

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:

NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,

Debtors.

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§
§
§
§

Chapter 11

Case No. 18-33836

(Jointly Administered)

**LIQUIDATING TRUSTEE'S (I) REPLY IN SUPPORT OF OBJECTION TO SOHAIL'S
CLAIM NO. 197; AND (II) RESPONSE TO REQUESTS FOR AFFIRMATIVE RELIEF
CONTAINED IN MR. ALAM'S FILINGS AT DOCKET NOS. 1045 AND 1046¹**

Tensie Axton, Trustee (the "Liquidating Trustee") of the Liquidating Trust (the "Liquidating Trust") of Neighbors Legacy Holdings, Inc. and certain of its affiliates and subsidiaries (the "Debtors"), files her *Reply to Alam's Objection and Response to Liquidating Trustee's Objection to Sohail Alam's Claim as a Creditor and Request to Appoint the United States Attorney Mr. Ryan Kelley Goeb Patrick to Investigate the Cover Up that Lingers in This Bankruptcy* (the "Reply").²

I. PRELIMINARY STATEMENT

Mr. Alam has filed dozens of pleadings in this bankruptcy case and in a related adversary proceeding.³ Those filings contain serial misstatements that require the Liquidating Trustee to file responses. The most recent pleadings, docket numbers 1045 and 1046, are no different. The Liquidating Trustee filed an objection to Mr. Alam's claim number 197 (the "Claim Objection"). In response, Mr. Alam filed two pleadings that fail to address the merits of the Claim Objection

¹ Mr. Alam filed identical pleadings at Docket Nos. 1045 and 1046 (collectively, the "Objection"). This Reply jointly responds to both.

² All terms not specifically defined in this Reply shall be defined by the *Liquidating Trustee's Objection to Sohail Alam's Claim No. 197* [Docket No. 1039] (Claim No. 197 hereinafter referred to as the "Claim").

³ See *Alam v. Neighbors GP LLC, et al.*; Adversary Proceeding Number 19-3442.



and instead contain new—and wholly unfounded—requests for relief. Despite his 18-page Objection and his patently false allegations, Mr. Alam has failed to provide any support for an administrative, secured, or priority claim, and his Claim should be disallowed. The Court should sustain the Claim Objection, deny Mr. Alam’s requests for affirmative relief (including his request for the United States Attorney to investigate this case) and bar Mr. Alam from filing further pleadings without prior Court approval. Mr. Alam cannot be allowed to continue to assert inflammatory and false accusations with absolutely no support and no relation to the proceedings before the Court.

II. RESPONSE TO MR. ALAM’S ALLEGATIONS

1. The Liquidating Trustee denies the allegations in paragraph 1.

2. The Liquidating Trustee denies the allegations in paragraph 2.

3. The Liquidating Trustee denies the allegations in paragraph 3. Mr. Alam did appear and argued at the Confirmation Hearing, *see* Confirmation Hearing Transcript, attached as **Exhibit A**, pages 9–26, Mr. Alam left the hearing prior to the close of evidence. *See id.* at 86–87.

4. The Liquidating Trustee denies the allegations in paragraph 4. The Court did conclude that Mr. Alam had opted out of the releases under the Debtors’ Plan. *See id.* at 31. The fact that Mr. Alam opted out of the releases, however, has no bearing on whether he holds an administrative, secured, or priority claim against the Debtors’ estates.

5. The Liquidating Trustee denies the allegations in paragraph 5. As stated above, Mr. Alam appeared and argued at the Confirmation Hearing.

6. The Liquidating Trustee is without sufficient information to admit or deny Mr. Alam’s allegations and assumptions and therefore denies all allegations in paragraph 6.

7. The Liquidating Trustee admits that she is named as a defendant in adversary proceeding no. 19-3442. The Liquidating Trustee denies all remaining allegations in paragraph 7.

8. The Liquidating Trustee denies the allegations in paragraph 8.

9. The Liquidating Trustee denies the allegations in paragraph 9. The Administrative Services Agreement was rejected as of August 31, 2018. *See Order Approving Debtors' Emergency Motion to Reject Administrative Services Agreement* [Docket No. 357], attached as **Exhibit B**. At the hearing to consider the Debtor's rejection, the Debtor adduced testimony that the Debtor received no benefit from the agreement. Mr. Alam did not object to the rejection and the Order is final.

10. The Liquidating Trustee denies the allegations in paragraph 10.

11. The Liquidating Trustee denies the allegations in paragraph 11.

12. The Liquidating Trustee denies the allegations in paragraph 12.

13. The Liquidating Trustee denies the allegations in paragraph 13.

14. The Liquidating Trustee denies the allegations in paragraph 14.

15. The Liquidating Trustee denies the allegations in paragraph 15.

16. The Liquidating Trustee admits that Mr. Alam filed proof of claim no. 197 and admits that Mr. Alam filed adversary proceeding no. 19-3442. The Liquidating Trustee denies all remaining allegations in paragraph 16.

17. The Liquidating Trustee denies the allegations in paragraph 17.

18. The Liquidating Trustee denies the allegations in paragraph 18.

19. The Liquidating Trustee denies the allegations in paragraph 19.

20. The Liquidating Trustee denies the allegations in paragraph 20.

21. The Liquidating Trustee denies the allegations in paragraph 21.

22. The allegations in paragraph 22 are incomprehensible and therefore the Liquidating Trustee denies them.

23. The Liquidating Trustee denies the allegations in paragraph 23.

24. Paragraph 24 contains no factual allegations to be admitted or denied, but to the extent required the Liquidating Trustee denies the allegations.

25. The Liquidating Trustee denies the allegations in paragraph 25.

26. The Liquidating Trustee is without sufficient information to admit or deny what Mr. Alam envisioned and therefore denies the allegations in paragraph 26.

27. Paragraph 27 contains no factual allegations to be admitted or denied.

28. The Liquidating Trustee admits that a cease and desist letter and two Rule 11 Letters have been sent to Mr. Alam. The Liquidating Trustee denies all remaining allegations in paragraph 28.

29. The Liquidating Trustee denies the allegations in paragraph 29.

30. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 30 and therefore denies them.

31. The Liquidating Trustee denies the allegations in paragraph 31.

32. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 32 and therefore denies them.

33. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 33 and therefore denies them.

34. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 34 and therefore denies them.

35. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 35 and therefore denies them.

36. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 36 and therefore denies them.

37. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 37 and therefore denies them.

38. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 38 and therefore denies them.

39. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 39 and therefore denies them.

40. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 40 and therefore denies them.

41. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 41 and therefore denies them.

42. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 42. Further, Mr. Alam does not have standing to make such allegations or requests for relief.

43. The Liquidating Trustee is without sufficient information to admit or deny the allegations in paragraph 43 and therefore denies them.

44. The Liquidating Trustee denies the allegations in paragraph 44.

45. The Liquidating Trustee denies the allegations in paragraph 45 and opposes the relief requested.

III. REPLY

46. Neighbors Telehealth LLC (“NTH”) is not a Debtor entity. As the Court’s docket makes clear, NTH is *not* a Debtor entity. NTH was formed as a Texas limited liability company

by Setul G. Patel, Rajan Popat, and Mr. Alam. *See* NTH Certificate of Formation, attached as **Exhibit C**.⁴ NTH is not—and has never been—owned by the Debtors in this case.

47. Mr. Alam Appeared and Argued at the Debtors' Confirmation Hearing. Notwithstanding the false statements in his Objection, Mr. Alam appeared *and* argued at the Debtors' March 22, 2019 confirmation hearing. *See* Confirmation Hearing Transcript, attached as **Exhibit A**, pages 9–26. Although Mr. Alam left prior to the close of evidence, *see id.* at 86–87, he argued in support of his objection to the Debtors' confirmation and voluntarily chose to leave.

COURT: So tell me now what is your confirmation objection to liquidating the Debtor -- which is what we're doing -- taking the proceeds and then allocating them out. Tell me your objection to that. [Confirmation Hearing Transcript, 14:1–4].

MR. ALAM: The fundamental objection basically is that and as I have supported this with 16 exhibits saying that if you go sequentially from day one to day last that -- and without respect to everyone concerned -- that this has been botched bankruptcy. In that everything that has been filed in this Court and has been filed with all federal agencies has been nothing more and nothing less but has been, for lack of better word, has been -- excuse the word, but has been a lie. [Confirmation Hearing Transcript, 14:5–12].

...

COURT: . . . If the Plan sets up a mechanism where people can evaluate and determine whether to sue the directors and that money comes back and it gets distributed out to the holders of claims. I thought that's what you told me you wanted to have happen. And if that's what the Plan does, I need to understand why you're not happy. [Confirmation Hearing Transcript, 19:9–15].

MR. ALAM: I will admit, Your Honor, I did not know that that's what the intention . . . of the Plan was. [Confirmation Hearing Transcript, 19:16–17].

. . . [later in the proceedings, after the close of evidence]

⁴ Neighbors Telehealth **Services**, LLC is a non-debtor entity owned by Debtor Neighbors Health, LLC. *See* Neighbors Telehealth Services, LLC Certificate of Formation, attached as **Exhibit D**. Neighbors Telehealth **Services**, LLC is not, and has never been, affiliated with Mr. Alam.

COURT: For any appellate record [Mr. Alam] is not in the courtroom and was not here when witnesses were on the stand in order to cross-examine them and that is why there was no cross-examination by him.

He was not asked to leave by me and I don't think by anyone else and was free to stay in the courtroom but chose to leave and he was also free to leave. I have no problem with that.

But I'm overruling any objection that he made. It is not supported by anything in the evidentiary record. [Confirmation Hearing Transcript, 86:24–25 – 87:1–8].

48. Although Mr. Alam voluntarily left the courtroom, prior to his leaving the Court told Mr. Alam that he was “fully welcome to participate in [the Confirmation Hearing].” *See* Confirmation Hearing Transcript, 24:18–19.

49. Claims Against Officers and Directors Were Transferred to the Unsecured Creditor Trust. To the extent that Mr. Alam holds any claims against the Debtors’ officers or directors, such claims have been transferred to the Unsecured Creditor Trust for investigation and prosecution. *See* Plan, Art. I(A)(137) (Unsecured Creditor Trust Assets includes all recoveries under the Debtors’ D&O Policies); Plan, Art. V.D (“all assets vested in the Unsecured Creditor Trust . . . shall be transferred [as of the Effective Date]”).

50. Mr. Alam has not shown—and cannot show—that he holds an administrative, priority, or secured claim against the Debtors’ estates.

IV. CONCLUSION

51. The Liquidating Trustee respectfully requests that the Court (i) disallow Alam’s Claim as a priority, administrative, or secured claim; (ii) award attorneys’ fees, costs and expenses to the Liquidating Trustee incurred in responding and prosecuting the objection and responding to frivolous pleadings and (iii) grant such other and further relief as may be just and proper.

Dated: Houston, Texas
February 17, 2020.

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CERTIFICATE OF SERVICE

I certify that on February 17, 2020, the foregoing Reply was served via electronic mail and USPS, postage prepaid, on the party below and was also served via CM/ECF on all parties requesting notice.

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/s/ John F. Higgins
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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO. 18-33836-H1-11
§ HOUSTON, TEXAS
NEIGHBORS LEGACY HOLDINGS, INC. § FRIDAY,
AND NHS EMERGENCY CENTERS LLC, § MARCH 22, 2019
DEBTORS. § 9:33 A.M. TO 12:15 P.M.

PLAN CONFIRMATION HEARING

BEFORE THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

APPEARANCES: SEE NEXT PAGE
COURTROOM DEPUTY: J. OLSON
COURT RECORDER: J. OLSON

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EXHIBIT A

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1 HOUSTON, TEXAS; FRIDAY, MARCH 22, 2019; 9:33 A.M.

2 THE COURT: Next case we have is Neighbors Legacy
3 Holdings. It's 18-33836.

4 (Pause in the proceeding.)

5 THE COURT: You-all saw that big long list of cases
6 and didn't think I would start on time, huh, Mr. English?
7 Nobody trusted me on that.

8 MR. ENGLISH: They should have known, Your Honor.

9 THE COURT: Let's go ahead and take appearances in
10 court and then we'll take appearances on the phone.

11 Mr. English.

12 MR. ENGLISH: Your Honor, Eric English, John Higgins
13 and Genevieve Graham for the Debtors. Also in Court are the
14 Debtor's chief restructuring officer, Chad Chandler and Chief
15 financial office, Tensie Axton.

16 THE COURT: Thank you, Mr. English.

17 Mr. Warner?

18 MR. WARNER: Good morning, Your Honor, Michael
19 Warner, Cole Schotz on behalf of the Committee.

20 THE COURT: Good morning.

21 Mr. Lim.

22 MR. LIM: Good morning, Your Honor. Lloyd Lim and
23 Matt Tashman of Reed Smith on behalf of KeyBank.

24 THE COURT: Thank you.

25 MR. JUDD: Good morning, Your Honor, Josh Judd with

1 Andrews Myers on behalf of Gerald H. Phipps, Inc.

2 THE COURT: Good morning.

3 MR. MARTIN: Good morning, Your Honor, Jarrod Martin
4 on behalf of Dr. Setul Patel, the former CEO of Neighbors.

5 THE COURT: Morning.

6 MS. MINSHEW: Good morning, Your Honor. Christie
7 Minshew -- Christie Minshew-Lewis appearing on behalf
8 Dr. Dharmesh Patel.

9 THE COURT: Good morning.

10 MR. PROBUS: Good morning, Your Honor, Matthew
11 Probus, P-R-O-B-U-S, representing Infinity Emergency
12 Management Group, LLC.

13 THE COURT: Good morning.

14 MR. JOHNSON: Good morning, Your Honor. Millard
15 Johnson, Sarah Sherman, Johnson DeLuca on behalf of
16 Drs. Gillman and Alleyne.

