

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION**

<b>IN RE:</b>	§	
	§	
<b>AJ HOME HEALTH SERVICES, INC.,</b>	§	<b>CASE NO. 17-42820</b>
	§	<b>(Chapter 11)</b>
<b>DEBTOR.</b>	§	

**AGREED ORDER FOR USE OF CASH COLLATERAL PURSUANT TO SECTION 363  
OF THE BANKRUPTCY CODE AND PROVIDING PARTIAL ADEQUATE  
PROTECTION AND GRANTING LIENS AND SECURITY INTERESTS**

**THIS MATTER** comes before the Court upon the *Emergency Motion for Order Authorizing the Interim and Final Use of Alleged Cash Collateral* [Docket # 8] (the “Motion”) filed on December 26, 2017 AJ Home Health Services, Inc., as debtor and debtor in possession (“Debtor”), and upon the consent of the Internal Revenue Service (the "IRS") to the Debtor's use of Cash Collateral (defined below). Based upon (i) any stipulations and agreement upon terms for the Debtor’s use of Cash Collateral, as may be set forth herein below, (ii) the Motion, (iii) the evidence presented, and (iv) the representations of the Debtor, the Court hereby approves and adopts said statements, stipulations and agreements as findings of fact and conclusions of law, and **FINDS** and **CONCLUDES** as follows:

**JURISDICTION AND NOTICE**

A. This Court has jurisdiction over this proceeding, the parties, and the property of the Debtor’s estate pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

B. Under the circumstances, the Debtor has provided sufficient and adequate notice of the Motion and the hearing on the Motion to all creditors and other parties in interest entitled to such notice pursuant to Federal Rules of Bankruptcy Procedure (“Bankruptcy Rule”) 2002 and

9006, and as required by Sections 102, 361, 362, and 363 of the Bankruptcy Code (defined below). Other than the notice provided for by this Order, no further notice of the Motion or the entry of this Order is necessary or required.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

C. On December 22, 2017, (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor is an operating a business that provides home health services with approximately 230 employees. The Debtor's primary income is from insurance companies and its primary expense is payroll for its home healthcare staff. The Debtor is currently operating its business and managing its property as a debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has been approved and appointed.

D. The Debtor asserts that the use of Cash Collateral (as defined herein) is necessary for the Debtor to continue to operate its business. Without the use of Cash Collateral, the Debtor asserts that it will not be able to pay post-petition operating expenses and obtain goods and services needed to carry on its business in a manner that will avoid irreparable harm to the Debtor's estate. At this time, the Debtor asserts that its ability to use Cash Collateral is necessary to preserve and maintain the going concern value of the Debtor's estate.

E. Pursuant to its Proof of Claim, the IRS asserts that the Debtor is indebted as follows:

- (i) A secured claim in the amount of \$102,727.07 for WT FICA taxes for 2011 and 2012;
- (ii) An unsecured priority claim of \$1,010,328.46 for various taxes for 2012-2017; and

(iii) A general unsecured claim of \$305,887.34 for penalties;

(collectively, the “IRS Indebtedness”). The Debtor asserts that some of these amounts have already been paid and the Debtor also generally reserves the right to contest the IRS Indebtedness for any reason .

F. The alleged liabilities evidenced by the IRS Indebtedness, including interest and penalties, are collectively identified as the “Prepetition Indebtedness.”

G. The Debtor seeks authorization to use Cash Collateral (as defined herein) to pay its ordinary and necessary operating expenses (the “Expenses”) set forth in the budget attached hereto as **Exhibit A** (the “Budget”) for the period of the date of the entry of this Order through and including June 1, 2018 (the “Termination Date”) pursuant to the terms of this Order. This Order is without prejudice to any request by the Debtor to use cash collateral past the Termination Date, as well as any objections thereto by the IRS.

H. Section 363(a) of the Bankruptcy Code defines “cash collateral” to mean 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 subject to a security interest as provided in section 552(b) of the Bankruptcy Code, whether arising before or after the commencement of the case under the Bankruptcy Code.

I. Section 363(c)(2) of the Bankruptcy Code provides that a debtor may not use, sell or lease “cash collateral” unless (i) each entity that has an interest in such cash collateral consents; or (ii) the Court, after notice and hearing, authorizes the use of the cash collateral.

