



expenses. The contract generates \$112,000.00 per month to provide medical transportation services and is subject to a lien filed by the Internal Revenue Service, according to Debtor in Possession.

Debtor in Possession projects that the funds will be used for expense as follows:

<b>Personal Property Collateral</b>			
	Veteran’s Affairs Contract	\$112,000.00	
	MYGORIDE, Inc. (Medical Services Contractor)		(\$100,000.00)
	Salary of Officer, Shiraz Mir		(\$4,000.00)
	Payroll taxes		(\$400.00)
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		Net Proceeds	\$7,600.00

Debtor in Possession proposes that the cash collateral be approved with a 10% variance in each category and that remaining funds be retained by Debtor in Possession.

**MARCH 22, 2018 HEARING**

At the hearing, Debtor in Possession’s counsel stated that Debtor in Possession is working actively to obtain other contracts. Dckt. 31. Debtor in Possession relayed that the payments of the monies are necessary to make post-petition payments to the sub-contractor to keep the existing contract in place.

The court granted the Motion for the period March 22, 2018, through May 31, 2018, and set a continued hearing at 10:30 a.m. on May 24, 2018, to consider a Supplement to the Motion to extend authorization to use cash collateral. Dckt. 33.

The court ordered Debtor in Possession to file and serve supplemental pleadings by May 17, 2018, if further authorization is requested. *Id.*

**SUPPLEMENTAL PLEADING**

Debtor in Possession filed a Supplemental Pleading in Support of Authorization for Continued Use of Cash Collateral on May 17, 2018. Dckt. 80. Debtor in Possession presents that the budget will change because of modified terms with the Internal Revenue Service (“IRS”) and because a sub-contractor recently discontinued service for Debtor in Possession. Debtor in Possession proposes the following budget, with a 10% variance in each category, effective through July 31, 2018:

<b>Personal Property Collateral</b>		
Veteran's Affairs Contract	\$112,000	
Medical Services Sub-Contractor		(\$103,500)
IRS Cash Collateral Payment		(\$3,000)
Salary of Officer		(\$1,800)
US Trustee Fee (payable quarterly)		(\$1,625)
GSA Fee		(\$1,000)
Internet/fax/phone		(\$210)
Payroll taxes		(\$180)
Payroll processing		(\$50)
Software		(\$50)
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	Net Proceeds	\$585

**APPLICABLE LAW**

Pursuant to 11 U.S.C. § 1101, a debtor in possession serves as the trustee in the Chapter 11 case when so qualified under 11 U.S.C. § 322. As a debtor in possession, the debtor in possession can use, sell, or lease property of the estate pursuant to 11 U.S.C. § 363. In relevant part, 11 U.S.C. § 363 states:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.

Federal Rule of Bankruptcy Procedure 4001(b) provides the procedures in which a trustee or a debtor in possession may move the court for authorization to use cash collateral. In relevant part, Federal Rule of Bankruptcy Procedure 4001(b) states:

(b)(2) Hearing

The court may commence a final hearing on a motion for authorization to use cash collateral no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a preliminary hearing before such 14-day period expires, but the court may authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

**RULING**

The court has reviewed the Amended Schedules and Petition filed by Debtor. Dckt. 40, 41. Debtor owns no real property. Dckt. 41 at 5. For personal property, Debtor states that it has an interest in, owns, or leases the following:

Four Bank of America Checking Accounts.....	\$0.00
Accounts Receivable, 90 days old or fewer.....	\$425,962.69
Accounts Receivable, older than 90 days.....	\$62,200.00
No Investments	
No Inventory	
No Leases	
No Furniture or Fixtures	
Office equipment (computers, server, phones).....	\$2,500.00
No Machinery or Equipment	
No Intangibles or Intellectual Properties	
No Notes	
No Tax Refunds	
No Insurance Policies	

*Id.* at 6–9. Debtor does state that it has a \$4,100,000.00 contract dispute claim with the Department of Veterans Affairs, but values it at an “unknown” value. On the Summary of real and personal property assets as part of Amended Schedule A/B, Debtor states under penalty of perjury that all of its assets have a value of \$428,462.69. *Id.* at 10.

