivered by the Debtor in favor of Ameriserv in the original principal amount of \$250,000.00, as later amended by a certain Change in Terms Agreement dated December 23, 2015 (as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, collectively "\$250K LOC Note");

(ii) As security for all obligations, liabilities and indebtedness due and owing by the Debtor to Ameriserv under the \$250K LOC Note, the Debtor executed and delivered in favor of Ameriserv a certain Commercial Security Agreement dated October 6, 2014 (as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, "\$250K LOC Security Agreement"), pursuant to which Debtor granted to Ameriserv a blanket security interest in and to the Debtor's existing and future owned inventory, chattel paper, business assets, equipment, accounts, monies and general intangibles, and all products and proceeds thereof, as more fully defined therein (collectively hereinafter the "Cash Collateral");

(iii) Ameriserv perfected its security interest in the Cash Collateral by filing a UCC Financing Statement with the Pennsylvania Department of State on

October 6, 2014 at Financing Statement No. 2014100605814, later amended by Financing Statement No. 2015042704029 (as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, collectively the "Blanket Financing Statement") (hereinafter the "\$250K LOC Note," the "\$250K LOC Security Agreement," and the "Blanket Financing Statement" are collectively referred to as the "\$250K LOC Loan" unless denoted otherwise.);

(iv) On or about October 6, 2014, Ameriserv also extended to the Debtor a certain Term Loan pursuant to the terms of a certain Business Loan Agreement dated October 6, 2014 by and between the Debtor and Ameriserv and evidenced by the terms of a certain Promissory Note dated October 6, 2014 executed and delivered by the Debtor in favor of Ameriserv in the original principal amount of \$250,000.00, as later amended by a certain Change in Terms Agreement dated June 13, 2016 (as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, collectively "\$250K Term Note");

(v) As security for all obligations, liabilities and indebtedness due and owing by the Debtor to Ameriserv under the \$250K Term Note, the Debtor executed and delivered in favor of Ameriserv a certain Commercial Security Agreement dated October 6, 2014 (as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, "\$250K Term Security Agreement"), pursuant to which Debtor granted to Ameriserv a blanket security interest in and to all of the Debtor's equipment to be purchased and all products and proceeds thereof;

(vi) Ameriserv perfected its security interest in the Debtor's acquisitions of by filing the Blanket Financing Statement and by filing a UCC Financing Statement with the Pennsylvania Department of State on June 15, 2015 at Financing Statement No. 2015061704301, as well as UCC Financing Statement filed with the Pennsylvania Department of State on September 8, 2015 at Financing Statement No. 201509201049 (together and collectively as the same may be amended, modified, supplemented, extended, substituted and restated from time to time, the "Equipment Financing Statements.") (hereinafter the "\$250K Term Note," the "\$250K Term Security Agreement," the "Blanket Financing Statement," and the "Equipment Financing Statements" are collectively referred to as the "\$250K Term Loan" unless denoted otherwise.)

(The "\$250K LOC Loan" and "\$250K Term Loan" are collectively referred to hereinafter simply as "Loan Documents" unless separately denoted otherwise.)

(vii) As of February 1, 2017, the balance due and owing under the \$250K LOC Loan is \$287,341.75 itemized as follows:

(viii)

Principal	\$ 285,000.00
Interest to 2/1/17	\$ 1,777.29
Late Fees	<u>\$ 564.46</u>
TOTAL:	\$ 287,341.75 with accruing and additional interest from February 2, 2017, plus fees, charges and reasonable and incurred attorneys' fees and costs.

(ix) As of February 1, 2017, the balance due and owing under the \$250K Term Loan is \$233,017.75 itemized as follows:

Principal	\$ 229,198.89
Interest to 2/1/17	\$ 1,836.66
Late Fees	<u>\$ 1,982.20</u>
TOTAL:	\$ 233,017.75 with accruing and additional interest from February 2, 2017, plus fees, charges and reasonable and incurred attorneys' fees and costs.