J. The Debtor believes the Secured Creditor asserts that the Collateral<sup>1</sup>, together with the proceeds and revenues thereof, constitute Cash Collateral as that term is defined in Section 363(a) of the Bankruptcy Code (the “Cash Collateral”).

K. This Court concludes that entry of this Order is in the best interest of the Debtor, its estate, and the estate’s creditors, as its implementation will, *inter alia*, allow for the continued operation and preservation of the going concern value of the Debtor’s business.

L. To the extent any findings of fact may constitute conclusions of law, and *vice versa*, they are hereby deemed as such.

Based upon the above findings and conclusions, the Court, having reviewed the Motion, considering the evidence presented and representations of the Debtor’s and the IRS’s counsel, and otherwise being fully advised, hereby **ORDERS** as follows:

1. **Final Order.** This Order shall be considered a final cash collateral order, and shall be binding upon all parties and upon all subsequently appointed court officers, including any trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code.

2. **Good Cause.** Good cause has been shown for the entry of this Order. The entry of this Order is in the best interests of the Debtor, its creditors, and the bankruptcy estate. The terms and conditions of the use of Cash Collateral and the security interests, liens, rights, and priorities granted to the IRS hereunder is fair and appropriate under the circumstances.

3. **DIP Accounts.** The Debtor shall maintain a debtor in possession (“DIP”) account(s), which shall contain all operating revenues and any other source of cash constituting Cash Collateral, which is generated by and is attributable to the Collateral (the “DIP Operating Account”).

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<sup>1</sup> All capitalized terms shall have the meaning attributed to those terms within the Motion unless expressly defined within this order.

4. **Terms of Cash Collateral Use.** The Debtor is hereby authorized to use the Cash Collateral strictly in accordance with the terms of the Budget and this Order. The Debtor shall not incur expenses for any category of expenses in the Budget for an amount that exceeds the budgeted amount for such category by more than 5% without the prior written approval of the IRS. Additionally, the Debtor shall not exceed the aggregate of all the categories in the Budget by more than 5% without the prior written approval of the IRS.

5. The use of Cash Collateral under this Order shall continue after the Termination Date if the Debtor submits additional monthly budgets to the IRS for its approval (the "Subsequent Budgets"), and such Subsequent Budgets are approved by the IRS. The Subsequent Budgets shall detail the Debtor's proposed continued use of Cash Collateral to pay its ordinary operating expenses. The Subsequent Budgets, if approved by the IRS, shall be incorporated herein, and subject to the terms of this Order.

6. In addition to the items on the Budget, the Debtor may pay to the U.S. Trustee and to the Bankruptcy Clerk any fees assessed by either, and any fees and expenses included in the Budgets and allowed by the Court to (i) the Debtor's counsel, (ii) counsel for any official creditors' committee appointed by the U.S. Trustee, and (iii) any healthcare ombudsman appointed under section 333 of the Bankruptcy Code.

7. The Debtor is hereby authorized to enter into all agreements pursuant to the terms of this Order necessary to allow the Debtor to use Cash Collateral subject to the terms of this Order in the amounts and for the expenses set forth on the Budget and the Subsequent Budgets. The Debtor is authorized to collect and receive all accounts receivable and other operating revenues.

8. Reasonable and necessary repairs to the Debtor's property that do not appear on the Budget may be made with the IRS's prior consent and approval. In connection with any such repairs, the Debtor is required to provide the IRS repair cost estimates, and proof of payments.

9. Taxes. The Debtor shall remain current on all post-petition tax payments and reporting obligations, including, but not limited to, all federal trust fund taxes. The Debtor shall provide copies of all tax returns, instruments used to remit tax payments, and all supporting documentation to counsel for the IRS and the U.S. Trustee within three (3) business days of a request for such documents from the Debtor. The Debtor verifies to the best of its knowledge and belief that all payments to all taxing authorities with respect to its property are current at the present time except as otherwise disclosed in the Debtor's Schedules and Statement of Financial Affairs that have been or will be filed with the Bankruptcy Court.

