



IT IS HEREBY ADJUDGED and DECREED that the below described is SO ORDERED.

Dated: January 05, 2018.

**H. CHRISTOPHER MOTT
UNITED STATES BANKRUPTCY JUDGE**

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

IN RE:	§	
	§	
M. SYLVESTER GONZALES DDS, PA	§	CASE NO. 17-11499
D/B/A PALMA VISTA DENTAL	§	
	§	CHAPTER 11
Debtor	§	

AGREED FINAL ORDER AUTHORIZING USE OF CASH COLLATERAL AND PROVIDING ADEQUATE PROTECTION, WITH NOTICE THEREOF

On January 5, 2018 the Court conducted a Final Hearing on the Emergency Motion for Interim Use of Cash Collateral [Docket #2] (the "Motion") filed on December 2, 2017 by M. Sylvester Gonzales DDS, PA (the "Debtor"), and together with an Order on Motion for Interim Use of Cash Collateral With Notice of Final Hearing [Docket #15] (the "Order") granted by this Court on December 7, 2017. Based upon (i) the stipulation and agreement of the Debtor and secured creditor Bank of America, N.A. (the "Bank") upon terms for the Debtor's use of Cash Collateral, as set forth herein below, (ii) the Motion and Order, (iii) the evidence presented, (iv)

the representations of counsel, and (v) all the proceedings herein, the Court hereby approves and adopts said stipulations and agreements as findings of fact and conclusions of law, and **FINDS** as follows:

JURISDICTION AND NOTICE

A. This Court has jurisdiction over this proceeding, the parties, and the property of the Debtors' estate pursuant to 28 U.S.C. § 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. By operation of the notice and opportunity for final hearing as provided in the Order, the Debtor have provided sufficient and adequate notice of the Motion, the hearings on the Motion, and the terms hereof to all creditors and other parties in interest entitled to such notice pursuant to the Federal Rules of Bankruptcy Procedure (collectively, the "Bankruptcy Rules" each a "Bankruptcy Rule") and as required by the Bankruptcy Code (defined below).

FACTS

C. On December 2, 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 continues to manage and operate its business as debtor-in-possession pursuant to section 1107 and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner and no official committee has yet been appointed.

D. The Debtor asserts that a critical need exists for the Debtor to obtain and use cash in order to continue the operation of its business. Without such funds, the Debtor asserts that it will not be able to pay post-petition direct 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.

E. The Debtor is the borrower pursuant to the Finance Agreement dated as of February 12, 2012 and Loan Modification Agreement dated January 10, 2017, (the "Credit

Agreement", and together with all documents, agreements and instruments executed and delivered therewith and all related documents, agreements and instruments, collectively, the "Loan Documents") among the Debtor and the Bank as the Secured Creditor. Approximately \$410,125.00 was past due and outstanding under the Credit Agreement as of the Petition Date and is owed by the Debtor;

F. The Debtor stipulates and agrees that the Bank holds valid, perfected secured claims, as defined in section 101 of the Bankruptcy Code, against the Debtor (the "Secured Claims"), which are secured by first-priority valid and perfected liens on, *inter alia*, all of Debtor's right, title, present and future interest in the Collateral. As used herein, the term "Collateral" shall collectively mean all of the Debtor's personal property of every kind, whether now owned or later acquired, (as defined in the Credit Agreement) and all proceeds of the foregoing.

G. The Debtor stipulates and agrees that the Secured Claims are secured by, *inter alia*, the following: (i) the Credit Agreement; (ii) security agreements and financing statements executed in connection with the Credit Agreement; (iii) various UCC financing statements filed with the Texas Secretary of State concerning the Collateral. The Loan Documents are genuine, valid, existing and legally enforceable subject to the terms thereof.

H. The Debtor seeks authorization to use Cash Collateral (as defined herein) to pay the ordinary and necessary operating expenses (the "Expenses") set forth in the budget attached hereto as **Exhibit A** for the period of January 1, 2018, through and including March 31, 2018, or in any subsequent Budget as provided below (each, a "Budget") pursuant to the terms of this Order. As used herein, the term "Budget Termination Date" shall mean March 31, 2018 with respect to the Budget attached hereto as Exhibit A, and to the last day of the budgeted period for each subsequent Budget as provided herein. The then existing Budget may be amended or modified by the Debtor

only with the prior written consent of the Bank or by Court Order, but with required notice as described below in the ordering paragraph 17.

