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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF ARIZONA

In re

REGIONAL CARE SERVICES CORP., ☒
CASA GRANDE COMMUNITY HOSPITAL ☒
D/B/A CASA GRANDE REGIONAL MEDICAL
CENTER,
REGIONAL CARE PHYSICIANS GROUP, ☒
INC., and
CASA GRANDE REGIONAL RETIREMENT ☐
COMMUNITY, INC.,

Debtors.

Chapter 11

Case Nos. 4:14-bk-01383-EWH
4:14-bk-01384-EWH
4:14-bk-01385-EWH
4:14-bk-01386-EWH
(Joint Administration)

This Filing Applies to:

☐ All Debtors
☒ Specified Debtors

**UNOPPOSED MOTION TO PERMIT
PAYMENTS TO CERNER IN THE
ORDINARY COURSE OF BUSINESS
AND TO PROVIDE CERNER WITH
ADEQUATE PROTECTION DURING
CHAPTER 11 PROCEEDING**

Cerner Corporation ("Cerner") hereby moves this Court for entry of an order authorizing and directing Regional Care Services Corp. ("RCSC"), Casa Grande Community Hospital d/b/a Casa Grande Regional Medical Center ("CGRMC"), and Regional Care Physician's Group, Inc. ("RCPG" and collectively with RCSC and CGRMC, the "Applicable Debtors") to make post-petition payments

1 to Cerner in the ordinary course of business and to provide Cerner with adequate protection during the
2 Chapter 11 proceedings. The Applicable Debtors do not oppose the relief sought in this Motion.

3 Cerner and the Applicable Debtors are parties to three agreements, two of which are very
4 comprehensive: (1) the Cerner Business Agreement for Remote Hosting Options Services (the
5 “Cerner Business Agreement”); (2) the RevWorks Services Agreement; and (3) the Professional
6 Services Project Agreement No. 1 (collectively, the “Agreements”). The Cerner Business Agreement
7 governs the Applicable Debtors’ use and support of clinical healthcare information solutions that
8 Cerner has licensed to the Applicable Debtors to support their delivery of care to their patients, which
9 can include laboratory, pharmacy, surgery, nursing and emergency components. Through the
10 RevWorks Services Agreement, Cerner manages the Applicable Debtors’ revenue cycle process by
11 which claims to third party payers and invoices to the Applicable Debtors’ patients for the Applicable
12 Debtors’ services are generated and processed. Under the RevWorks Services Agreement, Cerner also
13 provides the transactional services by which the Applicable Debtors’ claims are submitted to third
14 party payers for reimbursement and remittances are transmitted by the payers back to the Applicable
15 Debtors. With RevWorks, Cerner supplies services in areas such as scheduling, registration, health
16 information management, patient information, and patient accounting.

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19 In this Motion, Cerner seeks an order directing the Applicable Debtors to continue to pay
20 Cerner under the Agreements in the ordinary course of business. The suite of solutions and services
21 Cerner provides to the Applicable Debtors were designed over the past eight years to work in concert.
22 Moreover, the licenses that Cerner has granted and continues to support and the services that Cerner
23 provides to the Applicable Debtors under these agreements are critical to both the Applicable Debtors’
24 delivery of healthcare to their patients and the Applicable Debtors’ business operations. Cerner should
25 be able to rely on the regular and timely payment from the Applicable Debtors of all invoices on a
26 post-petition basis.
27

1 Further, Cerner seeks adequate protection from the Applicable Debtors with respect to its travel
2 reimbursement invoices. Due to the nature of the services provided to the Applicable Debtors under
3 the Agreements, Cerner employees are frequently on-site at the Applicable Debtors' locations. Prior to
4 the bankruptcy filing, Cerner held a claim of approximately \$455,660. Approximately \$141,033 of
5 this pre-petition balance represents unpaid travel, lodging and meals of Cerner's employees and the
6 professional services associated with same. As adequate protection, Cerner respectfully requests that
7 the Applicable Debtors either (a) forthwith pay the pre-petition travel reimbursement and professional
8 services invoices of Cerner totaling \$141,033; or (b) post a deposit with Cerner in the amount of
9 \$141,033 for Cerner's use in timely reimbursing itself for prepaid travel costs and professional services
10 in the event of non-payment by the Applicable Debtors.
11

12 This Motion is supported by the attached Memorandum of Point and Authorities.

13 DATED this February 26, 2014.

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1 **MEMORANDUM OF POINT AND AUTHORITIES**

2 **I. JURISDICTION**

3 1. This court has jurisdiction to consider this motion pursuant to 28 U.S.C. §§ 157 and
4 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is appropriate pursuant to 28
5 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are §§ 105(a), 361(1)
6 and (3), and 363(b) and (e) of the Bankruptcy Code.
7

8 **II. FACTUAL BACKGROUND**

9 **A. The Debtors**

10 2. RCSC, CGRMC, RCPG, and Casa Grande Regional Retirement Community
11 (“CGRRC”, and collectively with RCSC, CGRMC, and RCPG, the “Debtors”) each filed a voluntary
12 Chapter 11 proceeding on February 4, 2014 (the “Petition Date”). The Debtors cases are being jointly
13 administered for procedural purposes.