17 THE COURT: Good morning.

18 MR. MUNISTER: Good morning, Your Honor, James
19 Munister on behalf of Drs. Chen, Chang, Henderson and Patel.

20 THE COURT: Good morning.

21 If anyone on the phone wish to make an appearance,
22 I'm going to ask you press five star on the phone.

23 The first appearance we've already had is from 713-
24 705-3087. Have that again. So who do we have --

25 MR. FLACK: Paul Flack for Mr. Patel.

1 THE COURT: I stepped on you with pressing some
2 buttons here. Could you repeat that for me, please?

3 MR. FLACK: This is Paul Flack for Setul Patel,
4 along with Mr. Martin who's there in person.

5 THE COURT: Thank you.

6 Mr. Brookner? Someone from 214-954-4138.

7 MR. BROOKNER: Yes, Your Honor, good morning. Jason
8 Brookner from Gray Reed McGraw on behalf of the Read King and
9 various affiliates.

10 THE COURT: Thank you. Good morning, Mr. Brookner.
11 And from 713-444-1845?

12 MS. SCOTT: Your Honor, Brendetta Scott appearing on
13 behalf of Century Square Commercial Venture, LLC, Venture
14 Hospitality, LP. Good morning, Your Honor.

15 THE COURT: Good morning.

16 All right, so I've got the Agenda. Did you want to
17 proceed with it in that order, Mr. English?

18 MR. ENGLISH: Your Honor, I think we can generally
19 proceed in that order. What we'd like to do, if it's
20 acceptable, is sort of walk you through the timeline of filing
21 the Plan and getting here. And we have a chart that's been
22 updated to reflect objections and resolutions.

23 I think we have a lot of resolutions to announce, so
24 if that's acceptable, I'll do it that way.

25 THE COURT: Well, why don't we start with Mr. Alam's

1 complaint, unless you've got that one resolved.

2 MR. ENGLISH: We don't.

3 THE COURT: All right, Mr. Alam, why don't we go and
4 get Mr. Alam to appear and make his complaint.

5 Mr. Alam, come on forward, please.

6 Good morning.

7 MR. ALAM: Good morning, Judge. I'm not aware of
8 any protocols, so.

9 THE COURT: Would you go ahead and state -- why
10 don't you start off by telling me your full name, please.

11 MR. ALAM: My name is Sohail Alam. I also go by the
12 name, Sam Alam.

13 THE COURT: Good morning. Mr. Alam, I read what you
14 filed and I'm not sure if you actually are here to pursue a
15 claim or just to be sure that you have alerted, for example,
16 the United States Trustee who is in charge of the integrity of
17 the bankruptcy process of your position.

18 If your was simply to alert people that you think
19 that something wrong has occurred, the US Trustee was given
20 notice of that and they are now on notice.

21 If your goal is to pursue some sort of a claim, then
22 you need to tell me and then, of course, we then have the
23 complaint by the Debtor that says that you didn't cooperate in
24 discovery, so.

25 Tell me where you want to go and what you want to

1 do.

2 MR. ALAM: Your Honor, I am a creditor in this
3 bankruptcy proceedings. My creditor number is 197. I have
4 filed a proof of claim. I was asked to submit all documents
5 relative to the proof.

6 THE COURT: Right.

7 MR. ALAM: I have submitted that. Concurrently I am
8 filing an objection to this bankruptcy with regard to the --
9 my proof of claim that basically evolved and evolves around my
10 employment contract which gives rise to basically as an
11 administrative claim.

12 THE COURT: How does your employment claim contract
13 give you an administrative claim.

14 MR. ALAM: The way it does is that my employment
15 contract was a non-terminable employment contract. It was
16 visa-a-via a contract per se in which Neighbors Health and
17 EDMG guaranteed me a payment in the amount of \$660,000 over a
18 period they specified to be 60 months in exchange for my
19 intellectual property.

20 And it is specified in the documents which I have
21 provided to this Court, referencing from Exhibit 1 to Exhibit
22 16, as to how it was arrived and all the relative nuances as
23 to how it was developed and that --

24 THE COURT: I don't understand how you're telling
25 me -- why you're telling me it is an administrative claim and

1 I also didn't get the documents you are describing to me
2 unless they're part of your proof of claim.

3 Are they all part of your proof of claim or do you
4 present them as separate exhibits.

5 MR. ALAM: Your Honor, I'm a little bit hard of
6 hearing, I apologize.

7 THE COURT: All right. Where are those 16 exhibits?

8 MR. ALAM: They have been filed in Court on --

9 THE COURT: With part of your proof of claim or
10 separately from that?

11 MR. ALAM: That's part of my proof of claim.

12 THE COURT: Okay. Why is the claim -- you told me
13 the claim was an administrative claim, but I don't understand
14 why it is administrative under the Bankruptcy Code.

15 MR. ALAM: Because under the Bankruptcy Code all of
16 administrative expenses are deemed to be determined based on
17 employment claim, employment contract as they are relative to
18 a person that was retained by the company.

19 THE COURT: Why is that? I don't think that's
20 right, but I need you to explain to me why that makes it an
21 administrative claim.

22 MR. ALAM: I have provided a -- the standards, Your
23 Honor, to this Court that I'm a party in interest and that the
24 employment contract basically gives me the right and
25 obligation incident to the contract for full recovery because

1 administrative claims are paid as part of the administrative
2 expense.

3 THE COURT: I'm trying to understand why it's
4 administrative not -- I know how administrative claims have to
5 be paid, but I don't understand why your claim becomes an
6 administrative claim. That's what I'm asking you about.

7 MR. ALAM: I'm unable to express fully and clearly
8 verbally to you. I've expressed that in writing. I apologize
9 that I'm not --

10 THE COURT: Where do you express in writing to me?
11 I mean, --

12 MR. ALAM: It is in my objections to confirmation.

13 THE COURT: So I have your objection to
14 confirmation. I'm looking at ECF Number 736. I want to be
15 sure that that's the same document that you're referencing.
16 And I've got it up on the screen.

17 MR. ALAM: Not on that one, Your Honor.

18 THE COURT: Okay.

19 MR. ALAM: It was just filed in bankruptcy
20 proceeding on March 20th.

21 MR. WARNER: Your Honor, if I can help the Court. I
22 believe it's docket 828 that Mr. Alam is referring to.

23 THE COURT: All right.

24 (Pause in the proceeding.)

25 THE COURT: So where in here does it tell me why

1 your claim is an administrative claim?

2 (Pause in the proceeding.)

3 MR. ALAM: I believe it's if you go down further
4 under objections on item -- the number four.

5 THE COURT: Paragraph four?

6 MR. ALAM: Paragraph four, please.

7 THE COURT: No, paragraph four tells me why you want
8 it to be an administrative claim. I want to know why it is an
9 administrative claim. What in the Bankruptcy Code makes a
10 pre-petition employment agreement an administrative claim for
11 its full amount?

12 MR. ALAM: Because I think one of the distinctions I
13 make is that this employment contract was obtained based on
14 fraud.

15 THE COURT: Let me assume that. Why does that make
16 it an administrative claim?

17 MR. ALAM: Your Honor, I can't answer that.

18 THE COURT: Okay. I don't think it is
19 administrative. So whatever you claim -- whatever claim you
20 might have would be, I believe, a general unsecured claim even
21 if it arises out of fraud.

22 Where does that take us in terms of what you believe
23 we ought to be doing? Because unless you -- the burden is on
24 you to demonstrate it's an administrative claim and I don't
25 understand why it would be.

1 So tell me now what is your confirmation objection
2 to liquidating the Debtor -- which is what we're doing --
3 taking the proceeds and then allocating them out. Tell me
4 your objection to that.

5 MR. ALAM: The fundamental objection basically is
6 that and as I have supported this with 16 exhibits saying that
7 if you go sequentially from day one to day last that -- and
8 without respect to everyone concerned -- that this has been
9 botched bankruptcy. In that everything that has been filed in
10 this Court and has been filed with all federal agencies has
11 been nothing more and nothing less but has been, for lack of
12 better word, has been -- excuse the word, but has been a lie.

13 And I just don't understand as to how this
14 bankruptcy has proceed to where it is being allowed to be
15 discharged when sequentially almost all elements in this
16 bankruptcy and the way it has been shown to Court and when
17 documents that I have are limited and with these limited
18 documents.

19 If you read through them, just a few of them show
20 just a mountain -- show, you know, a bunch of things that
21 leads one to believe that if just a few of these documents
22 show so much of again excuse the word, just basically lacking
23 the words. My vocabulary is not as great, it's just so much
24 of corruption, then maybe there is more to it.

25 So I -- my second objection was that why is it that

1 some of this information did not come forward to this Court
2 before hand. And --

3 THE COURT: So what -- this Plan doesn't leave
4 Neighbors in business, right?

5 MR. ALAM: I apologize.

6 THE COURT: Yeah, this plan does not leave Neighbors
7 in business. It puts Neighbors out of business, sells
8 whatever they have and distributes the money. What do you
9 think should happen in the end?

10 MR. ALAM: This Plan should not leave Neighbors. I
11 think basically the Federal Bankruptcy Regulations are that
12 the creditors -- the unsecured creditors should not be just
13 told to just vacate premises and just go their way. Because
14 the Federal Bankruptcy Code, you know, gives credence to
15 secured creditors and tells the unsecured creditors bye-bye
16 basically.

17 I think the Court has the duty to look into this and
18 say was this bankruptcy a true bankruptcy which means that was
19 this bankruptcy because of having insufficient assets and
20 insufficient armings and was this bankruptcy truly a true
21 bankruptcy?

22 In fact, I read Mr. Chad Chandler's (phonetic)
23 declaration under oath and if you read that, Your Honor, I
24 believe it is Exhibit 20 if I'm not mistaken. If you read
25 that is totally controvertible basically to the facts. We had

1 one --

2 THE COURT: But, no -- I'm not communicating to you
3 properly. Even if you're right about all of that, what should
4 the outcome be? We're putting them out of business. What
5 should the outcome be? What should the final answer be?

6 MR. ALAM: The final answer should be that -- the
7 first answer would be that it's not up to me to suggest to
8 this honorable court as to what the answer should be. The
9 answer should be basically based -- invested in the Court to
10 say to the public at large and to all the creditors that this
11 is not a true bankruptcy and because it's not a true
12 bankruptcy, then because of the case laws and before hand,
13 these actions are viable and necessary.

14 And whatever the case laws have been in the past,
15 then the Judge should rule on those case laws based on the
16 president. But if you ask me as a lay person as to what
17 should it be, I think you should hold all the board members
18 responsible. Because I have shown you on Exhibits in my case,
19 Your Honor, that Neighbors Health has filed factitious Federal
20 Tax Returns.

21 And if Neighbors can file factitious tax returns to
22 the Federal Government, Your Honor, you should never allow
23 this bankruptcy to proceed.

24 THE COURT: Okay, now I just want to back up a
25 minute. What is the Plan now -- you're telling me that we

1 ought to be sure and hold the directors liable. What does the
2 Plan do about the directors liability?

3 MR. ALAM: Again, Judge, you are asking me. I --

4 THE COURT: No, you're complaining about the Plan.
5 And you're telling me that we need to hold the directors
6 liable. And I'm asking you what does the Plan do with the
7 directors? It's not my Plan. It's their Plan and their Plan.
8 And you object to it.

9 I need to know what your objecting to. What does it
10 do with the directors?

11 MR. ALAM: Okay. So the answer is as follows. I
12 sent a letter to this honorable court on the 15th --

13 THE COURT: No, no. Answer my question. What -- if
14 you don't know, then tell me you don't know. But you're
15 complaining about the Plan and I need to know what does it do
16 with directors.

17 MR. ALAM: Okay. The direct answer is that all the
18 directors who have been building their own companies instead
19 of running Neighbors Health and as I have proven in this, that
20 one of them is building a VC company; one of them was writing
21 a book to become a millionaire; one of them --

22 THE COURT: What does the Plan do with the
23 directors? That's a pretty simple question.

24 MR. ALAM: Right, so their earnings that they have
25 received from all their building of the company should then be

1 confiscated --

2 THE COURT: No, what does the Plan do with the
3 Directors? It's not a hard question.

4 MR. ALAM: So the answer, if I understand correctly,
5 the Plan should then go after --

6 THE COURT: Don't tell me what it should do, what
7 does it do?

8 MR. ALAM: Then I don't understand the question,
9 Your Honor. I apologize.

10 THE COURT: What does the Plan do with the claims
11 against the directors?

12 MR. ALAM: I don't know, sir.

13 THE COURT: Then how do you know that it's a bad
14 idea if you don't know what it's doing?

15 MR. ALAM: Your question is what is the Plan doing
16 with the directors today?

17 THE COURT: Yes. You're complaining --

18 MR. ALAM: I don't know that.

19 THE COURT: Okay. Mr. English, what does the Plan
20 do with the directors?

21 MR. ENGLISH: Your Honor, the Plan retains all
22 claims and causes of action against officers and directors.
23 It transfers those claims to a trust for investigation and
24 pursuit of those claims if deemed appropriate.

25 THE COURT: So if the directors have done something

1 wrong, the Plan gives a method for prosecuting those claims?

2 MR. ENGLISH: It does.

3 THE COURT: And is that vested in Mr. Warner's
4 clients, basically their successor?

5 MR. ENGLISH: Yeah, it'll be the unsecured creditors
6 trust. Mr. Shapiro has been named as the trustee of that
7 trust. He's the financial advisor for that committee.

8 THE COURT: Isn't that what you want? That's why
9 I'm trying to understand the complaint. If the Plan sets up a
10 mechanism where people can evaluate and determine whether to
11 sue the directors and that money comes back and it gets
12 distributed out to the holders of claims.

13 I thought that's what you told me you wanted to have
14 happen. And if that's what the Plan does, I need to
15 understand why you're not happy.

16 MR. ALAM: I will admit, Your Honor, I did not know
17 that that's what the intention --

18 THE COURT: Fair enough.

19 MR. ALAM: -- of the Plan was. The second thing
20 that I wanted occurring was that based on what I had produced,
21 Your Honor, I think that the selling of the assets with the
22 auction that I personally felt -- and I'm also in healthcare,
23 Your Honor, and I've been in healthcare for a long time. And
24 I grant you that I know exactly how healthcare is operated and
25 I have been doing this for many, many years.

