

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

IN RE:

FOREST PARK MEDICAL CENTER  
AT FRISCO, LLC

DEBTOR.

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CHAPTER 11

CASE NO. 15-41684 - BTR

HEARING DATE & TIME:  
September 23, 2015 at 1:30 p.m.

**DEBTOR’S EMERGENCY MOTION FOR AN ORDER AUTHORIZING (I) THE DEBTOR TO PAY PRE-PETITION WAGES AND BENEFITS OR ALTERNATIVELY, TO PAY OR HONOR PREPETITION OBLIGATIONS TO CERTAIN CRITICAL VENDORS AND (II) BANKS TO HONOR AND PAY CHECKS ISSUED TO PAY PRE-PETITION WAGES AND WITHHOLDINGS**

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

Forest Park Medical Center at Frisco, LLC (the “Debtor”), debtor and debtor-in-possession, hereby moves on an emergency basis for authority to pay pre-petition wages and benefits or alternatively, to pay or honor prepetition obligations to certain critical vendors; and (ii) banks to honor and pay checks issued to pay pre-petition wages, withholdings, benefits and expenses (the “Motion”). In support of this Application, the Debtor submits the Affidavit of Michael S. Miller in Support of the Debtor’s Chapter 11 Petition and Requests for First-Day Relief, (the "Miller Affidavit")<sup>1</sup>, filed contemporaneously herewith. In further support of this Motion, the Debtor respectfully states as follows:

<sup>1</sup> Any defined terms not otherwise defined herein shall be ascribed the meaning contained in the Miller Affidavit.

**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 and no creditors' committee has yet been appointed in this case. 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)(A) and (O). 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 sought herein are Sections 105(a), 363(b) and 507(a) of the Bankruptcy Code.

**II.**  
**BACKGROUND**

**A. General.**

4. The Debtor is a doctor-owned Texas limited liability company that owns and 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. It is currently minimally staffed for an average daily census of 1-3

inpatients per day and up to 200 outpatients per month, but has a fully staffed maximum capacity of 54 inpatients per day and 1,000 outpatients per month. The Debtor's leased facility is comprised of over 136,759 useable square feet and is situated on approximately 4.7 acres. Approximately 159 employees work at the Hospital, including 100 full-time employees and 59 part-time employees.

5. 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. The Hospital's back office services and employees are contracted through FPMC Services, LLC ("Shared Services"). Shared Services manages 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 these services.

**B. Pre-Petition Secured Lender.**

**Pre-Petition Financing**

6. On or about October 10, 2012, the Debtor entered into that certain *Loan and Security Agreement*, dated as of October 10, 2012, by and between the Debtor and Texas Capital Bank ("TCB"), as such may have been amended and/or supplemented from time to time (the "Line of Credit Agreement"). The Debtors currently owe approximately \$2,500,000.00 under the Line of Credit Agreement, secured by essentially all of the Debtor's assets ("Line of Credit"). The Line of Credit matured on or about December 31, 2014, with an additional extension to April 1, 2015. Around the time of the December 31, 2014 maturity date, the Debtor learned that TCB would not be renewing the Debtor's Line of Credit nor providing further extensions of credit beyond the extended maturity.

7. In addition, the Debtor is also indebted to TCB under that certain *Master Equipment Lease* dated May 30, 2012 (the “Master Equipment Agreement”) for certain of the Debtor’s equipment. The Debtor is indebted to TCB in the approximate amount of \$5.5 million secured by the Debtor’s assets. The remainder of the equipment is leased through various parties, including General Electric Capital Corporation, Karl Storz, Commerce Bank and Olympus Corporation.

8. The Line of Credit was critical to the management of the Debtor’s operations. Currently, based upon a trailing three (3) months ending in July 2015, the Debtor generates approximately \$3,400,000.00 a month in revenue, and has operational expenses of approximately \$4,300,000.00 a month (not including restructuring costs and debt service obligations). As such, the Debtor does not generate sufficient revenue to operate the Hospital and to service their debt unless the number of patients exceeds recent levels.