14 3. The Debtors continue in possession of their property and management of their business
15 as debtors-in-possession pursuant to Bankruptcy Code §§ 1107 and 1108.
16

17 **B. Cerner Corporation**

18 4. Cerner is a global supplier of health care information technology solutions, services,
19 devices and hardware. Its software solutions optimize clinical and revenue cycle processes for health
20 care organizations.

21 **C. The Cerner Business Agreement**

22 5. RCSC and CGRMC are parties to the Cerner Business Agreement, dated December 29,
23 2005, in which Cerner agrees to provide non-exclusive, non-transferrable licenses for RCSC, CGRMC
24 and RCPG to use Cerner’s licensed software.¹ In very broad terms, the Cerner Business Agreement
25 governs the Applicable Debtors’ use of the clinical and revenue cycle healthcare information solutions
26

27
28 ¹ RCPG is a “permitted facility” under the Cerner Business Agreement.

1 by which the Applicable Debtors provide care to their patients in a wide array of acute care venues
2 ranging from the pharmacy to certain surgical functions.

3 6. In addition, the Cerner Business Agreement provides for Cerner to remotely host all
4 clinical and revenue cycle solutions licensed by the Applicable Debtors at data centers maintained by
5 Cerner in Kansas City, Missouri. Through the remote hosting provisions of the Cerner Business
6 Agreement, Cerner manages the computer networks upon which the Applicable Debtors' licensed
7 healthcare information technology solutions are installed. Cerner maintains the hardware and
8 technology for these clinical and revenue cycle systems that are continually changing, requiring
9 specific security and needing day-to-day system management.

11 7. The Cerner Business Agreement includes fourteen separate schedules, as many as
12 fourteen amendments, and several project agreements, many of which are interdependent. It covers
13 remote hosting, software licenses, certification and engineering, monthly support for the software,
14 equipment and sublicensed software, professional services, and subscriptions (i.e., supplements) added
15 to the licensed software that enhance or expand the use of the software.

16 8. The Applicable Debtors are billed monthly, quarterly and annually under the Cerner
17 Business Agreement, depending upon the specific solution, license, subscription, or service. Monthly
18 fees cover services such as remote hosting. Quarterly and annual invoices are sent for items such as
19 subscriptions renewals and license fees. For example, the licensed *PharmNet*® solution is a
20 sophisticated pharmacy management and medication information system for which the Applicable
21 Debtors have contracted. This information system is supported by a subscription for related drug/drug,
22 drug/food, and drug/allergy interaction content that provides crucial updates to the system and
23 enhances patient safety to avoid adverse medication events.
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1 **D. The RevWorks Services Agreement**

2 9. Cerner and debtors RCSC and CGRMC are also parties to an entirely separate
3 agreement known as the RevWorks Services Agreement. Under the RevWorks Services Agreement,
4 Cerner employees provide management and measurement services to the Applicable Debtors' revenue
5 cycle in certain areas such as patient accounting, patient registration/scheduling, and HIM. The
6 services provided under the RevWorks Services Agreement are a combination of licensed software
7 solutions and on-site services.
8

9 10. Through the RevWorks Services Agreement, Cerner assists the Applicable Debtors in
10 generating claims and invoices for their healthcare services and in recovering reimbursement and
11 payment through their billings, reimbursements and accounting functions with a goal of improving
12 revenue cycle functions and the Applicable Debtors' economic performance, i.e., increasing
13 reimbursements, accelerating cash, lowering costs, and eliminating waste and delay. Health care
14 providers that may have once used several vendors for transactional services can look to RevWorks for
15 a comprehensively managed solution, thus reducing problems with efficiencies and support.
16

17 11. Under the RevWorks Services Agreement, Cerner meets with the Applicable Debtors at
18 the end of the quarterly revenue cycle to perform a true-up. That true-up involves a reconciliation of
19 the agreed upon quarterly budgeted costs under the RevWorks Services Agreement to the actual costs
20 incurred by RCPG and CGRMC for the quarter. Cerner then remits a check to the Applicable Debtors
21 for the actual incurred costs and the Applicable Debtors in turn remit a check to Cerner for the
22 budgeted quarterly costs.

