Docket #0002 Date Filed: 4/4/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: GLOBAL WOUND CARE MEDICAL GROUP, a Professional Corporation,[1] Debtor.	Chapter 11 Case No. 24-34908 (CML)

GLOBAL WOUND CARE MEDICAL GROUP, a Professional Corporation, Plaintiff, vs. WELLS FARGO BANK, N.A. Defendant.	Adv. Pro. No. 25-03121 (CML)

DEBTOR'S EMERGENCY MOTION FOR
PRELIMINARY INJUNCTION AND TEMPORARY RESTRAINING ORDER

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 5:00 P.M. (PREVAILING CENTRAL TIME) ON APRIL 28, 2025. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

[1] The last four digits of the Debtor's tax identification number in the jurisdiction in which it operates is 3572.

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Plaintiff-Debtor Global Wound Care Medical Group, a Professional Corporation, the debtor and debtor in possession (the "Debtor")[2] in the above-captioned Chapter 11 case (the "Chapter 11 Case") by and through its undersigned counsel, submits this memorandum of law, together with the accompanying proposed order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Order"), and the contemporaneously filed Declarations of Louis E. Robichaux IV (the "Robichaux Declaration") and Isaac Lee (the "Lee Declaration") in support of this motion (the "Motion") for a temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure (the "Federal Rules"), as made applicable to this proceeding by Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

PRELIMINARY STATEMENT[3]

1. Despite being unable to articulate any reason—much less harm or risk to Wells Fargo from continuing the ongoing banking relationship with the Debtor—Wells Fargo insists on terminating the relationship. Indeed, earlier today, Wells Fargo filed its *Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. § 362(d) to Close the Debtor's Bank Account* [Docket No. 157] (the "Relief from Stay Motion").

2. Since the Chapter 11 Case filed, the Debtor has worked cooperatively with the Department of Justice to enter into a settlement agreement, which has allowed and would continue to allow the Debtor to provide essential wound

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[2] Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the complaint (the "Complaint") filed contemporaneously herewith.

[3] Capitalized terms used but not otherwise defined in the Preliminary Statement shall have the meanings ascribed to them below.

care to thousands of elderly patients. The Debtor's continued access to the Wells Fargo Bank Account is critical to the Debtor's ongoing operations and implementation of any final settlement agreement with the Department of Justice.

3. While the Debtor has communicated the importance of the Bank Account to Wells Fargo, the bank remains unwilling to allow the Debtor to maintain the account, despite the severe risk termination poses to the Debtor's business and patient care.

4. Closure of the Bank Account and termination of the banking relationship with Wells Fargo would have disastrous, potentially fatal, consequences for the Debtor because it will significantly interrupt the Debtor's government receivables, which is the majority of its revenue. By way of example, it could take Medicare three months, or more, to update their systems, during which time no payments would be received by the Debtor. Without this revenue, the Debtor would likely be forced to immediately liquidate and would be unable to provide elderly patients with critical healthcare. Consequently, the Debtor requires an injunction preventing Wells Fargo from terminating the banking relationship.

5. The Debtor's Complaint seeks:

- A declaratory judgment determining that any termination of the Debtor's banking relationship with Wells Fargo and any closure of the Bank Account would violate the automatic stay imposed by section 362(a) of the Bankruptcy Code; and
- An injunction that enjoins any termination of the Debtor's banking relationship with Wells Fargo and any closure of the Bank Account

FACTUAL BACKGROUND

A. Relationship Between Wells Fargo and the Debtor

6. The Debtor has been a long standing client of Wells Fargo ("Wells Fargo") and uses Wells Fargo to conduct all of its business. As described in the Debtor's Cash Management Motion (defined below), the Debtor conducts all of its business out of the Bank Account. Indeed, the Debtor has only one deposit account, which is a checking account numbered XXXXXX9783 (the "Bank Account"). The Debtor uses Wells Fargo as its sole bank to handle all of its operations, including all transfers and disbursements (the "Cash Management System"). Critically, all of the Debtor's receipts from Medicare and commercial insurers, accounting for essentially all of the Debtor's revenue, are paid to the Bank Account.

