

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

<b>IN RE:</b>	§	
	§	
<b>FOREST PARK MEDICAL CENTER AT FRISCO, LLC,</b>	§	<b>CASE NO. 15-41684-BTR</b>
	§	<b>(Complex Chapter 11)</b>
<b>DEBTOR.</b>	§	

**EMERGENCY MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION  
TO ENFORCE THE AUTOMATIC STAY**

**NO HEARING WILL BE CONDUCTED ON THIS MOTION UNLESS A WRITTEN OBJECTION IS FILED WITH THE CLERK OF THE UNITED STATES BANKRUPTCY COURT AND SERVED UPON THE PARTY FILING THIS PLEADING WITHIN TWENTY-ONE (21) DAYS FROM DATE OF SERVICE UNLESS THE COURT SHORTENS OR EXTENDS THE TIME FOR FILING SUCH OBJECTION. IF NO OBJECTION IS TIMELY SERVED AND FILED, THIS PLEADING SHALL BE DEEMED TO BE UNOPPOSED, AND THE COURT MAY ENTER AN ORDER GRANTING THE RELIEF SOUGHT. IF AN OBJECTION IS FILED AND SERVED IN A TIMELY MANNER, THE COURT WILL THEREAFTER SET A HEARING. IF YOU FAIL TO APPEAR AT THE HEARING, YOUR OBJECTION MAY BE STRICKEN. THE COURT RESERVES THE RIGHT TO SET A HEARING ON ANY MATTER.**

**EMERGENCY CONSIDERATION HAS BEEN REQUESTED**

TO THE HONORABLE BRENDA T. RHOADES,  
CHIEF UNITED STATES BANKRUPTCY JUDGE:

Forest Park Medical Center at Frisco, LLC (the “Debtor”), debtor and debtor-in-possession, hereby submits this emergency motion (the “Motion”) pursuant to Sections 105(a) and 362 of the of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq.* (the “Bankruptcy Code”), for the entry of an order enforcing the automatic stay. In support of this Motion, the Debtor respectfully represents as follows:

**I.**  
**STATUS OF THE CASE AND JURISDICTION**

1. On September 22, 2015 (the “Petition Date”), the Debtor commenced this case by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor has continued in the possession of its property and is operating and managing its business as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code.

2. No request for a trustee or examiner has been made. An Official Unsecured Creditors’ Committee was appointed on September 30, 2015. This Court has jurisdiction over this Motion under 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. §§ 157(b)(2). Venue of these proceedings and this Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Sections 105(a) and 362 of the Bankruptcy Code.

**II.**  
**BACKGROUND**

4. The Debtor is a doctor-owned Texas limited liability company that operates a 54-bed state-of-the-art medical facility, including 30 private rooms, 14 family suites, and 10 intensive care rooms (the “Hospital”) in Frisco, Texas. The Hospital is a luxury medical facility located at 5500 Frisco Square Boulevard in Frisco, Texas, off of the Dallas North Tollway and Main Street. The Debtor offers a range of surgical services, including, but not limited to, pediatric, bariatric, brain, orthopedic, pain management, plastics and reconstructive, spine, and neurosurgery.

5. Prior to the Petition Date and for a period of time post-petition, the Hospital’s human resources management and back office services were provided by FPMC Services, LLC (“FPMC Services”). As set forth in the *Affidavit of Michael Miller in Support of the Debtor’s*

*Chapter 11 Petition and Requests for First Day Relief*, [Docket No. 3], FPMC Services managed all revenue for the Debtor, as well as six other affiliates and is owned in equal parts by those seven entities for which it performs(ed) these services.

6. Prior to the Petition Date, FPMC Services performed all of the billing, collection, financial management and reporting (in connection with the Debtor's management). FPMC Services informed the Debtor it would no longer provide central billing office ("CBO") services after December 31, 2015, resulting in the Debtor filing its *Expedited Motion for an Order Authorizing Entry into Contract with Accordias Health Services, LLC* [Docket No. 349], to which an Order was entered granting such relief on January 6, 2016 [Docket No. 371]. Accordias Health Services, LLC now provides CBO services for the Debtor.