Landlord and DIP Financing

9. The Debtor leases the real property and fixtures on which the Hospital operates, from Sabra Texas Holdings, L.P. (“Sabra”) pursuant to the terms of that certain *Lease Agreement* dated December 6, 2010, which was thereafter amended pursuant to that certain *First Amendment to Lease Agreement* dated as of October 22, 2013 (the “Lease”) assigning the Lease from FPMC Frisco Realty Partners, LP to Sabra. The Lease is for an initial term of 20 years, accruing rent in the amount of \$842,290.00 per month for the Hospital and the parking structure, to increase every calendar year over the term of the Lease by 3%.

10. Sabra has offered the Debtor debtor-in-possession (“DIP”) financing in the approximate amount of \$18,500,000.00, available in draws and accruing interest at a 5% interest

rate, payable monthly in arrears (“DIP Financing”) pursuant to that certain Senior Secured Superpriority Debtor-In-Possession Loan and Security Agreement (“DIP Agreement”). The DIP Financing would mature upon the occurrence of certain events, including the conversion of this Case, dismissal of this Case, the sale of substantially all of the Debtor’s assets, the revocation of the Debtor’s license to operate or the expiration of 35 days after the filing of a Petition if a final order approving the DIP Credit Facility has not been entered by the Bankruptcy Court.

11. Prior to the Petition Date, the Debtor anticipated that without continuing liquidity, the value of its assets would rapidly diminish and would more than likely require the Debtor to close down the Hospital and liquidate its assets.

**C. Reorganization Efforts.**

12. The Debtor’s operations were developed based upon an “out-of-network” model. This model relied upon higher reimbursement rates as an out-of-network facility. However, prior to the Petition Date, the Debtor determined that it would be unable to sustain the level of revenue needed to operate by operating solely out of network. Consequently, it attempted to increase its revenues by entering into network contracts with various insurance providers. Although being “in network” with various insurance providers would result in discounted reimbursement rates, it was thought that being in network would increase the volume of procedures at the Hospital and thus increase revenue. However, the reduced rates that the insurance providers contracted for were too low for the Hospital to schedule enough procedures to reap any financial benefit from the contracts.

13. The Debtor engaged Juniper Advisory, LLC for assistance to pursue a sale of the Hospital to a purchaser in June, 2014. Despite many possible purchasers performing due diligence and even one offer for purchase, (such offer included a purchase of the real estate owned by Sabra and Sabra was unwilling to sell the real estate at the proposed purchase price) the Debtor was unable to close a sale.

14. In addition to seeking a potential purchaser, the Debtor's Management Company, Vibrant Healthcare Frisco, LLC, ("Management Company") also sought and located a replacement revolving lender who would pay off the TCB Line of Credit and provide up to an additional \$6.5 million in additional availability based upon the amount of the Debtor's accounts receivable. However, this demand note, bearing 15% interest, provided a decreasing amount of liquidity due to the Debtor's declining accounts receivable balance while the Debtor worked to resolve obstacles to closing such as intervening lawsuits, a delay in signing a new management contract and Sabra's impending eviction of the Debtor from its leased space. Ultimately, this financing never closed.

15. Finally, to address the increasingly exigent financial and operational issues, the Debtor retained Deloitte CRG ("Deloitte") on September 11, 2015. Deloitte was retained to assist the Debtor to, among other things, create short-term budgets, negotiate appropriate waivers and forbearances, and assess the Debtor's available assets and options by which to improve the Debtor.

16. In Chapter 11, the Debtor has an opportunity to quickly evaluate whether a plan of reorganization or a sale of the Debtor's assets will provide for the most recovery to the Debtor's creditors. This would avoid further deterioration of the Debtor's business, would

preserve over one hundred jobs, and would achieve maximum values for all creditors. In order to evaluate the strategies set forth herein, and maximize values for all creditors, including unsecured creditors, the Debtor was forced to commence this Chapter 11 Case.