7. As of April 3, 2025, the cash balance of the Bank Account was $20,322,463.62. The Cash Management Motion also provides that the Debtor's Cash Management System constitutes an ordinary course and essential business practice of the Debtor. *See* Cash Mgmt. Mot. ¶ 7. Importantly, the Cash Management System provides significant benefits to the Debtor including, among other things, the ability to control corporate funds, ensure the availability of funds when necessary, and reduce costs and administrative expenses by facilitating the movement of funds and developing timely and accurate account balance information. *Id.* ¶ 8.

8. The Debtor also maintains books and records to document its financial results and a wide array of operating information (collectively, the "Books and Records").

9. The Debtor also utilizes various forms of electronic payment — electronic funds transfers ("EFTs") and automatic clearing-house (or "ACH") transactions that are processed through the Bank Account. *Id.* ¶ 10.

10. The majority of the Debtor's receipts are received in the form of ACH transactions from Medicare and various commercial insurance carriers. *Id.* ¶ 11. Separate from the ACH transactions, the Debtor also receives checks from secondary payors, including Medicare, and various commercial insurance carriers (collectively, the "Payors") that account for the Debtor's remaining revenue. *Id.*

11. As described in the Cash Management Motion, closing the Bank Account will result in a "high likelihood of significant delays in collections" due to the "complexity in processes for the submission and payment of claims from the Debtor's Payors." *Id.* This is because closing the Bank Account would disrupt the deposits the Debtors receives from the Payors. *Id.* This would in turn disrupt the Debtor's ability to conduct its business and would harm the many patients who rely on the Debtor's services.

12. Additionally, the Debtor's accounting staff relies heavily on the Wells Fargo relationship to continue and maintain its day to day operations, which includes supplying all of the information needed to meet the Debtor's chapter 11 reporting requirements, as well as performing their regular tasks. *Id.*

13. Lastly, the Debtor also relies on the Bank Account and Cash Management System for other important business functions, including payment of payroll, applicable state and federal payroll taxes, and the payment of vendors to buy biologics needed to the Debtor's business. *Id.* ¶ 13.

B. The Chapter 11 Case

14. On October 21, 2024 (the "Petition Date"), the Debtor filed a voluntary petition for relief pursuant to chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtor continues to operate its business and manage its

property as a debtor-in-possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

15. No trustee, examiner, or official committee has been appointed in the Chapter 11 Case.

16. A description of the Debtor, its business, and the facts and circumstances of the Chapter 11 Case are set forth in greater detail in the *Declaration of Ralph Cetrulo in Support of Chapter 11 Petition and First Day Motions* [Docket No. 8] (the "First Day Declaration"), filed on the Petition Date and incorporated herein by reference.

17. The Court approved the Debtor's Cash Management Motion [Docket No. 6], which was filed on the Petition Date (the "Cash Management Motion"), on a final basis on November 11, 2024 [Docket No. 58] (the "Final Cash Management Order").

18. The Final Cash Management Order authorizes Wells Fargo to:

> [C]ontinue to service and administer the Bank Account as an account of the Debtor as a debtor in possession, without interruption and in the ordinary course of business, consistent with prepetition practices, including prefunding arrangements, and to receive, process, honor and pay any and all checks, drafts, wire transfers, and ACH and other transfers issued, whether before or after the Petition Date, and drawn on the Bank Account after the Petition Date by the holders or makers thereof, as the case may be; provided that the Debtor will instruct the Bank as to which checks, drafts, wire transfers (excluding any wire transfers or ACH transfers that the Bank is obligated to settle), or other items presented, issued, or drawn, shall not be honored.

Final Cash Mgmt. Order ¶ 3.

19. On December 19, 2024, the Debtor entered into a stipulation [Docket No. 87] (the "Medicare Stipulation") with the United States providing for the modification of a previously imposed Medicare payment suspension to allow for 75% of

the claims submitted to be paid to the Debtor. The term of the Medicare Stipulation was most recently extended through April 7, 2025, to allow for additional time for the Debtor and the United States to reach a global resolution of all disputes with the government. *See* Docket No. 154. The United States has the sole discretion whether to provide further extensions. Consequently, any disruption in the banking relationship between the Debtor and Wells Fargo that affects the United States' willingness to provide further extensions, or to continue permitting the Medicare payments under the Medicare Stipulation, would leave the Debtor helpless.