GRAND TOTAL: \$ 520,359.50 (as of 2/1/17)

together with continuing and accruing interest on the unpaid principal balance under the terms of the Loan Documents and all other sums due and owing, as the case may be, including without limitation any late charges, default interest, prepayment charges, attorneys' fees and costs (hereinafter collectively referred to as the "Indebtedness"). The Debtor hereby acknowledges and agrees that it has no defenses, counterclaims or offsets of whatsoever nature or kind to the Indebtedness.

(x) The collateral, liens, security interests, pledges, assignments, and other encumbrances created by the Loan Documents (together with all amendments, extensions, modifications and restatements thereof) are and shall continue to be security and collateral for repayment of the Indebtedness, and the Debtor does hereby reaffirm, ratify and confirm in favor of Ameriserv all of the foregoing and any and all other collateral, liens, security interests, pledges, assignments, and other encumbrances of any kind and nature whatsoever as provided and described in the Loan Documents and/or this Order, as modified from time to time (collectively the "Collateral" and/or "Cash Collateral").

(xi) The Debtor has no claims, counterclaims, setoffs, actions or causes of action of any kind or nature whatsoever against Ameriserv or any of its directors, officers, employees, agents, attorneys, legal representatives, successor or assigns,

affiliates or related entities that directly or indirectly arise out of or are based upon or in any manner connected with any Prior Related Event. As used herein the term "Prior Related Event" means any transaction, event, circumstance, action, failure to act or occurrence of any sort or type, whether known or unknown, which occurred, existed, was taken, was permitted or begun prior to the execution of this Order and occurred, existed, was taken, was permitted or begun in accordance with pursuant to or by virtue of any of the terms of this Order or any of the Loan Documents (or prior iterations thereof), or which was related or connected in any manner, directly or indirectly, to the Loan Documents.

7. If the Debtor is to continue to operate under Chapter 11, the Debtor requires the use of the Collateral and Cash Collateral in order to effectively operate, as well as pay pre-petition wages to employees;

8. Ameriserv is willing to consent to the Debtor's use of the Collateral and Cash Collateral and pay pre-petition wages in order that the Debtor may continue to operate its business as a Chapter 11 Debtor engaged in business so long as it is provided adequate protection and any and all of its pre-petition security interest, whether or not referenced herein, is extended post-petition; and

9. Ameriserv is amenable to permitting the Debtor to have the use of the Collateral and the Cash Collateral, subject to the terms and conditions of this Order.

NOW THEREFORE, IT IS HEREBY ORDERED ADJUDGED AND DECREED THAT,

10. Pursuant to Section 364(c)(1), (c)(2) and (d)(1) of the Bankruptcy Code and Rule 4001(c) of the Federal Rules of Bankruptcy Procedure, the Debtor is authorized, on a final basis, to use the Collateral and Cash Collateral of Ameriserv upon the terms and conditions set forth in this Order in compliance with and for the purposes of operation of its business only.

11. The Debtor shall make monthly "interest only" adequate protection payments to Ameriserv as follows:

- a.) Regarding the \$250K Term Loan, monthly payments in the amount of interest only for a period of three (3) consecutive months for January, February and March of 2017. Commencing with the monthly payment due April of 2017, the monthly payment amount shall thereafter revert to the unmodified original contractual payments due under the \$250K Term Loan in the monthly principal and interest amount of \$3,964.59 with an unmodified maturity date, unless the monthly payment amounts are otherwise modified in accordance with a Court approved Chapter 11 Plan.
- b.) Regarding the \$250K LOC Loan, unmodified monthly interest payments as provided for under the \$250K Loan, unless otherwise modified in accordance with a Court approved Chapter 11 Plan.