1 I can tell you this that the auction that was
2 entirely premature.

3 THE COURT: It's too late. That's already happened.

4 MR. ALAM: I understand that. But you were asking
5 me what should happen, so my answer to that is I think that
6 auction is to be looked at and, if possible, the Judge has the
7 power to vacate that and in a way --

8 THE COURT: I don't have the power to vacate the
9 auction. So that's a done thing.

10 MR. ALAM: Second -- the third thing you were asking
11 me as to what needs to happen is I really think that maybe
12 it's time and I don't know fully and completely whether or not
13 it is in the Plan that maybe a trustee needs to be appointed
14 that could be a go-between between the unsecured creditors
15 and --

16 THE COURT: So there is an official committee of
17 unsecured creditors. And under the Plan, the rights of that
18 official committee get vested into a creditor's trust. And
19 that creditor's trust, I believe I'm correct about this, will
20 have a trustee.

21 So I think the Plan does that.

22 MR. WARNER: Your Honor, if I might.

23 THE COURT: Mr. Warner, go ahead.

24 MR. WARNER: And I'll speak to the Court, but I want
25 this gentleman to hear. The way the Plan is structured is

1 typical in cases like this where you don't investigate the
2 claims until after the case is closed and a trust is created
3 for the benefit of investigating those claims.

4 And so in this structure, all of the claims that
5 exist will be passed over to a trust. The trust will have a
6 trustee. The gentleman is actually sitting in the courtroom.
7 This gentleman in the front row. He will be the trustee.

8 His job, Your Honor, will be to investigate claims.
9 Claims against D's and O's. Claims against auditors. Claims
10 against accountants. Claims against any party that might have
11 a claim.

12 THE COURT: That's what I thought we had and that's
13 why I'm trying to get to the bottom of what the complaint is.

14 MR. WARNER: And so the result, Your Honor, will be
15 that the complaints that we're hearing today that may have
16 existed in the past haven't been lost. They're just being
17 passed over into the trust. And the trust will then pursue
18 those for the benefit of all creditors that become
19 beneficiaries of that trust.

20 THE COURT: Okay, thank you.

21 MR. ALAM: The -- in response to your question as to
22 what is it that I want to do on December 15th when I wrote a
23 letter to this Court, my goal really was to alert this Court
24 with the issues that were quite prevalent.

25 And I, with that letter, wanted this Honorable Court

1 to be aware of the issues that were great, great concern not
2 only to the unsecured creditors, but grant me, Your Honor, to
3 the public at large and to all of these 23 lawyers here to
4 really look into it whether or not they were -- they had the
5 duty to look into this.

6 And it was my way as a creditors to alert this
7 Court. It was not my job, it was not my duty to come up here
8 to this Court and say look this went wrong or this went wrong
9 or this went wrong or this is how it happened. Not at all.

10 I think as a citizen, as a creditor, I took upon
11 myself to notify the Honorable Court, the justice, the Judge
12 to say look. And my statement was very clear. And I always
13 ended up with a question mark, with a question mark, with a
14 question mark.

15 And Your Honor I really honestly expected that this
16 Court would have -- with all respect, with all million
17 respect, billion respect of this Court -- I genuinely thought
18 that this Court would issue some sort of an order asking every
19 counsel and every trustee and Mr. Chandler and Ms. Tensie
20 (phonetic) saying I want answers to this.

21 And instead I'm summoned here basically to say what
22 do you have in your mind. And I personally feel kind of, you
23 know, belittled. I am 65 years old. I have lost \$818,000. I
24 came here with an American Dream, you know, to basically make
25 a life in this country. I think I have.

1 I saved money. I put all my money with Neighbors.
2 Dr. SETUL Patel lied to me. Neighbors Health lied to me.
3 When the CRO was brought in, they covered up, in my opinion.
4 They just put everything under the rug. In the Declaration on
5 Exhibit 20, they come up with issues and innuendoes. That
6 Judge, I'm a healthcare guy I can point to you point blank
7 that absolutely not true if what they say is true in the
8 Declaration I promise to you, Your Honor, they will be a bunch
9 of these 24 hour free standing ER's going bankrupt. They are
10 not.

11 So my point is -- allow me to please finish, Your
12 Honor, because --

13 THE COURT: No, I'm going to interrupt you.

14 MR. ALAM: I have --

15 THE COURT: I'm going to interrupt you.

16 MR. ALAM: -- Your Honor, \$818,000 --

17 THE COURT: Mr. Alam.

18 MR. ALAM: -- and I am basically -- I can't even
19 afford a lawyer. There are no lawyer is going to take my case
20 because everybody -- nobody wants to go through 23 lawyers
21 here. And all I have is justice. And I just wrote a letter
22 on -- to this Court hoping --

23 THE COURT: Mr. Alam. I did not mean in anyway to
24 belittle you. I'm not a prosecutor nor an investigator. And
25 you may have misunderstood what my role was in the case. It

1 is my job to listen to disputes.

2 And in terms of the representation of the unsecured
3 creditors, those disputes are to be brought by the unsecured
4 creditors committee and I don't take sides until there is
5 evidence that is introduced.

6 If you think I'm belittling you, that is not
7 intended at all. What I always ask parties if I can't
8 understand it is, what do you want at the end of the day. And
9 I want to start with that.

10 And I think at the end of the day, you want to be
11 sure that we're not discharging claims against directors and
12 officers today. And we're not. That's why I was puzzled
13 about why you weren't happy with the Plan. Because the Plan
14 preserves those claims.

15 I don't know if they're good claims or bad claims.
16 I won't know that until there's a full evidentiary hearing.
17 But that's what the committee is supposed to investigate.

18 So you're fully welcome to participate in today's
19 hearings. I apologize to you if you think I was belittling
20 you. I did not mean it that way. But I did need to know what
21 you wanted.

22 I think you're getting what you wanted even though I
23 know you're not happy about where things are. Thank you.

24 MR. ALAM: Just one last thing. Your Honor, I think
25 my employment contract if somebody whoever is looking into

1 this were to look at the employment contract and you will see
2 and all the exhibit that I have given it is and it would be
3 and I am not citing as a layman the law that I think I should
4 be. It is my fault entirely, but I think given the situation
5 that all my money was put into Neighbors and that I cannot
6 even afford a lawyer. No lawyer would touch me basically and
7 you would know why that grant me as a pro se although I'm
8 supposed to be -- I'm a creditor. I'm not even a pro se
9 basically.

10 That my employment contract is in tact fully and in
11 compliance with the rule of the Bankruptcy Court. I may not
12 be giving you the exact and I regret that I don't have that
13 exact code, but if somebody were to -- and if you would be
14 just enough as a just, you know, basically looking to provide
15 justice to all and say my employment contract would be a
16 contract basically intact to allow me as a secured creditor.

17 THE COURT: Well, you're not a secured creditor by
18 that contract, are you? What's your lien on?

19 MR. ALAM: My lien is the software, Your Honor. I
20 provided Exhibit 14. Judge, if somebody were to just review
21 my contract. Judge, the software has been in the hands of
22 Mr. Chandler and he's refusing to give me my software.

23 He has -- Judge, as late as March 6th of 2019, I
24 have begged him and begged him and begged him to give me my
25 documents. He has refused to give me my document. He has no

1 reason to hold them. He has no authority to hold them.
2 There's no law that requires him to hold anything.

3 And he has had the software that I have performed.
4 I have fully performed. That means that it is secured with my
5 software. He has had it. He has used it. He has distributed
6 it. People has it. I am deemed. They are liable to give me
7 my money under the employment contract. And I have supported
8 it all, Your Honor. Is there black and white.

9 THE COURT: All right, thank you sir.

10 MR. ALAM: Thank you.

11 THE COURT: Mr. English?

12 MR. ENGLISH: Your Honor, a couple of comments in
13 response. First, there's no evidence to support or
14 substantiate Mr. Alam's allegations about this process being
15 tainted in some way. We vehemently dispute that.

16 There's been no wrong doing in this process. His
17 comments, obviously, are not testimony. There's been no
18 evidence or exhibits that have been offered or admitted. The
19 Plan does preserve the claims as we pointed out.

20 With respect to his claim, he did not file it as an
21 admin claim. He hasn't provided value to the estate post
22 petition. All contracts to the extent there are any remaining
23 with Mr. Alam or anyone else are being rejected under the
24 Plan.

25 And so we think that really his issues are -- they

1 don't affect confirmation and to the extent there is a claim
2 issue, it can be taken up at a later time as part of a claims
3 allowance process.

4 THE COURT: All right, thank you. Let's move ahead.

5 MR. ENGLISH: Your Honor, a final point. The
6 software that he's talking about was contributed to a
7 non-Debtor entity called Neighbors Telehealth, LLC. It's not
8 a debtor. Those are not assets of the estate. They're not
9 items that we have.

10 Moving on --

11 THE COURT: Who controls Neighbors Telehealth?

12 MR. ENGLISH: I believe Mr. Alam controls it now.
13 It was set up by some of the founding parties of the Debtor.

14 THE COURT: So the Debtor has no control over
15 Neighbors Telehealth?

16 MR. ENGLISH: It does not.

17 THE COURT: If he wants to go take his software back
18 from his license agreement, he can do that as far as you're
19 concerned?

20 MR. ENGLISH: As far as I'm aware that's right.

21 THE COURT: Okay.

22 MR. FLACK: Your Honor, this is Paul Flack with --

23 THE COURT: I'm sorry.

24 MR. FLACK: -- (indiscernible).

25 THE COURT: I need you to get -- your phone is

1 coming across very fuzzy.

2 Could you identify yourself again?

3 MR. FLACK: Hello, Your Honor, yes it's Paul Flack
4 for Setul Patel. We obviously dispute the allegations he's
5 made against Mr. Patel -- Dr. Patel.

6 (Indiscernible) he already sued Patel and others in
7 state court over this very issue. They settled that case.
8 And in that settlement they gave Dr. Patel -- basically gave
9 -- he got the company, Neighbors, to help and the software
10 and can go do whatever he likes with it.

11 THE COURT: All right, thank you, sir.

12 Mr. English.

13 MR. ENGLISH: Your Honor, moving on. We filed our
14 Plan and disclosure statement back on February 8th. We filed
15 an amended versions of the Plan on the 19th and the first
16 amended -- sorry, first amended disclosure statement on
17 February 19th. First amended Plan on February 20th. Those
18 incorporated changes from various parties.

19 We filed a second amended disclosure statement on
20 February 20th. On that same day we had a hearing on
21 conditional approval of the disclosure statement. The Court
22 entered an order conditionally approving it and approving
23 solicitation procedures.

24 On February 22nd, the Plan was solicited. We have
25 in our Exhibits certificates of service of sending out the

1 solicitation materials.

2 On March 15th, we filed the Plan supplement.

3 THE COURT: Mr. English, I don't think I have your
4 Exhibits yet.

5 MR. ENGLISH: Okay.

6 THE COURT: If you're going to be referring to
7 those, I probably need to get them.

8 MR. ENGLISH: May I approach, Your Honor?

9 THE COURT: You can.

10 (Pause in the proceeding.)

11 THE COURT: All right, go ahead please.

12 MR. ENGLISH: On March 15th we filed our Plan
13 Supplement at docket no. 802. March 18th, we filed an
14 amendment to that Plan Supplement with an amended liquidating
15 trust agreement that had some minor changes.

16 On March 20th, the voting deadline and objection
17 deadline passed. On March 21st we filed a voting tabulation
18 report. And that's Exhibit 22 in the Debtor's Exhibit
19 Notebooks. And that is a certification from our claims and
20 validating agent which is KCC in this case.

21 Attached to that and as part of that, there is a
22 summary of ballots. We solicited ballots from two classes.
23 Class III was the pre-petition secured lenders. 100 percent
24 in number approved the Plan and 100 percent in amount.

25 We also solicited Class IV. We had 86 percent in

1 number accepting the Plan and 97.69 percent in amount
2 approving the Plan.

3 Yesterday, we filed a brief in support of
4 confirmation that outlines the factors from the Bankruptcy
5 Code. It also contained a chart that attempted to outline and
6 summarize the objections that we received and the resolutions
7 that we had reached at that time. And the Debtor's proposed
8 resolution for those that have not been resolved.

9 We do have an updated version of that and
10 momentarily Mr. Higgins is planning to go through the current
11 status of those objections. Most of them are resolved, but no
12 all of them.

13 And then we also filed a proposed Confirmation Order
14 yesterday. That document will also have some changes to
15 reflect additional -- to reflect additional settlements that
16 have been reached.

17 At this point, Your Honor, I would move to admit
18 some of the Debtor's Exhibits. One through 13 and 18 through
19 24. That include the balloting report that we just spoke
20 about.

21 With -- there's one comment to that with respect to
22 an informal objection. We got to admissibility of that
23 document from the Phipps party. That document does not have
24 appended to it a list of the opt out notices. But for the
25 record, Phipps has opted out of the release.

1 THE COURT: All right, is there any objection to the
2 admission of 1 to 13 and the admission of 18 to 24?

3 MR. JUDD: Your Honor, Josh Judd for Phipps. With
4 that stipulation that we've opted out, no objection to 22.

5 THE COURT: One through 13 are admitted. 18 through
6 24 are admitted.

7 (Debtor's Exhibits 1 through 13 and 18 through 24
8 received.)

9 THE COURT: How did you treat Mr. Alam on the opt
10 out?

11 MR. ENGLISH: I don't believe Mr. Alam returned a
12 valid or an opt out notice. And so he's -- he is not treated
13 as not having opted out from the third party release. That's
14 how we treated it.

15 THE COURT: I'm going to deem him from the documents
16 that he has filed as a lay person to have opted out.

17 MR. ENGLISH: Okay.

18 THE COURT: So I want Dr. -- Mr. Alam to be on the
19 opt out list in any final documents. I don't think there's
20 any question that from reading the documents he did not intend
21 to release people. So he has opted out.