C. Negotiations With Wells Fargo

20. As explained more fully in the Cash Management Motion, The Debtor's banking relationship with Wells Fargo is essential for the operation of the Debtor's business and to allow for a smooth transition into Chapter 11 and to minimize any delays or disruptions with the Debtor's ongoing business.

21. On January 3, 2025, Wells Fargo sent a letter to the Debtor (the "January 3 Letter"). *See* Complaint, Ex. A. The January 3 Letter informed the Debtor that Wells Fargo "performs ongoing reviews of its account relationships in connection with the Bank's responsibilities to manage risks in its banking operations." *Id.* at 1. The January 3 Letter further provided that Wells Fargo "recently reviewed [the Debtor's] account relationship and, as a result of this review" Wells Fargo would be closing the Bank Account. *See id.* The January 3 Letter also informed the Debtor that the Bank Account would be closed by February 20, 2025. *See id.*

22. In response to the January 3 Letter, on January 14, 2025, the Debtor sent a letter to Wells Fargo (the "January 14 Letter"). *See* Complaint, Ex. B. The January 14 Letter informed Wells Fargo of, among other things, the requirements of the Final Cash Management Order, that Wells Fargo is subject to the automatic stay imposed

under section 362(a) of the Bankruptcy Code, and that immediate and severe disruptions to the Debtor's business that would occur if Wells Fargo terminated its banking relationship with the Debtor, among other things.

23. Counsel to the Debtor also asked Wells Fargo to respond to the January 14 Letter by January 17, 2025. *See* Complaint, Ex. C (Jan. 14, 2025 Email from A. Glaubach to bnkrptrp@wellsfargo.com at 10:00 p.m.).

24. On February 14, 2025, Wells Fargo sent another letter to the Debtor (the "February 14 Letter"). *See* Complaint, Ex. D. The February 14 Letter provided an update on the "pending account closure" and extended the date of closure from February 20, 2025 to March 31, 2025 "because you have requested to delay the closure of your account." *Id.* at 1.

25. On February 21, 2025, after some informal discussions with Wells Fargo, Winstead PC ("Winstead"), outside counsel to Wells Fargo, reached out to Dentons, Debtor's bankruptcy counsel, stating that "Wells Fargo still desires to exit the relationship," and requested a call "to discuss how the parties can work to hopefully amicably achieve that goal while minimizing any disruption to the Debtor's operations." *See* Complaint, Ex. E (Feb. 21, 2025 Email from S. Davis to C. Doherty at 4:24 p.m.).

26. Subsequently, Winstead and the Togut Firm, conflicts counsel to the Debtor, engaged in informal discussions to resolve the matter. On March 13, 2025, Wells Fargo's counsel agreed that it would "not close the Debtors' bank account…on or before March 31, 2025" but also stated that "Wells Fargo continues to reserve all applicable rights with respect to the closure of the debtor's account at some point after March 31, 2025." *See* Complaint, Ex. F (Mar. 12, 2025 Email from S. Davis to K. Ortiz at 12:09 p.m.).

27. For nearly three months, the Debtor attempted to reach a resolution with Wells Fargo that would allow them to maintain their existing banking relationship. Wells Fargo had requested that the Debtor provide additional reporting as negotiations continued, however before the Debtor could even begin to provide the requested reports, on March 28, 2025, Winstead contacted the Togut Firm notifying them that Wells Fargo would be seeking court approval to close the bank account on April 30, 2025. *See* Complaint, Ex. G (Mar. 28, 2025 Email from S. Davis to K. Ortiz at 6:19 p.m.).

28. Between March 28, 2025 and April 4, 2025, Winstead and the Togut Firm continued to try and resolve the matter. For example, on April 3, 2025, Winstead asked the Togut Firm how often the Debtor provides weekly reporting the Department of Justice and whether the Debtor was offering October 1, 2025 or October 31, 2025 as a proposed Bank Account closure date. *See* Complaint, Ex. H (Apr. 3, 2025 Email from S. Davis to A. Glaubach at 10:11 a.m.). Shortly thereafter, the Togut Firm responded to Winstead's questions and stated that: (1) the Department of Justice receives reports on a weekly basis; and (2) October 31, 2025 was the proposed Bank Account closure date. *See* Complaint, Ex. I (Apr. 3, 2025 Email from A. Glaubach to S. Davis at 1:15 p.m.).