**III.**  
**REQUEST FOR AUTHORITY TO PAY**  
**PRE-PETITION COMPENSATION AND RELATED CLAIMS**

17. The Debtor's workforce includes a total of one hundred fifty-nine (159) non-insider clinical and non-clinical professionals and staff (the "Employees"). These are, in large part, highly skilled medical professionals that are very difficult to replace. In many instances, physicians have assembled their team of proven specialized medical professionals whose expertise has been verified, and with whom they are comfortable working with for that particular type of procedure. The doctors are committed to the safety of their patients and if they do not feel that they have adequate support for a patient procedure, they will schedule that procedure at another facility. Furthermore, assuming that replacement professionals were available, that would require going through an agency, taking time and an estimated 40% increased expense to the Debtor for that professional's services. Therefore, it is clear that the continued and uninterrupted service of the Employees is essential to the Debtor's continuing business operations and its ability to reorganize.

18. The Employees are not technically employed directly by the Debtor; rather, they are employed by Shared Services. In addition, the benefits, such as healthcare, are provided through one contract held by the Management Company that covers the employees at all seven of the hospitals in the Forest Park System. This was done to provide additional buying power by pooling the volume of employees under one administrative roof and also reducing overhead

through economies of scale. The Debtor is also responsible for its portion of Shared Services' staff wages ("Shared Services Staff"). Those expenses are split amongst all seven Forest Park affiliates. *See* the Miller Affidavit.

19. The Debtor is responsible for funding payroll for the Employees and its portion of Shared Services Staff every two (2) weeks. The Debtor estimates its gross payroll responsibility for a two (2) week period to be approximately \$408,000.00 based upon recent payroll cycles. The Debtor's first post-petition payroll funding responsibility will arise on October 1, 2015, (the actual payroll date is October 2, 2015, but such funds must be transferred for payment on October 1, 2015) for the period September 13, 2015 through September 26, 2015. Nine (9) days of that payroll responsibility will be based upon services that were provided pre-petition. A graphic representation of the Debtor's estimated pre-petition gross wages for the Employees and Shared Services Staff will be provided as an exhibit prior to the hearing on the Motion. The Debtor estimates that its payroll expense for the September 13, 2015 through September 21, 2015 pay period will total approximately \$485,500.00 based upon recent payroll cycles.<sup>2</sup> The net wages for the Pre-Petition Period is \$190,000.00 (the "Pre-Petition Wages").

20. Each Employee's or Shared Services Staff's Pre-Petition Wages that the Debtor seeks is equal to or less than the priority wage allowance of \$12,750, as allowed by Section 507(a)(4) of the Bankruptcy Code.

21. In addition, as of the Petition Date, the Debtor had obligations relating to Pre-Petition Wages for withholdings from Employees' paychecks on account of various federal, state

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<sup>2</sup> This calculation includes \$160,000.00 approximately two (2) months of past due benefits payments, and is therefore significantly larger than an average nine (9) day payroll expense for the Debtor.



and local income, FICA, Medicare and other taxes for remittance to the appropriate federal, state or local taxing authority (collectively, "Withholdings"). Shared Services, through the ADP payroll system, withholds the necessary and proper amounts for various federal, state and local income taxes, FICA, Medicare and other taxes. The Debtor estimates the Withholding for the period September 13, 2015 through September 21, 2015 is approximately \$69,500.00.

22. In the ordinary course of its business, Shared Services maintains (and the Debtor is responsible for via contract with Shared Services) medical insurance, dental insurance, vision coverage programs, life insurance, and disability insurance for the benefit of the Employees. The Debtor pays the majority of the premiums for such coverage for Employees and the balance of the premiums are deducted from the Employees' wages through a bi-weekly contribution. The Debtor offers the Employees a 100% coinsurance PPO medical plan and a Health Reimbursement Arrangement to help the Employees manage the deductible on the group plan. The Debtor is also responsible for 401k policy contributions for the Employees, with the Debtor's "matching" contribution totaling up to 3% of the Employee's 401k contribution. Such contributions by the Debtor are vested based upon a five (5) year vesting schedule (collectively, together with the insurance benefits, the "Benefits"). The Debtor estimates the Benefits owing pre-petition are approximately \$223,000.00.<sup>3</sup>

23. Furthermore, the Debtor is also responsible for providing certain of the Employees with cell phone reimbursement and general expense reimbursement for approved

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<sup>3</sup> This calculation includes \$160,000.00 for approximately two (2) months of past due benefits payments, and is therefore significantly larger than an average nine (9) day benefit expense for the Debtor.

business expenses (the “Expenses”). The Debtor estimates that the Expenses for the period September 13, 2015 through September 21, 2015 is approximately \$3,000.00.

