

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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

**DEBTORS' EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS  
AUTHORIZING THE DEBTORS TO (I) CONTINUE OPERATING THEIR CASH  
MANAGEMENT SYSTEM, (II) HONOR CERTAIN PREPETITION OBLIGATIONS,  
(III) MAINTAIN EXISTING BUSINESS FORMS, AND  
(IV) GRANTING RELATED RELIEF**

**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.**

**EMERGENCY RELIEF HAS BEEN REQUESTED. 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. A HEARING WILL BE CONDUCTED ON THIS MATTER ON JULY 13, 2018, AT 10:30 A.M. IN COURTROOM 404, UNITED STATES BANKRUPTCY COURT FOR THE SOUTHERN DISTRICT OF TEXAS, 515 RUSK STREET, HOUSTON, TEXAS 77002.**

<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.

**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” and, together with their non-Debtor affiliates, the “Company”), hereby move (the “Motion”) this Court for entry of interim and final orders under sections 105(a), 345, 363, 364, 503, 1107 and 1108 of title 11 of the United States Code (the “Bankruptcy Code”) and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) (a) authorizing, but not directing, the Debtors to continue using their existing cash management system, bank accounts, and business forms, and to pay related prepetition obligations, and (b) authorizing the continuance of intercompany transactions and honoring certain related prepetition obligations including, to the extent applicable, granting administrative expense status to postpetition intercompany claims between and among the Debtors pursuant to Bankruptcy Code section 503(b)(1). In support of this Motion, the Debtors have filed contemporaneously the Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Pleadings (the “First Day Declaration”). 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.

### **EMERGENCY CONSIDERATION**

2. The Debtors request emergency consideration of this Motion. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” FED. R. BANKR. P. 6003. The Debtors utilize the cash management system on a daily basis to support virtually all aspects of their operations. Failure to receive the applicable relief during the first 21 days of the Chapter 11 Cases (defined below) would thus severely disrupt the Debtors’ operations at this critical juncture. Accordingly, the Debtors submit that they have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

### **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, 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 request entry of interim and final orders (a) authorizing the Debtors to continue using their existing cash management system, bank accounts, and business forms, in each case subject to changes that they may make thereto in their sole discretion, and to pay related prepetition obligations, (b) postponing or waiving any applicable investment and deposit requirements imposed by Bankruptcy Code section 345(b), or otherwise, and (c) authorizing the Debtors to continue their Intercompany Transactions (as defined herein) in the ordinary course of business and to honor certain prepetition amounts related thereto including, to the extent applicable, granting administrative expense status to

postpetition intercompany claims between and among the Debtors pursuant to Bankruptcy Code section 503(b)(1).

10. In order to effectuate the purposes of this Motion, the Debtors request that all Banks (defined below) be authorized to: (a) continue administering the Bank Accounts (defined below) in the usual and ordinary course of business in accordance with the Debtors' representations and instructions, and relying on any order entered on this Motion; (b) pay any and all checks, drafts, wires, or electronic funds transfers presented, issued, or drawn on the Bank Accounts on account of certain claims arising prepetition or postpetition so long as sufficient funds are available in such Bank Accounts unless the Debtors specifically issue "stop payment" instructions with respect to such items; (c) honor the Debtors' directions with respect to the opening or closing of any Bank Account; and (d) accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions. The Debtors further propose that the Banks not be liable to any party on account of (a) following the Debtors' instructions or representations as to any order of the Court, and (b) honoring any checks, drafts, wires, or electronic funds transfers presented in a good faith belief that this Court has authorized the honoring of such checks, drafts, wires, or electronic funds transfers.

11. The Debtors also request that the Court schedule a final hearing on the Motion within forty-five (45) days of entry of the interim order.

12. For the avoidance of doubt, nothing in this Motion is nor shall be construed as a request by the Debtors to be relieved of any of the duties under or restrictions or limitations imposed upon them by or in connection with debtor in possession financing or cash collateral documents or any order approving same. Without limiting the generality of the foregoing, Intercompany Transactions (as defined below), investment activities and other uses of cash

proposed in this Motion shall be made as permitted by the Debtors' proposed DIP financing (the "DIP Financing") upon Court approval of such DIP Financing.

13. For the reasons set forth herein, the Debtors submit that the relief requested herein is in the best interest of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore, should be granted.

### **BASIS FOR RELIEF**

#### **A. Cash Management System**

14. To support their operations, the Debtors maintain a centralized cash management system to facilitate cash flow between Debtor entities, while minimizing costs (the "Cash Management System").

15. On a daily basis, the Debtors process deposits, withdrawals, and other transfers in accordance with ordinary course practices. The Debtors maintain records of all transactions processed to track the funds involved in the Debtors' operations and efficiently manage their resources. This system enables the Debtors to satisfy their operating needs, ensure cash availability and liquidity, pay material debt obligations in the ordinary course and reduce administrative expenses by facilitating the efficient movement of funds. Thus, the Cash Management System is a critical component of the Debtors' overall business.

16. The Cash Management System includes 89 open bank accounts (collectively, the "Bank Accounts") controlled by the Debtors at various banks (collectively, the "Banks"). A list of the Debtors' Bank Accounts (the "Account List") is attached hereto as **Exhibit A**.<sup>2</sup> The Account List identifies the type of account and indicates the owner of each Bank Account. A

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<sup>2</sup> The Debtors believe that Exhibit A is a complete list of their open Bank Accounts. To the extent that any Bank Account has been omitted from that list, the Debtors request that the order granting the relief sought herein apply to any and all Bank Accounts actually in, or linked to, the Cash Management System.

description of the Cash Management System, including the role of each Bank Account, is set forth below.

**i. Receipts**

17. The Debtors' cash receipts derive primarily from payments by patients and commercial insurance providers (collectively the "Payments"). Payments to the Debtors are made in satisfaction of two distinct charges: (i) charges attributable to physician services (the "Physician Payments"), and (ii) charges attributable to all other services rendered by the Emergency Center facilities, which include, without limitation, services rendered by non-physician staff (the "Facility Payments").

18. The Physician Payments are deposited directly into an account maintained by Neighbors Physician Group, PLLC ("NPG"), which employs and pays the Debtors' physicians (the "NPG Account," BBVA Compass Acct. # XXX-0604).

19. The Facility Payments are deposited into the respective income account of the Emergency Center that rendered the services (the "Facility Income Accounts"). Each Emergency Center facility has its own Income Account, all of which are included on **Exhibit A**.

**ii. Disbursements from the Facility Income Accounts**

20. Regular disbursements are made from the Facility Income Accounts to cover a variety of the Debtors' operating and overhead expenses and each Emergency Center's share of the Debtors' debt service obligation under the credit facility. These disbursements include, without limitation: (i) disbursements to each respective Emergency Center's expense account (the "Facility Expense Accounts"),<sup>3</sup> (ii) disbursements to a corporate bank account (the

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<sup>3</sup> As with the Facility Income Accounts, each Emergency Center has its own Expense Account. All Expense Accounts are similarly included on **Exhibit A**.

“Corporate Account”) maintained by EDMG, LLC (“EDMG”), (iii) disbursements to a payroll account maintained by EDMG (the “Payroll Account”), (iv) disbursements to the NPG Account, (v) disbursements to Neighbors Practice Management, LLC (“NPM”), and (vi) disbursements on account of Deficient Emergency Centers (defined below). Each of these disbursements is described in more detail below.