29. Despite these efforts to resolve the matter without Court involvement, on April 4, 2025, Winstead informed the Togut Firm that while the information the Togut Firm provided was "helpful," Wells Fargo would be a filing a motion for stay relief to close that Bank Account to "maintain our current progress and give everyone a goal for which to aim." *See* Complaint, Ex. J (Apr. 4, 2025 Email from S. Davis to K. Ortiz at 11:05 a.m.).

30. Approximately thirty minutes after Winstead contacted the Togut Firm, Wells Fargo filed the Relief from Stay Motion. The parties have not been able to reach resolution. Rather, despite never articulating why they want to terminate a

banking relationship that provides little to no risk to Wells Fargo, the bank maintains that it wants to close the Bank Account and terminate its relationship with the Debtor on April 30, 2025.

ARGUMENT

31. The Court has authority under Federal Rule 65(a) to issue emergency injunctive relief enjoining the actions against the Debtor. Fed. R. Civ. P. 65(a). Under applicable Fifth Circuit precedent, Courts consider the following when considering issuance of a preliminary injunction: "A plaintiff seeking a preliminary injunction must establish that he is likely to succeed on the merits, that he is likely to suffer irreparable harm in the absence of preliminary relief, that the balance of equities tips in his favor, and that an injunction is in the public interest." *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). "[A]s to the relationship between the likelihood of success and irreparable harm . . . the movant must show that there is both a likelihood of success on the merits and of suffering irreparable harm, but if the movant should demonstrate that one factor has a strong likelihood, then the opposite factor may be subject to a lower standard." *Villarreal v. N.Y. Marine & Gen. Ins. Co. (In re OGA Charters, LLC),* 554 B.R. 415, 425 (Bankr. S.D. Tex. 2016). The standard for issuing a temporary restraining order is the same as the standard for issuing a preliminary injunction. *Clark v. Prichard*, 812 F.2d 991, 993 (5th Cir. 1987). Each element for preliminary injunctive relief is met here.

32. Further, section 105(a) of the Bankruptcy Code "is a broad grant of power which exceeds the limits of the automatic stay, and empowers the Court to use its equitable powers to assure the orderly conduct of the reorganization proceedings." *Keene Corp. v. Acstar Ins. Co. (In re Keene Corp.)*, 162 B.R. 935, 944 (Bankr. S.D.N.Y. 1994) (internal quotations and citations omitted). Moreover, Bankruptcy Rule 7065 expressly

permits the bankruptcy court to issue temporary restraining orders and preliminary injunctions in adversary proceedings. *See* Fed. R. Bankr. P. 7065 (incorporating Federal Rule 65 in adversary proceedings).

33. Federal Rule 65(b) provides that a court may issue a temporary restraining order without notice to the adverse party if: (i) specific facts in an affidavit or a verified complaint clearly show that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party can be heard in opposition; and (ii) the movant's attorney certifies in writing any efforts made to give notice and the reasons why it should not be required. Fed. R. Bankr. P. 7065; Fed. R. Civ. P. 65(b)(1).

A. Termination of the Banking Relationship and Closing the Bank Account Will Cause the Debtor Irreparable Harm and Impede Prospects for a Successful Reorganization

34. The Debtor is likely to suffer irreparable harm absent an order preventing Wells Fargo from terminating the banking relationship. At best, terminating the Debtor's banking relationship with Wells Fargo and closing the Bank Account would impede the Debtor's ability to reorganize. At worst, during this critical period when the Debtor should be focused on a value maximizing restructuring, such actions would create an immediate (and potentially fatal) liquidity crisis as the result of the Debtor's inability to process receipts from Medicare and other Payors during a transition to a new bank. As explained above and in the Cash Management Motion, the Debtor only uses Wells Fargo to run its business. *See* Cash Mgmt. Mot. ¶ 6. Specifically, the Debtor uses Wells Fargo to handle all of its transactions and distributions, day-to-day operations including payment of payroll, applicable state and federal payroll taxes, and the payment of vendors to buy supplies critical to the Debtor's business. *See* Cash Mgmt. Mot. ¶¶ 6, 13.