22 MR. ENGLISH: And, Your Honor, with that, I'll pass
23 it to Mr. Higgins to go through the objections.

24 THE COURT: Thank you.

25 MR. HIGGINS: Morning, Your Honor.

1 THE COURT: Good morning, Mr. Higgins.

2 MR. HIGGINS: Your Honor, we've prepared an updated
3 summary of the status of the objections and if I may hand one
4 to the Court.

5 THE COURT: Thank you.

6 MR. HIGGINS: And then Ms. Graham will blow it up on
7 the screen and I'll try to walk the Court through it.

8 THE COURT: Ms. Graham are you plugged in or are you
9 using the join.me.

10 MS. GRAHAM: Your Honor, I'm on join.

11 THE COURT: Okay, for those of you on the phone, if
12 you want to see this updated list of objections, we'll put it
13 up on the screen in the Court. You'll be able to see it on
14 the join.me website. The room you're going to want to join is
15 Judge Isgur. It's all one word, J-U-D-G-E-I-S-G-U-R.

16 It'll take me just a minute to get that going.

17 MR. HIGGINS: No problem, Your Honor.

18 (Pause in the proceeding.)

19 THE COURT: Ms. Graham, you need to do something on
20 your computer to take that.

21 (Pause in the proceeding.)

22 THE COURT: All right, it's now up on the computer.
23 It's a black screen, but in a moment we'll get a non-black
24 one.

25 (Pause in the proceeding.)

1 THE COURT: All right. Let's move ahead then. I'm
2 going to rule on Mr. Alam's objection once I hear all the
3 evidence today and at the end of the hearing.

4 MR. HIGGINS: Understood, Your Honor.

5 THE COURT: So let's go to the next one of those.
6 Century Square.

7 MR. HIGGINS: Your Honor, first of all just an
8 overview we had seven filed objections. We had two informal
9 objections. All of the objections have been resolved with the
10 exception of Mr. Alam and the Phipps objection which was a
11 limited objection.

12 Mr. Judd and I have spoken and we agree that that is
13 not a factual dispute. It is simply a legal question as to
14 whether or not certain language should be included in the
15 confirmation order. And I'll allow Mr. Judd to address that
16 at the appropriate time.

17 THE COURT: Ms. Scott do you have an objection to
18 what we're doing here?

19 MS. SCOTT: No, you just mentioned that Century was
20 up first. And I just wanted to mention that the language that
21 they're proposing we have no objection. So I'll just wanted
22 to be here to make sure --

23 THE COURT: Thank you.

24 MS. SCOTT: -- when that question comes, I'm ready.

25 MR. HIGGINS: Yes, Your Honor and the language has

1 been included in the uploaded order that we had filed
2 yesterday afternoon.

3 THE COURT: All right.

4 MR. HIGGINS: No. It's in the current version. I'm
5 sorry, Your Honor. Which we have here today.

6 THE COURT: Is there any party that objects to the
7 agreed confirmation order language between Century Square and
8 the Debtor?

9 (No verbal response.)

10 THE COURT: Okay, we'll approve it.

11 MS. SCOTT: Thank you, Your Honor.

12 THE COURT: Thank you.

13 MR. HIGGINS: Next, Your Honor, is the objection at
14 822, the advalorem taxing authorities. We have agreed to
15 include the language that is set forth on the chart. It is in
16 our confirmation order which we will upload at the appropriate
17 time at the conclusion of the hearing.

18 THE COURT: Is there any party in interest that
19 objects to the agree language with the taxing authorities?

20 (No verbal response.)

21 THE COURT: All right, it's approved.

22 MR. HIGGINS: With respect to 821, Infinity
23 Emergency Management Groups objection. We have reached an
24 agreement. And the language will need to be resolved -- I
25 mean, excuse me, Your Honor. The language will need to be

1 modified slightly.

2 If the Court could look at the Debtor's proposed
3 confirmation order language. If you follow --

4 THE COURT: Do you want me to pull that up from the
5 docket sheet?

6 MR. HIGGINS: It's not --

7 THE COURT: 840 or is it -- I guess I compare it to
8 840 or what's in the chart?

9 MR. HIGGINS: Your Honor, it's not uploaded yet so I
10 think we just -- if you can follow the language in this chart
11 for right now? I mean I just want to state on the record the
12 changes that will be made so Mr. Probus can get comfortable.

13 THE COURT: Okay. Thank you.

14 MR. HIGGINS: And it's the sentence that says,
15 "Article V of the confirmed Plan shall not affect the rights,
16 if any, of the former officers and directors of the Debtors
17 designated as insureds under the D&O policies or Infinity's
18 right," will be inserted "to seek and receive coverage for
19 losses or proceeds," will be inserted, "under the D&O
20 policies." And then continues to the end of that sentence as
21 is.

22 In addition we will insert a sentence that says,
23 "This Confirmation Order does not determine or resolve
24 Infinity's proof of claim or litigation claims. Those claims
25 will be determined in the litigation and/or in the objections

1 to Infinity's proof of claim."

2 And that's the language that we will include and I
3 believe --

4 THE COURT: Does that satisfy Infinity, Mr. Probus?

5 MR. PROBUS: Yes, it does, Your Honor.

6 THE COURT: And with that language, you withdraw
7 your objection?

8 MR. PROBUS: That's correct, we do.

9 THE COURT: Is there any party here that objects to
10 the Infinity agreement?

11 (No verbal response.)

12 THE COURT: All right, we'll show that it's -- it
13 will be included and it's approved by the Court.

14 MR. HIGGINS: Your Honor, we've got at Docket No.
15 820, there was a limited objection filed by a certain
16 directors of the company represented by Mr. Johnson. We have
17 reached a resolution to include the language that is
18 identified on the chart which will be set forth in the
19 Confirmation Order.

20 THE COURT: And is that where we can just include
21 Mr. Alam's name?

22 MR. HIGGINS: I'm sorry, Your Honor.

23 THE COURT: Can we include Mr. Alam's name in that
24 list?

25 MR. HIGGINS: I don't think so, Your Honor.

1 THE COURT: That he's not a releasing party under
2 the Plan?

3 MR. HIGGINS: These are the directors. We have no
4 problem just including a separate sentence for --

5 THE COURT: Mr. Alam.

6 MR. HIGGINS: -- Mr. Alam.

7 THE COURT: Okay, thank you. And is there any party
8 that agrees to the language to resolve the objection filed at
9 820?

10 Mr. Warner?

11 MR. WARNER: Your Honor, I'm not sure -- this
12 language is to confirm that certain directors are not
13 releasing.

14 THE COURT: Right.

15 MR. WARNER: The opt out does the same essentially.
16 So do we need to redundantly --

17 THE COURT: No, you can just put it in one place or
18 the other. I just want to be sure it makes it in there.

19 MR. WARNER: Yeah, so I think leaving him as an opt
20 out on the record is probably sufficient. And I don't mean to
21 speak for the gentleman.

22 THE COURT: That's fine.

23 MR. HIGGINS: We'll include a sentence in the Order,
24 Your Honor.

25 THE COURT: Thank you.

1 MR. JOHNSON: Just by way of clarification, Your
2 Honor. We -- if you look on the left hand side, we just want
3 to ensure that the jurisdiction issue, the language that we
4 are discussing, is also going to be included in the
5 confirmation order.

6 MR. HIGGINS: That is the argument that I understood
7 was going to be made by Mr. Judd. The same language, right?

8 MR. JOHNSON: I don't think it is the same language.
9 But it is different. It's a different issue.

10 This is the language we wanted clarification on.

11 (Pause in the proceeding.)

12 MS. MINSHEW: And Your Honor, just for the Record, I
13 joined -- Christian Minshew for Dr. Darmesh Patel. I joined
14 in Mr. Johnson's motion or objection.

15 MR. HIGGINS: Excuse me, Your Honor.

16 THE COURT: So the italicized language on
17 jurisdiction is what you're asking to be included?

18 MR. JOHNSON: That's correct, Your Honor. Simply
19 for clarification purposes.

20 MR. MARTIN: Your Honor, this is Jerry Martin. I
21 filed an objection as Docket Number 819 and my objection is
22 the same. And so just to --

23 MR. JOHNSON: The resolution of this issue should
24 clear both of those.

25 MR. MARTIN: Will clarify our objections.

1 MR. ENGLISH: Your Honor, just to be clear about
2 what I think the agreements are. The agreed confirmation
3 order language that's on the right hand column resolves their
4 objection except for this language that they're asking for on
5 the left.

6 And we -- the agreement was that the parties would
7 be able to make an argument on whether that language ought to
8 be included or not.

9 MR. JOHNSON: It's for you to decide.

10 THE COURT: So let's deal with it. I understand
11 that we have multiple parties that want to deal with that.

12 Let me first of all understand why or how a
13 confirmation order could impair someone's right to seek a
14 trial by jury if they have one? I don't want any language
15 that vests the right to trial by jury or why it could impair
16 their right to seek a remand. Although I don't know that they
17 have such a right.

18 I just don't know why a plan would affect remand
19 rights, jury rights, withdrawal of reference rights. But if
20 you-all think that you can do that in a Plan, then tell me
21 because then I guess I need to understand what the fights
22 about.

23 MR. HIGGINS: To be clear, Your Honor, we thought
24 that the language was unnecessary because we agree and the
25 Debtors are not seeking to somehow strip away their rights to

1 a jury trial or to seek remand.

2 THE COURT: So if it's unnecessary, is it a
3 statement of the law that you believe is accurate?

4 MR. HIGGINS: With modification, Your Honor, that
5 something to the effect of assuming they have such right.

6 THE COURT: Let's include -- I do think it's fair
7 for people to be sure that they don't accidentally loose
8 rights and it's a complicated order and a complicated plan.

9 It's also important to me that we don't vest rights
10 that we shouldn't be vesting. So I would like to change the
11 language that's been proposed in the italics to make it clear
12 that the confirmation order -- not in the confirmation order
13 nor the Plan expand or constrict these rights.

14 And I'll let you-all worry about the exact language,
15 but it ought to be bi-lateral in terms of no effect. Does
16 that resolve the issue if we can get to language that is, in
17 fact, is bilateral?

18 MR. JOHNSON: It does -- it does for us, Your Honor,
19 for my clients.

20 THE COURT: Ms. Minshew?

21 MS. MINSHEW: It does for Dr. Dharmesh Patel.

22 MR. MARTIN: Same for Dr. Setul Patel, Your Honor.

23 MR. HIGGINS: Your Honor, I think we can cure this
24 and we ill include the language if after the word "right to
25 trial by jury" we add the words "if any". And then after the

1 words "rights to withdraw the reference, if any."

2 That would satisfy from the Debtor's perspective.

3 MR. JUDD: Josh Judd on the Phipps party. My
4 primary concern is that the Plan attempts to transfer assets
5 that don't belong to the Debtor's estate into the Plan Trust.

6 So I'm not sure --

7 THE COURT: So this language doesn't deal with the
8 Phipps objection?

9 MR. JUDD: Right.

10 MR. HIGGINS: We're not there yet.

11 THE COURT: Okay, got it. But does Phipps have any
12 objection to this jurisdictional language with the words "if
13 any" inserted in the two locations suggested by Mr. Higgins?

14 MR. JUDD: No, Your Honor.

15 THE COURT: I'm going to -- unless I hear some
16 objection, I'm just going to order that to happen and we're
17 going to resolve this. Okay.

18 MR. HIGGINS: Thank you, Your Honor.

19 MS. MINSHEW: Thank you.

20 THE COURT: So that resolves 819 and 820, right?

21 MR. HIGGINS: Correct, Your Honor. Which takes us
22 to Docket No. 810 which is Mr. Phipps objection. Which, Your
23 Honor, one we do not believe the Plan is attempting to
24 transfer any non-debtor third parties direct claims to the
25 liquidating trust.

1 THE COURT: Right.

2 MR. HIGGINS: Number two, the Plan does not release
3 the D&O's. It's very explicit. In fact, in the definition of
4 released parties, the last sentence, I believe, states that
5 this -- for the avoidance of doubt the D's and O's are not
6 being released. And so we're not sure exactly what Mr. Judd
7 is complaining about as far as the transfer of claims.

8 THE COURT: Mr. Judd, what assets do you think are
9 being transferred to the Trust that the Debtor's don't own.

10 MR. JUDD: Yeah, so in the Plan, Your Honor, one of
11 the retained causes of action including any claims against
12 officers and directors is claims for misuse of the Debtor's
13 funds.

14 Misuse of the Debtor's funds would constitute that's
15 part of what would fall under the Texas Trust Fund Act. So,
16 and I've -- and I can point the Court -- I believe it's in the
17 definitions of D&O claims, Your Honor. Under paragraph 30 on
18 page 4 of the Plan.

19 THE COURT: Well, let me get there.

20 (Pause in the proceeding.)

21 THE COURT: Paragraph 40?

22 MR. JUDD: No, I'm sorry, Your Honor. It's
23 definition number 30 on page 4 of the Plan.

24 (Pause in the proceeding.)

25 THE COURT: I thought the argument on trust fund

1 assets was that they weren't estate property at all. Is that
2 wrong?

3 MR. JUDD: Well, under the Trust Fund Act, you're
4 correct. The property does not belong to the estate or the --
5 it would not belong necessarily to the Debtors. But --

6 THE COURT: If it does belong to the Debtors, it's a
7 Debtors claim. If it doesn't belong to the Debtors, it's the
8 claimant -- it's the beneficiary claim.

9 MR. JUDD: Correct. There's like I think in this
10 Court has cited previously that there's a bare legal title to
11 funds --

12 THE COURT: There is.

13 MR. JUDD: -- for the Debtor.

14 THE COURT: I think there is.

15 MR. JUDD: So including the misuse of company funds
16 would out of an abundance of caution, give rise to then the
17 unsecured creditors trust saying no those claims belong to us.

18 THE COURT: Is it difficult to say in here that what
19 is not transferred would be any claim that funds that are
20 trust funds were -- that are trust funds over which the Phipps
21 have claims are not being transferred over?

22 And then there -- we're going to have to write some
23 pretty careful language if it turns out that these funds are
24 not trust funds or were not trust funds then it won't matter
25 that the Phipps claim that they are.