7. As the prior primary provider of all billing, collection, financial management and reporting for the Debtor, FPMC Services has possession, custody and control of certain documents and information, including but not limited to, books, records and bank statements relating to the Debtor's property and financial affairs. Post-petition, discrepancies have arisen as to payments the Debtor made to FPMC Services and believed FPMC Services had paid, on the Debtor's behalf, to Debtor's creditors. Thus, it is incumbent upon the Debtor to investigate the payments collected and paid by FPMC Services and to assemble a reliable accounting of all such transactions. In order to conduct this investigation, the Debtor must have firsthand access to the books, records and bank statements of FPMC Services as well as any other documents containing information regarding the Debtor's property and financial affairs.

8. Furthermore, the Debtor's monthly operating report for the month of December 2015 was due on January 20, 2016. FPMC Services has demanded a payment of \$1,500.00 for assistance in providing information so that the Debtor may complete its monthly operating

report, despite the fact that the Debtor paid \$11,000.00 for the services of an independent contractor working at FPMC Services for this assistance. Therefore, the Debtor has no choice but to demand turnover of all its records and information.

9. On January 25, 2015, the Debtor filed an *Emergency Motion for an Order Compelling Turnover of Books, Records, and Bank Statements of FPMC Services, LLC Relating to Debtor's Property or Financial Affairs* [Docket No. 397] (the "Turnover Motion") and this Court has set such motion for hearing on Thursday, January 28, 2016. The Debtor files this Motion as an alternative basis for the same requested relief. Therefore, the Debtor requests the Court set this Motion for hearing at the same time as the related Turnover Motion.

10. Both the Debtor and Debtor's counsel have made numerous attempts to resolve this issue with FPMC Services. As of the filing of this Motion, no agreement has been reached. The Debtor estimates that as of the filing of this Motion, it has incurred approximately \$10,000.00 in legal fees and expenses as a result of FPMC's actions. While the Debtor doesn't seek these damages in this Motion, it reserves the right to seek them at a later date.

11. The Debtor's need for this information is immediate given the issues with various creditors, the deadline to file its monthly operating report and in light of the Debtor's proposed sale transaction. The Debtor's damages from this willful violation will increase each day that FPMC Services does not turnover the requested information.

**III.**  
**RELIEF REQUESTED AND BASIS FOR RELIEF**

12. Though the Debtor is attempting to reach an agreement that will prevent the interruption of the Debtor's business operations, in the event an agreement cannot be reached, the Debtor seeks an order from this Court to enforce the automatic stay and compel FPMC Services, LLC to deliver the information requested herein to the Debtor.

13. Section 362(a) of the Bankruptcy Code precludes any entity from taking any act to obtain possession of property of the estate or of property from the estate *or to exercise control over property of the estate*. Section 362 also precludes any act to collect, assess, or recover a claim against the Debtor that arose before the commencement of the bankruptcy case. 11 U.S.C. § 362 (emphasis added). An action is related to a bankruptcy case if the outcome could conceivably affect the bankruptcy estate. *Edge Petroleum Operating Co. v. GPR Holdings, LLC (In re TXNB Internal Case)*, 483 F.3d 292, 298 (5th Cir. 2007). “Certainty is unnecessary; an action is ‘related to’ bankruptcy if the outcome could alter, positively or negatively, the debtor’s rights, liabilities, options, or freedom of action or could influence the administration of the bankruptcy estate.” *Id.*

14. FPMC Services’ actions in refusing to provide the Debtor with the Debtor’s financial information constitute an attempt to exercise control over property of the estate. Thus, any such act by FPMC Services constitutes a willful violation of the automatic stay.

15. Section 105(a) provides that the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code. 11 U.S.C. § 105(a). The Debtor requests that the Court issue an order prohibiting FPMC Services from exercising control over the property of the estate, and directing FPMC Services to provide the Debtor with the information requested herein and the services for which the Debtor has already paid.

16. The Debtor reserves the right to request that the Court sanction FPMC Services for any willful and intentional actions taken in violation of the automatic stay, including, without limitation, awarding the Debtor damages, punitive damages and attorneys’ fees at a later date.