10. As to the IRS:

- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll taxes. To be current, the Debtor must make the payment within 3 business days of each payroll period;
- The Debtor must stay current on payment via EFTPS of all of its post-petition payroll deposits. To be current, the Debtor must make the payment within 3 business days of each payroll period;
- The Debtor must timely file all of its post-petition employment tax returns;
- The Debtor must timely file all federal tax returns (subject to a one-time only proper and timely extension filing on the income tax return) and pay all post-petition federal taxes;
- The Debtor must provide proof of Federal Trust Fund Deposits within three (3) days of their deposit to Lorraine Washington at the IRS via facsimile at 888-882-4485 and to Ruth Yeager, IRS Counsel, via facsimile at 903/590-1436;
- All tax deposits with the IRS shall be made through the IRS' EFTPS system; and
- The Debtor shall allow the inspection of the collateral and the Debtor's books and records at any time upon reasonable notice from the IRS.

- As adequate protection for its secured claim, the Debtor shall pay to the IRS \$1,500.00 by February 20, 2018, \$3,000.00 by March 20, 2018, \$5,000.00 by April 20, 2018, and thereafter \$8,000.00 per month on the 20<sup>th</sup> day of the month thereafter. This payment shall continue each month until (i) termination of this Order by its terms; (ii) further order of this Court; or (iii) confirmation of any plan of reorganization in this proceeding. All payments made under this paragraph shall be sent to the IRS through Lorraine Washington, 1100 Commerce St., MC 5027 DAL, Dallas, Texas 75242, and proof of each payment under this paragraph shall also be faxed to Lorraine Washington, IRS, at 888-882-4485 on the day each payment is due. All payments made under this paragraph shall be applied toward the payment of the IRS's secured claim.

11. If the Debtor fails to meet the requirements of this Order as they relate to the IRS, then the IRS will give one written notice of default to Debtor and to Debtor's counsel with opportunity to cure such default by the Debtor, and, if the Debtor fails to cure the default within 5 business days after notice of default is mailed and/or transmitted by facsimile, then IRS may file a declaration with the Court as evidence of the default by the Debtor, then Debtor cannot use any further cash collateral without an order from the Court or consent of the IRS.

12. **Adequate Protection – Replacement Liens.** As partial adequate protection for the Debtor's use of Cash Collateral, the Secured Creditors hereby are granted, effective as of the Petition Date, valid, binding, enforceable, and automatically perfected liens (the "Replacement Liens") co-extensive with their pre-petition liens, in all currently owned or hereafter acquired property and assets of the Debtor, of the same kind or nature they had prepetition, whether real or personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds<sup>2</sup> and products. This additional adequate protection is being given to the extent of any decrease in value of the property and Cash Collateral as a result of the Debtor's post-petition use. The Replacement Liens granted pursuant to this Order shall have the same priority as any existing pre-petition liens. The Debtor shall execute and deliver to the Secured Creditors,

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<sup>2</sup> For purposes of this Order, "proceeds" of any of the Collateral shall mean "Proceeds," as defined in the Uniform Commercial Code, of such collateral.

if applicable, all such agreements, financing statements, instruments and other documents as the Secured Creditors may reasonably request to evidence, confirm, validate or perfect the liens granted pursuant hereto.

13. To the extent that 11 U.S.C. § 362, or any applicable non bankruptcy law otherwise would restrict the granting, scope, enforceability, attachment, or perfection of the liens and security interests authorized or created in this Order, or otherwise would impose filing or registration requirements with respect to such replacement liens, such law is hereby preempted to the maximum extent permitted by the Bankruptcy Code, other applicable federal law, and the judicial power of the United States Bankruptcy Court. The liens and interests granted by and through this Order do not require filing, recording, or perfecting and shall be binding and fully enforceable by the entry of this Order; however, the Debtor shall execute any additional instruments required by the Secured Creditors to evidence the post-petition liens and security interests granted herein. Nothing in this Order shall be construed to grant any Secured Creditor's liens senior to pre- and/or post-petition *ad valorem* property tax liens against the Debtor's property.

14. Nothing herein shall be construed as granting any liens on Chapter 5 causes of action or on any other property in which the Secured Creditors do not already have pre-petition liens.

15. **Reporting and Accounting Requirement.** During the period governed by this Order, the Debtor shall maintain an accounting of all funds deposited into the DIP Account. The Debtor shall serve any reports required by the United States Trustee, including all monthly operating reports for the prior month's operations, on the IRS. Such service shall be made on the IRS by serving their respective counsel *via* email.