23 **E. Cerner's Prepetition Claim**

24 12. On the Petition Date, the Applicable Debtors owed Cerner approximately \$1,563,611
25 under the Agreements. However, \$1,107,951 represented an offsetting sum due the Applicable
26 Debtors pursuant to the RevWorks Services Agreement and has been handled separately in a
27
28

1 stipulation regarding set-off. The remaining pre-petition amount due Cerner is approximately
2 \$455,660.²

3 13. Approximately \$141,033 of the approximately \$455,660 due pre-petition is related to
4 travel and on-site services that generally represent a direct out-of-pocket payment by Cerner to, for
5 example, an employee to reimburse airfare, lodging or meals for work performed at the Applicable
6 Debtors' premises.

7
8 14. Also included in the pre-petition balance due are licensed subscriptions for which the
9 Applicable Debtors have not paid.

10 15. Certain annual and quarterly billed items, mainly subscriptions and software support,
11 straddled the Petition Date. Only the percentages of those invoices falling on the pre-petition side of
12 that line are included in the pre-petition balance. Cerner has supplied the Applicable Debtors with an
13 accounting of those items that were billed (or mailed) pre-petition but where services will be due post-
14 petition. Payment is expected for the post-petition portion of those invoices.

15 **F. Cerner's Upcoming Post-Petition Invoices**

16
17 16. While some services expected to be billed in the coming months are billed based upon
18 the volume of certain services, for example the number of claims electronically submitted via Cerner
19 for payment to the Applicable Debtors, other amounts are fixed. The amounts billed vary greatly from
20 month to month due to the quarterly and annual nature of the licenses/subscription invoices. Cerner
21 expects that the Applicable Debtors will not operate its intellectual property without paying according
22 to the invoice terms as stipulated on each individual invoice.

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² The amount asserted as Cerner's claim, above, does not include amounts set forth under a deferred payment schedule
27 entered into between the Debtor and Cerner in late 2013 and certain contractual amendments where payment terms were
28 extended past the petition date. Cerner and the Debtors are continuing to work through and reconcile the dollars related to
those agreements.

1 **III. RELIEF REQUESTED**

2 17. Cerner seeks an order directing the Applicable Debtors to pay Cerner under the
3 Agreements each month, on time, in the ordinary course of business. As the owner of intellectual
4 property and a party forced to supply license support, maintenance and on-site support, Cerner
5 respectfully requests that the Court condition the Applicable Debtors' use of Cerner's intellectual
6 property upon the regular and timely payment of its post-petition invoices. This includes the post-
7 petition portion of the invoices that straddle the Petition Date as well as the payments due in the
8 coming months.
9

10 18. Cerner also seeks adequate protection, under §§ 361(1) and (3) of the Bankruptcy Code.
11 Having paid a substantial sum out-of-pocket to reimburse employees for travel and expenses related to
12 onsite professional services supplied to the Applicable Debtors, Cerner requests that the Applicable
13 Debtors either (a) forthwith pay the pre-petition travel reimbursement and professional services
14 invoices of Cerner totaling \$141,033; or (b) post a deposit with Cerner in the amount of \$141,033 for
15 Cerner's use in timely reimbursing itself for the prepaid travel costs and professional services in the
16 event of non-payment by the Applicable Debtors.
17

18 **IV. BASIS FOR RELIEF**

19 **A. Bankruptcy Code § 363(e) Permits a Party to Seek Adequate Protection of Its**
20 **Interest in Property.**

21 19. Section 363(e) of the Bankruptcy Code provides that:
22 on request of an entity that has an interest in property used . . . or proposed to be used . . . by
23 the [debtor-in-possession], the court, with or without a hearing, shall prohibit or condition such
24 use . . . as is necessary to provide adequate protection of such interest.

25 11 U.S.C. § 363(e).
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1 20. As the owner of intellectual property that the Applicable Debtors seek to use Cerner is
2 seeking, pursuant to 11 U.S.C. § 363(e), to condition such further use upon the timely payment of all
3 post-petition invoices.

4 21. A post-petition failure to have a valid paid license for use of intellectual property may
5 subject a debtor to an infringement lawsuit. *Voice Sys. and Servs., Inc. v. VMX, Inc.*, 26 U.S.P.Q.2d
6 1106, 1113 (N.D. Okla. 1992). The *Voice Sys. and Servs.* court relied, in part, on 28 U.S.C. § 959(a) in
7 authorizing suits against debtors-in-possession, without leave of court, with respect to their acts in
8 carrying on the business of the debtor. That court ultimately issued a preliminary injunction against
9 the debtors to stop the infringing activity.