21. **Disbursements to Facility Expense Accounts.** As set forth above, each Emergency Center maintains its own Expense Account. Each Emergency Center pays a variety of its ordinary expenses directly from its respective Facility Expense Account, including utilities, leases, maintenance, and supplies. The Facility Expense Accounts are zero balance accounts linked to the respective Emergency Center’s Facility Income Account. Funds are automatically transferred from each Emergency Center’s Facility Income Account to its Expense Account as checks are presented in order to honor the payments.

22. **Disbursements to the Corporate Account.** Each Facility Income Account regularly disburses funds to the Corporate Account (BBVA Compass Acct. # XXX-0590) to pay various corporate overhead costs (the “Corporate Overhead Costs”). The Corporate Overhead Costs primarily consist of costs incurred by Neighbors Health, LLC (“Neighbors Health”), which manages the Emergency Centers pursuant to a management services agreement with each respective Emergency Center (the “MSAs”). The management services include, without limitation, accounting, financial planning, staffing and human resources, executive operations management, and insurance administration services. The services provided by Neighbors Health are referred to as the “Management Services.” The Management Services are crucial to the success of each individual Emergency Center and to the Debtors’ enterprise as a whole. In order



to provide Management Services to the Emergency Centers, Neighbors Health maintains its own employees, office space, and associated resources.

23. Subject to certain exceptions (described below), the Corporate Overhead Costs are ordinarily allocated equally among the Emergency Centers. Disbursements in satisfaction of Corporate Overhead Costs are effectuated through manual transfers within the Debtors' online banking system.

24. Each Facility Income Account regularly disburses funds to the Corporate Account to cover its respective share of the Debtors' debt service obligation under the credit facility.

25. **Disbursements to the Payroll Account.** As further set forth in the Debtors' Employee Wage Motion,<sup>4</sup> EDMG funds the payroll obligations of each Emergency Center's non-physician employees. Accordingly, each Facility Income Account regularly disburses funds to a payroll account maintained by EDMG (the "Payroll Account," BBVA Compass Acct. # XXX-5249). The amount of each Emergency Center's disbursements to the Payroll Account is determined by that respective Emergency Center. Each Center tracks its individual payroll obligations, including obligations arising from salaries, insurance, and other benefits (the "Employee Payroll Obligations").

26. Subject to certain exceptions (described below), each Facility Income Account disburses funds to the Payroll Account sufficient to cover its individual Employee Payroll Obligations. Disbursements to the Payroll Account are effectuated through manual transfers within the Debtors' online banking system. EDMG funds each Emergency Center's Employee

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<sup>4</sup> Debtors' Emergency Motion (I) Authorizing, but not Directing, the Debtors to Pay the Prepetition Workforce Obligations, (II) Authorizing, but not Directing, the Debtors to Continue Certain Workforce Benefit Programs, and (III) Authorizing, but not Directing, Applicable Banks to Honor Prepetition Checks for Payment of the Prepetition Workforce Obligations, filed contemporaneously with this Motion.

Payroll Obligations within 48 hours of the Emergency Center's disbursement of the Payroll Obligations into the Payroll Account.

27. **Disbursements to the NPG Account.** Each Facility Income Account also regularly disburses funds to the NPG Account to help pay the wages of physicians who work at the respective Emergency Center. Disbursements from the Facility Income Accounts to the NPG Account are made in conjunction with NPG's payroll. The amount of each Emergency Center's disbursements to the NPG Account is determined by that respective Emergency Center. Each Center tracks its individual physician obligations, including obligations arising from salaries, insurance, and other benefits (the "Physician Payroll Obligations").

28. Subject to certain exceptions (described below), each Facility Income Account disburses sufficient funds to the NPG Account to ensure that its individual Physician Payroll Obligations are satisfied. Disbursements to the NPG Account are effectuated through manual transfers within the Debtors' online banking system.

29. **Disbursements to NPM.** Each Facility Income Account also regularly disburses funds to a bank account maintained by NPM, which provides billing and collections services for the Debtors (the "NPM Account," BBVA Compass Acct. # XXX-6022). NPM charges each Emergency Center a collection fee of 4% of the Facility Payments it collects. Disbursements to the NPM Account are effectuated through manual transfers within the Debtors' online banking system.

30. **Disbursements on Account of Deficient Emergency Centers.** If at any time an Emergency Center lacks sufficient cash to satisfy: (i) its share of the Corporate Overhead Costs, (ii) its individual Employee Payroll Obligations, (iii) its individual Physician Payroll Obligations, (iv) its ordinary expenses specific to its operations, such Emergency Center is a "Deficient

Emergency Center,” or (v) its share of the Debtors’ debt service obligations. On an as-needed basis, EDMG will recover amounts owed by a Deficient Emergency Center (a “Deficiency”) from an Emergency Center with excess cash (a “Crediting Emergency Center”). In turn, EDMG books the amount of the Deficiency as a payable from the Deficient Emergency Center to EDMG and a receivable from EDMG to the Crediting Emergency Center.

**iii. Disbursements from the NPG Account**

31. NPG also makes regular disbursements from its account, including: (i) disbursements to the NPM Account on account of NPM’s billing and collections services, and (ii) disbursements to make payroll for the Physicians.

32. **Disbursements to the NPM Account.** Like the Emergency Centers, NPG regularly disburses funds from the NPM Account in satisfaction of NPM’s 6% collection fee on the Physician Payments it collects. Disbursements to the NPM Account are effectuated through manual transfers within the Debtors’ online banking system.

33. **Disbursements for Physician Payroll.** As further set forth in the Debtors’ Employee Wage Motion, NPG funds the payroll obligations of each Emergency Center’s physician employees. Accordingly, there are monthly disbursements from the NPG Account to pay the physicians.

34. **Disbursements for Operating Expenses.** NPG disburses funds to cover its operating expenses, including computer software, contract labor and bank charges.

**iv. The NPM Account**

35. As described above, the NPG Account and each Facility Income Account regularly disburse funds to the NPM Account on account of the billing and collections services NPM provides for the Debtors. NPM charges each Emergency Center a 4% collection fee for

the Facility Payments it collects and charges NPG a 6% collection fee for the Physician Payments it collects. Disbursements from the NPM Account include disbursements to make payroll for NPM employees and to cover its operating expenses.

v. **Inactive Accounts**

36. In addition to the above-described accounts, the Debtors maintain certain additional inactive accounts:

37. **The Asset Accounts.** The Debtors own some of the real property associated with the Emergency Centers in which they operate. The Asset Accounts were originally established to pay expenses associated with real property ownership; however, the Debtors now pay these expenses directly from the Facility Account associated with the real property. Accordingly, the Asset Accounts are now inactive. The Asset Accounts are BBVA Compass Acct. Nos. XXX-9646 (Baytown), XXX-7722 (Kingwood), XXX-3630 (Pearland), and XXX-2196 (Tyler, Closed).

38. **EDMG Income – Construction Account.** The Construction Account was established to hold proceeds from bank loans the Debtors previously obtained to fund certain of the Debtors' construction projects. The Construction Account is BBVA Compass Acct. # XXX-5575. As of the Petition Date, the balance of the Construction Account was at or near zero.

39. **EDMG – Shareholder Account.** The Shareholder Account was established in 2017 to account for a requirement of the Debtors' secured lenders that the Debtors' original eight founders contribute \$8 million to the Company. The Shareholder Account is BBVA Compass Acct. # XXX-7354. As of the Petition Date, the Shareholder Account has a zero balance.

