

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

	§	
<b>In re:</b>	§	<b>Chapter 11</b>
	§	
<b>NEIGHBORS LEGACY HOLDINGS, INC.,</b>	§	<b>Case No. 18-33836 (MI)</b>
<i>et al.,</i>	§	
	§	<b>(Jointly Administered)</b>
<b>Debtors.<sup>1</sup></b>	§	

**DEBTORS’ MOTION FOR  
AUTHORITY TO PAY PREPETITION PATIENT REFUNDS**

**THIS MOTION SEEKS ENTRY OF AN ORDER THAT MAY ADVERSELY AFFECT YOU. IF YOU OPPOSE THE MOTION, YOU SHOULD IMMEDIATELY CONTACT THE MOVING PARTY TO RESOLVE THE DISPUTE. IF YOU AND THE MOVING PARTY CANNOT AGREE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY. YOU MUST FILE AND SERVE YOUR RESPONSE WITHIN 21 DAYS OF THE DATE THIS WAS SERVED ON YOU. YOUR RESPONSE MUST STATE WHY THE MOTION SHOULD NOT BE GRANTED. IF YOU DO NOT FILE A TIMELY RESPONSE, THE RELIEF MAY BE GRANTED WITHOUT FURTHER NOTICE TO YOU. IF YOU OPPOSE THE MOTION AND HAVE NOT REACHED AN AGREEMENT, YOU MUST ATTEND THE HEARING. UNLESS THE PARTIES AGREE OTHERWISE, THE COURT MAY CONSIDER EVIDENCE AT THE HEARING AND MAY DECIDE THE MOTION AT THE HEARING.**

**REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEYS.**

Neighbors Legacy Holdings, Inc. (“NLH”) and certain of its affiliates and subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”), hereby move (the “Motion”) this Court for entry of interim and final orders authorizing the Debtors to pay prepetition patient refunds, as described herein. In support of the Motion, the Debtors rely upon and incorporate by reference the Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”), filed with the Court

<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/neighbors](http://www.kccllc.net/neighbors). The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue, Houston, Texas 77042.

concurrently with this Motion. In further support of the Motion, the Debtors, by and through their proposed undersigned counsel, respectfully represent:

**JURISDICTION AND VENUE**

1. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. § 1408.

2. The legal predicates for the relief requested are Bankruptcy Code sections 105(a), 363, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004.

**BACKGROUND**

3. On July 12, 2018 (the “Petition Date”), the Debtors each commenced a case by filing a petition for relief under Chapter 11 of the Bankruptcy Code (collectively, the “Chapter 11 Cases”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

4. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

5. To date, no creditors’ committee has been appointed in the Chapter 11 Cases by the Office of the United States Trustee for the Southern District of Texas (the “United States Trustee”). No trustee or examiner has been appointed in the Chapter 11 Cases.

6. The Debtors currently operate 22 freestanding emergency centers (the “Emergency Centers”) throughout the State of Texas, including in South Texas, El Paso, the Golden Triangle, the Permian Basin, the Panhandle, and the greater Houston area. The Debtors’ Emergency Centers are designed to offer an attractive alternative to traditional hospital emergency rooms by reducing wait times, providing better working conditions for physicians and staff, and giving patient care the highest possible priority.

7. The Debtors' original parent was founded in 2008, and the first Neighbors emergency center opened in 2009. At their peak, the Debtors operated 33 emergency centers across three states. In recent years, the Debtors have experienced financial difficulties caused in large part by increased competition, less favorable insurance payor conditions, declining revenues, and disproportionate overhead costs as compared to their operational income. These challenges have caused significant strain on the Debtors' liquidity and threatened their ability to continue operating as a going concern. Prepetition, the Debtors engaged professionals and explored various out-of-court solutions, including closing unprofitable emergency centers and downsizing their corporate overhead. Ultimately, the Debtors' out-of-court restructuring efforts were unsuccessful and the Debtors elected to commence these Chapter 11 Cases.

8. Additional background information regarding the Debtors, including their business operations, their corporate and capital structure, and the events leading to the Chapter 11 Cases, is set forth in detail in the First Day Declaration.

### **RELIEF REQUESTED**

9. By this Motion, the Debtors seek entry an order, under Bankruptcy Code sections 105(a), 363, 1107(a), and 1108 and Bankruptcy Rules 6003 and 6004, authorizing, but not directing, the Debtors, in the reasonable exercise of their business judgment, to pay the Patient Refunds to patients (the "Patients") who overpaid for procedures prior to the Petition Date.

10. In the ordinary course of business, health care facilities like the Debtors receive overpayments on patient accounts. Overpayments arise in a number of situations. For example, a patient whose insurance policy has both copay and deductible components might be presented with a bill containing an estimate of the portion of the bill that is the patient's responsibility.

Often, that estimate is incorrect. If the estimated copay turns out to be lower than the actual copay after the patient paid for the services, the patient is entitled to a credit and a refund.

11. The trust and confidence of the Debtors' Patients is essential to the Debtors' businesses. If the Debtors lose goodwill among their Patients and in the market, the Debtors' estates and their stakeholders will be harmed.