I. Notwithstanding the foregoing, the stipulations contained in Paragraphs F and G above are subject in all respects to the rights of all creditors and other parties in interest to challenge any such stipulations.

CASH COLLATERAL

J. 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 Debtor or its 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.

K. 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.

L. The Bank asserts that the Collateral, together with the proceeds and revenues thereof, includes cash collateral as that term is defined in Section 363(a) of the Bankruptcy Code (the "Cash Collateral").

M. The Bank does not consent to the Debtor's use of Cash Collateral except in

accordance with the Budget and the terms and conditions as set forth in this Order.

N. The 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 businesses and assets.

ORDER

Based upon the above findings, the Court, having reviewed the Motion and the terms hereof and having considered the agreements of the Debtor and the Bank, and otherwise being fully advised, hereby **ORDERS** as follows:

1. The Motion is GRANTED as provided herein.
2. **Findings and Conclusions.** The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Federal Rule of Bankruptcy procedure 7052, made applicable to this proceeding pursuant to Federal Rule of Bankruptcy Procedure 9014. To the extent any of the findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the conclusions of law constitute findings of fact, they are adopted as such.
3. **Notice.** The service of the Motion on the Notice Parties, providing such parties with an opportunity for final hearing, constitutes sufficient and adequate notice to all parties entitled to such notice, such notice is appropriate under the circumstances, and no other or further notice of the Motion or Agreed Order is or shall be required.
4. **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 its bankruptcy estate. The terms and conditions of the use of Cash Collateral and the security interests, liens, rights, and priorities granted to the Bank hereunder are fair and appropriate under the circumstances.

5. **Authorization to Use Cash Collateral.** Upon the terms and subject to the conditions and limitations set forth herein, the Debtor is hereby authorized to use the Cash Collateral in accordance with the Budget attached hereto as Exhibit "A" until the earlier to occur of the then-existing Budget Termination Date and the then-existing Termination Date (as defined below). Absent the approval of the Court or the Bank, the Debtor's actual expenses under any line item entry on the Budget shall not deviate by 10% negatively (i.e., actual expenses shall not be greater than projected expenses by 10%) from the projected line item entry with respect to disbursements for the corresponding period. Other than ordinary salary and employee expenses, or as otherwise approved by the Court, the Debtor shall not make any payment to or for the benefit of any insider of the Debtor, as that term is defined in Section 101(31) of the Bankruptcy Code.

6. **Adequate Protection — Replacement Liens.** As partial adequate protection for the Debtor's use of Cash Collateral, the Bank is hereby granted, effective as of the Petition Date, valid, binding, enforceable, and automatically perfected liens (the "Replacement Liens") co-extensive with the Bank's pre-petition liens, in all currently owned or hereafter acquired property and assets of the Debtor, of any kind or nature, personal, tangible or intangible, wherever located, now owned or hereafter acquired or arising and all proceeds and products, including, without limitation, all cash, goods, accounts receivable, furniture, general intangibles, deposit accounts, and equipment, to the extent existing prior to the bankruptcy filing. This additional adequate protection is being given to the extent of any decrease in value of the Collateral, including Cash Collateral, as a result of the Debtor's post-petition use. The Replacement Liens granted pursuant to this Order shall have the same validity, enforceability, and priority as the Bank's pre-petition liens and security interests.

7. The Order shall be sufficient evidence of the Bank's perfected post-petition liens and security interests in all of the Debtor's assets as provided in the Credit Agreement and this Order and shall be binding, enforceable and perfected upon the entry of this Order. The Debtor is hereby authorized and directed to execute such documents including, without limitation, Uniform Commercial Code financing statements and to pay such costs and expenses as may be reasonably required to perfect the Bank's security interests in the Collateral as provided herein. In addition, the Bank is hereby authorized (but not required) to file and record financing statements with respect to such security interests and liens, all such financing statements being deemed to have been filed or recorded on the Petition Date. 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.