40. A chart reflecting the flow of funds through the Bank Accounts in the Cash Management System (the “Chart”) is attached as **Exhibit B**. The amount of funds that flow through the Cash Management System on a monthly basis fluctuates greatly.

**B. Business Forms and Investment and Deposit Practices**

41. In the ordinary course of business, the Debtors may use a number of checks, business letterhead, purchase orders, invoices, envelopes, promotional materials, and other business forms and correspondence (collectively, the “Business Forms”). Given that the Business Forms were used prepetition, they do not include references to the Debtors’ current status as debtors in possession. Most parties doing business with the Debtors undoubtedly will be aware of the Debtors’ status as debtors in possession as a result of the publicity surrounding the Chapter 11 Cases and the notice of commencement of the Chapter 11 Cases that has been or will soon be provided to parties in interest. As is the case with the existing Cash Management System, requiring the Debtors to change existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts and impose needless expenses on the estates, without any meaningful corresponding benefit.

**C. Intercompany Transactions**

42. As explained above, in the ordinary course of business, the Debtors regularly transfer money between their accounts in the ordinary course of business to fund operations (the “Intercompany Transactions”).

43. The Debtors seek authority to continue the Intercompany Transactions postpetition. Because the Debtors engaged in the Intercompany Transactions on a regular basis prepetition and such transactions are common for enterprises like the Debtors, the Debtors believe that they may continue the Intercompany Transactions in the ordinary course, as contemplated by section 363(c)(1) of the Bankruptcy Code, without court approval. Nonetheless,

out of an abundance of caution, the Debtors seek express authority to continue engaging in the Intercompany Transactions.

44. Failure to continue the Intercompany Transactions in the ordinary course of the Debtors' business would unnecessarily and severely hinder operations. Absent the continuation of the Intercompany Transactions, the Debtors' ability to operate their business during the Chapter 11 Cases would be severely prejudiced, and their ability to maximize value for creditors would be drastically reduced. Avoiding such potentially crippling hindrances by continuing the Intercompany Transactions is, therefore, in the best interests of the estates. The Debtors therefore request that the Court authorize them to continue the Intercompany Transactions in the ordinary course of business.

#### **APPLICABLE AUTHORITY**

##### **A. The Court Should Authorize Continued Use of the Existing Cash Management System and Related Bank Accounts in the Ordinary Course of Business**

45. Allowing the Debtors to use their Cash Management System is entirely consistent with applicable provisions of the Bankruptcy Code. Bankruptcy Code section 363(c)(1) authorizes a debtor in possession to "use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). The purpose of Bankruptcy Code section 363(c)(1) is to provide a debtor in possession with the flexibility to engage in ordinary course transactions required to operate its business, without unneeded oversight by the debtor's creditors or having to obtain court approval. *See, e.g., In re Lavigne*, 114 F.3d 379, 384 (2d Cir. 1997); *In re Roth American, Inc.*, 975 F.2d 949, 952 (3d Cir. 1992).

46. The Debtors' ability to continue using the Cash Management System and engaging in related "routine transactions" falls within the parameters of Bankruptcy Code section 363(c). *See, e.g., In re Charter Co.*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that a debtor's

request for authority to continue using its existing cash management system is consistent with Bankruptcy Code section 363(c)(1)).

47. To the extent that use of the existing Cash Management System is beyond the ordinary course of the Debtors' business, such use is permitted by Bankruptcy Code sections 363(b)(1) and 105(a). Bankruptcy Code section 363(b)(1) provides, in relevant part, that "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Bankruptcy Code section 105(a) further provides that the Court may "issue any order . . . that is necessary or appropriate to carry out the provisions of the [Bankruptcy Code]." 11 U.S.C. § 105(a).

48. Where there is a valid business justification for using property outside the ordinary course of business, the law presumes that, "in making a business decision the directors of a corporation acted on an informed basis, in good faith [,] and in the honest belief that the action taken was in the best interests of the company." *In re Integrated Res., Inc.*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

49. Courts have noted that an integrated cash management system "allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash." *See, e.g., In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff'd in part, rev'd in part*, 1992 U.S. Dist. LEXIS 9460 (D. Del. July 6, 1992), *aff'd in part, rev'd in part*, 997 F.2d 1039 (3d Cir. 1993), *cert. denied sub nom. Official Comm. of Unsecured Creditors v. Columbia Gas Transmission Corp.*, 510 U.S. 1110 (1994).

50. The Debtors' ability to continue their Cash Management System in the ordinary course of their business is essential to their operations. The Cash Management System and

applicable procedures employed by the Debtors constitute ordinary, usual, and essential business practices and are similar to those used by other major corporate enterprises. The Cash Management System affords the Debtors significant benefits, including, among other things, the ability to: (a) control corporate funds centrally; (b) ensure the availability of funds when necessary; and (c) minimize administrative expenses by facilitating a more efficient movement of funds and monitoring of balance and presentment information. It would be unduly difficult and expensive for the Debtors to establish a new cash management system. For example, altering the Cash Management System could disrupt payments to employees and key vendors and impose a serious administrative burden on the Debtors. The Debtors therefore request permission to use their existing Cash Management System on an interim basis until a final hearing to consider the Motion and, ultimately, on a final basis.

51. Allowing the existing Cash Management System to remain in place will facilitate a smoother transition into Chapter 11 and will aid the Debtors' restructuring efforts. The Debtors are requesting, in this Motion and other motions filed concurrently herewith, authority, but not direction, to pay certain prepetition obligations. With respect to certain of these obligations, the Debtors may have issued checks prior to the Petition Date which have yet to clear the relevant accounts. Given the scope of the Company's operations and the complex corporate structure of the Debtors' operating entities as described in the First Day Declaration, preservation of the Cash Management System and other relief requested herein will enable the Debtors and other parties in interest to ensure that transactions are readily ascertainable and adequately documented.

52. Bankruptcy courts routinely permit Chapter 11 debtors to maintain their existing cash management systems, generally treating requests for such relief as a relatively "simple



matter.” *In re Columbia Gas Sys.*, 997 F.2d 1039, 1061 (3d Cir. 1993) (recognizing that a requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient”); *Charter Co. v. Prudential Ins. Co. of Am. (In re Charter Co.)*, 778 F.2d 617, 621 (11th Cir. 1985) (holding that allowing the debtors to use their prepetition “routine cash management system” was entirely consistent with applicable provisions of the Bankruptcy Code).

53. Numerous courts including court in this district have authorized debtors to continue their existing cash management systems in other large Chapter 11 cases. *See, e.g., In re Emas Chiyoda Subsea Ltd.*, No. 17-31146 (MI), Docket No. 272 (Bankr. S.D. Tex. Apr. 13, 2017); *In re Stone Energy Corp.*, No. 16-36390 (MI), Docket No. 255 (Bankr. S.D. Tex. Jan. 10, 2016); *In re Sandridge Energy, Inc.*, No. Case No. 16-32488 (DRJ), Docket No. 93 (Bankr. S.D. Tex. May 18, 2016); *In re Linn Energy, LLC*, No. 16-60040 (DRJ), Docket No. 87 (Bankr. S.D. Tex. May 13, 2016); *In re Midstates Petroleum Co.*, No. 16-32237 (DRJ), Docket No. 65 (Bankr. S.D. Tex. May 2, 2016); *In re Juniper GTL LLC*, No. 16-31959 (MI), Docket No. 52 (Bankr. S.D. Tex. Apr. 18, 2016); *In re Goodrich Petroleum Corp.*, No. 16-31975 (MI), Docket No. 40 (Bankr. S.D. Tex. Apr. 18, 2016); *In re Energy XXI Ltd.*, No. 16-31928 (DRJ), Docket No. 56 (Bankr. S.D. Tex. Apr. 15, 2016).