1 There is a problem with legal title versus
2 beneficial title here.

3 MR. HIGGINS: I'm thinking about that for one
4 second, Your Honor. But I would point out if you look at
5 definition 30, D&O claims --

6 THE COURT: Right.

7 MR. HIGGINS: It does include misuse of company
8 funds as he points out. But if you go to -- call page 13,
9 definition 123. Retained causes of action does include D&O
10 claims but it says D&O retains causes of action which maybe
11 asserted by or on behalf of the Debtor's or the estates or the
12 assignee.

13 And so it's obviously, Your Honor, limited to
14 property of this estate to the extent he has a direct trust
15 fund claim and can prove that. We're not trying to impact
16 that.

17 MR. WARNER: Your Honor, it's as simple as assets of
18 the estate will be transferred over to the liquidating trust.
19 If it's not an asset of the estate, it doesn't get
20 transferred. It's almost the concept of a direct or a
21 derivative.

22 THE COURT: Right. There is a problem, though, where
23 these trust fund taxes. I mean, we've explicitly held and I
24 think the Fifth Circuit affirmed the whole thing. That legal
25 title to the trust funds are owned by the estate and that the

1 beneficial right to the funds are held by the beneficiaries,
2 not by the estate.

3 And to make it clear, that if there are funds to
4 which the Debtor owns only bare legal title, that those rights
5 aren't being transferred. If the Debtor owns anything more
6 than bare legal title, the rights are being transferred.

7 For example, if there are multiple claimants against
8 the trust fund and there are inadequate trust funds, we've
9 basically held they do come into the estate and then they have
10 to get redistributed back out. So some bare legal title
11 language might actually just resolve this but it's a fair
12 concern to get clarity.

13 MR. WARNER: It's definitely a fair concern and I
14 agree with the clarity. But I want to make sure that there's
15 a distinction between a claim for misuse of funds --

16 THE COURT: Right.

17 MR. WARNER: -- and the misuse of the -- and the
18 funds themselves.

19 And so I get the concept that the trust funds
20 arguably the estate has no interest in. But the act, the
21 cause of action for misuse of those funds is an estate cause
22 of action.

23 THE COURT: I agree with that.

24 MR. WARNER: And I --

25 THE COURT: So can we just add some language

1 somewhere that says: If Phipps asserts a claim to recover
2 funds over which the Debtor had only bare legal title, that
3 claim belongs to Phipps and is not transferred to the estate.

4 And we leave your misuse of funds language in there
5 because there may be a claim that they exposed the -- and D&O
6 exposed the estate to liability by misusing trust funds. Even
7 if they have a right to recover them there could be a separate
8 claim and I accept that.

9 MR. WARNER: It could be claim because Phipps ends
10 up with the money.

11 THE COURT: Right. But do you have any problem with
12 this kind of bare legal title language?

13 MR. JUDD: No, Your Honor, and I think we could
14 clarify that our claims, our allegations relate solely to
15 trust funds as identified in Chapter 162 of the Texas Property
16 Code.

17 THE COURT: But again, it can't just be that your
18 claims are that. They have to be claims against assets over
19 which the Debtor had bare legal title. Because if -- you can
20 have such a claim and the Debtors' rights can be more than
21 bare legal title at which point they are going in there and
22 you're going to get some prorated amount, right?

23 MR. JUDD: Well, we -- under the facts of our
24 allegations that the claims arising out of the Trust Fund
25 Statute cannot be transferred to the trust because they are

1 direct claims of Phipps and only that --

2 THE COURT: I got it that if you win.

3 MR. JUDD: Okay.

4 THE COURT: But they get to contest that. That's
5 why what you should only win is if it's -- if the estate has
6 only bare legal title and you can pursue your claims, right?

7 MR. JUDD: So that's the -- and I'm fine going along
8 those roads. The second part of the issue is the transfer of
9 the proceeds of the insurance policies to the trust.

10 I think it's pretty well undisputed that the
11 proceeds of the D&O policies are not property of the estate.
12 I think as late as yesterday the Court issued an order along
13 the lines that said the proceeds of these D&O policies are not
14 property of the estate.

15 But the plan provides that he controls --

16 THE COURT: Well, I think I said that in a case --
17 and it may even have been this case -- but the allegation was
18 that there were adequate funds to pay off claims. In cases
19 where there are not adequate funds to pay off claims I think
20 the Fifth Circuit has held that those proceeds may be property
21 of the estate. And so we need to worry about that question.
22 But I'm not sure which case I issued the order in.

23 MR. JUDD: I think it was this case, your Honor.

24 THE COURT: Okay. And there was an allegation of
25 that there were adequate funds.

1 MR. JUDD: Currently I think there are adequate
2 funds but I --

3 THE COURT: Well, no. There was an allegation that
4 there were adequate funds to cover everything, is what I got.
5 If I misread that, I misread that.

6 MR. WARNER: Well, certainly not in the facts here.
7 Not in this case.

8 THE COURT: I don't remember which case it was that
9 I issued the order in but I believe that was the allegation.

10 MR. JUDD: Okay. I thought it was this case but
11 perhaps it wasn't.

12 THE COURT: Well, let's look and see. Was it in the
13 main case?

14 MR. HIGGINS: No, we have not had a ruling in this
15 case to that effect, Your Honor.

16 MR. JUDD: On an agreed motion for relief from stay,
17 it wasn't in this case?

18 MR. HIGGINS: No. The Debtors did not oppose the
19 Director and Officers rights --

20 THE COURT: It was 835.

21 MR. HIGGINS: -- to get proceeds for defense costs.

22 MR. JUDD: Yeah.

23 THE COURT: Yeah, that was a different situation in
24 which it was -- the allegation was that under the terms of the
25 policy money goes first to pay the officers' and directors'

1 defense costs.

2 MR. JUDD: Understood.

3 THE COURT: And that that was true even if there was
4 a shortage of funds. And so all that we held was that the
5 payments would, in fact, be first allocated out to the D's and
6 the O's because even if there was inadequate funds it would go
7 to the D's and O's. I don't think we held that any residual
8 wouldn't be property of the estate, only that that money would
9 go direct.

10 If I messed up my order I messed up my order. We
11 should fix it.

12 MR. JUDD: I did not -- I was not aware of the
13 background of that order. So when I --

14 THE COURT: So the specific allegation that was made
15 was -- because it took me some time to go through this,
16 there's some very confusing language in the policy.

17 If you look at that policy, the policy says: In the
18 event that the losses exceed the coverage under the policy
19 then the proceeds are allocated in the following order of
20 priority, and (a) is to pay the defense costs of the D's and
21 the O's.

22 So I decided that when you had -- if you didn't have
23 a shortage it was no problem to pay them. And if you did have
24 a shortage it was no problem to pay them because if you had a
25 shortage they came first in the level of priority.

1 And so I don't think I've held what you've said in
2 the event of a shortage.

3 MR. JUDD: With that understanding, Your Honor, the
4 plan continues to assert that all the proceeds of those
5 policies go to the plan trust.

6 My position would be that we have equal right -- to
7 the extent that we have a claim that's covered under those
8 policies, an equal right to those proceeds absent further
9 order of the Court. Or if it comes back to the estate it --

10 THE COURT: Well, not if there's a shortage.

11 MR. HIGGINS: Well, in -- Your Honor, they are not a
12 named insured. And so I think they may have a right to assert
13 a claim against an insured and then in the event they get a
14 judgment possibly have the insurance company honor that. But
15 they don't have a direct claim to the insurance policy or the
16 proceeds. That's just Louisiana.

17 MR. WARNER: Well and I think there's more of a
18 point here, Your Honor. If they're asserting a claim that is
19 derivative it's not their claim to assert any more.

20 If the claim is direct and they get a judgment
21 against a director or officer that is named insured, the
22 director or officer has a judgment. That judgment either is
23 paid by coverage or it's not. They don't have a direct claim
24 to the coverage.

25 The coverage is not for the judgment creditor; the

1 coverage is for the defendant.

2 THE COURT: The argument he's making is -- and I
3 need to look at the language. He's telling me that the
4 proceeds of the policies are paid in. And as I understand
5 Fifth Circuit law, the proceeds of the policies can be paid in
6 but only if there is a shortage in the policy; otherwise,
7 those proceeds don't get paid into the estate. Am I
8 misunderstanding what the complaint is? Let me start with
9 looking at the language.

10 MR. JUDD: Yeah. No, that's the concern is if --

11 THE COURT: Let me see the language. Where is the
12 language?

13 MR. JUDD: Sure. It's in page 25 of the plan where
14 it describes paragraph D under the unsecured creditor trust.
15 It describes what assets are vested solely in the unsecured
16 creditors trust.

17 And it says all of the proceeds of the D&O policies.
18 That would potentially exclude the ability of an officer or
19 director who has a judgment against them from accessing those
20 proceeds to the detriment of my client's direct claim.

21 MR. HIGGINS: Your Honor, I think we may be able to
22 solve this issue. We reached a resolution with the D&O's and
23 we also reached a resolution with Infinity regarding the
24 insurance policy language that I addressed earlier. And by
25 including Infinity we resolved their objection.

1 We have no problem including Phipps in that same
2 language. If he thinks he's got a right to go after the
3 policies, he can go after the policies.

4 We don't agree with that proposition but -- page 2
5 of the summary chart, Your Honor.

6 THE COURT: Does that work for Phipps?

7 Let me back up a minute. The D's and the O's are
8 different than a claim against the D's and the O's. Does the
9 claimant against the D's and the O's have any rights to those
10 proceeds at all?

11 MR. JUDD: Under our reading of the policy they
12 would have coverage if we get a judgment.

13 THE COURT: The D's and the O's would have coverage
14 but Phipps wouldn't have coverage.

15 MR. JUDD: No, we're not a named beneficiary. I
16 don't dispute that.

17 THE COURT: And I don't think you have standing to
18 raise this objection, it's a problem of the D's and the O's.
19 You don't have a right to have them have coverage.

20 MR. JUDD: I'm not, but I'm saying we're objecting
21 to the potential exclusion of all other parties that may have
22 -- that the plan can't transfer the proceeds of that policy to
23 the plan trust.

24 THE COURT: Why not?

25 MR. JUDD: Because the proceeds of that policy are

1 not necessarily property of the estate.

2 THE COURT: Well, you have multiple claimants
3 against it, none of whom are your client, and all of those
4 claimants are agreeing that this is the right allocation,
5 right?

6 MR. JUDD: I'm sorry, Your Honor?

7 THE COURT: So you have D's and O's and Debtors, all
8 of whom say, "We have a right to proceeds." And everybody --
9 those beneficiaries, which don't include your client, all
10 agree that it's going to all go into the creditor's trust to
11 pay claims out in this kind of a priority scheme.

12 So if all of the beneficiaries believe that's the
13 way the money goes how does your client have standing to
14 complain about that?

15 MR. JUDD: Because that would be an otherwise
16 potential pool of assets for us to recover under.

17 THE COURT: I don't think so. You have the right to
18 a judgment and you can go collect from people. It's their
19 responsibility to preserve the right to get some insurance
20 proceeds if they want to do that. It sounds like in some
21 instances they have.

22 MR. JUDD: Well, I'm not too sure that that is --
23 that that's spelled out in the plan that the proceeds of the
24 D&O policies was ever property of the estate. Why can
25 something become property of the estate upon filing or through

1 the plan rather than --

2 THE COURT: If there's a shortage of proceeds it
3 becomes property of the estate.

4 MR. JUDD: But that hasn't been determined whether
5 there's --

6 THE COURT: I know but the parties have agreed to it
7 and your client doesn't have any standing on that question.

8 I'm overruling the objection for an absence of
9 standing to complain about how somebody else's money gets
10 spent. It's not your money.

11 But I'm going to sustain the objection in terms of
12 the first part that you made and will include that language.
13 So I'm sustaining in part and overruling in part.

14 MR. HIGGINS: We'll draft some language and run it
15 by Mr. Judd with respect to the trust fund language, Your
16 Honor.

17 THE COURT: What do we have next?

18 MR. HIGGINS: Next we have two informal objections,
19 one by numerous taxing authorities. And we have reached an
20 agreement on proposed language.

21 THE COURT: Is there any objection to the taxing
22 authority language?

23 (No response.)

24 THE COURT: All right. We'll include it.

25 MR. HIGGINS: And we have similar language for the

1 Texas Comptroller, Your Honor, which has been agreed to.

2 THE COURT: Any objection to the Comptroller
3 language?

4 (No response.)

5 THE COURT: We'll include that. Okay. All right.
6 Now let's open -- I think we're ready to present evidence; is
7 that correct?

8 MR. HIGGINS: Yes, Your Honor. Excuse me. If we
9 might take a short recess and then call our first witnesses.

10 THE COURT: Any objection?

11 (No response.)

12 THE COURT: All right. We'll see you all at 5 till
13 11:00. Thank you.

14 MR. HIGGINS: Thank you, Your Honor.

15 COURTROOM DEPUTY: All rise.

16 (Recess taken from 10:45 a.m. to 10:57 a.m.)

17 AFTER RECESS

18 COURTROOM DEPUTY: All rise.

19 THE COURT: All right. Please be seated. Go ahead,
20 please.

21 MR. ENGLISH: Your Honor, the Debtors call Chad
22 Schandler to the stand.

23 THE COURT: All right. Mr. Schandler, would you
24 raise your right hand, please, sir.

25 (Witness sworn.)

1 THE COURT: Thank you.

2 DIRECT EXAMINATION OF CHAD SCHANDLER

3 BY MR. ENGLISH:

4 Q Please state your name for the Record.

5 A Chad Schandler.

6 Q Mr. Schandler, it's been a while since you've testified
7 in this case. Can you remind the Court what your position is
8 with the Debtors?