35. As explained in more detail in the Lee Declaration, as a result of the Chapter 11 Case, even though the Debtor does all of their business through the Wells Fargo account and despite the protections of the Cash Management Order, Wells Fargo has made it difficult for the Debtor to process payments through the Bank Account. For example, Wells Fargo will not permit the Debtor to make or process any payments online and requires a Debtor representative to physically go to a Wells Fargo branch to conduct any business, where they must present two forms of identification to initiate a meeting. *See* Lee Decl. ¶ 16.

36. Moreover, the majority of the Debtor's revenue comes in the form of EFT transfers or ACH transactions from Medicare and various other Payors, which are all connected to the Bank Account. *See* Cash Mgmt. Mot. ¶ 11. The Payors, many of which are governmental institutions, cannot quickly redirect the payments to a new bank account. *See* Robichaux Decl. ¶¶ 5-7. Transferring payments that belong to the Debtor to another account is a process that takes time and cannot be done overnight. *See id.* As set forth in the Robichaux Declaration, it usually takes approximately thirty-days for a debtor to open new bank accounts and then an additional sixty-days for the debtor to work with government payors to transition payment systems while monitoring, managing, and reconciling any payment issues that inevitably arise. *Id.* at ¶ 7. To be clear, switching banks would result in the Debtor receiving no revenue at all for at least three months. This would be disastrous for the reorganization of the Debtor and likely force the Debtor to liquidate immediately. And the Debtor is not the only victim of Wells Fargo's actions. Any interruption to the Debtor's cash flow, whether from Medicare or other sources, would detrimentally impact patient care. *Id.* at ¶ 5.

37. Finally, terminating the Debtor's banking relationship with Wells Fargo and closing the Bank Account would also impede the Medicare Stipulation and

prevent the DOJ from continuing to engage in good faith discussions, to provide further extensions, or continue to make Medicare payments permitted under the Medicare Stipulation.

38. Remedies available at law, such as monetary damages, are inadequate to wholly compensate for the harm to the Debtor's business and to patient care that will result from a termination of the banking relationship. *See Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) ("It is well-established that an injury is irreparable only 'if it cannot be undone through monetary remedies.'"); *see Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) ("[H]arm is irreparable where there is no adequate remedy at law, such as monetary damages."). Simply, there will be no business left to compensate.

39. Accordingly, terminating the Debtor's banking relationship with Wells Fargo and closing the Bank Account would significantly impede the Debtor's ability to restructure, if not eliminate the possibility of a successful restructuring entirely, and impair creditor recoveries. *See, e.g., Dennis Melancon, Inc. v. City of New Orleans*, 703 F.3d 262, 279 (5th Cir. 2012) ("It is well-established that an injury is irreparable only 'if it cannot be undone through monetary remedies.'"); *see Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) ("[H]arm is irreparable where there is no adequate remedy at law, such as monetary damages.").

B. <u>The Debtor is Likely to Prevail on the Merits</u>

40. The Debtor is likely to succeed on the merits of its Complaint because the Bank Account is considered property of the Debtor's bankruptcy estate under section 541 of the Bankruptcy Code and therefore Wells Fargo cannot exercise control over such property without relief from the automatic stay imposed under section 362(a) of the Bankruptcy Code. *See* 11. U.S.C. § 541(a)(1) (the commencement of

a bankruptcy case creates an estate that includes "all legal or equitable interests of the debtor in property as of the commencement of the case."); *see also In re Calvin*, 329 B.R. 589, 595-96 (Bankr. S.D. Tex. 2005) (stating that "Courts have found that property of the debtor is defined in include all legal or equitable interests of the debtor…and obviously that includes the interest that a depositor has in the money in his account" and that "a bank account owned by a debtor automatically becomes property of the estate upon the debtor filing for bankruptcy") (internal citations omitted).