**B. The Court Should Authorize Continued Use of the Bank Accounts and the Business Forms**

54. The U.S. Trustee Guidelines, among other restrictions and requirements, prohibit disbursements other than by numbered checks, which checks must bear the applicable debtor’s case name and case number, a “debtor in possession” designation, and an indication of the account type. However, rigid adherence to the U.S. Trustee Guidelines would require, among other things, closure of prepetition bank accounts, the opening of new accounts, and the

immediate printing of new checks with a “Debtors in Possession” designation on them. Thus, enforcement of the U.S. Trustee Guidelines in the Chapter 11 Cases would disrupt the Debtors’ business operations, impose burdensome expenses on the estates, and unnecessarily distract the Debtors from their reorganization efforts. *See In re Gaylord Container Corp.*, No. 92-3654, 1993 WL 188671, at \*3, 13 (E.D. La. May 24, 1993) (adopting the bankruptcy court’s findings of fact and conclusions of law, including a finding that the banking requirements of the Office of the United States Trustee for the District of Louisiana “represent a substantial burden on any debtor and, in this case, resulted in the incurrence of extraordinary unquantifiable costs by [the debtor] associated with the confusion engendered by the implementation of new policies and procedures to comply with such rules, and due to the substantial restrictions that such rules placed on the debtor’s treasury functions”).

55. In the ordinary course of business, the Debtors may also use other various Business Forms, including, but not limited to, business letterhead, purchase orders, invoices, envelopes, promotional materials, and other business forms and correspondence. To minimize expenses, the Debtors seek authority to continue using the Business Forms, substantially in the forms existing immediately before the Petition Date and without any reference in such forms to the Debtors’ status as debtors in possession. As with the Bank Accounts, requiring the Debtors to change their existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts and impose needless expense.

56. Further, authorizing continued use of both the Bank Accounts and the Business Forms will make the Debtors’ transition into Chapter 11 smoother, less costly, and more orderly.

57. Accordingly, the Debtors request that the Court exercise its equitable powers under Bankruptcy Code section 105(a) to waive compliance with the U.S. Trustee Guidelines

and to authorize the Debtors to continue using their existing Bank Accounts and existing Business Forms in the ordinary course of business.<sup>5</sup>

**C. Cause Exists to Postpone or Waive the U.S. Trustee Guidelines Regarding Authorized Depositories**

58. Bankruptcy Code section 345(a) authorizes deposits or investments of estate money in a manner that will “yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” 11 U.S.C. § 345(a). For deposits or investments that are not “insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States,” Bankruptcy Code section 345(b) provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of an adequate corporate surety, “unless the court for cause orders otherwise.” 11 U.S.C. § 345(b).

59. To help debtors comply with this section of the Bankruptcy Code, the United States Trustee has promulgated the U.S. Trustee Guidelines as well as a list of authorized depositories (the “Authorized Depositories”) at which debtors may maintain bank accounts. Under the U.S. Trustee Guidelines, debtors in possession must, among other things, close prepetition bank accounts and open new “debtor in possession” operating, payroll, and tax accounts at an Authorized Depository.

60. Courts, however, may waive compliance with Bankruptcy Code section 345(b), and ultimately the U.S. Trustee Guidelines, for “cause.” In evaluating whether “cause” exists, courts have considered a number of factors, including, among others, the sophistication and size

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<sup>5</sup> Authority to continue the use of bank accounts has been granted in numerous other chapter 11 cases. *See supra* ¶ 44 (citing case law).

of a debtor's business, the amounts of the investments involved, bank ratings, the complexity of the case, the debtor's safeguards for the funds, the debtor's ability to reorganize in the face of failure of one or more of the financial institutions, the benefit to the debtor of a waiver of the section 345(b) requirements, the potential harm to the estate, and the reasonableness of such a waiver under the circumstances. *See In re Serv. Merch. Co.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

61. The Debtors' corporate structure relies on a complex Cash Management System implicating multiple Bank Accounts on a daily basis. Four (4) of the Debtors' Bank Accounts are maintained with financial institutions on the United States Trustee's list of Authorized Depositories in the Southern District of Texas—Wells Fargo Bank, N.A. and Bank of America. The Debtors' remaining accounts are with BBVA Compass, which is a financially stable banking institution. The Bank Accounts are either insured by the FDIC up to any applicable limits, or invested primarily in high quality securities and money market mutual funds. To protect against the unauthorized payment of prepetition obligations, the Debtors represent that if they are authorized to continue to use the Bank Accounts, they will not pay, and the Banks will not be directed to pay, any debts incurred before the Petition Date, other than as authorized by this Court.

62. Because the Bank Accounts are vital to the Cash Management System, the Debtors submit that requiring the Debtors to transfer these funds to other banks would be unduly burdensome to the Debtors' operations, which must seamlessly operate across multiple jurisdictions. Therefore the Debtors request that ample cause exists to waive the U.S. Trustee Guidelines.

**D. The Court Should Authorize the Debtors to Honor Certain Prepetition Obligations Related to the Cash Management System.**

63. Contemporaneously with the filing of this Motion, the Debtors have filed various motions for authorization to pay certain prepetition obligations. With respect to some of these obligations, prior to the Petition Date, the Debtors issued checks that have yet to clear the banking system. With respect to other obligations, the Debtors intend to issue checks post-petition on account of such prepetition debt once the Court enters an order permitting the Debtors to take such action.

64. In addition, in connection with the Cash Management System, the Debtors incur fees and other charges in connection with Bank services, dishonored or returned checks, and other obligations (collectively, all such fees and charges, the “Bank Account Claims”). Over the past four (4) months, Bank Account Claims have averaged approximately \$65,000.00 per month.

65. As with the Cash Management System, payment of the Bank Account Claims will minimize disruption to the Debtors’ operations and is therefore in the best interests of the estates. Absent payment of the Bank Account Claims, the Banks might assert offset rights against the funds in the Bank Accounts on account of the Bank Account Claims, freeze the Bank Accounts, and/or refuse to provide services to the Debtors. The payment of Bank Account Claims will not prejudice unsecured creditors given that, as noted above, the Banks may have setoff rights with respect to the Bank Account Claims.

66. Accordingly, under Bankruptcy Code sections 105(a) and 363(b), the Debtors seek authority, in their sole discretion, to pay and/or reimburse the Banks in the ordinary course of business for any Bank Account Claims arising prior to or after the Petition Date. The Debtors further request that the Bank Account Claims be granted administrative expense priority status pursuant to Bankruptcy Code section 503(b).

**E. The Court Should Authorize the Debtors to Continue to Engage in the Intercompany Transactions in the Ordinary Course of Business**

67. Bankruptcy Code section 363(b)(1) authorizes a debtor in possession to use property of the estate other than in the ordinary course of business, after notice and a hearing. Courts have held that there must be some articulated business justification for using, selling, or leasing property out of the ordinary course of business before the bankruptcy judge may order such disposition under section 363(b). *See, e.g., Dai-Ichi Kangyo Bank, Ltd. v. Montgomery Ward Holding Corp. (In re Montgomery Ward Holding Corp.)*, 242 B.R. 147, 153 (D. Del. 1999) (“In determining whether to authorize the use, sale or lease of property of the estate . . . , courts require the debtor to show that a sound business purpose justifies such actions.”).

