

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 17, 2023 at 2:00 p.m.

| | | |
|--|---|---|
| 1. <u>23-23620</u> -E-11 <u>GEL-1</u> | ROBERT P. OBREGON DDS INC. Gabriel Liberman | MOTION TO USE CASH COLLATERAL AND/OR MOTION FOR ADEQUATE PROTECTION , CHAPTER 11 FIRST DAY MOTION SCHEDULING DEADLINES RELATING TO A FINAL HEARING ON USE OF CASH COLLATERAL O.S.T. 10-13-23 [9] |
|--|---|---|

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).

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 the Office of the United States Trustee and all creditors and parties in interest on October 13, 2023. By the court's calculation, 4 days' notice was provided. The court set the hearing for October 17, 2023. Dckt. 15.

The Motion to Use Cash Collateral and Adequate Protection was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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 Motion for Authority to Use Cash Collateral is xxxxxxx , and the hearing is continued to xx:xx x.m. on xxxx, 202x.

Robert P. Obregon, DDS, Inc., the Debtor/Debtor in Possession, moves for an order approving the use of cash collateral in the form of bank deposits, account receivables and proceeds received from the disposition of sales in the ordinary course of business. Debtor/Debtor in Possession requests the use of cash collateral to operate its daily business, including to pay employees and vendors, and to meet other daily obligations. Declaration, Dckt. 12.

Debtor/Debtor in Possession proposes to use cash collateral for the following expenses:

10/09/23
Cash Basis

ROBERT OBREGON, DDS, INC.

Profit & Loss

Interim Budget

| | Interim Use | Nov-23 | Dec-23 | Jan-24 | Feb-24 | Mar-24 |
|---|----------------------|----------------------|----------------------|----------------------|----------------------|----------------------|
| Ordinary Income/Expense | | | | | | |
| Income | | | | | | |
| 5010 · Income | \$ 106,162.00 | \$ 106,162.00 | \$ 107,162.00 | \$ 108,162.00 | \$ 109,162.00 | \$ 110,162.00 |
| 5200 · Refunds | \$ (463.87) | \$ (463.87) | \$ (463.87) | \$ (463.87) | \$ (463.87) | \$ (463.87) |
| 5300 · Interest Income | 0.01 | \$ 0.01 | \$ 0.01 | \$ 0.01 | \$ 0.01 | \$ 0.01 |
| Total Income | \$ 105,698.14 | \$ 105,698.14 | \$ 106,698.14 | \$ 107,698.14 | \$ 108,698.14 | \$ 109,698.14 |
| Expense | | | | | | |
| 7510 · Officer Salary | \$ - | \$ 18,000.00 | \$ 18,000.00 | \$ 18,000.00 | \$ 18,000.00 | \$ 18,000.00 |
| 7550 · Salaries & Wages | \$ 28,032.89 | \$ 28,032.89 | \$ 28,032.89 | \$ 28,032.89 | \$ 28,032.89 | \$ 28,032.89 |
| 7650 · Bank Charges/Merchant Fees | \$ 1,330.68 | \$ 1,330.68 | \$ 1,330.68 | \$ 1,330.68 | \$ 1,330.68 | \$ 1,330.68 |
| 7780 · Dues-Building Association | \$ 647.34 | \$ 647.34 | \$ 647.34 | \$ 647.34 | \$ 647.34 | \$ 647.34 |
| 7790 · Dues & Subscriptions | \$ 149.83 | \$ 149.83 | \$ 149.83 | \$ 149.83 | \$ 149.83 | \$ 149.83 |
| 7850 · Finance Charges | \$ 174.90 | \$ 174.90 | \$ 174.90 | \$ 174.90 | \$ 174.90 | \$ 174.90 |
| 7900 · Insurance | \$ 1,266.17 | \$ 1,266.17 | \$ 1,266.17 | \$ 1,266.17 | \$ 1,266.17 | \$ 1,266.17 |
| 7910 · Insurance - Medical | \$ 4,901.94 | \$ 5,400.00 | \$ 5,400.00 | \$ 5,400.00 | \$ 5,400.00 | \$ 5,400.00 |
| 7970 · Adequate Protection Payments | \$ - | \$ - | \$ - | \$ - | \$ - | \$ - |
| 7971 · First Montana Bank | \$ 2,102.85 | \$ 2,102.85 | \$ 2,102.85 | \$ 2,102.85 | \$ 2,102.85 | \$ 2,102.85 |
| 7973 · Wells Fargo | \$ 5,108.23 | \$ 5,108.23 | \$ 5,108.23 | \$ 5,108.23 | \$ 5,108.23 | \$ 5,108.23 |
| 7974 · Community Bank | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 |
| 7976 · Five Star Bank | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 |
| 7978 · Bankers Sharegroup/2022 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 |
| SBA EIDL Loan | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 | \$ 500.00 |
| Total Adequate Protection Payments | 9,211.08 | 9,211.08 | 9,211.08 | 9,211.08 | 9,211.08 | 9,211.08 |
| Ascentium Capital - Equipment Loan | \$ 315.82 | \$ 315.82 | \$ 315.82 | \$ 315.82 | \$ 315.82 | \$ 315.82 |
| 8020 · Legal & Accounting | \$ 183.59 | \$ 183.59 | \$ 183.59 | \$ 183.59 | \$ 183.59 | \$ 183.59 |
| 8030 · Janitorial | \$ 637.50 | \$ 637.50 | \$ 637.50 | \$ 637.50 | \$ 637.50 | \$ 637.50 |
| 8050 · Laboratory Fees | \$ 3,522.60 | \$ 3,522.60 | \$ 3,522.60 | \$ 3,522.60 | \$ 3,522.60 | \$ 3,522.60 |
| 8100 · Office Supplies | \$ 561.77 | \$ 561.77 | \$ 561.77 | \$ 561.77 | \$ 561.77 | \$ 561.77 |
| 8125 · Payroll Taxes | \$ 3,506.84 | \$ 4,500.00 | \$ 4,500.00 | \$ 4,500.00 | \$ 4,500.00 | \$ 4,500.00 |
| 8126 · Payroll Fees | \$ 547.26 | \$ 547.26 | \$ 547.26 | \$ 547.26 | \$ 547.26 | \$ 547.26 |
| 8130 · Pension Expense | \$ 2,381.64 | | | | | |
| 8190 · Postage | \$ 119.30 | \$ 119.30 | \$ 119.30 | \$ 119.30 | \$ 119.30 | \$ 119.30 |
| 8305 · Security | \$ 91.27 | \$ 91.27 | \$ 91.27 | \$ 91.27 | \$ 91.27 | \$ 91.27 |
| 8310 · Supplies - Dental | \$ 2,820.89 | \$ 2,820.89 | \$ 2,820.89 | \$ 2,820.89 | \$ 2,820.89 | \$ 2,820.89 |
| 8460 · Taxes & Licenses | \$ 289.38 | \$ 289.38 | \$ 289.38 | \$ 289.38 | \$ 289.38 | \$ 289.38 |
| 8550 · Telephone | \$ 283.80 | \$ 283.80 | \$ 283.80 | \$ 283.80 | \$ 283.80 | \$ 283.80 |
| 8600 · Utilities | \$ 883.83 | \$ 883.83 | \$ 883.83 | \$ 883.83 | \$ 883.83 | \$ 883.83 |
| Total Expense | 61,860.28 | 78,969.87 | 78,969.87 | 78,969.87 | 78,969.87 | 78,969.87 |
| Net Ordinary Income | 43,837.86 | 26,728.28 | 27,728.28 | 28,728.28 | 29,728.28 | 30,728.28 |
| Net Income | 43,837.86 | 26,728.28 | 27,728.28 | 28,728.28 | 29,728.28 | 30,728.28 |