For Creditors, Debtor states that the IRS has six secured claims, totaling \$434,857.64. Amended Schedule D, Dckt. 40 at 1–3. Debtor states that it has no priority unsecured claims. Amended Schedule E, *Id.* at 5. Then for general unsecured claims, Debtor lists \$649,457.24 of claims. Amended Schedule F, *Id.* at 5–9.

On Amended Schedule G, Debtor states that it has two Executory Contracts or Unexpired Leases. *Id.* at 10. One contract is with the San Francisco VA hospital for transportation of employees for forty-eight months, and another subcontract is with Mygoride, Inc., for performance of the contract. *Id.*

On Schedule H, Debtor lists having a co-debtor on a number of debts, with that co-debtor identified as a “Shehla Tariq” (who is identified as the President of Debtor on the Statement of Financial Affairs). Dckt. 24 at 19–20.

The Statement of Financial Affairs states that there was gross revenue from July 1, 2015, to June 30, 2016, of \$4,350,600.00. Dckt. 41 at 11. For July 1, 2016, through June 30, 2017, gross revenue was \$2,891,000.00. *Id.* For July 1, 2017, to the filing date (February 27, 2018), gross revenue was \$547,272.61. *Id.* The Statement also includes that there were nine law suits against Debtor pending when this case was filed. *Id.* at 13–14.

Debtor’s shareholders and officers are stated to be Shehla Tariq and Shiraz Mir. *Id.* at 18.

From a review of the Amended Schedules, Debtor in Possession has clarified that there are assets around which a Chapter 11 case may be prosecuted, namely in the form of accounts receivable totaling slightly under \$500,000.00.

The Supplemental Pleading shows that Debtor in Possession’s budget has become more constricted. Previously, the court approved a budget that yielded \$7,600.00 in net proceeds. Now, Debtor in Possession’s budget, although full of disclosures, yields \$585.00 in monthly net proceeds. The budget leaves very little room for financial error, but the court is willing to give Debtor in Possession an opportunity to demonstrate that this tight budget can work.

The Motion is granted, and Debtor in Possession is authorized to use the cash collateral **for the period of June 1, 2018, through July 31, 2018. All surplus cash collateral is to be held in a cash collateral account and separately accounted for by Debtor in Possession.**

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Authority to Use Cash Collateral filed by Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted, pursuant to this order, for the period June 1, 2018, through July 31, 2018, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 10% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget:

<b>Personal Property Collateral</b>		
Veteran's Affairs Contract	\$112,000	
Medical Services Sub-Contractor		(\$103,500)
IRS Cash Collateral Payment		(\$3,000)
Salary of Officer		(\$1,800)
US Trustee Fee (payable quarterly)		(\$1,625)
GSA Fee		(\$1,000)
Internet/fax/phone		(\$210)
Payroll taxes		(\$180)
Payroll processing		(\$50)
Software		(\$50)
		-----
	Net Proceeds	\$585

**IT IS FURTHER ORDERED** that the creditors having an interest in the cash collateral are given replacement liens in the post-petition proceeds in the same priority, validity, and extent as they existed in the cash collateral expended, to the extent that the use of cash collateral resulted in a reduction of a creditor's secured claim.

**IT IS FURTHER ORDERED** that the hearing on the Motion is continued to **10:30 a.m. on July 19, 2018**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before, July 12, 2018, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the July 19, 2018 hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.

**APPEARANCE OF SCOTT SAGARIA  
AND MATTHEW DECAMINADA  
REQUIRED AT THE HEARING**

**TELEPHONIC APPEARANCES PERMITTED**

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).**

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Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, and Office of the United States Trustee on April 1, 2018. By the court's calculation, 51 days' notice was provided. The court set the hearing for 10:30 a.m. on May 24, 2018. Dckt. 11.

The Order to Show Cause was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

**The Order to Show Cause is discharged.**

The Clerk of the Bankruptcy Court referred to the Chief Bankruptcy Judge in this District matters relating to the untimely payment of filing fees for documents filed by attorneys in the law firm Sagaria Law, P.C. Under the Rules governing the electronic filing of documents, the filing fees are due when the documents are electronically filed. If not paid when filed, the court accepts the documents for filing and then issues a Notice of Payment Due.