68. The Debtors have routinely engaged in the Intercompany Transactions in the ordinary course of business, and submit that the continuation of the Intercompany Transactions would be within the ordinary course of business. However, out of an abundance of caution, the Debtors seek authority to enter into such post-petition Intercompany Transactions in the ordinary course of business. If the Debtors are permitted to continue entering into the Intercompany Transactions in the ordinary course, the Debtors will continue to maintain records of the Intercompany Transactions, including records of intercompany accounts receivable and accounts payable.

69. As noted above, pursuant to Bankruptcy Code section 363(b)(1), debtors in possession are authorized to use property of the estate other than in the ordinary course of business after notice and a hearing. The Intercompany Transactions facilitate the Debtors’ day-to-day operations and payments associated with the Intercompany Transactions are important sources of liquidity for the Debtors. Without the ability to continue supporting the Debtor affiliates through the Intercompany Transactions, the Debtors’ future cash flows and ongoing

operations may be jeopardized, to the detriment of the Debtors and their estates. Thus, the Debtors submit that such relief under Bankruptcy Code section 363(b)(1) is appropriate, as entrance into postpetition Intercompany Transactions is well within the sound business judgment of the Debtors.

70. Additionally, the Debtors request that the Court authorize the Debtors, in their sole business judgment, to continue the Intercompany Transactions to preserve the value of the Company as a whole and to preserve and enhance the value of the Debtors' estates. The Debtors, as debtors in possession with fiduciary duties towards their respective stakeholders, are under an obligation to "protect and preserve the estate, including an operating business's going-concern value." *In re CoServe, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). In some instances, the Debtors may fulfill its fiduciary duty "by the preplan satisfaction of a prepetition claim," if the payment "is the only means to effect a substantial enhancement of the estate." *Id.*

71. Finally, because effectively the Debtors will be lending and borrowing cash on a postpetition basis, debtors request that claims arising from post-petition Intercompany Transactions among Debtors be granted administrative expense priority status under Bankruptcy Code sections 364(a) and 503(b)(1).

72. Such treatment is consistent with Bankruptcy Code section 364(a), which provides that, unless the Court orders otherwise, the Debtors are authorized to incur unsecured debt in the ordinary course of business allowable as an administrative expense under Bankruptcy Code section 503(b)(1). The requested relief is also an appropriate exercise of this Court's equitable powers under Bankruptcy Code section 105(a) and is further appropriate under Bankruptcy Code section 363. *See, e.g., In re Gen. Growth Props.*, 412 B.R. 609, 610 (Bankr. S.D.N.Y. 2009) (holding that debtors were authorized to continue prepetition cash management

practices, including intercompany transactions, under Bankruptcy Code sections 105(a) and 363(c)).

73. Courts frequently have authorized debtors to continue their prepetition intercompany practices after commencement of Chapter 11 cases. *See, e.g., In re Emas Chiyoda Subsea Ltd.*, No. 17-31146 (MI) (Bankr. S.D. Tex. Feb. 28, 2017); *In re Stone Energy Corp.*, No. 16-36390 (MI) (Bankr. S.D. Tex. Dec. 16, 2016); *In re Sandridge Energy, Inc.*, No. Case No. 16-32488 (DRJ) (Bankr. S.D. Tex. May 18, 2016); *In re Midstates Petroleum Co.*, No. 16-32237 (DRJ) (Bankr. S.D. Tex. May 2, 2016); *In re Southcross Holdings LP*, No. 16-20111 (MI) (Bankr. S.D. Tex. Mar. 29, 2016); *In re Sherwin Alumina Co., LLC*, No. 16-20012 (DRJ) (Bankr. S.D. Tex. Jan. 13, 2016).

74. In addition, courts have granted superpriority administrative expense status to postpetition intercompany claims in other large Chapter 11 cases. *See, e.g., In re Energy XXI, Ltd.*, Case No. 16-31928 (DRJ) (Bankr. S.D. Tex. May 19, 2016); *In re Ultra Petroleum Corp.*, Case No. 16-32202 (MI) (Bankr. S.D. Tex. May 03, 2016); *In re Sherwin Alumina Co., LLC*, Case No. 16-20012 (DRJ) (Bankr. S.D. Tex. Jan. 13, 2016).

75. For the reasons set forth above, the Debtors submit that the relief requested in this Motion is in the best interests of the Debtors, their estates, creditors, stakeholders, and other parties in interest, and therefore should be granted.

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

76. Bankruptcy Rule 6004(h) 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. Accordingly, the Debtors respectfully request



that the Court waive the fourteen day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**RESERVATION OF RIGHTS**

77. Nothing contained herein is or should be construed as: (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claim on any grounds; (c) a promise to pay any claim; (d) an assumption or rejection of any executory contract or unexpired lease pursuant to Bankruptcy Code section 365; or (e) otherwise affect the Debtors' rights under Bankruptcy Code section 365 to assume or reject any executory contract with any party subject to this Motion.

**NOTICE**

78. 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 United States Attorney's Office for the Southern District of Texas; (e) the Internal Revenue Service; (f) any party that has requested notice pursuant to Bankruptcy Rule 2002 as of the time of service; and (g) any party required to be served under Bankruptcy Local Rule 9013-1(d). Due to the nature of the relief requested herein, the Debtors submit that no other or further notice need be provided.

**CONCLUSION**

79. The Debtors respectfully request that the Court enter orders, substantially in the forms annexed hereto, 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

By: /s/ John F. Higgins  
John F. Higgins  
State Bar No. 09597500  
Eric M. English  
State Bar No. 24062714  
Genevieve M. Graham  
State Bar No. 24085340  
1000 Main Street, 36th Floor  
Houston, Texas 77002  
Telephone: (713) 226-6000  
Fax: (713) 226-6248