24. Additionally, the Debtor provides paid time off (“PTO”) to full-time Employees to maintain a healthy work life balance. Full-time Employees begin accruing PTO hours upon the first day of work at the Hospital and may begin using them after the first ninety (90) days of employment. Employees may be provided the opportunity to cash out up to one hundred and twenty (120) hours of their PTO at 100% of their current hourly rate of pay subject to administrator approval provided they maintain a minimum balance of eighty (80) hours. Upon termination of employment, unused accumulated PTO will be paid at 100% of the Employee’s current hourly rate of pay. The Debtor plans to honor the benefit packages of the Employees.

25. The Debtor seeks authority to pay all (a) Pre-Petition Wages, (b) Withholdings, (c) Benefits, and (d) Expenses, totaling approximately \$485,500.00.

26. Authority to pay the requested Pre-Petition Wages, Withholdings, Benefits, and Expenses should be granted because such amounts are tantamount to or analogous to priority wage claims pursuant to 11 U.S.C. § 507(a)(4). *See In re News Publishing Co.*, 488 B.R. 241 (Bankr. N.D. Ga. 2013) (Court authorized payment of staffing agency’s claim that would be paid to temporary workers on theory that claim was analogous to prepetition wage claim payable on a fourth-level priority basis in bankruptcy.); *In re Equalnet Communications Corp.*, 258 B.R. 368 (Bankr. S.D. Tex. 2000) (Debtors would be allowed to pay claim asserted by contract employee for what was tantamount to priority wages, to the extent of statutory cap on wage claims.). Furthermore, 11 U.S.C. § 507(a)(4) does not expressly require the individual or corporation to be a direct employee of the debtor entity. Priority under Section 507(a)(4) is given to the following

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expenses and claims: “allowed unsecured claims, but only to the extent of \$12,475 for each individual or corporation, as the case may be, earned within 180 days before the date of filing of the petition or the date of the cessation of the debtor’s business, whichever occurs first, for wages, salaries, or commissions, including vacation, severance and sick leave pay earned by an individual.”). 11 U.S.C. § 507(a)(4). Therefore, the Debtor respectfully requests authority to pay the Pre-Petition Wages, Withholding, Benefits and Expenses.

**IV.**  
**ALTERNATIVE REQUEST FOR AUTHORITY TO PAY OR HONOR PREPETITION OBLIGATIONS TO CERTAIN CRITICAL VENDORS**

27. Alternatively, the Debtor seeks entry of an order authorizing it to pay, in the reasonable exercise of its business judgment, pre-petition amounts owed to Shared Services for Pre-Petition Wages, Withholding, Benefits and Expenses as a critical vendor because the Employees are essential to Debtor’s business operation. Shared Services provides the Debtor with clinical and nonclinical staff. Shared Services has informed the Debtor that it will not have any funds with which to pay the Employees their pre-petition wage and benefit amounts unless Debtor pays such funds to Shared Services. If the Employees are not paid, they will leave and find other jobs. Without the Employees, the Debtor’s business operations would collapse.

28. The outstanding balance due to Shared Services for employee wages and benefits prior to the Petition Date would arguably be entitled to priority under 11 U.S.C. § 507(a)(4).

29. Pursuant to Sections 105(a), 363(b), and 507(a)(4) and (5) of the Bankruptcy Code and the “necessity of payment” doctrine, the Debtor seeks authority to pay the foregoing outstanding employee obligations and expenses. Section 363(b)(1) of the Bankruptcy Code authorizes a debtor-in-possession to use property of the estate other than in the ordinary course of

business after notice and a hearing. 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code further provides that “[t]he Court may issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this Title.” 11 U.S.C. § 105(a).