Tuesday, October 17, 2023 at 2:00 p.m.

Debtor/Debtor in Possession proposes that the cash collateral be approved with a 15% variance in each category and that remaining funds be retained by Debtor in Possession. Dckt. 9.

The Debtor/Debtor in Possession identifies the following creditors having claims for which they assert a lien against the cash collateral which Debtor/Debtor in Possession seeks to use:

| Date UCC Financing Statement Filed | Creditor | Estimated Claim |
|---|---|------------------------|
| 8/18/2015 | Wells Fargo Bank, N.A. (Additional Collateral 8035 Madison Ave #G1 Property) | (\$604,961) |
| 12/13/2017 | First Montana Bank (Additional Collateral, all of Debtor's personal property business assets) | (\$40,646) |
| 12/17/2018 | Community Bank and Trust Company (Additional Collateral, all of Debtor's personal property business assets) | (\$85,576) |
| 12/3/2019 | Five Star Bank (Additional Collateral, all of Debtor's personal property business assets) | (\$224,235) |
| 5/5/2020 | Small Business Administration (EIDL) (Additional Collateral, all of Debtor's personal property business assets) | (\$499,000) |
| 5/18/2022 | Bankers Health Group, LLC F/B/O BHG Grantor Trust 20220C (Additional Collateral, all of Debtor's personal property business assets) | (\$309,628) |
| | | ===== |
| | Total Claims Secured By The Cash Collateral | (\$1,764,046) |

In the Motion, Debtor/Debtor in Possession does not identify how much cash collateral exists as of the filing of this Bankruptcy Case and what accounts receivable exist as of the filing of this Bankruptcy Case for which the proceeds thereof would be cash collateral.