9 A I'm the Chief Restructuring Officer.

10 Q And how long have you been the CRO?

11 A Since the end of October of 2017. I'm sorry, the end of
12 August of 2017.

13 Q What is the current operational status of the Debtors?

14 A There are no operations any longer.

15 Q Have they closed all of their asset sale transactions?

16 A They have.

17 Q Were you involved in developing and negotiating the
18 Debtors' plan and disclosure statement?

19 A Yes, I was.

20 Q Can you describe that process?

21 A The initial plan was drafted by Debtors' counsel and then
22 circulated to both myself as the Chief Restructuring Officer
23 and Ms. Tensie Axton as the Chief Financial Officer for our
24 review and additional comments.

25 At that point in time that document was then circulated

1 to counsel for the prepetition lenders and agent, as well as
2 to the counsel for the unsecured creditors committee. They
3 provided their comments to those documents which we then
4 reviewed and negotiated those further.

5 At that point in time that document was then presented to
6 the board of directors for their approval and additional
7 comment as well.

8 Q Did the Debtors negotiate those documents in good faith?

9 A Yes, they did.

10 Q And did the negotiations proceed at arms length?

11 A Yes, they did.

12 Q Have you read the disclosure statements and the plan?

13 A Yes.

14 Q And have you read the exhibits?

15 A Yes.

16 Q Did you suggest changes to those documents where you
17 thought it was appropriate?

18 A Yes, I did.

19 Q Is the disclosure statement accurate to the best of your
20 knowledge?

21 A Yes.

22 Q Are they, the plan and the disclosure statement,
23 supported by the Debtors' Key stakeholders?

24 A Yes, they are.

25 Q Does the plan include a settlement between the Key

1 parties regarding funds to be set aside for unsecured
2 creditors?

3 A Yes, it does.

4 Q Can you, at a high level, describe that settlement?

5 A Yes. The prepetition lenders have agreed to carve out
6 \$275,000 of their collateral to fund the unsecured creditor
7 trust and as well as they have agreed to not take any
8 recoveries from the first \$1 million of recoveries into the
9 unsecured creditor trust. They will then get the next
10 \$125,000 and then it will be shared pro rata beyond that.

11 Q Can you briefly describe the two trusts that are being
12 created under the plan?

13 A Yes. There is what we call a liquidating trust and then
14 an unsecured creditor trust. Basically the unsecured creditor
15 trust is the easier one to describe and that is the one that
16 will be pursuing causes of action that it will be vested with
17 as well as objecting to unsecured claims and they making
18 distributions to unsecured creditors.

19 The liquidating trust or liquidation trust will be
20 empowered with making any administrative distributions for the
21 collection of the accounts receivable of the Debtors, other
22 liquidating of the Debtors' assets that remain, preparation of
23 tax returns and other documents that may be required to
24 ultimately wind up the Debtors' estates.

25 Q Are the trustees for each of those trusts identified in

1 the plan supplement documents?

2 A Yes, they are.

3 Q And who are the trustees?

4 A For liquidation trust it's going to be Ms. Tensie Axton
5 and for the other unsecured creditor trust Mark Shapiro.

6 Q Does the plan include a partial consolidation concept?

7 A A deemed consolidation concept, yes.

8 Q And is that a consolidation for all purposes?

9 A No, it is just for voting purposes and distribution
10 purposes, it is not a legal consolidation.

11 Q What factors did the Debtor consider in deciding to
12 include deemed consolidation?

13 A The number of Debtor entities that actually exist and
14 primarily the cost of administering each one of those entities
15 if they were to continue to survive -- if they were able to
16 continue to each one pursue and have the reporting
17 requirements and the like of each individual entity. There's
18 really a cost benefit analysis as well.

19 Q Are substantially all of the Debtors' assets subject to
20 the Key Bank debt and liens?

21 A Yes, they are.

22 Q What was the approximate amount of that debt on the
23 petition date?

24 A Approximately \$110 million.

25 Q What are the primary likely sources of recoveries for

1 unsecured creditors?

2 A Causes of action.

3 Q Would it be challenging to administer separate estates
4 for each Debtor?

5 A It would be extremely challenging as well as it wouldn't
6 be cost effective.

7 Q Excuse me?

8 A It would not be cost effective either.

9 Q Is there enough resources in these estates, in your mind,
10 to separately administer all of them at this point?

11 A No, there isn't.

12 Q Is there any benefit in doing so?

13 A No.

14 Q Are all of the entities insolvent on account of the bank
15 debt?

16 A Yes.

17 Q Is the consolidation something that was negotiated with
18 the lenders and the committee?

19 A Yes, it was.

20 Q And is it required by those parties?

21 A Yes.

22 Q Does the disclosure statement include a liquidation
23 analysis?

24 A It does.

25 Q If you would turn to Exhibit 4 in the Debtors' exhibit

1 book that's in front of you. Do you recognize this document?

2 A Yes, I do.

3 Q And is this the liquidation analysis?

4 A It is.

5 Q Were you involved in preparing it?

6 A Yes.

7 Q Can you give us the conclusion from this analysis?

8 MR. JUDD: Your Honor, if I may, could that document
9 be put on the screen, if at all possible?

10 (Brief pause.)

11 THE COURT: Ms. Green, I think you still have the
12 presenter role or did you give that back?

13 MS. GREEN: Yes, Your Honor, it will take me a
14 minute to get the liquidation analysis.

15 THE COURT: I didn't hear you.

16 MS. GREEN: It's going to take me just a minute to
17 get that document.

18 THE COURT: Okay. But I just want to be sure you
19 still do have the presenter?

20 MS. GREEN: I do, Your Honor. I just have my email
21 up so I don't want to present right now but I do have it.

22 THE COURT: Thank you. All right. Go ahead,
23 please.

24 BY MR. ENGLISH:

25 Q Mr. Schandler, can you give us the conclusion from this

1 liquidation analysis?

2 A Yes. And if we were to go to a straight liquidation
3 there would be -- we estimated approximately \$20.3 million of
4 asset recovery still remaining, although a majority of that --
5 approximately 16.3 million -- is already sitting in cash. And
6 basically all of that, other than the Chapter 7 Trustee, and
7 his or her professionals, would go to the secured claims.

8 Q Without funds being made available by the secured lenders
9 would there be resources to pursue causes of action?

10 A No.

11 Q Does the plan include a release for the Debtors'
12 prepetition lenders and their agent bank?

13 A It does.

14 Q Does it also include a release for the DIP lender?

15 A Yes.

16 Q Have the Debtors previously given these parties releases?

17 A Yes, it has.

18 Q Does the cash collateral order that was entered in this
19 case include a release for the lenders?

20 A Yes, it does.

21 Q What are the Debtors getting in exchange for giving a
22 release to the lenders under the plan?

23 A Well, during the course -- the use of the cash collateral
24 during the course of the chase, the settlement, as well with
25 the unsecured creditors committee with regarding the funding

1 of the unsecured creditor trust and the sharing of proceeds,
2 both with regard to the million dollar carve out of the
3 collateral, and then the share pro rata sharing of their -- of
4 the recoveries beyond that.

5 Q During the time that you've been CRO, did either the DIP
6 lender or the prepetition agent ever have control over the
7 Debtors?

8 A No.

9 Q During that time did the DIP lender or the prepetition
10 agent have decision-making authority over the Debtors?

11 A No.

12 Q Are the prepetition lenders under secured in this case?

13 A Yes, they are.

14 MR. ENGLISH: Your Honor, I think we can skip ahead
15 a little bit here because we resolved a lot of these
16 objections. If you can just give me one second.

17 THE COURT: Take your time.

18 (Brief pause.)

19 MR. JOHNSON: Your Honor, we were wondering if it's
20 possible if we could be -- I'm sorry.

21 Millard Johnson on behalf of some certain of the
22 directors.

23 We were wondering, Your Honor, if it was possible --
24 I was not going to simply walk out without permission of the
25 Court -- if we could be released since their prove-up of their

1 confirmation materials is not material to the objections we've
2 already had resolved.

3 THE COURT: Any party that wishes to depart the
4 hearing is free to depart the hearing but you waive any
5 objections to what happens after you depart.

6 MR. JOHNSON: Fair enough. Thank you, Your Honor.

7 THE COURT: Thank you.

8 BY MR. ENGLISH:

9 Q Mr. Schandler, were the plan and disclosure statement
10 sent to the board for comments and approval?

11 A Yes, they were.

12 Q And did they provide comments?

13 A They did.

14 Q Did the Debtor have meetings of the board to discuss the
15 plan?

16 A Yes.

17 Q And did the board ultimately approve the plan?

18 A Yes, it did.

19 Q To the best of your knowledge does the plan comply with
20 the provisions of the Bankruptcy Code?

21 A Yes.

22 Q To the best of your knowledge has the Debtor complied
23 with provisions of the Bankruptcy Code?

24 A Yes.

25 Q Did the Debtors propose the plan in good faith?

1 A Yes, they did.

2 Q Does the plan classify creditors into classes?

3 A Yes.

4 Q Are claims in interest in each particular class
5 substantially similar to the claims in interest in those
6 classes?

7 A Yes, they are.

8 Q Does the plan designate whether each class of claims is
9 either impaired or unimpaired?

10 A Yes.

11 Q Does the plan provide for the same treatment of each
12 claim or interest within a particular class?

13 A Yes.

14 Q Are all administrative claims subject to court approval
15 as reasonable?

16 A Yes.

17 Q Did all classes vote to accept the plan?

18 A Yes.

19 Q Does the plan provide priority claims under Section 507
20 will be paid in full?

21 A Yes.

22 Q Does the plan provide for payment of the U.S. Trustee
23 fees?

24 A Yes.

25 Q Will the Debtors be paying professional fees from assets

1 of the estate?

2 A Yes.

3 Q And are those fees subject to the Court's approval?

4 A Yes.

5 Q Are there any retiree benefits at issue here?

6 A No.

7 Q Does the plan include some release provisions?

8 A Yes.

9 Q And which parties are getting releases?

10 A The prepetition DIP lenders -- I'm sorry. The
11 prepetition lenders, the DIP lender and myself in my capacity
12 as the Chief Restructuring Officer.

13 Q Are directors and officers obtaining a release?

14 A No.

15 Q Did creditors have the option to opt out of the third-
16 party releases that were provided for the plan?

17 A Yes, they did.

18 Q And was there an opt-out notice that was sent to the non-
19 voting creditors?

20 A Yes.

21 Q Were the release provisions in the plan heavily
22 negotiated?

23 A Yes.

24 Q Are the release provisions that are in the plan a
25 condition to the lenders approving the plan?

1 A Yes, they are.

2 Q Are they a condition to the committee approving the plan?

3 A Yes.

4 MR. ENGLISH: Pass the witness, Your Honor.

5 THE COURT: Thank you. Are there any additional
6 questions for Mr. Schandler by any party?

7 MR. JUDD: Yes, Your Honor.

8 THE COURT: Mr. Judd.

9 CROSS-EXAMINATION OF CHAD SCHANDLER

10 BY MR. JUDD:

11 Q Mr. Schandler, what investigation, if any, have you done
12 regarding any of the D&O claims that are described generally
13 in the plan?

14 A We have not done any investigation at this point in time.

15 Q Do you know if anybody in your team has done any
16 investigation of those potential claims?

17 A No.

18 Q What investigation, if any, has done -- did you do
19 regarding any claims against Key Bank?

20 A Initially we had done -- and this goes to when we had the
21 initial hearings regarding the use of the cash collateral and
22 the DIP motion when those releases were granted -- we
23 investigated, we pulled the appropriateness of whether the
24 liens were actually valid or not and the activity between the
25 Debtors and Key Bank up until that particular point in time.

1 Q Did you do any investigation regarding Key Bank's actions
2 prior to your arrival as Chief Restructuring Officer?

3 A As far as actions, I don't believe -- I did not
4 investigate anything specifically but with regard to -- before
5 my arrival. But we did wind up talking to the other parties
6 involved who were there during my arrival so I guess to some
7 extent, yes.

8 Q And do you have an opinion on whether any -- there were
9 any claims against Key Bank prior to your arrival?

10 A Well, based upon our investigation, again this is to go
11 to the point of back then when the cash collateral order and
12 the DIP order were approved and also granting those releases
13 as well as the releases at the time prior to my arrival during
14 all of the amendments that were entered into between the
15 Debtor and Key Bank as agent on behalf of the bank group, that
16 there didn't seem to be anything that was inappropriate
17 between the relationship between the Debtors and Key Bank.

18 Q And what percentage of the unsecured creditor pool does
19 Key Bank's claim consist of?

20 A An overwhelming majority. I think that they are
21 currently sitting at -- I think it's roughly \$40 million of
22 the unsecured creditor pool.

23 Q So they'll receive, in your estimation, likely over 80
24 percent of any recovery of claims or causes of action brought
25 on behalf of the plan trust?

1 A Well, again, that's just all a matter of where claims
2 ultimately wind up in the reconciliation process for the
3 unsecured creditors. It also depends upon how much of that
4 initial million dollars is received. To the extent that the
5 causes of action only get up to a million dollars in recovery
6 they will receive none of that.

7 Q Do you believe -- have you done any analysis of potential
8 recovery of the causes of actions that you're talking about?

9 A No, we have not.

10 Q Do you have an opinion on what percentage of recovery the
11 unsecured creditors will obtain under the proposed plan?

12 A I do not.

13 MR. JUDD: No further questions, Your Honor.

14 THE COURT: Thank you.

15 MR. WARNER: Your Honor, if I might?

16 THE COURT: Mr. Warner.

17 MR. WARNER: Thank you.

18 CROSS-EXAMINATION OF CHAD SCHANDLER

19 BY MR. WARNER:

20 Q Mr. Schandler, Mike Warner on behalf of the Committee.

21 You were asked questions about the investigation of
22 claims against Key Bank. You recall those questions and
23 answers just a moment ago?

24 A Yes.

25 Q Okay. Was there an investigation to your knowledge done

1 by anybody other than the Debtor on the bank claims?

2 A I believe that that was one of the things that the
3 Committee took as its charge. Obviously it's it's fiduciary
4 duty to determine as part of the hearing with regard to the
5 use of cash collateral as well as the approval of the DIP.

6 Q And there was an interim cash collateral DIP order,
7 correct?

8 A That's correct.

9 Q And there was a final cash collateral DIP order, correct?

10 A Correct.

11 Q And did the final cash collateral order differ from the
12 interim with respect to the bank and issues of claims against
13 the bank?