30. The relief requested in this Motion is supported by the well-established “necessity of payment” doctrine. The “necessity of payment” doctrine provides that “if payment of a claim that arose prior to reorganization is essential to the continued operation of the [business] during the reorganization, payment may be authorized even if it is made out of corpus.” *In re Leigh & New England Ry. Co.*, 657 F.2d 570, 581 (3rd Cir. 1981). Bankruptcy courts have recognized their power to authorize a debtor’s payment of pre-petition wages and salaries on the grounds that such payments are crucial to a debtor’s reorganization, particularly when such payments would otherwise be entitled to priority under the Bankruptcy Code. *In re CEI Roofing*, 315 B.R. 50 (Bankr. N.D. Tex. 2004); *In re Coserv, L.L.C.*, 273 B.R. 487; (Bankr. N.D. Tex. 2002); *In re Quality Interiors, Inc.*, 127 B.R. 391, 396 (Bankr. N.D. Ohio 1991) (*citing In re Chateaugay Corp.*, 80 B.R. 279 (S.D.N.Y. 1987)) (under the “necessity of payment” doctrine, the bankruptcy court should defer to debtor’s business judgment in permitting payment of certain workers’ compensation claims); *In re Structurlite Plastics Corp.*, 86 B.R. 922 (Bankr. S.D. Ohio 1988).

31. The “necessity of payment” doctrine authorizes the Debtor to pay the Employee obligations described in this Motion. As set forth above, the compensation claims individually do not exceed \$12,475.00, and, therefore, are entitled to priority status under 11 U.S.C. §§ 507(a)(4) and 507(a)(5). The Debtor will have to pay these claims in order to confirm a chapter 11 plan. *See* 11 U.S.C. 1129(a)(9)(B). Consequently, in connection with these priority claims, granting the relief sought herein would only affect the timing, and not the amount, of payment of compensation.

32. The “fundamental purpose of reorganization is to prevent the debtor from going into liquidation, with an attendant loss of jobs.” *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984). Payment of the amounts requested in this Motion pursuant to the “necessity of payment” doctrine is in the interests of all parties because such payment will facilitate the continued operation of the Debtor’s business. *See Lehigh*, 657 F.2d at 581. The relief requested in this Motion will allow the Debtor to continue to operate with minimal disruption and enable the Debtor to continue its business.

33. In *CEI Roofing*, the Court recognized the importance of permitting a debtor to pay pre-petition wages. In support of its order *authorizing such payment*, the Court stated:

[T]here has evolved a rule for the payment of pre-petition wages and benefits which is based on both common sense and the express provisions of the Bankruptcy Code. If employees are not paid, they will leave. If they leave the Debtor’s *business*, the bankruptcy case fails shortly after the filing. No one will benefit from the process. The Code gives employees a statutory priority that elevates the claims above the *general unsecured* claims, and, in fact, most claims in the bankruptcy case.

...  
The treatment and payment of such claims before confirmation does no violence to the Code or existing case law in this circuit. In fact, such orders are usually “necessary” and “appropriate” to implement a debtor’s reorganization under Chapter 11.

*In re CEI Roofing*, 315 B.R. at 61.

34. Concurrent herewith, the Debtor has filed a motion seeking approval to obtain secured post-petition financing (the “DIP Motion”). The DIP Motion proposes that all such post-petition financing will be used according to a limited budget. The compensation and related employment expenses referenced in this Motion are included within such budget. Accordingly,

upon the approval of the DIP Motion, the Debtor will have sufficient funds to pay the amounts sought by this Motion.

35. In order to maintain the continuity of its business and to preserve the morale of its vital labor force, it is essential that the Debtor be permitted to pay to the Employees the compensation that has accrued but remains unpaid as set forth herein. The Debtor seeks the relief requested in this Emergency Motion because any delay or disruption in providing employee compensation will destroy the Debtor's relationship with the Employees and irreparably impair workforce morale at the very time when the dedication, confidence, and cooperation of these individuals is most critical. The Debtor faces the risk that its operations may be severely impaired if authority is not granted for the Debtor to make the payments described above.