41. Section 362(a) of the Bankruptcy Code "operates as a stay, applicable to all entities, of . . . . 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." 11 U.S.C. § 362(a)(3). Accordingly, the Wells Fargo cannot threaten to breach or modify the Debtor's Bank Account without relief from the automatic stay imposed by 11 U.S.C. § 362(a). Specifically, freezing, withdrawing from, modifying, conditioning, suspending, terminating or interfering with, or discriminating against the Debtor and based upon the commencement of a case under Chapter 11 of the Bankruptcy Code would violate the automatic stay.

42. The automatic stay under section 362 of the Bankruptcy Code is "one of the fundamental debtor protections provided by the bankruptcy laws." *Midatlantic Nat'l Bank v. N.J. Dep't of Envt'l Prot.*, 474 U.S. 494, 503 (1986) (internal quotations marks and citations omitted). The "stay" is crucial for the benefit and protection of creditors and the central bankruptcy objective of equal treatment of creditors." *Delta Air Lines, Inc. v. Bibb (In re Delta Air Lines)*, 359 B.R. 454, 459 (Bankr. S.D.N.Y. 2006).

43. To establish a violation of the stay, the Debtor need only demonstrate the existence of estate property and Wells Fargo's efforts to control that property. *See Golden Distribs., Ltd. v. Reiss (In re Golden Distribs., Ltd.)*, 122 B.R. 15, 19 (Bankr. S.D.N.Y. 1990). "Property of the estate" encompasses "all legal or equitable interest of the debtor in property as of the commencement of the case," 11 U.S.C. § 541(a)(1), and includes "any interest in property that the estate acquires after the commencement of the case," *id.* § 541(a)(7). As the Supreme Court has explained, section 541(a) of the Bankruptcy Code is broad in scope and is "intended to include in the estate any property made available to the estate by other provisions of the Bankruptcy Code." *U.S. v. Whiting Pools, Inc.*, 462 U.S. 198, 205 (1983) (citing H.R. Rep. No. 95-595, p. 367 (1977)).

44. By attempting to terminate the banking relationship and close the Bank Account, Wells Fargo will be acting "to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." *See* 11 U.S.C. § 362(a)(3); *see also Moratzka v. Visa U.S.A. (In re Calstar, Inc.)*, 159 B.R. 247, 256 (Bankr. D. Minn. 1993). Wells Fargo would also be doing so unilaterally, neither seeking nor obtaining leave of the Court. Such conduct is a clear attempt to control the Bank Account and would be a violation of the automatic stay. *See Matter of Lee*, 35 B.R. 452, 456 (Bankr. N.D. Ga. 1983) (Court determined that bank's unilateral closing of the debtors' bank account violated the automatic stay noting that the debtors had the "power and intention to exercise dominion or control over the fund through the [b]ank," and that by closing the account, the bank "usurped the contractual dominion and control to which the debtors were entitled.").

45. Even if Wells Fargo's threatened actions are exempted from the automatic stay (which it is not), an injunction is still warranted. Bankruptcy Code

section 105(a) permits the court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of" the Code. Although section 105(a) does not give the court a blank check to "create substantive rights that are otherwise unavailable under applicable law" or act as "a roving commission to do equity," (*United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir.1986); *accord* COLLIER ON BANKRUPTCY ¶ 105.01[2] (16th ed. 2012)), the section does permit the court to take actions necessary to "protect the integrity of the bankrupt's estate" and enjoin actions that "might impede the reorganization process." *Bear v. Coben (In re Golden Plan of Cal., Inc.)*, 829 F.2d 705, 713 (9th Cir.1986). A bankruptcy court may utilize section 105 to "enjoin actions that are excepted from the automatic stay ... 'in exceptional circumstances.'" *E.g., Mirant Corp. v. Potomac Elec. Power Co. (In re Mirant Corp.)*, 378 F.3d 511, 523 (5th Cir.2004) (quoting *In re Cajun Elec. Power*, 185 F.3d 446, 457 n.18 (5th Cir. 1999)); *Commonwealth Oil Ref. Co. v. EPA (In re Commonwealth Oil Ref. Co.)*, 805 F.2d 1175, 1188 n.16 (5th Cir.1986) (listing cases from numerous jurisdictions). Thus, because Wells Fargo intended actions threaten both the bankruptcy estate and Debtor's reorganization prospects, injunctive relief is appropriate in this case, regardless of whether the stay has been violated or not. *See In re FiberTower Network Servs. Corp.*, 482 B.R. 169, 182 (Bankr. N.D. Tex. 2012) (issuing injunctive relief pursuant to section 105 despite finding that defendant's actions are exception from the automatic stay").

