

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

IN RE:	§	
	§	
REMARKABLE HEALTHCARE OF CARROLLTON, LP, et al.,	§	CASE NO. 18-40295-BTR
	§	Chapter 11
Debtors.	§	Jointly Administered
	§	

**AGREED ORDER REGARDING DEBTORS' SECOND MOTION
PURSUANT TO 11 U.S.C. § 363 FOR FINAL ORDER AUTHORIZING
THE CONTINUED USE OF CASH COLLATERAL
AND GRANTING ADEQUATE PROTECTION**

Upon consideration of the *Debtors' Second Motion Pursuant to 11 U.S.C. § 363 for Final Order Authorizing the Continued Use of Cash Collateral and Granting Adequate Protection* [Docket No. 171] (the "Motion") filed by Remarkable Healthcare of Carrollton, LP, Remarkable Healthcare of Dallas, LP, Remarkable Healthcare of Fort Worth, LP, Remarkable Healthcare of Seguin, LP, and Remarkable Healthcare, LLC on September 12, 2018 (collectively, the "Debtors"), the Court finds that all required parties have been served with notice thereof and the Debtors and Comerica Bank have reached an agreement on the continued use of cash collateral as evidenced by their representations during the hearing on the Motion. Accordingly, the Court finds that just cause exists for entry of the following order.

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

1. The Court's prior *Final Order Authorizing the Debtors to Use Cash Collateral and Providing for Adequate Protection* (the "Final Order") entered on April 20, 2018 [Dkt. 82] remains in full force and effect, except that such Order is hereby modified solely as follows:

a. The Debtors' authorization to use Cash Collateral to the extent set forth in the Final Order is hereby extended through and including November 30, 2018 (the "Termination Date").

b. The term "Budget," as defined under Paragraph 1 of the Final Order, is hereby modified to include and refer to the budget attached hereto.¹

c. The first sentence of Paragraph 2 of the Final Order is modified and replaced as follows:

Cash Disbursements Testing: The Debtors shall not incur cash disbursements nor use Cash Collateral in an amount that exceeds by more than ten percent (10%) of the total cash disbursements provided in the Budget (the "Permitted Variance"), pursuant to the testing set forth below, without first obtaining Comerica's written consent; provided, however, that expenses and disbursements related to facility capital repairs that are paid with insurance proceeds shall not be included in calculating such variance.² Debtors shall identify any disbursements that are paid with insurance proceeds in the weekly vendor transaction list and also specifically identify the receipt of any insurance proceeds as a note in the Standing Agenda Topics.

d. Paragraph 5, footnote 3 of the Final Order is modified and replaced as follows: "As of **September 19, 2018**, the interest due and owing under the Prepetition Facility Documents is in the amount of **\$35,525** per month."³

e. The first sentence of Paragraph 7 of the Final Order is modified and replaced as follows:

Kinser Transfers. Nancy Kinser ("Kinser") agrees to pay to the Debtors the sum of \$80,000.00, which amount was incorrectly paid postpetition to Kinser for prepetition debt (the "Kinser Transfers"),⁴ as follows: (i) within

¹ The budget attached hereto is a summary of the detailed cash flow budget provided by the Debtors and agreed to by Comerica Bank for the period October 1, 2018 through November 30, 2018.

² The cost of such repairs is typically covered by the Debtors' insurance policies and not funded by operations.

³ The increase of \$850.58 in the amount of the Interest Payment was not included in the payment made by the Debtors on September 25, 2018; this amount of \$850.58 shall be added to the Debtors' October Interest Payment.