14 A No.

15 Q Was there an embodiment of a settlement in the final cash
16 collateral order?

17 A Yes.

18 Q Okay. And was that settlement something that the Debtor
19 negotiated?

20 A No, that was negotiated between the Committee and the
21 bank agent.

22 Q So as a result of the final cash collateral order the
23 bank -- claims against the bank were resolved; is that
24 correct?

25 A Yes.

1 MR. WARNER: Okay. Thank you.

2 THE COURT: So from the date of the final cash
3 collateral order through today what person is most familiar
4 with the Debtors' relationship between the Debtor and Key
5 Bank?

6 THE WITNESS: Probably myself.

7 THE COURT: And are you aware of any claims that
8 have arisen between entry of the final cash collateral order
9 and today?

10 THE WITNESS: No.

11 THE COURT: Are you aware of any misconduct?

12 THE WITNESS: No.

13 THE COURT: Are you aware of anything that should be
14 investigated about Key Bank?

15 THE WITNESS: No.

16 THE COURT: All right. Thank you. Go ahead,
17 please.

18 REDIRECT EXAMINATION OF CHAD SCHANDLER

19 BY MR. ENGLISH:

20 Q Mr. Schandler, please turn to Exhibit 21 in the notebook
21 in front of you. It's the document at the top. It says
22 Waiver Consent and Amendment Number 3 to Credit Agreement.

23 A Yes.

24 Q Do you see that?

25 A Yes.

1 Q And what's the date of this document?

2 A May 9th, 2017.

3 Q And if you would, please turn to page 21. And in
4 particular if I could draw your attention to Section 9.4.
5 Will you please take a look at Section 9.4?

6 A (Examines document.)

7 Q Is this a waiver and release of claims that the Debtors
8 might've had against the agent and the lenders?

9 A Yes, it is.

10 MR. ENGLISH: Pass the witness, Your Honor.

11 THE COURT: Thank you. Any further questions for
12 Mr. Schandler?

13 (No response.)

14 THE COURT: All right. You can step down, sir.

15 (Witness steps down.)

16 THE COURT: Any further evidence by the Debtors?

17 MR. ENGLISH: Yes, Your Honor. We call Tensie
18 Axton.

19 THE COURT: Ms. Axton.

20 (Witness sworn.)

21 THE COURT: Thank you.

22 DIRECT EXAMINATION OF TENSIE AXTON

23 BY MR. ENGLISH:

24 Q Please state your name for the Record.

25 A Tensie Axton.

1 Q And what is your role with the Debtor, Ms. Axton?

2 A I'm the Chief Financial Officer.

3 Q How long have you been the Chief Financial Officer?

4 A Since December of 2016.

5 Q Are you aware that Sam Alam, A-l-a-m, has submitted a
6 letter to the Court and an objection?

7 A Yes.

8 Q Was Mr. Alam involved with any of the Debtor entities?

9 A No.

10 Q Was he involved with an entity called Neighbors
11 Telehealth, LLC?

12 A Yes.

13 Q And is that a Debtor?

14 A It is not.

15 Q Do you know if that entity is still operating?

16 A I don't know.

17 Q What involvement did the Debtors have with Neighbors
18 Telehealth, LLC?

19 A We had three major components.

20 First, we had a management services agreement where we
21 were providing back office services to them such as payroll
22 processing, staffing, HR.

23 The second one was we licensed our name, Neighbors,
24 to Neighbors Telehealth for their use. And in exchange we had
25 a 1 percent equity ownership given to Neighbors Health, LLC.

1 And third, we had a free license for use of their
2 software.

3 Q Let's talk a little more about the services agreement.
4 What services did the Debtors provide under that agreement?

5 A We provided processing of their payroll, HR supports, IT
6 supports, as well as processing invoices for them.

7 Q What did the Debtors charge for providing those services?

8 A We did not charge anything.

9 Q Did the Debtors get reimbursed for expenses that the
10 Debtors paid on behalf of Telehealth?

11 A Not all of them.

12 Q Were they supposed to under the agreement?

13 A Yes.

14 Q Are the Debtors still owed money from Telehealth?

15 A Yes.

16 Q If you would turn to Exhibit 20 in the notebook, please.
17 Do you recognize this document?

18 A I do.

19 Q Is it the wrong exhibit?

20 A Yes.

21 MR. ENGLISH: Okay. Your Honor, may I have one
22 moment. I think we have an exhibit issue.

23 THE COURT: Yes.

24 (Brief pause.)

25 THE COURT: I have something called Telehealth Open

1 Invoices is my 20. It's not your 20?

2 THE WITNESS: No.

3 MR. ENGLISH: Your Honor, may I approach the
4 witness?

5 THE COURT: Yes, sir. Can we put 20 up? You can go
6 ahead if she's got it. I was just thinking it might be handy
7 to have it there.

8 MR. ENGLISH: I think it would be helpful so that
9 we're all on the same continent.

10 (Brief pause.)

11 THE COURT: So what's been put on the screen is a
12 copy of what was admitted as 20.

13 MR. ENGLISH: Okay. Thank you, Your Honor. I think
14 it was just the wrong exhibit in the book that was in front of
15 the witness but we've corrected that.

16 BY MR. ENGLISH:

17 Q Ms. Axton, do you recognize Exhibit 20?

18 A I do.

19 Q Okay. And did you prepare this document?

20 A I did.

21 Q What is it?

22 A It is a summary of all of the payroll expenses, the wages
23 and the benefits that Neighbors paid and was not reimbursed
24 for.

25 Q Where did you obtain the information to prepare the

1 document?

2 A Out of our payroll register.

3 Q Is this a summary of data from the payroll register?

4 A Yes, it is.

5 Q Is it your ordinary practice to maintain a register of
6 payroll transactions?

7 A Yes.

8 Q And is that something that's kept in the ordinary course
9 of the Debtors' business?

10 A Yes.

11 Q What is the current amount outstanding by -- owed by
12 Telehealth to the Debtor?

13 A \$490,530.

14 Q And did the Debtors reject this services agreement
15 earlier in this case?

16 A Yes.

17 Q And why did they do that?

18 A We were no longer providing services. They had requested
19 to take on their own payroll and they have moved out of the
20 building so it was no longer active.

21 Q You mentioned a software license agreement between the
22 Debtors and Telehealth. Can you describe the relationship
23 that was created by that agreement?

24 A We were provided a perpetual license to use the software.

25 Q Did the Debtors ever use the software?

1 A We did some pilots in a couple of our centers to see if
2 the doctors wanted to actually adopt it.

3 Q And did they ever ultimately adopt it?

4 A No.

5 Q Did the Debtors ever use the software postpetition?

6 A No.

7 Q Do the Debtors have any ongoing obligations under the
8 software license agreement?

9 A No.

10 Q Do the Debtors owe anything to Telehealth under that
11 agreement?

12 A No.

13 Q Did any of the purchasers of the Debtors' assets purchase
14 the Debtors' equity interest in Telehealth?

15 A No.

16 Q Did they purchase any rights related to this software
17 license?

18 A No.

19 Q Did any of the purchasers show any interest in the
20 Telehealth assets?

21 A No.

22 Q Were the Debtors involved in managing the Telehealth
23 entity?

24 A No.

25 Q Did the Debtors have control over the Telehealth bank

1 accounts?

2 A No.

3 Q Were you involved in the negotiations of the Debtors'
4 plan and disclosure statement?

5 A Yes.

6 Q Did the Debtors negotiate those documents in good faith?

7 A Yes.

8 Q Are you familiar with an entity called Girish Capital?

9 A Yes.

10 Q Is that a Debtor entity?

11 A No.

12 Q Is it part of the Debtors' corporate family?

13 A No, it is not.

14 Q Is Girish Capital getting a release under the plan?

15 A No.

16 Q Who is Setul Patel?

17 A He was out CEO until December of 2017 and was a founder
18 as well as a board member.

19 Q Is Mr. Patel getting a release under the plan?

20 A He is not.

21 Q Are claims against Mr. Patel, and other parties, being
22 transferred to a trust?

23 A Yes.

24 Q In some of Mr. Alam's filings with the court he compares
25 Neighbors Health, LLC to Enron with, quote, "secret

1 partnerships, fake holdings, creative market-to-market type
2 accounting," end quote.

3 Are you familiar with the Debtors' corporate structure?

4 A Yes, I am.

5 Q Are you familiar with the Debtors' books and records?

6 A Yes.

7 Q Have you seen anything like what Mr. Alam alleges in the
8 books and records or the structure?

9 A No.

10 Q Mr. Alam asked questions about the relationship between
11 the Debtors and an entity called Read King. Are you familiar
12 with Read King?

13 A Yes.

14 Q Who is Read King?

15 A They are a construction development company.

16 Q Are they a creditor in these cases?

17 A Yes, they are.

18 Q Are they a member of the committee?

19 A Yes.

20 Q Did they help develop many of the Debtors' locations?

21 A They did.

22 Q Mr. Alam also raises questions about an entity called
23 Signarama. Are you familiar with that entity?

24 A Yes.

25 Q And what do they do?

1 A They provide signage on buildings.

2 Q And did they provide those goods and services for the
3 Debtors?

4 A They did.

5 Q Mr. Alam asks questions about an entity called Neighbors
6 GP, LLC. What is that entity?

7 A That is the general partner of all of our limited
8 partnerships which is where our facilities are.

9 Q And is it a Debtor entity?

10 A It is.

11 Q Mr. Alam also has questions about someone named Thomas
12 Grunert, who is that?

13 A He was our legal counsel.

14 Q Is he still?

15 A No.

16 Q Does the plan provide for rejection of all remaining
17 executory contracts?

18 A Yes, it does.

19 Q Would this include any contracts with Telehealth or with
20 Mr. Alam?

21 A Yes.

22 Q Are those contracts providing any benefit to the estates
23 at this time?

24 A No.

25 Q Did Mr. Alam provide any services to the Debtors

1 postpetition?

2 A No.

3 MR. ENGLISH: Pass the witness, Your Honor.

4 THE COURT: Thank you. Are there any questions for
5 Ms. Axton by any party?

6 MR. JUDD: Yes, Your Honor.

7 THE COURT: Mr. Judd.

8 CROSS-EXAMINATION OF TENSIE AXTON

9 BY MR. JUDD:

10 Q Ms. Axton, my name is Josh Judd. I'm the attorney for
11 Gerald H. Phipps, Inc.

12 A Uh-huh.

13 Q You've been identified as the liquidating trustee under
14 the plan, correct?

15 A Correct.

16 Q And what's your hourly rate for liquidating trustee?

17 A It's in the back of the liquidating plan and it's \$400 an
18 hour.

19 Q And you've been the CFO since December of 2006 of
20 Neighbors Health, correct?

21 A 2016.

22 Q I'm sorry, excuse me, 2016.

23 A Yeah.

24 Q And you assisted in drafting and preparing the plan and
25 disclosure statement?

1 A Correct.

2 Q And did you do any investigation about any of the D&O
3 claims that are described or alluded to in the plan and
4 disclosure statement?

5 A No.

6 Q Has anyone made an allegation against you as an officer
7 of the Debtors for a D&O claim?

8 A No.

9 Q And you understand, as the liquidating trustee, you will
10 be a fiduciary to that trust?

11 A I do.

12 Q And you will also be in control of the business records
13 of the Debtor?

14 A Yes.

15 Q And you would agree that you would not destroy or
16 otherwise alter the business records of the Debtor?

17 A I agree, yes.

18 Q And are you aware of whether any person has altered or
19 otherwise destroyed any of the business records of the
20 Debtors?

21 A Not that I'm aware of.

22 Q Have you conducted any investigation as to any potential
23 D&O claim against any of the other directors or officers?

24 A No.

25 Q You mentioned Read King in your testimony. Do you

1 believe that the Debtors have a claim against Read King?

2 A I'm not aware of one.

3 Q Do you know if such a claim has been investigated?

4 A I'm not aware of that.

5 Q Do you have any relationship or have you ever worked with
6 Mr. Shapiro, who is going to be trustee for the unsecured
7 creditors trust?

8 A No.

9 MR. JUDD: No further questions, Your Honor.

10 THE COURT: Thank you. Any further questions?

11 MR. ENGLISH: Not from the Debtors, Your Honor.

12 THE COURT: Thank you, Ms. Axton.

13 THE WITNESS: Thank you.

14 (Witness steps down.)

15 THE COURT: Mr. English?

16 MR. ENGLISH: Your Honor, the Debtors rest at this
17 time.

18 THE COURT: All right. Does any proponent of the
19 plan have any witnesses they wish to introduce or any other
20 evidence?

21 MR. WARNER: If I may, Your Honor, one moment.

22 THE COURT: And I mean that with a small "p" not a
23 capital "P." Anyone in favor of the plan.

24 (Brief pause.)

25 MR. WARNER: Nothing, Your Honor. Thank you.

1 THE COURT: Thank you. Does any opponent of the
2 plan have any evidence that they wish to introduce?

3 (No response.)

4 THE COURT: All right. Show the evidentiary record
5 is closed.

6 Is there anyone that, as things stand now, opposes
7 plan confirmation that wishes to make an argument against
8 confirming?

9 MR. JUDD: Your Honor, we've opposed for the reasons
10 stated on the record. I understand Your Honor has overruled
11 our objection, our second objection but just to preserve that.

12 THE COURT: But sustain the first one, right?

13 MR. JUDD: Correct.

14 THE COURT: So assuming that you've preserved your
15 objection to my ruling for any appellate purposes, do you have
16 any other thing you want to argue that says we shouldn't
17 confirm?

18 MR. JUDD: Only with one clarification -- I believe
19 this was resolved earlier -- that there is actually no
20 discharge of this Debtor.

21 THE COURT: I don't think there is in the plan.

22 MR. JUDD: I don't either. But there was a
23 reference to it but I feel comfortable that here today there's
24 been no description -- there's not a discharge.

25 THE COURT: There was a reference to it by Mr. Alam,

1 right? But I don't think that the Debtors referred to a
2 discharge. Is there a discharge?