12. Additionally, the Patient Refunds are not property of the Debtors' bankruptcy estates under Bankruptcy Code section 541, and retention of the funds may create confusion without providing any corresponding benefit to the estates. If the Debtors fail to reimburse Patients for overpayments for medical services, the Debtors would suffer reputational damage as service providers, which would greatly diminish the value of their assets and business enterprises.

13. The Debtors in the ordinary course of business regularly remit refunds for overpayments to patients. The Debtors estimate that the prepetition amount of outstanding Patient Refunds is *de minimis* and not more than \$15,000. Accordingly, the continued payment of Patient Refunds in the ordinary course of business and in the exercise of the Debtors' business judgment is in the best interest of the Debtors, their estates, and their stakeholders and the Debtors respectfully request that the Court authorize the Debtors, in the reasonable exercise of their business judgment, to pay the Patient Refunds to patients who overpaid for procedures prior to filing the Chapter 11 Cases.

### **BASIS FOR RELIEF**

#### **A. The Bankruptcy Code and the Doctrine of Necessity Support Payment of the Patient Refunds.**

14. Courts have authorized payment of pre-petition obligations under Bankruptcy Code section 363(b) where a sound business purpose exists for doing so. *See In re Ionosphere*

*Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc. (In re James A. Phillips, Inc.)*, 29 B.R. 391, 398 (S.D.N.Y. 1983) (authority to pay prepetition claims of suppliers); *see also In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (authority to pay prepetition claims to certain vendors).

15. Additionally, the proposed payments of pre-petition Patient Refunds should be authorized under Bankruptcy Code section 105 and the “doctrine of necessity.” Bankruptcy Code section 105(a), which codifies the inherent equitable powers of the Court, empowers this Court “to issue any order. . . necessary or appropriate to carry out the provisions” of the Bankruptcy Code. 11 U.S.C. § 105(a). The doctrine of necessity is a well-settled doctrine that permits a bankruptcy court to authorize payment of certain prepetition claims prior to the completion of the reorganization process where the payment of such claims is necessary to the reorganization. *See In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (stating that where the debtor “cannot survive” absent payment of certain prepetition claims, the doctrine of necessity should be invoked to permit payment);<sup>2</sup> *see also In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (“[T]he court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor.”); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor

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<sup>2</sup> The Court’s power to utilize the doctrine of necessity in chapter 11 cases derives from the Court’s inherent equity powers and its statutory authority to “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). The United States Supreme Court first articulated the doctrine of necessity over a century ago, in *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882), in affirming the authorization by the lower court of the use of receivership funds to pay pre-receivership debts owed to employees, vendors, and suppliers, among others, when such payments were necessary to preserve the receivership property and the integrity of the business in receivership. *See id.* at 309-14. The modern application of the doctrine of necessity is largely unchanged from the Court’s reasoning in *Miltenberger*. *See In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581-82 (3d Cir. 1981) (“[I]n order to justify payment under the ‘necessity of payment’ rule, a real and immediate threat must exist that failure to pay will place the [debtor’s] continued operation . . . in serious jeopardy.”).

must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”). The Debtors respectfully submit that payment of pre-petition Patient Refunds is proper under Bankruptcy Code section 105, as failure to reimburse Patients for overpayment could have a severe impact on the Debtors’ reputation, which would significantly impact the value of the Debtors’ estates.

16. Courts in various jurisdictions have similarly authorized Debtors to pay patient refunds. *See ADPT DFW Holdings, LLC, et al.*, No. 17-31432 (N.D. Tex. 2017) (authorizing payment of patient refunds and authorizing all banks and other financial institutions to honor and process related checks and transfers; *In re Coschocton Ct. Mem’l Hosp. Ass’n*, No. 16-51552 (Bankr. N.D. Ohio 2016) (same); *In re Forest Park Med. Ctr. at Southlake, LLC*, No. 16-40273-rfn-11 (Bankr. N.D. Tex. 2016) (authorizing debtor to pay pre-petition patient refunds); *In re Quincy Med. Ctr., Inc., et al.*, No. 11-16394 (Bankr. D. Mass. 2011) (authorizing the debtors to refund overpayments by patients and insurers).

**B. Payment of the Patient Refunds is Authorized Under Bankruptcy Code Sections 1107(a) and 1108.**

17. The Debtors, operating their businesses as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries “holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners.” *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty “to protect and preserve the estate, including an operating business’s going-concern value.” *Id.*

18. Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty “only . . . by the preplan satisfaction of a prepetition claim.” *Id.*; *see also In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003) (allowing debtors to pay

claims “reasonably believe[d]” to be authorized under the *CoServ* test or whose payment was necessary “in the exercise of their business judgment . . . in order for the debtors to continue their respective businesses”). The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate.” *CoServ*, 273 B.R. at 497. The court provided a three-pronged test for determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor’s fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it 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. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*Id.* at 498.

19. Payment of Patient Refunds in the ordinary course, in the exercise of the Debtors’ business judgment, meets the *CoServ* court’s standard. As noted above, the refunds are not actually funds of the Debtors. Additionally, if Patients do not receive the Patient Refunds they are owed, there is a very real threat that Patients will speak critically of the Debtors, which would further damage the Debtors’ business prospects.