8. **Adequate Protection — Adequate Protection Payments.** As further adequate protection for the Debtor's use of the Collateral and Cash Collateral, the Debtor shall pay the Bank \$3,000.00 per month for three months (the "Adequate Protection Payments"), beginning from and after the Petition Date, on account of the Credit Agreement. The first such payment shall be due by January 20, 2018, with subsequent payments due on the twentieth (20th) day of each calendar month thereafter until the Termination Date. If the current Termination Date is extended by agreement of the Debtor and the Bank, the Debtor shall continue to pay the Bank \$3,000.00 per month on the twentieth (20th) day of each calendar month during any such extended period.

9. **Adequate Protection — Super-Priority Administrative Claim.** To the extent there is a diminution of value of collateral, as further adequate protection for the Debtor's use of the Collateral and Cash Collateral the Bank is hereby granted an allowed super-priority administrative claim (the "Superpriority Administrative Claim") under Section 507(b) of the Bankruptcy Code, with priority in payment over any and all administrative expenses arising under Bankruptcy Code Sections 503(b) and/or 507(a), to the extent that all other adequate protection provided by this Order fails. Notwithstanding anything to the contrary herein, while the Replacement Liens and other partial adequate protection provided herein shall not extend to Chapter 5 causes of action or the proceeds thereof, such proceeds may be subject to the Bank's Section 507(b) claim, if any, under applicable law.

10. To the extent that there is a diminution in the value of the Bank's collateral, the Superpriority Administrative Claim shall have priority in payment over any other indebtedness and/or obligations now in existence or incurred hereafter by the Debtor and over all administrative expenses or charges against property arising in the Debtor's Chapter 11 cases or any superseding Chapter 7 cases, including without limitation those specified in sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code. Nothing in this Order shall be construed to grant a priority of payment over the indebtedness or obligations incurred by Debtor pursuant to 28 U.S.C. § 1930.

11. **Taxes.** Nothing in this Order shall be construed to grant the Bank's liens that are senior to pre- and post-petition statutory *ad valorem* real property tax liens. The Debtor shall remain current on all post-petition tax claims and reporting obligations, including, but not limited to, all post-petition *ad valorem* property taxes and federal trust fund taxes. The Debtor shall provide copies of all tax returns, instruments used to remit tax payments, and all supporting

documentation to the Bank within three (3) business days of the Bank's requesting such documents from the Debtor. The Debtor verify to the best of its knowledge and belief that any payments owed to taxing authorities with respect to the Collateral are current.

12. **Reporting and Inspection.** The Debtor shall maintain an accounting of all funds. The Debtor shall provide to the Bank, if so requested in writing, all reporting that the Debtor was required to provide prepetition to the Bank or Agent pursuant to the Loan Documents. The Debtor shall serve on the Bank any reports required by the United States Trustee, including all monthly operating reports required to be filed with the Court for the prior month's operations, including copies of the most recent bank statements for each of the Debtor's accounts. On or before the twentieth day of each month, the Debtor shall serve on Secured Creditor a report that reconciles the projected income and budgeted expenses against the actual receipts and disbursements for the prior month on a monthly and cumulative basis, with explanation for any material variances from the budgeted amounts for the prior month. The Bank shall be authorized, at any time or times (on reasonable notice to the Debtor), to enter upon the Debtor's premises or properties, to inspect the Collateral and to inspect the books and records of the Debtor (including without limitation, records pertaining to the Collateral and the Cash Collateral).

13. **Surcharge.** So long as this Order is in effect, nothing contained in this Order shall be deemed to be a consent by the Bank to any charge, lien, assessment, or claim against its collateral under 11 U.S.C. § 506(c), or otherwise, and shall be without prejudice to any and all of the Bank's rights under the Loan Documents, the Bankruptcy Code, and other applicable law. No costs or expenses of administration or other costs or expenses of the Debtor that have

been incurred or may be incurred in this chapter 11 case shall be charged either against the Collateral of the Bank pursuant to Section 506(c) of the Bankruptcy Code or otherwise.

14. **Proof of Insurance.** The Debtor shall maintain insurance on the Collateral and, within fourteen (14) days from entry of this Order, shall provide to the Bank (to the extent not previously provided) proof that the Collateral is adequately insured against risk of loss.