36. In addition, bolstering the Employees' morale will assist the Debtor in maintaining a "business as usual" atmosphere and, in turn, facilitate the Debtor's efforts to emerge from chapter 11 without significant delay.

37. Because the amounts represented by Pre-Petition Wages are needed to enable the Employees to meet their own personal obligations, absent the relief requested herein, they will suffer undue hardship and, in many instances, serious financial difficulties. Moreover, without the requested relief, the stability of the Debtor would be undermined by the potential threat that otherwise loyal Employees would seek other employment.

38. In addition, to avoid the serious disruption of the Debtor's reorganization efforts that could result from the nonpayment of any withholding taxes, the Debtor seeks authority to remit all Withholdings, including pre-petition Withholdings, collected on behalf of the

Employees to the applicable taxing authorities. Many federal, state and local taxing authorities impose personal liability on the people in control of entities responsible for collecting taxes from employees to the extent any such taxes are collected but not remitted. Accordingly, if these amounts remained unpaid, there is a risk that either Shared Services or the Debtor's officers and directors may be subject to lawsuits or even criminal prosecution on account of any such nonpayment during the pendency of this Chapter 11 Case. Such lawsuits or proceedings obviously would constitute a significant distraction for managers at a time when they should be focused on the Debtor's effort to (a) stabilize their post-petition business operations, and (b) develop and implement a successful reorganization strategy.

**A. Payment of Prepetition Debt Is Allowed Under Certain Circumstances.**

39. Section 105(a) of the Bankruptcy Code provides that “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” The purpose of Section 105(a) is to “assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of its jurisdiction.” COLLIER ON BANKRUPTCY ¶ 105.01[1], at 105–06 (Lawrence P. King, et al. eds., 15th ed. 2000).

40. The Debtor seeks critical vendor status only where: (1) it is critical that the debtor deal with the creditor; (2) unless the debtor deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim; and (3) there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *See In re CoServ, L.L.C.*, 273 B.R. 487 (Bankr.

N.D. Tex. 2002). By this Motion, the Debtor only seeks to impart critical vendor status on Shared Services to the extent of the Pre-Petition Wages, Withholdings, and Benefits.

**B. The Critical Vendors Are Essential to the Debtor's Business.**

41. Payment of the Employees' wage claims is vital to the Debtor's reorganization because (a) the services provided by the Employees are the only or most economical source from which the Debtor can procure such services, (b) failing to pay the Employees would likely result in the loss of obtaining these same services, and (c) losing these services would have an immediate and severe impact that would jeopardize the Debtor's operation and effort to reorganize.

42. Payment of the Employee wage claims is crucial to effect a substantial enhancement of the estate, to preserve and protect the estate, and to preserve the Debtor's going-concern value. The obligations that the Debtor seeks to pay represent a small percentage of the Debtor's total pre-petition debts. Honoring these obligations enables the Debtor to continue its business operation, while not paying the Employees' wage claims will severely disrupt the Debtor's business operation and challenge the very success of this reorganization.

**C. Paying the Critical Vendors Benefits the Estate.**

43. On the whole, paying the Employee wage claims is a benefit to the estate. Failure to deal with the Employees would result in a loss of revenue and a corresponding loss of value of the business. The Employees provide specialized services to the Debtor that are essential to the operation of the Debtor's business and without which the Debtor will have no income. Without the proceeds from the medical procedures, the Debtor's operations will cease and Debtor's successful reorganization will be impossible. The risk of harm to the Debtor's



estate, therefore, is profound and is greatly disproportionate to the size of the payment sought by this Motion.