12. Commencing upon the entry of this Order, in addition to any monthly operating reports required to be publicly filed with the Court, the Debtor shall provide Ameriserv with the financial records and financial statements and information as and when required under the Loan Documents, as well as all monthly and quarterly financial statements, balance sheets, income statements, accounts receivable and accounts payable ledgers and such other additional internal financial information and reports, as Ameriserv shall reasonably require from time to time. Notwithstanding the foregoing, upon entry of this Order, Debtor shall provide to Ameriserv the income statement, balance sheet, statement of retained earnings, statement of cash flow of Debtor for fiscal month ending January 31, 2017 and continuing on the fifteenth (15th) day of each calendar month thereafter, the income statements, balance sheets, statements of retained earnings, statements of cash flow of Debtor for prior fiscal month, internally prepared by Debtor.

13. In addition to the Collateral and Cash Collateral granted as security to Ameriserv

which existed on the Filing Date, Ameriserv is granted a security interest in and to all of the Debtor's post-petition assets, including the Collateral and Cash Collateral, to the same extent and priority as existed pre-petition. The post-petition security interest shall not require the filing of any additional UCC financing statements and shall be retroactive to the Filing Date.

14. The Debtor agrees to permit the employees or agents of Ameriserv at any reasonable time within ten (10) days of this Order to enter and examine, value and inspect all equipment, assets and inventory in which the Debtor has any ownership interest.

15. Ameriserv may seek a super-priority administrative claim pursuant to 11 U.S.C. §507(b) to the extent that the adequate protection granted herein provides to be inadequate.

16. The Debtor may use Cash Collateral only in the normal course of the Debtor's business activities to make those payments pursuant to the budgets and/or monthly financial reports filed with this Honorable Court.

17. The Debtor shall continue to observe and perform all of the terms, conditions, covenants and agreements contained in the Loan Documents, including without limitation all financial and audit reporting requirements.

18. The Debtor shall maintain adequate insurance coverage in an amount acceptable to Ameriserv on the Collateral and Cash Collateral subject to Ameriserv's security interest and shall list Ameriserv as a lender's loss payable under an appropriate endorsement to the extent and priority of its security interest. Upon request, the Debtor shall forthwith provide Ameriserv with evidence of such insurance.

19. Any one or more of the following events shall constitute and "Event of Default" under this Order:

(a.) The failure of Debtor to observe or perform any term, condition, covenant or agreement contained in this Cash Collateral Order and/or Loan Documents which is not cured within ten (10) days after written notice from Ameriserv to Debtor; or

(b.) The conversion to another Chapter or the filing of any application or motion by Debtor seeking conversion or dismissal, unless consented to by Ameriserv; or

(c.) The failure of Debtor to file a Plan of Reorganization within two (2) months of the date of the entry of this Order, unless and extension is consented to by Ameriserv; or

(d.) The entry of any final order by this Bankruptcy Court or the filing of a request by Debtor for entry of an order appointing a Trustee in Debtor's Bankruptcy or appointing an examiner in such case with the authority to perform the duties of a Trustee, unless consented to by Ameriserv.

20. Upon the occurrence of any Event of Default hereunder, Ameriserv's authorization to Debtor to use the Collateral and Cash Collateral shall automatically terminate without further action or notice from Ameriserv or the Bankruptcy Court, unless otherwise ordered by the Bankruptcy Court.

21. This Cash Collateral Order is sufficient and conclusive evidence of Ameriserv's replacement liens in the Debtor's assets, without the necessity of filing, recording, or serving any financing statements or other documents which may otherwise be required under federal or state law in any jurisdiction, or the taking of any other action to validate or perfect the security interest and liens granted to Ameriserv herein, and such liens, security interests, rights and protections granted herein shall continue to remain in effect until and unless otherwise modified by the Bankruptcy Court or until the Indebtedness due to Ameriserv is paid in full.

22. Final hearing on
this Order set for
March 9, 2017 at
same time as hearing
on attorney's fee order

BY THE COURT:

Thomas P. Agresti
United States Bankruptcy Judge

AGREED AND CONSENTED TO BY:

/s/ David W. Raphael

David W. Raphael, Esq.

On behalf of Respondent Ameriserv Financial Bank

/s/ Brian Thompson

Brian Thompson, Esq.

On behalf of Debtor Lyneil Mitchell Physical
Therapy, P.C. d/b/a Revolution Physical Therapy