C. Balance of Equities Tips Decidedly in Favor of Granting Preliminary Injunctive Relief

46. In assessing a request for injunctive relief, courts "must balance the harm that would be suffered by the [moving party] if the preliminary injunction is denied against the possible harm that would result to the [non-moving party] if the

injunction is granted." *Angel v. Tauch (In re Chiron Equities, LLC)*, 552 B.R. 674, 700 (Bankr. S.D. Tex. 2016). The balance of harm tips in favor of the Debtor here.

47. For the reasons discussed above, any interruption with the Cash Management System will cause severe and irreparable harm to the Debtor's business. Indeed, the Debtor's would not be able to perform any of its business functions, whether it be processing Medicare payments, ensuring payroll is completed, or even ensuring the Debtor's accounting staff can supply information for the Chapter 11 Case—every aspect of the Debtor's business would be impacted. The ultimate result would be twofold (1) patient care could seriously suffer and (2) any realistic chance of a successful rehabilitation would be severed.

48. Conversely, Wells Fargo does not stand to be harmed or prejudiced in anyway by continuing to maintain its relationship with the Debtor. As it currently stands, the Debtor is not in default of any payments owed to Wells Fargo, indeed this is simply just a bank account, not a loan or credit card or any financial instrument that puts Wells Fargo at risk. Further, the Medicare Stipulation imposes stringent reporting requirements on the Debtor which should alleviate any of Wells Fargo's concerns regarding the only possible harm to Wells Fargo, which is an overdraft. Importantly, Wells Fargo has refused to articulate any reason as to why it is seeking to terminate its banking relationship with the Debtor or close the Debtor's Bank Account. The Debtor is merely seeking to continue its existing relationship with Wells Fargo in the ordinary course of business—*they are not seeking to modify the relationship in* ***any*** *way.* There is no risk for Wells Fargo, specifically in light of this Court's approval of the Cash Management System in the Cash Management Order. *See* Docket No. 58. Moreover, should their ever be a risk of non-payment by the Debtor, Wells Fargo maintains over $20 million dollars in the Bank Account, and that account can be maintained for future

use in the event the Debtor becomes unable to pay any debts owed to Wells Fargo. *See Aim International Trading, LLC v. Valcucine SpA., IBI LLC,* 188 F. Supp. 2d 384, 388 (S.D.N.Y. 2002) (determining that "balance of equities tip[ped] firmly in plaintiffs' favor" where, if the status quo was not preserved, the plaintiffs' business would be destroyed, while the defendants failed to make a showing as to how they would be damaged).

D. An Injunction is Necessary to Protect the Debtor's Estate and in the Public Interest

49. Even though, as shown above, the Debtor is likely to suffer irreparable harm in the absence of immediate injunctive relief, an injunction should be issued here even without a showing of irreparable harm to the Debtor because Wells Fargo's intended actions threaten the "Debtor's chances of successfully reorganizing. . . . unless injunctive relief is granted." *In re FiberTower Network Servs. Corp.*, 482 B.R. at 189–90; *see also In re Calpine Corp.*, 354 B.R. 45, 48 (Bankr. S.D.N.Y. 2006), *aff'd*, 365 B.R. 401 (S.D.N.Y. 2007). Indeed, Courts have often held that injunctions that facilitate reorganizations serve the public interest. *See, e.g., SAS Overseas Consultants v. Benoit*, No. Civ. A. 99–1663, 2000 WL 140611, at *5 (E.D. La. Feb. 7, 2000) (citing *Venzke Steel Corp. v. LLA, Inc. (In re Venzke Steel Corp.),* 142 B.R. 183, 185 (Bankr. N.D. Ohio 1992); *Lazarus Burman Assocs. v. Nat'l Westminster Bank U.S.A. (In re Lazarus Burman Assocs.),* 161 B.R. 891, 901 (Bankr.E.D.N.Y.1993)). "Chapter 11 expresses the public interest of preserving the going-concern values of businesses, protecting jobs, ensuring the equal treatment of and payment of creditors, and if possible saving something for the equity holders." *Hunt v. CFTC (In re Hunt),* 93 B.R. 484, 497 (Bankr. N.D. Tex. 1988) (citing H.R. Rep. No. 95–595, 340 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963).