15. **Events of Default.** Each of the following shall constitute an "Event of Default" for purposes of this Order:

- a. The Court enters an order authorizing the sale of all or substantially all assets of the Debtor that does not provide for the payment in full to the Bank of all of its claims in cash upon the closing of the sale, unless otherwise agreed by the Bank in its sole and absolute discretion;
- b. The Court enters an order granting relief from the automatic stay to a third party with respect to material assets (as determined by the Bank in its sole and absolute discretion) of the Debtor's estate;
- c. The Debtor ceases operations of its present business as such existed on the Petition Date or take any material action for the purpose of effecting the foregoing without the prior written consent of the Bank;
- d. The Debtor's bankruptcy case is either dismissed or converted to a Chapter 7 case, pursuant to an order of the Court, the effect of which has not been stayed;
- e. A Chapter 11 trustee, an examiner with expanded powers, or any other responsible person or officer of the Court with similar powers is appointed by order of the Court, the effect of which has not been stayed;
- f. This Order is reversed, vacated, stayed, amended, supplemented or otherwise modified in a manner which shall, in the sole opinion of the Bank; (i) materially and adversely affect the rights of the Bank hereunder, or (ii) materially and adversely affect the priority of any or all of the Bank's claims and/or the liens granted herein;
- g. The occurrence, subsequent to the Petition Date, of an Event of Default under the Credit Agreement, including, without limitation, the Debtor's failure to maintain appropriate insurance on the Collateral protecting the Bank's interests therein to the full extent required under the terms of the Credit Agreement. However, any

Event of Default occurring and/or existing as of the Petition Date which does not affect the value of the Collateral, or the ability of the Debtor to repay their debts to the Bank or solely because of the commencement of the Debtor's bankruptcy cases shall not constitute an Event of Default hereunder;

- h. The Debtor fails to pay the Bank \$3,000.00 per month as required herein;
- i. The occurrence of a material adverse change, which effects the value of the Collateral, the Debtor's ability to operate its business or the Debtor's ability to repay the Bank;
- j. Non-compliance or default by the Debtor with any of the terms and provisions of this Order; provided, however, that said non-compliance or default shall not be deemed an Event of Default if curable and cured by the Debtor within five (5) days after written notice of such non-compliance or default is given to the Debtor by the Bank.

16. With respect to an Event of Default as to which a Default Notice (defined below) has been given in writing, the Debtor shall have five (5) days from the receipt of the Default Notice to cure such default.

17. Upon the occurrence of the earlier of (a) an Event of Default and the provision of five (5) business day's written notice thereof by the Bank to the Debtor, Debtor's counsel, the official committee of unsecured creditors (the "Committee"), if any, and the Office of the U.S. Trustee (which notice may be given by facsimile or e-mail transmission), (the "Default Notice"), or (b) March 31, 2018 at 11:59 p.m. Central, unless such date is extended in writing by the Bank (the "Termination Date"), the Bank's consent to the Debtor's use of the Cash Collateral shall terminate and the Bank shall have the right to move the Court for appropriate relief, including, but not limited to, relief of the restrictions of 11 U.S.C. § 362 or under any other section of the Bankruptcy Code or applicable law or rule, and seek authorization to take immediate action to protect the Collateral from harm, theft and/or dissipation and to exercise all of its contractual, legal and equitable rights and remedies as to all or such part of the Collateral as the Bank shall elect. The Bank may seek relief on an expedited basis by providing the Debtor, Debtor's

counsel, the Committee, if any, or the top twenty unsecured creditors, if no Committee has been appointed, and the Office of the U.S. Trustee (which notice may be given by facsimile or e-mail transmission) seven (7) days' notice of the hearing on such motion. The Bank and the Debtor may agree to extend the Termination Date and the Budget Termination Date, or modify the Budget, and in such event the Bank and the Debtor shall file a notice with the Court signed by the Bank and the Debtor reflecting such extension.

18. **No Waiver.** No waiver by the Bank of any violation of default under a condition expressed in this Order by the Debtor will be construed as, or constitute, a continuing waiver of such provision, or a waiver of any other violation, default or condition provided for herein.