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

**CERTIFICATE OF SERVICE**

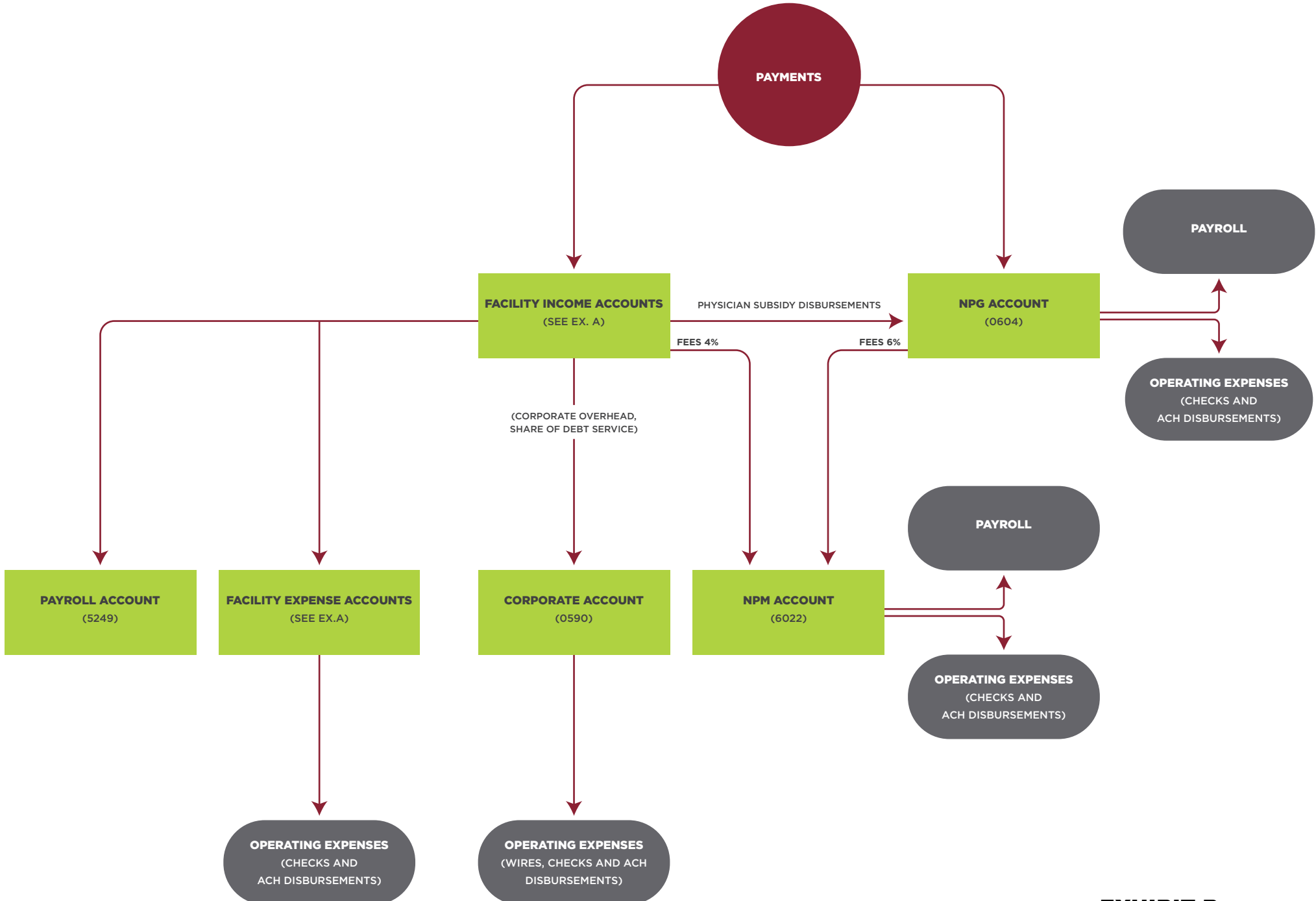
I hereby certify that a true and correct copy of the foregoing Motion was served via first-class U.S. mail, postage prepaid on all of the parties on the attached service list on this 12th day of July, 2018.

*/s/ John F. Higgins*

\_\_\_\_\_  
John F. Higgins

Center Status	Debtor	Institution	Account Type	Last 4 Digits of Account No.	Balance as of Petition Date	Purpose	Account Open?	Status
Closed	NEC Amarillo South Emergency Center, LP	BBVA Compass	Checking	0773		Facility Income	Open	Active
Closed	NEC Amarillo South Emergency Center, LP	BBVA Compass	Checking	1505		Facility Expense	Open	Active
Closed	NEC College Station Emergency Center, LP	BBVA Compass	Checking	7248		Facility Expense	Open	Active
Closed	NEC College Station Emergency Center, LP	BBVA Compass	Checking	7272		Facility Income	Open	Active
Closed	NEC Greeley Emergency Center, LP	BBVA Compass	Checking	4582		Facility Expense	Open	Active
Closed	NEC Greeley Emergency Center, LP	BBVA Compass	Checking	4868		Facility Income	Open	Active
Closed	NEC Kerrville Emergency Center, LP	BBVA Compass	Checking	4779		Facility Expense	Open	Active
Closed	NEC Kerrville Emergency Center, LP	BBVA Compass	Checking	5171		Facility Income	Open	Active
Closed	NEC Lakeline Emergency Center, LP	BBVA Compass	Checking	1955		Facility Expense	Open	Active
Closed	NEC Lakeline Emergency Center, LP	BBVA Compass	Checking	3397		Facility Income	Open	Active
Closed	NEC Longview Emergency Center, LP	BBVA Compass	Checking	7566		Facility Expense	Open	Active
Closed	NEC Longview Emergency Center, LP	BBVA Compass	Checking	7736		Facility Income	Open	Active
Closed	NEC Lufkin Emergency Center, LP	BBVA Compass	Checking	2550		Facility Expense	Open	Active
Closed	NEC Lufkin Emergency Center, LP	BBVA Compass	Checking	8427		Facility Income	Open	Active
Closed	Next Door Urgent Care, LLC	BBVA Compass	Checking	3416		Facility Expense	Open	Active
Closed	Next Door Urgent Care, LLC	BBVA Compass	Checking	4080		Facility Income	Open	Active
Closed	NEC San Angelo Emergency Center, LP	BBVA Compass	Checking	6059		Facility Expense	Open	Active
Closed	NEC San Angelo Emergency Center, LP	BBVA Compass	Checking	6415		Facility Income	Open	Active
Closed	NEC Texas City Emergency Center, LP	BBVA Compass	Checking	5914		Facility Expense	Open	Active
Closed	NEC Texas City Emergency Center, LP	BBVA Compass	Checking	5728		Facility Income	Open	Active
Closed	NEC Tyler Emergency Center, LP	BBVA Compass	Checking	7720		Facility Expense	Open	Active
Closed	NEC Tyler Emergency Center, LP	BBVA Compass	Checking	7496		Facility Income	Open	Active
Closed	NEC West Warwick Emergency Center, LP	BBVA Compass	Checking	0608		Facility Expense	Open	Active
Closed	NEC West Warwick Emergency Center, LP	BBVA Compass	Checking	5763		Facility Income	Open	Active
Closed	NEC West Warwick Emergency Center, LP	Bank of America Merrill Lynch	Checking	1830		Facility Income	Open	Active
Closed	NEC Wichita Falls Emergency Center, LP	BBVA Compass	Checking	8449		Facility Expense	Open	Active
Closed	NEC Wichita Falls Emergency Center, LP	BBVA Compass	Checking	8724		Facility Income	Open	Active
Closed	NEC Wichita Falls Emergency Center, LP	Wells Fargo	Checking	6281		Facility Income	Open	Active
Closed	NEC Zaragoza Emergency Center, LP	BBVA Compass	Checking	2666		Facility Expense	Open	Active
Closed	NEC Zaragoza Emergency Center, LP	BBVA Compass	Checking	2895		Facility Income	Open	Active
Closed	Neighbors Physician Group - Colorado, LLC	BBVA Compass	Checking	7604		NPG Account	Open	Active
Closed	Neighbors Physician Group - Colorado, LLC	BBVA Compass	Checking	7779		NPG Account	Open	Active
Closed	Neighbors Physician Group - Rhode Island, LLC	BBVA Compass	Checking	6963		NPG Account	Open	Active
Closed	Neighbors Physician Group - Rhode Island, LLC	BBVA Compass	Checking	1878		NPG Account	Open	Active
Open	NEC Amarillo Emergency Center, LP	BBVA Compass	Checking	1726		Facility Income	Open	Active
Open	NEC Amarillo Emergency Center, LP	Wells Fargo	Checking	6257		Facility Income	Open	Active
Open	NEC Amarillo Emergency Center, LP	BBVA Compass	Checking	0498		Facility Expense	Open	Active
Open	NEC Baytown Asset Holdings, LLC	BBVA Compass	Checking	9646		Asset Account	Open	Inactive
Open	NEC Baytown Emergency Center, LP	BBVA Compass	Checking	3754		Facility Expense	Open	Active
Open	NEC Baytown Emergency Center, LP	BBVA Compass	Checking	6614		Facility Income	Open	Active
Open	NEC Bellaire Emergency Center, LP	BBVA Compass	Checking	5734		Facility Expense	Open	Active
Open	NEC Bellaire Emergency Center, LP	BBVA Compass	Checking	3757		Facility Income	Open	Active
Open	NEC Brownsville Emergency Center, LP	BBVA Compass	Checking	0180		Facility Expense	Open	Active
Open	NEC Brownsville Emergency Center, LP	BBVA Compass	Checking	0369		Facility Income	Open	Active
Open	NEC Crosby Emergency Center, LP	BBVA Compass	Checking	0143		Facility Expense	Open	Active
Open	NEC Crosby Emergency Center, LP	BBVA Compass	Checking	1026		Facility Income	Open	Active
Open	NEC Eastside Emergency Center, LP	BBVA Compass	Checking	4818		Facility Expense	Open	Active