**V.**  
**REQUEST FOR AUTHORITY FOR BANKS TO HONOR AND PAY**  
**CHECKS ISSUED TO PAY PRE-PETITION WAGES AND WITHHOLDINGS**

44. The Debtor further requests that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtor, in the Debtor's sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtor's accounts for payment of Pre-Petition Wages, Withholdings, Benefits, and Expenses, whether such checks were presented prior to or after the Petition Date, provided that sufficient funds are available in the applicable accounts to make the payments.

45. Nothing contained herein is intended or should be construed as: (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's rights to dispute any claim; or (c) an approval or assumption of any agreement, contract or lease, pursuant to Section 365 of the Bankruptcy Code.

**VI.**  
**NOTICE**

46. Notice of this Application has been given by e-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) the Office of the United States Trustee for the Eastern District of Texas; (b) the Office of the Texas Attorney General; (c) the Office of the United States Attorney General; (d) Texas Department of State Health Services; (e) Texas Capital Bank; (f) Sabra Texas Holdings, L.P.; and (g) each of the Debtor's twenty (20) largest unsecured creditors. The Debtor

submits that, in light of the nature of the relief requested, no other or further notice need be given.

**VI.**  
**CONCLUSION**

47. For these reasons, the Debtor respectfully requests the Court (a) enter an order authorizing the Debtor to pay Pre-Petition Wages, Withholdings, Benefits and Expenses or alternatively, to pay or honor prepetition obligations to Shared Services as a critical vendor for the limited purpose of paying the Pre-Petition Wages, Withholdings, Benefits and Expenses; and banks to honor and pay checks issued to pay Pre-Petition Wages, Withholdings, Benefits and Expenses; and (b) granting such other and further relief as the Court may deem proper.

Dated: September 22, 2015.

Respectfully submitted,

/s/ William L. Medford

William L. Medford, Esq.

State Bar No. 00797060

Vickie L. Driver, Esq.

State Bar No. 24026886

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing pleading was served upon the parties listed on the attached service list via e-mail, facsimile, overnight delivery, and/or courier on this 22<sup>st</sup> day of September, 2015.

/s/ William L. Medford

William L. Medford

**MASTER SERVICE LIST**

**Forest Park Medical Center at Frisco, LLC**

**Case No. \_\_\_\_\_ -BTR-11**

**Secured Creditors:**

**Debtor:**

Forest Park Medical Center at Frisco, LLC  
5500 Frisco Square Blvd.  
Frisco, TX 75034

Commerce Bank  
Attn: Gregory (Greg) Leftwich  
Market President  
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**Debtor's Counsel:**

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Vickie L. Driver  
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Dallas, TX 75201

Olympus America Inc.  
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Center Valley, PA 18034

Karl Storz  
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El Segundo, CA 90245

**Governmental Agencies:**

Internal Revenue Service  
P.O. Box 7346  
Philadelphia, PA 19101-7346

General Electric Capital Corporation  
Attn: Alan Beckman  
20225 Watertower Blvd.  
Brookfield, WI 53045

Timothy W. O'Neal  
Assistant U.S. Trustee  
Office of the United States Trustee  
Bank of America Building  
110 North College Ave., Room 300  
Tyler, TX 75702

Texas Capital Bank  
c/o J. Mark Chevallier  
James "Jim" Rea  
McGuire Craddock & Strother, P.C.  
2501 N. Harwood St., Suite 1800  
Dallas, TX 75201

Texas Department of State Health Services  
P.O. Box 149347  
Austin, TX 78714-9347

**Landlord and Proposed DIP Financing:**

Sabra Texas Holdings, L.P.  
c/o Deirdre B. Ruckman  
Marcus Helt  
Gardere  
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Dallas, TX 75201

Texas Attorney General's Office  
Bankruptcy-Collections Division  
P.O. Box 12548  
Austin, TX 78711-2548

Office of the Attorney General  
Main Justice Building, Room 5111  
10<sup>th</sup> and Constitution Ave., N.W.  
Washington D.C. 20530

**Twenty Largest Unsecureds**

Vibrant Management  
c/o glendonTodd LLC  
2101 Cedar Springs  
Suite 1540  
Dallas, TX 75201