50. As demonstrated above, Debtor's chance of successfully reorganizing will be jeopardized unless injunctive relief is granted. Absent an injunction, Wells Fargo intends to terminate the banking relationship with the Debtor and close the Bank Account, which, in addition to violating the automatic stay under section 362 of the Bankruptcy Code, would cause severe disruption to the Debtor's business as described above. Any delay in the Debtor's ability to meet its payroll needs or receive or disburse funds would damage Debtor's reputation and their employee and client relationships. Accordingly, any interruption with the Cash Management System threaten the reorganization process and could result in a loss of value to the estates. By contrast, the impact on Wells Fargo, if any, is minimal, especially when considering Wells Fargo's protections under the Cash Management Order.

CONCLUSION

For the foregoing reasons, the Debtor respectfully submits that its motion for preliminary injunction and temporary restraining order should be granted.

Dated: April 4, 2025
New York, New York

TOGUT, SEGAL & SEGAL LLP
By:

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Conflicts Counsel to the Debtor

Exhibit A

Proposed Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: GLOBAL WOUND CARE MEDICAL GROUP, a Professional Corporation,[1] Debtor.	Chapter 11 Case No. 24-34908 (CML)
GLOBAL WOUND CARE MEDICAL GROUP, a Professional Corporation, Plaintiff, vs. WELLS FARGO BANK, N.A. Defendant.	Adv. Pro. No. ____ (___)

[PROPOSED] ORDER GRANTING TEMPORARY RESTRAINING ORDER

Upon the *Debtor's Emergency Motion for Preliminary Injunction and Temporary Restraining Order* (the "Motion")[2] filed by Global Wound Care Medical Group, a Professional Corporation, the debtor and debtor in possession (the "Debtor") in the above-captioned Chapter 11 case, and plaintiff in the above-captioned adversary proceeding, seeking a temporary restraining order and a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil Procedure (the "Federal Rules"), as made applicable to this proceeding by Rule 7065 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"); and the Court having jurisdiction over this matter

[1] The last four digits of the Debtor's tax identification number in the jurisdiction in which it operates is 3572.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and this Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that sufficient notice of the Motion has been given; and that the Court having reviewed Debtor's Complaint, the Motion, the Declaration of Isaac Lee in Support of the Debtor's Motion for Preliminary Injunction and Temporary Restraining Order, and the Declaration of Louis E. Robichaux IV in Support of the Debtor's Motion for Preliminary Injunction and Temporary Restraining Order, and the Court having heard the statements in support of the relief requested therein and received evidence at a hearing before the Court; and after due deliberation and sufficient cause appearing therefore,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C § 1334; this proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b); and venue of this proceeding and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtor is entitled to issuance of a temporary restraining order pursuant to Bankruptcy Rule 7065 (incorporating Federal Rule 65).

C. The Debtor established (1) a substantial likelihood success on the merits; (2) that absent preliminary injunctive relief, they are likely to suffer irreparable harm; (3) that the balance of equities is in their favor; and (4) preliminary injunctive relief is in the public interest. All findings made on the record are incorporated pursuant to Bankruptcy Rule 7052.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.

2. Pursuant to section 105(a) of the Bankruptcy Code and Bankruptcy Rule 7065, Wells Fargo is enjoined from closing the Bank Account through and until [____] [__], 2025, which date may be extended for good cause or on consent of the Parties.

3. The Court shall conduct a hearing on the Debtor's request for a preliminary injunction at _____ on [____], 2025.

4. Pursuant to Bankruptcy Rule 7065, the security requirements shall be waived.

5. This Order shall be immediately effective and enforceable upon its entry.

6. The Court retains jurisdiction with respect to all matters arising from or related to this Order, including jurisdiction to sanction any party for failure to comply with the terms of this Order.

Dated: _____, 2025

_____
HONORABLE CHRISTOPHER LOPEZ
UNITED STATES BANKRUPTCY JUDGE