⁴ Prior to the Petition Date, on January 29, 2018, check numbers 2865 and 2869, each in the amount of \$40,000.00, from the Regions Bank account of Remarkable Healthcare, LLC, were written to Nancy Kinser. Both checks were paid postpetition, on March 20, 2018.

ten (10) days of this Final Order, Kinser agrees to pay the sum of \$40,000.00 to the Debtors; and (ii) on the 30th day of each subsequent month, commencing in May 2018 and continuing through December 2018, Kinser agrees to pay the Debtors the sum of \$5,000.00.

f. Paragraph 15, subsection (e) of the Final Order is hereby modified and replaced as follows: “if the consolidated cash balance, according to any report provided under Paragraph 23 below, is actually or projected to be less than **\$200,000.00** on any day and Comerica does not consent in writing to such variation from the Budget or Subsequent Budgets.”

g. Paragraph 19 of the Final Order is hereby modified and replaced as follows:

Segregation of Cash Collateral. All of the Debtors’ cash and all Cash Collateral shall be deposited and held in the Debtors’ DIP account(s) at Regions Bank (the “DIP Account(s)”), *provided that* each of the DIP Account(s) not at Comerica shall be subject to a deposit account control agreement (a “DACA”) in favor of Comerica. The Debtors have delivered a DACA for each of such DIP Account(s). The Debtors are prohibited from withdrawing or using funds from the DIP Account(s) except as provided for in the Budget, this Final Order, and any further order of the Court.

h. Paragraph 23, subsection (d) of the Final Order is hereby modified and replaced as follows: “commencing on March 14, 2018, monthly accounts receivable and accounts payable aging reports; as well as the consolidated borrowing base certificate, on a monthly basis, signed by an officer of the Debtors.”

i. The last sentence of Paragraph 23 of the Final Order is hereby modified and replaced as follows:

In the event that any such reporting requirement is not received by Comerica and is not cured within three (3) business days after emailed notice of the default, the Debtors’ authorization to continue using Cash Collateral will immediately terminate pursuant to Paragraph 15(a) of this Final Order, without the need for a further order from this Court.

j. Paragraph 24 is hereby modified and replaced as follows:

Parties to Reporting. All information that the Debtors are obligated to send to Comerica under this Final Order shall be sent by email to: (a) Comerica's counsel; (b) Comerica's representative, David Jones, (c) Nick Zaccagnini and David Gorelick of Huron (d) Howard Spector, counsel for Montgomery Capital Partners I, LP, (e) Jason Searcy, counsel for the Committee, and (f) Thomas Whalen and Zachary Cohen with Griffin Financial Group, LLC, with a copy to Debtors' counsel, Bryan Assink. The Debtors agree that Huron representatives may contact Laurie Beth McPike directly, and Comerica may contact her directly via email, with questions regarding the Debtors' operations and the Debtors shall respond to those questions as promptly as possible (but no later than **72 hours** after such questions are sent).

2. Comerica is hereby authorized to withdraw the funds held in escrow by Comerica, in account number 1881574816,⁵ and apply such funds toward the principal balance of the Prepetition Facility Obligations; provided, however, that such funds shall be applied only toward the principal balance of Debtors' Prepetition Facility Obligations, and not to interest, fees, expenses, or other costs incurred in connection with Debtors' Prepetition Facility Obligations.

3. To the extent any provision in this Order conflicts with a provision in the Final Order, this Order controls.

Signed on 9/27/2018



SR
HONORABLE BRENDA T. RHOADES,
UNITED STATES BANKRUPTCY JUDGE

⁵ Prior to the filing of these Bankruptcy Cases, the Debtors pledged \$30,000.00 to be held in escrow by Comerica in connection with a forbearance under the Prepetition Facility.