**MASTER SERVICE LIST**

**Forest Park Medical Center at Frisco, LLC**

**Case No. \_\_\_\_\_ -BTR-11**

Intuitive Surgical  
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San Francisco, CA 94139

Stryker Endoscopy  
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CPM Medical LLC  
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Pro Silver Star Ltd.  
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Valley Services, Inc.  
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Lifecell Corporation  
P.O. Box 203888  
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Ricoh USA Inc.  
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Identity Media Services LLC  
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Johnson and Johnson Healthcare  
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Siemens Medical Solutions USA Inc.  
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Bell Nunnally and Martin LLP  
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Allergan USA Inc.  
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Stryker Instruments  
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Kalamazoo, MI 49001

**MASTER SERVICE LIST**

**Forest Park Medical Center at Frisco, LLC**

**Case No. \_\_\_\_\_-BTR-11**

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

IN RE:

FOREST PARK MEDICAL CENTER  
AT FRISCO, LLC

DEBTOR.

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§

CHAPTER 11

CASE NO. \_\_\_\_\_ - BTR

**ORDER GRANTING DEBTOR’S EMERGENCY MOTION FOR AN ORDER  
AUTHORIZING (I) THE DEBTOR TO PAY PRE-PETITION WAGES AND BENEFITS  
OR ALTERNATIVELY, TO PAY OR HONOR PREPETITION OBLIGATIONS TO  
CERTAIN CRITICAL VENDORS AND (II) BANKS TO HONOR AND PAY CHECKS  
ISSUED TO PAY PRE-PETITION WAGES AND WITHHOLDINGS**

Upon consideration of the Motion, dated September 22, 2015 (the “Motion”),<sup>1</sup> of Forest Park Medical Center at Frisco, LLC, as debtor and debtor-in-possession (the “Debtor”), for an order pursuant to Sections 105(a), 363(b) and 507(a) of the United States Bankruptcy Code, 11 U.S.C. §§ 101 et. seq. (the “Bankruptcy Code”) authorizing (I) the Debtor to pay pre-petition wages and benefits or alternatively, to pay or honor prepetition obligations to certain critical vendors and (II) banks to honor and pay checks issued to pay Pre-Petition Wages and Withholdings, as more fully described in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and venue of this case and the Motion in this district being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having determined that the

<sup>1</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest; and due and proper notice of the Motion having been given, and it appearing that no other or further notice need be provided; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation; and sufficient cause appearing therefor, it is

**ORDERED** that the Motion is **GRANTED**; and it is further

**ORDERED** that the Motion is necessary to the Debtor's reorganization efforts and to avoid irreparable harm as the payment of Pre-Petition Wages<sup>2</sup> to the hospital Employees and Shared Services Staff is essential to the continuing business operations and the Debtor's ability to reorganize; and it is further

**ORDERED** that such Pre-Petition Wages and Withholdings are tantamount to or analogous to priority wage claims pursuant to 11 U.S.C. § 507(a)(4) payable on a fourth-level priority basis in bankruptcy; it is further

**ORDERED** that the Court approves and hereby authorizes but does not require the Debtor to pay, \$190,000.00 in Pre-Petition Wages, \$69,500.00 in Withholdings, \$223,000.00 in Benefits, and \$3,000.00 in Expenses, for a total of \$485,500.00; and it is further

**ORDERED** that the Debtor's banking institutions receive, process, honor and pay any amounts drawn on the Debtor's accounts with respect to its Pre-Petition Wages, Withholdings, Benefits, and Expenses; and it is further

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<sup>2</sup> All defined terms not defined herein shall have the meanings ascribed to them in the Motion.



**ORDERED** that, notwithstanding anything herein to the contrary, the authority granted herein to the Debtor, including to make payments and honor obligations, is subject in all respects to the terms and conditions of the Debtor's post-petition financing agreement, including any budget contained therein, and any order approving the same.

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HONORABLE CHIEF JUDGE BRENDA T. RHOADES  
UNITED STATES BANKRUPTCY JUDGE

PREPARED BY:

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**PROPOSED DEBTOR'S COUNSEL**