## ISSUANCE OF ORDER TO SHOW CAUSE

On March 30, 2018, the court issued an Order to Show Cause for Sagaria Law, P.C., to show cause why the firm and its attorneys of record should not be subject to a corrective sanction of 25% of each filing fee in any case in the United States Bankruptcy Court for the Eastern District of California during the period any time after the entry of an order imposing the corrective sanction. Dckt. 11.

The court ordered Scott Sagaria and Sagaria Law, P.C., to report: (1) the source of the monies paid for each of the filing fees in all of the cases listed in the chart in the Order to Show Cause (see below); (2) whether such monies were deposited in the Sagaria Law, P.C., client trust account or other account (with such trust or other account identified); and (3) if deposited in the Sagaria Law, P.C., client trust account, when the monies were disbursed from the trust account and to whom.

The court instructed that written responses were to be filed and served on the Chapter 13 trustee for each of the identified cases and on the United States Trustee for Region 17, Sacramento Division Office on or before April 25, 2018. Replies, if any, were to be filed and served on or before May 11, 2018.

## SAGARIA LAW, P.C.'S RESPONSE

Scott Sagaria, on behalf of Sagaria Law, P.C., filed a Response on April 25, 2018. Dckt. 14. The Response states that there was no scheme to delay payment or to misappropriate client funds. Instead, the Response states that the firm's "practice is to collect the filing fee at the time the case is filed, separate from any payment of attorney's fees associated with the case." *Id.* at 2:9–10.

The firm explains its practice further by stating:

The filing fees are either paid simultaneous to the filing and payment of such fees or held in trust until the fee is paid. If moved to trust, it is only paid upon payment to the clerk for such fees.

*Id.* at 2:10–12. For the cases identified by the court, the firm reveals that "while the intent may be to collect the fee at or close to the time the case is filed, the reality is that a substantial portion of the fees in those cases were either paid by the client sometime after the case was filed or not paid at all." *Id.* at 2:13–15.

The firm states that new procedures have been implemented to ensure prompt payment of the filing fees. *Id.* at 2:19–20. Specifically, the change is that another attorney in the firm, Elliot Gale, is not authorized to make payments in Scott Sagaria's absence. *Id.* at 6:19–21.

The Response provides the following table of information what happened to funds in the cases identified by the court:

<b>Case Number</b>	<b>Date Case Filed</b>	<b>Source of Funds for Payment to Clerk</b>	<b>Date of Payment by Debtor</b>	<b>Held in Trust Account?</b>	<b>Date Disbursed from Trust</b>
18-20702	2/8/2018	Debtor	2/28/2018	Yes	3/19/2018
18-20743	2/12/2018	Debtor	2/22/2018	Yes	3/19/2018
18-20748	2/12/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
18-20749	2/12/2018	Debtor	2/12/2018	Yes	3/19/2018
18-20771	2/12/2018	Debtor	3/1/2018	Yes	3/19/2018
18-20794	2/13/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
18-20840	2/14/2018	Debtor	3/1/2018	Yes	3/19/2018
18-20876	2/15/2018	Debtor	3/1/2018	Yes	3/19/2018
18-20891	2/16/2018	Debtor	3/14/2018	Yes	3/19/2018
18-20892	2/16/2018	Debtor	2/16/2018	Yes	3/19/2018
18-21013	2/23/2018	Debtor	3/5/2018	Yes	3/19/2018
18-10588	2/23/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
10-35475	2/28/2018	Debtor	2/22/2018	Yes	3/19/2018
18-21146	2/28/2018	Debtor	2/27/2018	Yes	3/19/2018
18-21148	2/28/2018	Debtor	2/27/2018	Yes	3/19/2018
18-21149	2/28/2018	Debtor	2/27/2018	Yes	3/19/2018
18-21154	2/28/2018	Debtor	3/8/2018	Yes	3/19/2018
18-90128	2/28/2018	Debtor	2/28/2017	Yes	3/19/2018
18-21158	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-21160	2/28/2018	Debtor	2/26/2018	Yes	3/19/2018
18-21161	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-21163	2/28/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A