16. **Access to Information.** At a mutually agreeable time, no later than five (5) business days after Secured Creditor makes a request, the Debtor shall permit representatives, agents, and/or employees of the requesting Secured Creditor to visit, inspect, have reasonable access to and consult with, as the case may be: (a) the Debtor's books and records, including any held by a prior or current property management company; (b) the personnel and/or agents of the Debtor (including any applicable management company) who are familiar with the Debtor's books and records or the information set forth therein; (c) the Debtor's property; and (d) such other information as the Secured Creditor may reasonably request. The Debtor and its representatives, agents, and/or employees shall cooperate and consult with, and provide to such representatives, agents, and/or employees of the Secured Creditor all such information as it may reasonably request.

17. **Proof of Insurance.** The Debtor shall deliver any requesting Secured Creditor proof that the Collateral is adequately insured against risk of loss. The Debtor shall maintain insurance throughout the Debtor's bankruptcy case unless otherwise ordered by the Court.

18. **Termination and Defaults Under the Order.** Unless specifically waived in writing by the IRS (which waiver shall not be implied from any action, inaction, course of conduct or acquiescence by the IRS), the Debtor's right and authority to use Cash Collateral shall immediately terminate upon the occurrence of any of the following (each, an "Event of Default"):

- a. Five (5) business-days following either of the IRS's delivery of a notice (either written or *via* e-mail) of a breach by the Debtor of any obligations under this Order, which breach remains uncured at the end of such five (5) calendar-day notice period;
- b. Conversion of the Debtor's chapter 11 case to a case under chapter 7 of the Bankruptcy Code;
- c. The appointment of a chapter 11 trustee under the Bankruptcy Code;

- d. The entry of any order modifying, reversing, revoking, staying, rescinding, vacating or amending this Order without the express prior written consent of the IRS (and no such consent shall be implied from any action, inaction, course of conduct or acquiescence by the IRS);
- e. The lifting of the automatic stay for any other party other than the IRS authorizing such party to proceed directly against the Cash Collateral, or entry of a final order by the bankruptcy court authorizing any party to foreclose or otherwise enforce any lien or other right such other party may have in and to the Property and/or any part of the Collateral.

19. Unless otherwise agreed to in writing by the IRS, the Debtor's right to use Cash Collateral shall expire on the earlier of: (a) the Termination Date, unless extended by the terms of this Order; (b) an Event of Default (as defined herein); or (c) the Court entering a subsequent order terminating the Debtor's rights to use Cash Collateral.

20. **Reservations of Rights.** Subject to and notwithstanding anything to the contrary in this Order:

- a. Entry of this Order is without prejudice to any and all rights, remedies and claims that the Secured Creditor and the Debtor may have against each other or third parties, and does not bar or limit the Secured Creditor or the Debtor from seeking further or additional relief including, *inter alia*, seeking additional adequate protection and seeking to terminate or modify the automatic stay;
- b. The Secured Creditor reserve any and all rights to object to the entry of any subsequent order that substantially alters the terms and provisions of this Order;
- c. No act committed or action taken by any of the Secured Creditor under this Order shall be used, construed, or deemed to hold the Secured Creditor to be in control of the Debtor, or the governance, management, or operations of the Debtor for any purpose without limitation.

21. **Binding Effect of Order.** Subject to all reservations of rights in this Order, the provisions of this Order shall inure to the benefit of the Debtor and any Secured Creditor, and shall be binding upon the Debtor, the Secured Creditor, and their respective successors and assigns, including any trustee, agent, administrator or other fiduciary hereafter appointed as legal

representative of the Debtor, or with respect to property of the Debtor's estate, whether under Chapter 11 of the Bankruptcy Code or any subsequent Chapter 7 case, and shall also be binding upon all creditors of the Debtor and all other parties in interest, except as expressly set forth herein.

22. **Subsequent Modification of Order.** If any or all of the provisions of this Order are hereafter modified, vacated or stayed, such modification, vacation or stay shall not affect the validity of any obligation, indebtedness or liability incurred by the Debtor to any Secured Creditor from the Petition Date through the effective date of such modification, vacation or stay, or the validity or enforceability of any security interest, lien or priority authorized or created by this Order.