Debtor has filed Schedules in this Bankruptcy Case identifying its assets. Dckt. 1. The information provided therein as relates to the present Motion is:

A. Schedule A/B, Part 9 - Real Property; Dckt. 1 at 14.

1. 8035 Madison Ave, Suite #G1.....\$650,000

2. On Schedule D, Wells Fargo Bank, N.A. is listed as the only Creditor, with the above (\$604,000) claim, as having a lien on this real property.

B. Schedule A/B Parts 1 - **XXXXXXX**, Real Property; *Id.* at 11 - **XXXXXXX**

1. Wells Fargo Bank Account, Checking.....\$ 10,000
2. Accounts Receivable, Collectable.....\$ 8,137
3. An additional \$3,599 of accounts receivable are stated to be “doubtful or uncollectible.”
4. Office Supplies.....\$1,000
5. Dental Supply Inventory.....\$ 8,000
6. Office Furniture and Equipment
 - a. Furniture.....\$ 5,000
 - b. Office Lights.....\$ 500
 - c. Computers, Software, Printer, Scanner.....\$15,000
 - d. Dental Scanner Equipment.....\$15,000

Reviewing the above, it appears that the Cash Collateral at issue is the \$10,000 in the checking account and the \$8,137 in accounts receivable as those monies are collected. The Bankruptcy Code defines “cash collateral” to be:

§ 363. Use, sale, or lease of property

(a) In this section, “cash collateral” means 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 and the fees, charges, accounts or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a). Congress provides in 11 U.S.C. § 522 the post-petition effect of a pre-petition lien granted to a creditor.

§ 552. Postpetition effect of security interest

(a) Except as provided in subsection (b) of this section, **property acquired by the estate or by the debtor after the commencement of the case is not subject to any lien resulting from any security agreement entered into by the debtor before the commencement of the case.**

(b)

(1) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to proceeds, products, offspring, or profits of such property, then **such security interest extends to such proceeds, products, offspring, or profits acquired by the estate after the commencement of the case to the extent provided by such security agreement and by applicable nonbankruptcy law**, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

(2) Except as provided in sections 363, 506(c), 522, 544, 545, 547, and 548 of this title, and notwithstanding section 546(b) of this title, if the debtor and an entity entered into a security agreement before the commencement of the case and if the security interest created by such security agreement extends to property of the debtor acquired before the commencement of the case and to amounts paid as rents of such property or the fees, charges, accounts, or other payments for the use or occupancy of rooms and other public facilities in hotels, motels, or other lodging properties, then such security interest extends to such rents and such fees, charges, accounts, or other payments acquired by the estate after the commencement of the case to the extent provided in such security agreement, except to any extent that the court, after notice and a hearing and based on the equities of the case, orders otherwise.

11 U.S.C. § 522 (emphasis added). See 5 Collier on Bankruptcy ¶ 522.02 for discussion of newly acquired property post-petition not being encumbered by pre-petition lien (unless they constitute proceeds, products, offspring, or profits of pre-petition collateral).

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.

DISCUSSION

This Bankruptcy Case was filed on October 13, 2023, and the present Motion is an emergency “First Day Motion” to obtain the authorization to use cash collateral on little notice so that the business of the bankruptcy estate can continue to operate pending a regularly notice hearing.

Debtor/Debtor in Possession has shown that the proposed use of cash collateral is in the best interest of the Estate. The proposed use allows Debtor in Possession to run its business in the ordinary course.

The amount of the cash collateral to be used is, based on Debtor’s Schedules, to approximately \$26,000 (including the \$8,000 for dental supplies that may be used to generate post-petition receipts and receivables).

The Motion proposes to make substantial payments of \$9,211 monthly to the creditors having an interest in the possible \$26,000 in cash collateral. It appears that in less than three months these creditors would be paid the full value of any cash collateral.

At the hearing, **XXXXXXX**

The court shall issue an 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 Robert Obregon, DDS, Inc. ("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 **xxxxxx**, pursuant to this order, for the period October 17, 2023, through March 24, 2023, and the cash collateral may be used to pay the following expenses, granting Debtor in Possession a variance of 15% in any individual line item expense as long as the total amount used does not exceed five percent of the monthly total budget.

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.

10/09/23
Cash Basis

ROBERT OBREGON, DDS, INC.
Profit & Loss
Interim Budget

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| Net Income | 43,837.86 | 26,728.28 | 27,728.28 | 28,728.28 | 29,728.28 | 30,728.28 |

IT IS FURTHER ORDERED that **XXXXXXX**

IT IS FURTHER ORDERED that the hearing on the Motion is continued to **xx:xx x.m. on xxxx, 202x**, to consider a Supplement to the Motion to extend the authorization to use cash collateral. On or before **xxxx, 202x**, Debtor in Possession shall file and serve supplemental pleadings for the further use of cash collateral and notice of the **xxxx, 202x** hearing. Any opposition to the requested use of cash collateral may be presented orally at the hearing.