18-21165	2/28/2018	Debtor	2/26/2018	Yes	3/19/2018
18-21167	2/28/2018	Debtor	2/26/2018	Yes	3/19/2018
18-21171	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-90129	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-21172	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-21173	2/28/2018	Debtor	2/28/2018	Yes	3/19/2018
18-21202	3/1/2018	Debtor	2/27/2018	Yes	3/19/2018
18-21342	3/8/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
12-41591	3/8/2018	Debtor	3/6/2018	Yes	3/19/2018
18-90148	3/8/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
18-21370	3/9/2018	Sagaria Law, P.C.	Not Paid	N/A	N/A
18-21379	3/9/2018	Debtor	3/9/2018	Yes	3/19/2018
18-21380	3/9/2018	Sagaria Law, P.C.	Not Paid	N/A	3/19/2018
12-41591 (duplicate)	3/8/2018	Debtor	3/6/2018	Yes	3/19/2018
18-20743	2/12/2018	Debtor	2/22/2018	Yes	3/19/2018

The Response argues that the court should not impose a corrective sanction “because the filing fees in each of the cases has been paid and the failure to timely pay the filing fees in the listed cases was the result of the undersigned’s absence and illness during the period prior [to] the payment of the fees.” *Id.* at 5:8–113.

The Response reads that Mr. Sagaria was traveling outside of the United States and then became ill for eighteen of the days listed by the court. *Id.* at 5:12–13. Prior to the matter addressed in the Order to Show Case, the Response states that Mr. Sagaria was the only authorized payor for the accounts used to pay the filing fees, and his absence resulted in delay. *Id.* at 5:13–15.

The firm calculates that the amount of lost funds from non-payment of clients’ filing fees is approximately \$33,000.00. The Response argues that “the risk of debtor non-compliance and case dismissal is too great” to require debtor to pay the filing fees in installment payments. *Id.* at 6:9–10. Instead, the firm chooses to pay the filing fee when a case is filed and then seeks reimbursement from the debtor. *Id.* at 6:10–11.

The Response stress that this situation has never happened before and assures the court that it will not happen again.

## DECLARATION OF SCOTT SAGARIA

Scott Sagaria filed a Declaration on May 16, 2018. Dckt. 19. He provides sworn testimony to the salient facts presented in the Response, namely about the firm’s procedure for collecting fees, paying on behalf of debtors, Mr. Sagaria traveling and being ill during the delay period, and how an additional attorney has been authorized to pay fees.

## DISCUSSION

The Electronic Filing System Registration Form and User Agreement entered into by counsel for filing electronically in the Eastern District of California includes the following terms (emphasis added):

By submitting this Electronic Filing System Registration Form and User Agreement, I agree to abide by the following:

...

- i. I agree to pay fees for electronically filed documents through the U. S. Treasury Internet credit card program (Pay.gov), in accordance with procedures established by the Clerk.
- j. I understand that according to Judicial Conference policy, fees for filing documents are due at the time documents are filed. **I agree to pay all fees for electronically filed documents prior to completing the e-filing session in which they are incurred, and to settle my account for any outstanding fees the same day the documents are e-filed.** I understand that if fees are **not timely paid**, my e-filing account may be disabled and/or other appropriate action may be taken to **impose sanctions, strike the document(s), and/or dismiss the case.**

## Fee Payment Conduct of Sagaria Law, P.C.

The Clerk of the Court presented the court with a perceived pattern of conduct relating to delayed paying of filing fees. In the following cases, Sagaria Law filed documents for which a filing fee was due when filed, did not pay the fee on filing, was sent a Notice of Payment Due for the fees, failed to pay the filing fee pursuant to the Notice, and necessitated the court issuing an Order to Show Cause re Dismissal and/or Imposition of Sanctions for Failure to Tender Fees. Only after the Orders to Show Cause were issued and on the eve of the hearings for the respective Orders to Show Cause were the fees paid. Because it is in the general course of business for the court to issue an order to show cause upon an attorney’s failure to pay the fees when the document is filed or within the time period set in the Notice, orders to show cause are routinely dismissed if the fees are paid prior to the hearing on the order show cause (the court treating it as an isolated human business error).