Open	NEC Eastside Emergency Center, LP	BBVA Compass	Checking	4966	Facility Income	Open	Active
Open	NEC Harlingen Emergency Center, LP	BBVA Compass	Checking	0288	Facility Expense	Open	Active
Open	NEC Harlingen Emergency Center, LP	BBVA Compass	Checking	0474	Facility Income	Open	Active
Open	NEC Kingwood Asset Holdings, LLC	BBVA Compass	Checking	7722	Asset Account	Open	Inactive
Open	NEC Kingwood Emergency Center, LP	BBVA Compass	Checking	6742	Facility Expense	Open	Active
Open	NEC Kingwood Emergency Center, LP	BBVA Compass	Checking	0612	Facility Income	Open	Active
Open	NEC Lubbock Emergency Center, LP	BBVA Compass	Checking	1781	Facility Expense	Open	Active
Open	NEC Lubbock Emergency Center, LP	BBVA Compass	Checking	7536	Facility Income	Open	Active
Open	NEC McAllen Emergency Center, LP	BBVA Compass	Checking	2447	Facility Expense	Open	Active
Open	NEC McAllen Emergency Center, LP	BBVA Compass	Checking	2617	Facility Income	Open	Active
Open	NEC Midland Emergency Center, LP	BBVA Compass	Checking	9442	Facility Expense	Open	Active
Open	NEC Midland Emergency Center, LP	BBVA Compass	Checking	9833	Facility Income	Open	Active
Open	NEC Mueller Emergency Center, LP	BBVA Compass	Checking	1746	Facility Expense	Open	Active
Open	NEC Mueller Emergency Center, LP	BBVA Compass	Checking	1363	Facility Income	Open	Active
Open	Neighbors Physician Group, PLLC	BBVA Compass	Checking	0604	NPG Account	Open	Active
Open	NEC Odessa Emergency Center, LP	BBVA Compass	Checking	6961	Facility Expense	Open	Active
Open	NEC Odessa Emergency Center, LP	BBVA Compass	Checking	6767	Facility Income	Open	Active
Open	NEC Orange Emergency Center, LP	BBVA Compass	Checking	4009	Facility Expense	Open	Active
Open	NEC Orange Emergency Center, LP	BBVA Compass	Checking	4572	Facility Income	Open	Active
Open	NEC Paris Emergency Center, LP	BBVA Compass	Checking	6755	Facility Expense	Open	Active
Open	NEC Paris Emergency Center, LP	BBVA Compass	Checking	7026	Facility Income	Open	Active
Open	NEC Pasadena Emergency Center, LP	BBVA Compass	Checking	7915	Facility Expense	Open	Active
Open	NEC Pasadena Emergency Center, LP	BBVA Compass	Checking	7966	Facility Income	Open	Active
Open	NEC Pearland Asset Holdings, LLC	BBVA Compass	Checking	3630	Asset Account	Open	Inactive
Open	NEC Pearland Emergency Center, LP	BBVA Compass	Checking	8609	Facility Expense	Open	Active
Open	NEC Pearland Emergency Center, LP	BBVA Compass	Checking	7236	Facility Income	Open	Active
Open	NEC Port Arthur Emergency Center, LP	BBVA Compass	Checking	3965	Facility Expense	Open	Active
Open	NEC Port Arthur Emergency Center, LP	BBVA Compass	Checking	4023	Facility Income	Open	Active
Open	NEC Porter Emergency Center, LP	BBVA Compass	Checking	3141	Facility Expense	Open	Active
Open	NEC Porter Emergency Center, LP	BBVA Compass	Checking	3737	Facility Income	Open	Active
Open	NEC Texarkana Emergency Center, LP	BBVA Compass	Checking	4563	Facility Expense	Open	Active
Open	NEC Texarkana Emergency Center, LP	BBVA Compass	Checking	4849	Facility Income	Open	Active
Open	NEC Texarkana Emergency Center, LP	Wells Fargo	Checking	1903	Facility Income	Open	Active
Open	NEC Yorktown Emergency Center, LP	BBVA Compass	Checking	9677	Facility Expense	Open	Active
Open	NEC Yorktown Emergency Center, LP	BBVA Compass	Checking	8573	Facility Income	Open	Active
Open	EDMG, LLC	BBVA Compass	Checking	7354	Corporate Account	Open	Dormant
Open	EDMG, LLC	BBVA Compass	Checking	5575	Corporate Account	Open	Dormant
Open	EDMG, LLC	BBVA Compass	Checking	0590	Corporate Account	Open	Active
Open	Neighbors GP, LLC	BBVA Compass	Checking	5013	Corporate Account	Open	Inactive
Open	EDMG, LLC	BBVA Compass	Checking	5249	Payroll Account	Open	Active
Open	Neighbors Practice Management, LLC	BBVA Compass	Checking	6022	NPM Account	Open	Active



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

<p><b>In re:</b></p> <p><b>NEIGHBORS LEGACY HOLDINGS, INC., <i>et al.</i>,</b></p> <p style="text-align: center;"><b>Debtors.<sup>1</sup></b></p>	<p>§ § § § § §</p>	<p><b>Chapter 11</b></p> <p><b>Case No. 18-33836 (MI)</b></p> <p><b>(Jointly Administered)</b></p> <p><b>(Emergency Hearing Requested)</b></p>
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**INTERIM ORDER AUTHORIZING THE DEBTORS TO (I) CONTINUE OPERATING  
THEIR CASH MANAGEMENT SYSTEM, (II) HONOR CERTAIN PREPETITION  
OBLIGATIONS, (III) MAINTAIN EXISTING BUSINESS FORMS, AND (IV)  
GRANTING RELATED RELIEF**

[Relates To Doc. No. \_\_\_\_]

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) filed their motion (the “Motion”)<sup>2</sup> for entry of an interim order (a) authorizing, but not directing, the Debtors to continue using their existing cash management system, bank accounts, and business forms, and to pay related prepetition obligations, and (b) authorizing the continuance of intercompany transactions and honoring certain related prepetition obligations including, to the extent applicable, granting administrative expense status to post-petition intercompany claims between and among the Debtors pursuant to Bankruptcy Code section 503(b)(1). 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

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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.