20. Accordingly, to meet their fiduciary duties as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, the Debtors must be authorized to pay the Patient Refunds.

**C. Payment of the Patient Refunds Is Warranted Under Bankruptcy Code Sections 361, 362, and 363.**

21. In addition, the use of estate assets to pay the Patient Refunds constitutes a use of estate property that should be authorized under Bankruptcy Code section 363(b) so long as a

sound business purpose exists for doing so. *See, e.g., Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991); *In re Global Crossing Ltd.*, 295 B.R. 726, 742 (Bankr. S.D.N.Y. 2003); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989); *In re Gulf States Steel, Inc.*, 285 B.R. 497, 514 (Bankr. N.D. Ala. 2002). The Debtors have determined, in the exercise of their business judgment, that paying the Patient Refunds is critical to preservation of the Debtors' estates and the going concern value of the business. Meeting their Patient Refund obligations is in the best interest of the Debtors' estates and of their creditors and should therefore be approved.

22. Lastly, the Debtors believe that the Patient Refunds may be entitled to priority claim status pursuant to section 507(a)(7) of the Bankruptcy Code, which grants a priority, up to \$2,775, arising from the deposit of money in connection with the purchase of services, among other things.

**WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)**

23. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” FED. R. BANKR. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates.

**NOTICE**

24. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the Southern District of Texas; (b) the Debtors' 50 largest unsecured creditors on a consolidated basis; (c) Reed Smith LLP, Three Logan Square, 1717 Arch Street, Suite 3100,

Philadelphia, PA 19103 (Attn: Matthew E. Tashman), and via email to [mtashman@reedsmith.com](mailto:mtashman@reedsmith.com), counsel to KeyBank National Association in its capacity as Agent and DIP Agent; (d) the lenders under the Debtors' pre-petition loan facilities; (e) the Insurance Carriers; (f) the United States Attorney's Office for the Southern District of Texas; (g) the Internal Revenue Service; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service; and (i) any party required to be served under Bankruptcy Local Rule 9013-1(d) (parties (a) – (i) above, the "Notice Parties"). Due to the nature of the relief requested herein, the Debtors submit that no other or further notice need be provided.

### **CONCLUSION**

The Debtors respectfully request that the Court enter an order, substantially in the form attached to the Motion, granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: Houston, Texas  
July 12, 2018

### **PORTER HEDGES LLP**

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**PROPOSED COUNSEL FOR DEBTORS  
AND DEBTORS IN POSSESSION**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

<b>In re:</b>  <b>NEIGHBORS LEGACY HOLDINGS, INC.,</b> <i>et al.,</i>  <p style="text-align: center;"><b>Debtors.</b><sup>1</sup></p>	§ § § § § § § § §	<b>Chapter 11</b>  <b>Case No. 18-33836 (MI)</b>  <b>(Jointly Administered)</b>
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**ORDER AUTHORIZING THE DEBTORS  
TO PAY PREPETITION PATIENT REFUNDS**

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) filed their motion (the “Motion”)<sup>2</sup> for interim and final orders authorizing the Debtors to pay prepetition refunds. The Court has jurisdiction over the Motion and the relief requested in the Motion pursuant to 28 U.S.C. § 1334 and venue is proper in this District pursuant to 11 U.S.C. § 1408. The Motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter a final order on the Motion. The relief requested by the Motion is in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest and the Debtors’ gave sufficient and proper notice of the Motion and related hearings. Upon consideration of the Motion and First Day Declaration and after hearing statements in support of the Motion during proceedings before this Court, the Court finds that good cause exists to grant the requested relief.

It is therefore **ORDERED THAT**

1. The Motion is granted.

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<sup>1</sup> Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at [www.kccllc.net/neighbors](http://www.kccllc.net/neighbors). The location of Debtors’ principal place of business and the Debtors’ service address is: 10800 Richmond Avenue, Houston, Texas 77042.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment to pay Patient Refunds, up to \$15,000 in the aggregate, to all patients who overpaid for procedures prior to the filing of these Chapter 11 Cases.

3. All banks and financial institutions on which checks were drawn or electronic payment requests made in payment of such prepetition obligations approved herein are authorized and directed to receive, process, honor, and pay any and all checks or electronic payment requests drawn on the Debtors' disbursements accounts 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.

4. The relief requested in the Motion is necessary to avoid immediate and irreparable harm and, thus, notwithstanding the possible applicability of Bankruptcy Rule 6003, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 7062, or 9014, the terms and conditions of this Order shall be effective immediately and enforceable upon its entry.

6. To the extent this Order is inconsistent with any prior order or pleading with respect to the Motion in these cases, the terms of this Order shall govern.

7. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

8. This Court will retain jurisdiction to address all disputes related to the interpretation or enforcement of this Order.

Dated: Houston, Texas  
\_\_\_\_\_, 2018

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**THE HONORABLE MARVIN ISGUR**  
**UNITED STATES BANKRUPTCY JUDGE**