As set forth in the Order to Show Cause, the Clerk of the Court brought to the attention of the Chief Judge the cases identified in said Order, a serious of cases in which the filing fees were not timely paid, not paid when a notice of dismissal was issued, but only on the eve of the hearing on the notice of dismissal of the case. These cases, on their own, appeared to paint an uncomplimentary picture of the practices by counsel in those cases.

Other judges in the District had also noticed the pattern and were prepared to issue independent orders to show cause in their various cases. Because the chief judge was addressing this issue as it related to cases in various departments in this District, the other judges deferred to a unified approach.

California Rule of Professional Conduct 4-100 requires that funds of a client advanced for the payment of costs or expenses, such as filing fees, be deposited in the law firm trust account.

#### Rule 4-100 Preserving Identity of Funds and Property of a Client

(A) All funds received or held for the benefit of clients by a member or law firm, including advances for costs and expenses, **shall be deposited in** one or more identifiable bank accounts labeled "**Trust Account**," "**Client's Funds Account**" or words of similar import, maintained in the State of California, or, with written consent of the client, in any other jurisdiction where there is a substantial relationship between the client or the client's business and the other jurisdiction. No funds belonging to the member or the law firm shall be deposited therein or otherwise commingled therewith except as follows:

(1) Funds reasonably sufficient to pay bank charges.

(2) In the case of funds belonging in part to a client and in part presently or potentially to the member or the law firm, the portion belonging to the member or law firm must be withdrawn at the earliest reasonable time after the member's interest in that portion becomes fixed. However, when the right of the member or law firm to receive a portion of trust funds is disputed by the client, the disputed portion shall not be withdrawn until the dispute is finally resolved.

California State Bar Rules of Professional Conduct, Rule 4-100 (emphasis added).

When Sagaria Law, P.C., pays the filing fee, it is allowed to be reimbursed from the client's money in the client trust account. The client's money in the client trust account is to pay that client's expense. The lawyer is not authorized to take the expense money, which is to be deposited into the client trust account, and deposit the monies in the law firm general account months before the expense is actually paid.

The law firm's response to the Order to Show Cause is that the identified pattern of delayed payments by the court are the result of an untimely combination of travel and sickness by the one person in the firm who was authorized to pay filing fees. The firm's proposal to remedy the situation is to add another person in the firm as an authorized payor for whenever the primary payor is unavailable.

Sagaria Law, P.C., has provided information for numerous cases from February–March 2018, attempting to demonstrate to the court that the fees collected in all of those cases were deposited into trust accounts and then issued out on March 19, 2018, upon the return and recovery of Mr. Sagaria.

The court has reviewed additional cases for the period before February 2018 and for the period after the Order to Show Cause was issued. In the past, Sagaria Law, P.C.’s practice appeared to be waiting to pay the filing fee until after a Notice of Payment was issued, which could correspond with the firm’s argument that it waits for debtors to pay the filing fee. On some occasions, though, orders to show cause for failing to pay the filing fee were issued. Since the March 30, 2018 issuance of this Order to Show Cause, Sagaria Law, P.C., has significantly reduced the time between filing a case and paying the filing fee so that on many occasions a Notice of Payment Due is never issued. Some notices have been issued, though. Now, payment of the fee appears to happen within five days of filing.

The identified conduct by Sagaria Law, P.C., had caused the court great concern about the firm’s practices in the Eastern District of California. A practice of not paying the filing fee, but “challenging” the court to issue the order of show cause for dismissal of the case before “parting with the money” could be interpreted as one in which cases are filed without a good faith intention to prosecute the case. When the client has provided the filing fee and the attorney has filed the bankruptcy petition—subject to the Rule 9011 certifications—that the debtor and attorney are prosecuting in good faith, the filing fee should then be filed. It should not be held back, creating the appearance that there is no good faith belief in the case and the debtor and attorney do not want to “risk” paying the fee owed.

While the court was prepared to order corrective sanctions, Sagaria Law, P.C., has sufficiently informed the court about what appears to be an ill-fated confluence of events leading to this court’s scrutiny of firm practices. The Order to Show Cause is discharged, Sagaria Law, P.C., having sufficiently explained the delay of payment, the source and transfer of funds, and the implementation of firm changes to prevent this problem in the future.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.