**IV.**  
**NOTICE**

17. Notice of this Motion has been given by electronic mail, facsimile, overnight delivery, and/or courier to the Master Service List including the following parties or, in lieu thereof, to their counsel, if known: (a) Vibrant Healthcare Frisco, LLC; (b) FPMC Services, LLC; (c) the Office of the United States Trustee for the Eastern District of Texas; (d) the Office of the Texas Attorney General; (e) the Office of the United States Attorney General; (f) Texas Department of State Health Services; (g) Texas Capital Bank; (h) Sabra Texas Holdings, L.P.; (i) Healthcare Trust of America, Inc.; (j) counsel for the Unsecured Creditors' Committee; and, to all parties registered to receive notice via the Court's electronic transmission system. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

In conclusion, the Debtor respectfully requests the Court grant the Motion, and grant the Debtor such other and further relief as the Court may deem proper.

Dated: January 26, 2016.

Respectfully submitted,

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**COUNSEL FOR THE DEBTOR**

**CERTIFICATE OF CONFERENCE**

I hereby certify that I have been in telephone communication with Art Stewart, counsel for FPMC Services on the substantive issues set forth in the Motion, on January 26, 2016. As of the time of filing this Motion, the parties have been unable to reach a resolution.

/s/ Vickie L. Driver  
Vickie L. Driver

**CERTIFICATE OF SERVICE**

I hereby caused a true and correct copy of the foregoing pleading to be served by Donlin, Recano & Company upon the parties listed on the current Master Service List and FPMC Services at the addresses below via ECF notification, e-mail, facsimile, overnight delivery, and/or courier on this 26th day of January, 2016.

/s/ Vickie L. Driver  
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**UNITED STATES BANKRUPTCY COURT  
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<b>FOREST PARK MEDICAL CENTER AT FRISCO, LLC,</b>	§	<b>CASE NO. 15-41684-BTR</b>
	§	<b>Complex Chapter 11</b>
	§	
<b>DEBTOR.</b>	§	
	§	
	§	

**ORDER GRANTING EMERGENCY MOTION OF DEBTOR AND DEBTOR-IN-POSSESSION TO ENFORCE THE AUTOMATIC STAY [DOCKET NO. \_\_\_\_]**

Came on for consideration the *Emergency Motion of Debtor and Debtor-in-Possession to Enforce the Automatic Stay* (the “Motion”) filed by Forest Park Medical Center at Frisco, LLC, debtor and debtor-in-possession in the above referenced bankruptcy case (the “Debtor”) pursuant to 11 U.S.C. §§ 362 and 105(a) seeking an order prohibiting FPMC Services from violating the automatic stay and directing FPMC Services to deliver the documents and information requested therein to the Debtor. The Court, having considered the evidence and statements of counsel, finds that the Motion has merit. It is therefore

**ORDERED** that the Motion is **GRANTED**. It is further



**ORDERED** that, on or before 10:00 a.m. Central Time on February 1, 2016, FPMC Services, LLC shall turnover or disclose to the Debtor at the offices of Debtor's counsel, the books, documents, records and papers of FPMC Services, LLC, including but not limited to, bank statements, and any other information relating to the Debtor's property or financial affairs.

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HONORABLE BRENDA T. RHOADES  
CHIEF UNITED STATES BANKRUPTCY JUDGE

**PREPARED BY:**

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**Case No. 15-41684-BTR-11**

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**Case No. 15-41684-BTR-11**

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**Case No. 15-41684-BTR-11**

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**TOP 20 UNSECURED CREDITORS**

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DALLAS TX 75204

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3909 HULEN STREET  
FORT WORTH TX 76107

STRYKER INSTRUMENTS, A DIV. OF STRYKER CORP.  
C/O LORI L. PURKEY, ESQ.  
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GRAND RAPIDS MI 49546

SIEMENS MEDICAL SOLUTIONS USA, INC.  
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MALVERN PA 19355

STRYKER ENDOSCOPY, A DIV. OF STRYKER CORP.  
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IRVING TX 75063

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IDENTITY MEDIA SERVICES  
1801 ROYAL LANE  
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DALLAS TX 75229



**MASTER SERVICE LIST**  
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**Case No. 15-41684-BTR-11**

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