19. **Preservation of Rights.**

This Order is without prejudice to the right of the Bank to request at any time further adequate protection for the Debtor's use of Collateral or Cash Collateral, and this Order shall not be deemed to preclude the Bank from seeking such relief as it may deem necessary or appropriate including, but not limited to, relief from the automatic stay. Nothing contained in this Order shall be deemed a finding or an admission with respect to the adequate protection (as that term is used in 11 U.S.C. §§ 361 and 362) of the interests of the Bank in the Collateral or the value of the Bank's Collateral. Nothing herein shall be construed as a waiver or limitation in any way of any rights or remedies of the Bank under the Bankruptcy Code or other applicable law, which it may have.

20. **Binding Effect of Order.** Subject to all reservation of rights in this Order, the provisions of this Order shall inure to the benefit of and shall be binding upon the Debtor and the Bank 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 the Bank 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. **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: M. Sylvester Gonzales DDS, PA at Sylvester.Gonzales@gmail.com
- Debtor's counsel: Eric A. Liepins at eric@ealpc.com
Secured Creditor: Richard E. Hettinger at rhettinger@dtrglaw.com

24. **Interim/Final Order.** This Order shall be deemed to grant interim relief until the expiration of fourteen (14) days after the date of entry of this Order and shall thereafter be deemed to grant final relief; provided, however, that if an objection to the Motion ("Objection") is filed after the entry of this Order and prior to the expiration of such fourteen (14) day period, this Agreed Order shall become final only after a hearing on the Motion and Objection following such fourteen (14) day period. In the event and Objection is timely filed, the Debtor shall file a request for hearing with the Court. In the event the Objection is sustained, the terms and

conditions and the respective rights and obligations of the parties set forth herein shall nevertheless remain binding, valid and in full force and effect for the period prior to entry of a court order sustaining such Objection.

This Order is without prejudice to the parties' rights to request a hearing regarding the Debtor's current or future use of cash collateral. The Debtor shall promptly serve a copy of this Order on all creditors and parties in interest in this case and file a certificate of service reflecting such service.

END OF ORDER

AGREED AS TO FORM AND SUBSTANCE:

_____/s/ Eric Liepins_____
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Attorneys for Bank of America, N.A.

	Jan-18	Feb-18	Mar-18
Paloma Vista Dental Budget			
bookkeeping	\$520.00	\$500.00	\$500.00
payroll	\$142.00	\$142.00	\$142.00
Bank charges	\$400.00	\$400.00	\$400.00
CE	\$1,270.00	\$0.00	\$0.00
DUES	\$1,587.00	\$400.00	\$0.00
Marketing	\$0.00	\$3,000.00	\$0.00
MAL PRACTICE INS.	\$1,285.00	\$0.00	\$1,285.00
LAB EXPENSE	\$3,500.00	\$3,500.00	\$3,500.00
IT-computers	\$369.00	\$369.00	\$369.00
Doctor's Internet	\$250.00	\$250.00	\$250.00
DENTAL SUPPLIES	\$3,000.00	\$3,000.00	\$3,000.00
OFFICE SUPPLIES	\$500.00	\$500.00	\$500.00
verizon cell phone	\$192.00	\$192.00	\$192.00
UTILITIES	\$355.00	\$355.00	\$300.00
RENT	\$5,191.75	\$5,191.75	\$5,348.00
NNN RENT	\$1,832.00	\$1,832.00	\$1,832.00
STAFF PAYROLL TAX	\$3,700.00	\$3,700.00	\$3,700.00
OFFICE SALARIES	\$24,000.00	\$24,000.00	\$24,000.00
TELEPHONE/INT	\$175.00	\$175.00	\$175.00
Spectrum	\$117.63	\$117.63	\$117.63
Airgas LLC	\$30.00	\$30.00	\$30.00
First Shred	\$45.00	\$45.00	\$45.00
Allstate	\$189.17	\$189.17	\$189.17
Solution Reach	\$399.00	\$399.00	\$399.00
HIPPA e-mail encryp	\$23.00	\$23.00	\$23.00
Sleep Image	\$162.00	\$162.00	\$162.00
Dental Writer	\$149.00	\$149.00	\$149.00
security alarm	\$32.00	\$32.00	\$32.00
UST fee	\$650.00		
TOTAL EXPENSES:	\$49,415.55	\$48,653.55	\$46,639.80
TOTAL INCOME	\$55,000	\$55,000	\$55,000.00