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 as set forth in this Interim Order.
2. A final hearing (the “Final Hearing”) on the Motion shall be held on \_\_\_\_\_, 2018, at \_\_\_\_\_ a/p.m. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m. prevailing Central Time on \_\_\_\_\_, 2018. In the event no objections to entry of the final order on the Motion are timely received, the Court may enter a final order without a Final Hearing.
3. The Debtors are authorized to continue to use their existing Cash Management System and shall maintain through the use thereof detailed records reflecting all transfers of funds under the terms and conditions provided for by the existing agreements with the institutions participating in the Cash Management System, except as modified by this Order. In connection with the ongoing use of the Cash Management System, the Debtors shall continue to maintain records with respect to all transfers of cash so that all transactions may be readily ascertained, traced, and recorded properly.
4. The Debtors are authorized to (a) designate, maintain and continue to use any and all of their respective Bank Accounts in existence as of the Petition Date, with the same account numbers, styles, and document forms as are currently employed, including but not limited to the accounts identified in **Exhibit A** to the Motion; (b) if necessary, open new accounts whenever



they are needed; (c) deposit funds in, and withdraw funds from, the Bank Accounts by all usual means, including checks, wire transfers, ACH transfers, drafts, electronic fund transfers, or other items presented, issued, or drawn on the Bank Accounts; (d) pay ordinary course bank fees in connection with the Bank Accounts, including any fees arising prior to the Petition Date; (e) perform their obligations under the documents and agreements governing the Bank Accounts; and (f) treat the Bank Accounts for all purposes as accounts of the Debtors in their capacities as debtors in possession.

5. The Debtors are authorized to continue to use their existing checks and business forms without alteration or change and without the designation “Debtor in Possession” or a bankruptcy case number imprinted upon them. Any new check stock used by the Debtors shall contain the designation “Debtor in Possession.”

6. Subject to the terms of this Order, all Banks at which the Bank Accounts are maintained are authorized, without further order, (a) to continue to administer, service, and maintain the Bank Accounts as such accounts were administered, serviced and maintained prepetition, without interruption and in the ordinary course, (b) in accordance the terms of any pre-petition agreements that exist between them relating to the Bank Accounts, to exercise rights of offset with respect to any indebtedness or obligation owed by any Debtor to a Bank that arises out of or relates to Debtors’ Cash Management System, regardless of whether such indebtedness or obligation was incurred or arose prior to or after the Petition Date, including, without limitation, (i) all service charges, fees, and expenses related to the maintenance or administration of the Bank Accounts or the processing of any ACH transaction or wire or other transfer, (ii) all overdrafts and indebtedness arising from checks or other payment items deposited in or credited to any Bank Account and returned or otherwise not collected for any reason, (iii) any

adjustments or corrections of any posting or encoding errors, and (iv) all amounts payable or reimbursable in respect of ACH transactions, wire transfers, or other treasury management transactions; and (c) and to honor any and all checks, wire transfers, ACH transfers, electronic fund transfers or other items presented, issued or drawn on the Bank Accounts.

7. The Debtors shall promptly provide Banks with lists of the checks (specifying by check sequencing number, dollar amount and payee information), drafts, wires, ACH transactions or other payment items that are to be dishonored by such Banks, if any (the “Instructions”), and the Banks are authorized to accept and rely upon, without further inquiry, the Instructions. No Bank shall incur, and each is hereby released from, any liability for (a) relying upon the Instructions, and (b) honoring a prepetition check, wire transfer, ACH transfer, electronic fund transfer, or other item drawn on any Bank Account in the good-faith belief that the Court has authorized such prepetition check, wire transfer, ACH transfer, electronic fund transfer, or other item to be honored, or as a result of a good-faith error.

8. The Debtors are authorized to implement such reasonable changes to the Cash Management System as the Debtors may deem necessary or appropriate, including, without limitation, closing any of the Bank Accounts or opening any new accounts following the Petition Date, whenever the Debtors deem that such accounts are needed or appropriate, and whether or not the banks in which the accounts are opened are designated depositories in the Southern District of Texas. Notwithstanding the foregoing, any new account that the Debtors open will be (a) with a bank that is organized under the laws of the United States of America or any state therein, and that is insured by the FDIC or the Federal Savings and Loan Insurance Corporation, (b) designated a “Debtor in Possession” account by the relevant bank, and (c) with a bank that agrees to be bound by the terms of this Order. The new accounts are deemed to be Bank

Accounts and are similarly subject to the rights, obligations and relief granted in this Order. The Debtors shall provide the United States Trustee with prompt notice of any new accounts that are opened, or Bank Accounts that are closed. The Banks are authorized to honor the Debtors' requests to open or close (as the case may be) any Bank Account(s).

9. For Banks at which the Debtors hold accounts that are party to a Uniform Depository agreement with the Office of the United States Trustee for the Southern District of Texas, within fifteen (15) days from the date of entry of this Order the Debtors shall (a) contact each Bank, (b) provide the Bank with each of the Debtors' employer identification numbers, and (c) identify each of their accounts held at such Banks as being held by a debtor in possession. For Banks that are not party to a Uniform Depository Agreement with the Office of the United States Trustee for the Southern District of Texas, the Debtors shall use their good-faith efforts to cause the bank to execute a Uniform Depository agreement in a form prescribed by the Office of the United States Trustee within forty-five (45) days of the date of entry of this Order. Notwithstanding the foregoing, Compass Bank shall not be required to become party to a Uniform Depository Agreement with the United States Trustee, and the otherwise applicable requirements of section 345(b) of the Bankruptcy Code and the related United States Trustee Guidelines are hereby waived.

10. Notwithstanding anything to the contrary in the Motion, the Debtors shall have 90 days from the entry of this Interim Order to comply with the requirements of section 345(b) of the Bankruptcy Code of the Complex Chapter 11 Guidelines; provided that the Debtors must comply with section 345 of the Bankruptcy Code only to the extent that any of the Debtors' cash is (a) not held either in (i) a bank account that is an authorized depository under the UST

Operating Guidelines; or (ii) a bank account that is insured by the FDIC; or (b) exceeds the applicable FDIC insurance limits.

11. The Debtors are authorized to continue to engage in Intercompany Transactions as they deem appropriate to execute the Cash Management System and manage the day-to-day operations of their businesses, and the Debtors shall continue to maintain records with respect to all transfers of cash (including pursuant to such transactions) so that all Intercompany Transactions may be readily ascertained, traced, and recorded properly on applicable intercompany accounts.

12. All claims arising from Intercompany Transactions against a Debtor by another Debtor arising after the Petition Date shall be afforded superpriority administrative claim status, subject and subordinate only to other superpriority administrative claims granted pursuant to an order of this Court.

13. Notwithstanding anything to the contrary in the Motion or this Order, any payment, obligation, or other relief authorized by this Order, shall be subject to and limited by the requirements imposed on the Debtors under the terms of any interim or final orders approving the use of cash collateral.

14. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry hereof.

15. The Debtors are hereby authorized to take such actions and to execute such documents as may be necessary to implement the relief granted by this Order.

16. The Court retains exclusive jurisdiction with respect to all matters arising or related to the implementation, interpretation, and enforcement of this Order.

Dated: \_\_\_\_\_, 2018.

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