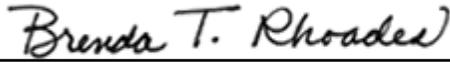
23. **Effective Date and Termination Date.** This Order shall be effective as of the Petition Date, upon signature by the Court, and may be relied upon by the Debtor and any Secured Creditors. The Debtor's authority to use Cash Collateral under this Order expires at midnight 12:00 a.m. (CST) on the Termination Date, unless extended as provided in this Order and/or by further order of the Court. This Order is without prejudice to the parties' rights to request a hearing regarding the Debtor's current or future use of cash collateral.

24. **Additional Provisions.** The Debtor is authorized and shall pay QSLWM \$5,000.00 per month for February, March, and April 2018, and thereafter \$2,000.00 per month until the case is dismissed, converted, or a plan is confirmed. The Debtor shall make such payments by the 20<sup>th</sup> day of the month and QLSWM shall hold such funds in trust as additional retainer funds pending further Order of this Court.

25. **Notice under this Order:** Any notice, objection, report, or other document required to be given under this Order shall be made, and shall be deemed given upon its transmission, *via* email as follows:

- Debtor: to [Hudson](mailto:hjobe@qslwm.com) M. Jobe at [hjobe@qslwm.com](mailto:hjobe@qslwm.com)
- To the IRS: to Ruth Harris Yeager at [Ruth.Yeager@usdoj.gov](mailto:Ruth.Yeager@usdoj.gov);

Signed on 2/13/2018

 SR  
\_\_\_\_\_  
HONORABLE BRENDA T. RHOADES,  
UNITED STATES BANKRUPTCY JUDGE

AGREED TO IN FORM AND SUBSTANCE:

AGREED:

QUILLING, SELANDER, LOWNDS,  
WINSLETT & MOSER, P.C.  
2001 Bryan Street, Suite 1800  
Dallas, Texas 75201  
(214) 880-1805 (Telephone)  
(214) 871-2111 (Fax)

By: /s/ Hudson M. Jobe

Christopher J. Moser  
State Bar No. 14572500  
Hudson M. Jobe  
State Bar No. 24041189  
S. Kyle Woodard  
State Bar No. 24102661

ATTORNEYS FOR DEBTOR

ALAN R. JACKSON  
U.S. ATTORNEY  
110 N. College Street, Suite 700  
Tyler, Texas 75702  
(903) 590-1400 (Telephone)  
(903) 590-1436 (Fax)  
[ruth.yeager@usdoj.gov](mailto:ruth.yeager@usdoj.gov) (Email)

By: /s/Ruth Yeager  
Ruth Yeager

ATTORNEYS FOR THE UNITED STATES

**Exhibit A**

<b>AJ HOME HEALTH SERVICES, INC.</b>		
	<b>Budget</b>	<b>Notes</b>
<b>Revenue</b>	<b>\$291,000.00</b>	
<b>Gross Income</b>		
Business Expenses		
Accounting	\$400.00	
Auto Expenses - Insurance	\$350.00	
Background Checks	\$90.00	
Computer Service	\$200.00	
Continuing Education	\$100.00	
Contract Services	\$4,280.00	1
Gasoline	\$300.00	
Professional Services - Legal	\$1,000.00	
Meal	\$150.00	
Office Supplies	\$500.00	
Parking and Tolls	\$50.00	
Postage	\$50.00	2
Rent	\$2,200.00	
Maintenance and Liability Insurance	\$350.00	
Salaries and Wages		
General	\$200,000.00	
Antonia	\$3,600.00	
Jude	\$7,200.00	
Federal Taxes - FICA		
Federal Taxes - Medicare		
Total Federal Taxes	\$50,000.00	
TWC	\$3,000.00	
Security and Alarm	\$100.00	
Software	\$800.00	
Utilities (Electricity)	\$500.00	
Utilities (Telephone and Cable)	\$450.00	
Waste	\$100.00	
Total Business Expenses	\$275,770.00	
Total Net Income (Loss)	\$15,230.00	

1 - \$4280 for February, \$3,280 for  
March 2018 and forward  
2- Est. cost for mailing 2017 W2