11 22. The Ninth Circuit has given similar respect to the rights of owners of intellectual
12 property. *Pearlman v. Catapult Entertainment (In re Catapult Entertainment)*, 165 F.3d 747 (9th Cir.
13 1999) (respecting the rights of the patent holder and other applicable federal law over the debtor's right
14 under the Bankruptcy Code to assume and assign the license to another entity).

15 23. Section 361 of the Bankruptcy Code further provides that:

16 When adequate protection is required under section 362, 363, or 364 of this title of an interest
17 of an entity in property, such adequate protection may be provided by –

18 (1) requiring the [debtor-in-possession] to make a cash payment or periodic cash payments to
19 such entity, to the extent that . . . use, sale, or lease under section 363 of this title . . . results in a
decrease in the value or such entity's interest in such property;

20 (3) granting such other relief . . . as will result in the realization by such entity of the
21 indubitable equivalent of such entity's interest in such property.

22 11 U.S.C. § 361.

23 24. Cerner is also seeking, pursuant to § 363(e) and §§ 361(1) and (3), adequate protection
24 to give Cerner the comfort of knowing it will be paid for the costs and fees associated with having its
25 employees work at the Applicable Debtors' location.

1 **B. The Relief Sought by Cerner Is Appropriate and Necessary to Provide Adequate**
2 **Protection of Its Interests.**

3 25. As set forth above, the relationship between Cerner and the Applicable Debtors is long-
4 standing and significant. Cerner's licensed solutions are operating the clinical side of CGRMC's 177
5 bed hospital, and RCPG's activities and those solutions are being remotely hosted by Cerner at its
6 facilities in Kansas City, Missouri. Cerner is also providing oversight of the revenue cycle
7 management of the Applicable Debtors' business. Such a complex and developed relationship,
8 coupled with a nearly half million dollar pre-petition default, merits an order directing the Applicable
9 Debtors to timely pay Cerner for its post-petition invoices.
10

11 26. Similarly, the interactive and hands-on nature of the services and solutions Cerner
12 provides to the Applicable Debtors supports an order for adequate protection of Cerner's interests.
13 Cerner is not encouraged to send its employees to the Applicable Debtors' location to perform services
14 for the Applicable Debtors unless and until it is reimbursed for the out-of-pocket costs associated with
15 past travel and related professional services or has a deposit to ensure future payment. Professional
16 service reimbursement invoices are a concern for Cerner because Cerner must extend funds to pay for
17 third-party travel and then seek reimbursement from the Applicable Debtors.
18

19 27. The Court has the power to fashion an adequate protection remedy to prevent further
20 loss to Cerner and give comfort to Cerner that its interests will be protected as the numerous and
21 substantial services provided to the Applicable Debtors continue.

22 28. The requested relief is appropriate and should cause no hardship to the Debtors, who
23 have represented that the reorganization sought in these Chapter 11 proceedings will result in general
24 unsecured creditors being paid in full or close to full on their claims. Moreover, the Debtors do not
25 oppose the relief sought pursuant to this Motion.
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1 **V. NOTICE**

2 29. Notice of this Motion will be given to: (a) the U.S. Trustee; (b) the Debtors and counsel
3 to the Debtors; (c) Great Western Bank and, if known, counsel to Great Western Bank; (d) JP Morgan
4 Chase & Co. and, if known, counsel to JP Morgan Chase & Co.; (d) Banner Health, the Debtors'
5 proposed post-petition lender; and (e) the Debtors' twenty (20) largest unsecured creditors. The
6 Debtors submit that, under the circumstances, no other or further notice is required.

7 **VI. CONCLUSION**

8
9 WHEREFORE, Cerner seeks an order directing the Applicable Debtors to continue to pay
10 Cerner under the Agreements in the ordinary course of business, including the regular and timely
11 payment of all invoices on a post-petition basis as well as the post-petition portion of those invoices
12 that straddle the Petition Date. As adequate protection, Cerner seeks an order directing the Applicable
13 Debtors to either (a) forthwith pay the pre-petition travel reimbursement and professional services
14 invoices of Cerner totaling \$141,033; or (b) post a deposit with Cerner in the amount of \$141,033 for
15 Cerner's use in timely reimbursing itself for the prepaid travel costs and professional services in the
16 event of non-payment by the Applicable Debtors.

17 DATED this February 26, 2014.

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