AGREED AS TO FORM AND SUBSTANCE:

/s/ Bryan C. Assink

Mark A. Castillo
Texas State Bar No. 24027795
Bryan C. Assink
Texas State Bar No. 24089009
CURTIS | CASTILLO PC
901 Main Street, Suite 6515
Dallas, Texas 75202
Telephone: 214.752.2222
Facsimile: 214.752.0709
Email: mcastillo@curtislaw.net
Email: bassink@curtislaw.net

COUNSEL FOR DEBTORS AND
DEBTORS-IN-POSSESSION

/s/ Jason A. Enright

Joseph J. Wielebinski
Texas State Bar No. 21432400
Jason A. Enright
Texas State Bar No. 24087475
WINSTEAD PC
500 Winstead Building
2728 N. Harwood Street
Dallas, Texas 75201
(214) 745-5400 (Telephone)
(214) 745-5390 (Facsimile)
Email: jwielebinski@winstead.com
Email: jenright@winstead.com

ATTORNEYS FOR COMERICA BANK

Exhibit A

Remarkable Healthcare - Consolidated Cash Flow Budget (10/1/2018 - 11/30/2018)											
Actual/Projected Week (Friday to Thursday)	Projected Partial Week 1	Projected Week 2	Projected Week 3	Projected Week 4	Projected Week 5	Projected Week 6	Projected Week 7	Projected Week 8	Projected Week 9	Projected Partial Week 10	Projected Weeks 1 - 10
Week Beginning:	10/1/2018	10/5/2018	10/12/2018	10/19/2018	10/26/2018	11/2/2018	11/9/2018	11/16/2018	11/23/2018	11/30/2018	10/1/2018
Week Ending:	10/4/2018	10/11/2018	10/18/2018	10/25/2018	11/1/2018	11/8/2018	11/15/2018	11/22/2018	11/29/2018	11/30/2018	11/30/2018
Cash Receipts											
Collections	\$ 362,000	\$ 361,000	\$ 687,000	\$ 654,000	\$ 473,000	\$ 512,000	\$ 316,000	\$ 914,000	\$ 433,000	\$ 73,000	\$ 4,785,000
Intercompany	-	-	-	-	-	-	-	-	-	-	-
Total Cash Receipts	362,000	361,000	687,000	654,000	473,000	512,000	316,000	914,000	433,000	73,000	4,785,000
Disbursements											
Payroll	-	628,000	-	620,000	-	649,000	-	625,000	-	-	2,522,000
Rent	-	197,167	225,886	-	-	-	216,085	206,968	-	-	846,106
Patient Supplies and Utilities	41,331	101,393	145,829	86,447	135,549	38,157	138,657	97,243	192,101	21,268	997,974
Regulatory, Repairs, and Maintenance	-	1,525	51,637	8,156	5,931	2,200	40,310	34,894	12,671	-	157,325
Other	-	9,684	6,827	-	955	-	15,694	4,322	-	255	37,737
Total Operating Disbursements	41,331	937,768	430,180	714,603	142,434	689,357	410,747	968,427	204,772	21,523	4,561,142
Debt Service Payments (Interest)	-	-	-	35,525	-	-	-	35,525	-	-	71,050
Professional Fees/Other Bankruptcy Costs	-	5,000	-	15,000	79,875	-	5,000	5,000	10,000	-	119,875
Total Non-Operating Disbursements	-	5,000	-	50,525	79,875	-	5,000	40,525	10,000	-	190,925
Total Disbursements	41,331	942,768	430,180	765,128	222,309	689,357	415,747	1,008,952	214,772	21,523	4,752,067
Net Weekly Cash Flow	320,669	(581,768)	256,820	(111,128)	250,691	(177,357)	(99,747)	(94,952)	218,228	51,477	32,933
Beginning Cash	471,908	792,577	210,809	467,630	356,502	607,192	429,835	330,088	235,136	453,364	471,908
Ending Cash	\$ 792,577	\$ 210,809	\$ 467,630	\$ 356,502	\$ 607,192	\$ 429,835	\$ 330,088	\$ 235,136	\$ 453,364	\$ 504,841	\$ 504,841

Source

"Cash Reconciliation Report as of 09.23.18 G - JEMa" provided by Remarkable Healthcare on September 24, 2018

Notes

Professional fees and other bankruptcy costs may include fees paid to debtor and committee counsels, U.S. trustee fees, and other advisors.