3 MR. JUDD: There is a reference to a discharge in
4 the plan but it's related to the Court's jurisdiction.

5 THE COURT: I think that there was a -- there's a
6 discharge of certain claims against certain individuals but I
7 don't think there is a discharge of the Debtors in the plan.
8 If there is I would like to know if there is a discharge of
9 the Debtors in the plan.

10 MR. ENGLISH: No, you're interpreting it correctly,
11 Your Honor. I think the section that Mr. Judd is referring to
12 is in the retention of jurisdiction section which is Article
13 13, Number 21. It says: The Court has jurisdiction to hear
14 and determine all disputes involving the existence, nature or
15 scope of the Debtors' discharge.

16 So if there is a dispute about whether there is one
17 or there isn't one, you, under this section, retain
18 jurisdiction to hear that.

19 THE COURT: I find as a matter of law that this is a
20 liquidating plan and that ordinarily liquidating plans do not
21 contain discharges of Debtors. This one contains no provision
22 for a discharge of the Debtor.

23 There may be other individuals who, as a consequence
24 of mutual releases, involuntarily releases -- or even
25 involuntarily releases, receive discharges. And to that

1 extent that provision will apply to our interpretation and
2 application of those but there is no discharge of the Debtors.

3 MR. JUDD: Thank you, Your Honor.

4 THE COURT: Thank you. And with that I just -- I
5 want a clean record so I need to figure out where we're going.

6 You're preserving your appellate record to the one
7 matter that I've ruled you on. Any other objections to
8 confirmation or do you agree that other than that issue it
9 ought to be confirmed?

10 MR. JUDD: With the stipulation that we've opted out
11 of the third-party releases we have no further objections.

12 THE COURT: Thank you. All right. So I think the
13 plan does meet all the requirements of 1129(a) and has the
14 overwhelming support of the creditors. The releases that are
15 in the plan are appropriate. The evidence is overwhelmingly
16 in support of the plan.

17 I regret that we have one individual that I think
18 really just didn't understand what this plan did, Mr. Alam.
19 And I feel like I may have -- I know he picked up on this.
20 Maybe I put him on the spot more than I should've. I was
21 trying to deal with his concerns right up front so that I
22 could and I'm not sure that came across to him in the
23 appropriate way.

24 For any appellate record he is not in the courtroom
25 and was not here when witnesses were on the stand in order to

1 cross-examine them and that is why there was no cross-
2 examination by him.

3 He was not asked to leave by me and I don't think by
4 anyone else and was free to stay in the courtroom but chose to
5 leave and he was also free to leave. I have no problem with
6 that.

7 But I'm overruling any objection that he made. It
8 is not supported by anything in the evidentiary record.

9 Most of his objection goes to whether a bankruptcy
10 is appropriate and I find in this case a bankruptcy is wholly
11 appropriate in order to try and recover something for the
12 unsecured creditors on an equal basis. And this has the
13 overwhelming support of those creditors, I believe over 98
14 percent in dollar amount have supported it.

15 There was some testimony that the bank controlled
16 about 40 percent of that amount but they only voted about \$10
17 million, I think. So they only voted about 14 percent of that
18 amount, I think, in terms of the voting tab.

19 Am I mistaken about that?

20 MR. TASHMAN: I think that map may be off, Your
21 Honor. I do think we're actually a higher portion of the
22 voting component of Class 4. I don't have the chart in front
23 of me.

24 THE COURT: When I looked at the tabulation itself,
25 and normally would this actually affect the outcome at all,

1 but --

2 MR. TASHMAN: It doesn't, Your Honor. I just, for
3 the Record --

4 THE COURT: Well, let me just tell you what I'm
5 looking at so that we can figure it out.

6 I'm looking at ECF 22 and there is a list of the
7 unsecured claims who voted. And Key voted 10.6 million.

8 MR. TASHMAN: But, Your Honor, Key is one of eight
9 lenders, so.

10 THE COURT: Right, I know that, but you were the
11 lead administrative lender, right?

12 MR. TASHMAN: Correct. But the voting was -- that
13 was Key voting its particular claim, not the claim of the
14 other seven lenders in the group, okay? Just to be clear.

15 THE COURT: No, I got that.

16 MR. TASHMAN: Okay.

17 THE COURT: But the other lenders, in terms of --
18 they weren't active in terms of the management of the claim.

19 MR. TASHMAN: They were certainly aware of the case
20 and independently voted their own claims.

21 THE COURT: Oh, absolutely, right. Okay.

22 I'm confirming under 1129(a). I know that we had a
23 number of announcements at the beginning of the hearing about
24 what are relatively minor changes to the confirmation order.
25 Is it best to try and do those right now or to come back this

1 afternoon at 2:00 or 2:30 and get them done then? What do you
2 all want to do? Or do you just want to upload an order?

3 I'm only concerned about you have a number of people
4 that have to sign off on it so it may be better to do it in
5 open court. But I'll leave that up to you all as to how you
6 want to do it.

7 MR. HIGGINS: Your Honor, I think we've got most of
8 them, most of the language already incorporated.

9 THE COURT: Okay.

10 MR. HIGGINS: And so we probably could just either
11 upload it or tender it to you and then add the additional
12 comments that we made and agreed to on the record.

13 THE COURT: That's fine with me. Can you email it
14 to Isgur_USB@TXS.USCOURTS.Gov?

15 MR. HIGGINS: Right, right.

16 THE COURT: In Word version.

17 MS. MINSHEW: Your Honor, Christie Minshew. I'm one
18 of the only --

19 THE COURT: I'm sorry but I can't hear you back
20 there without the microphones.

21 MS. MINSHEW: The other attorneys for the directors
22 and officers asked me to hold back. I would just like to see
23 it before it's submitted and you sign it.

24 THE COURT: What's going to happen is they're going
25 to email and then we're going to put it on the screen and

1 we're going to go through it.

2 MS. MINSHEW: Okay.

3 THE COURT: So why don't you stay near a mic if you
4 want to.

5 (Brief pause.)

6 THE COURT: So for anybody that didn't understand
7 that sort of shorthand, what I'm doing is I've got a special
8 website or email account just for uploading proposed orders.
9 This is going to get emailed to that. I'm then going to put
10 the proposed order up on the computer monitor as well as on
11 the internet so that people can see it.

12 (Brief pause.)

13 THE COURT: All right. I have the order up on the
14 screen and it's also on the internet. Is this redlined at
15 all?

16 MS. GRAHAM: This current writing, Your Honor, is
17 not redlined. I can redline it to the file.

18 MR. HIGGINS: This one -- well, let's try it this
19 way, Your Honor.

20 The first insert I think we need to add is that Mr.
21 Alam is deemed to have opted out. So that would be the first
22 addition.

23 THE COURT: And where is that?

24 MR. HIGGINS: It's not in here.

25 THE COURT: No, but where do you want to add it?

1 MR. HIGGINS: I don't have any particular place. At
2 the very end. At the very end would be fine, Your Honor. It
3 would be paragraph 33.

4 (Brief pause.)

5 THE COURT: Does that work?

6 MR. HIGGINS: It does, Your Honor.

7 THE COURT: All right. What do you have next?

8 MR. HIGGINS: Next would be Century Square, which is
9 in paragraph 32, is the language that we have agreed to and is
10 identical to what we had shown in the chart.

11 THE COURT: Any objection to 32?

12 (No response.)

13 THE COURT: All right.

14 MR. HIGGINS: Moving up, paragraph 31, Your Honor.
15 It resolves the taxing authority, ad valorem taxing authority
16 claim.

17 THE COURT: All right.

18 MR. HIGGINS: Your Honor, Ms. Graham just emailed to
19 you the chart. And just to save time, if you could copy the
20 Infinity proposed language and then we'll have to add a couple
21 of inserts that we discussed previously.

22 THE COURT: And will that be a new paragraph?

23 MR. HIGGINS: It will be, Your Honor.

24 THE COURT: Okay.

25 MR. HIGGINS: At page 2, bottom of page 2 in the

1 chart.

2 THE COURT: Right. Where do you want to put it over
3 here in the order?

4 MR. HIGGINS: Again at the end, Your Honor.

5 (Brief pause.)

6 MR. HIGGINS: I think you would probably want to say
7 Infinity and certain directors and officers. It really
8 addresses both of their objection.

9 THE COURT: Like that?

10 MR. HIGGINS: That's fine, Your Honor.

11 THE COURT: And the language that we're going to
12 then change that you want me to copy that.

13 (Brief pause.)

14 MR. HIGGINS: We've got a --

15 THE COURT: And what's the additional language?

16 MR. HIGGINS: Your Honor, I don't think that's the
17 correct cut. Let's see. What goes -- we inserted after
18 "losses." I think something got added. Keep going. The last
19 sentence, Your Honor, is not part of the agreed resolution.

20 THE COURT: I'm sorry, I'm not hearing what you're
21 telling me.

22 MR. HIGGINS: I'm sorry, Your Honor.

23 THE COURT: Just feel free to dictate to me what I'm
24 supposed --

25 MR. HIGGINS: The "notwithstanding anything to the

1 contrary."

2 THE COURT: Yeah.

3 MR. HIGGINS: That comes out. That comes out.
4 That's not the language we agreed to, Your Honor.

5 THE COURT: So I'm serious, I want you to dictate
6 precisely what you want me to do.

7 MR. HIGGINS: Beginning with the word
8 "notwithstanding."

9 THE COURT: Yes.

10 MR. HIGGINS: Eliminate that to the end of the
11 paragraph. And then go back to words "Debtors designated as
12 insureds under the D&O policies --"

13 THE COURT: Okay.

14 MR. HIGGINS: "-- or Infinity's --" right, you've
15 already added that. "-- to seek and receive coverage for
16 losses or proceeds," right there.

17 THE COURT: So who is Infinity's counsel; are they
18 here?

19 MS. MINSHEW: No, Your Honor, he left. I represent
20 Dr. Dharmesh Patel as part of the Defendants.

21 THE COURT: Does the language in the chart include
22 the language you had me cut out? And I want to be sure that
23 the deal that you announced is in here.

24 MR. HIGGINS: No it doesn't, Your Honor.

25 THE COURT: The notwithstanding language came right

1 out of the table.

2 MR. HIGGINS: That's an old chart.

3 THE COURT: Does that mean I got emailed the wrong
4 chart?

5 MR. HIGGINS: This is the language I agreed to.

6 THE COURT: The language I was handed up --

7 MR. HIGGINS: -- with Mr. Probus.

8 THE COURT: The language that was handed up to me
9 for the new chart and the language I was emailed included that
10 notwithstanding language.

11 MR. HIGGINS: We agreed to a different sentence,
12 Your Honor, and not that. It's going to say the same thing.

13 THE COURT: I'm pretty adamant that just want to be
14 sure we all know where that came from. So --

15 MR. HIGGINS: Yeah. And then you could add at the
16 end of this.

17 THE COURT: Okay.

18 MR. HIGGINS: "This confirmation order does not
19 determine or resolve Infinity's proof of claim or litigation
20 claims."

21 THE COURT: All right.

22 MR. HIGGINS: "Those claims will be determined in
23 the litigation and/or any objection to Infinity's proof of
24 claim."

25 THE COURT: Okay.

1 MR. WARNER: Your Honor, I have a suggested change
2 from the language that reads, "-- of the unsecured creditors
3 trust to oppose in any fashion any such efforts by the former
4 officers --," it should be "-- or directors --" not and "of
5 the Debtors or Infinity." Because we're giving Infinity the
6 right above.

7 THE COURT: All right. What do we have next?

8 MR. HIGGINS: I'm trying to make sure the next one
9 is already included, Your Honor. One second.

10 If you would just, so everybody could see it,
11 paragraph 30, Your Honor. This is the agreed-upon language
12 that was agreed to with Mr. Johnson and Mr. Munisteri and
13 Jarrod Martin.

14 THE COURT: Okay.

15 UNIDENTIFIED SPEAKER: And (indiscernible).

16 MR. HIGGINS: Yes. All right. I think next we
17 probably need to include their jurisdiction section which is
18 page 3 of the chart.

19 THE COURT: And where do you want to put that?

20 MR. HIGGINS: I think again Your Honor it's probably
21 simpler just to put it at the end. And it's the italicized
22 language that begins on page 3 of the left-hand side under
23 jurisdiction, "-- nothing in the amended plan or confirmation
24 order" paragraph.

25 (Brief pause.)

1 MR. HIGGINS: Then we agreed to insert --

2 THE COURT: I think the "if any's" have now been put
3 in there.

4 MR. HIGGINS: You've got them both, Your Honor.

5 THE COURT: There's two "if any's" that were in the
6 chart that was emailed to me.

7 MR. HIGGINS: Ms. Graham was making the changed.

8 MR. WARNER: Your Honor, should the language be "A
9 waiver or expansion"?

10 MS. MINSHEW: Your Honor, I think that while
11 everybody was here we all agreed that it's just the right to a
12 jury trial if any.

13 THE COURT: I suggested the language you're talking
14 about but everybody agreed to the "if any" language.

15 MR. HIGGINS: You're the Court.

16 THE COURT: I'm going to leave it like it is.

17 MR. HIGGINS: I think that takes us to Mr. Phipps
18 for the Phipps, Inc. objection, Your Honor.

19 THE COURT: And that's a new one that we haven't
20 dealt with yet in here, right?

21 MR. HIGGINS: Correct, Your Honor.

22 THE COURT: Do you want to put that before the
23 jurisdictional thing?

24 MR. HIGGINS: That's fine, Your Honor. And it's
25 Gerald H. Phipps, Inc.

1 THE COURT: Correct.

2 (Brief pause.)

3 THE COURT: And I don't know that we have language
4 on that, right?

5 MR. HIGGINS: We do not, Your Honor. We can sort of
6 start. I was trying to get notes but just something to the
7 effect that if Phipps asserts a claim over which the Debtor
8 has only bare legal title, such claims are preserved and I
9 think we could sort of start --

10 THE COURT: Let me take a stab at it.

11 MR. HIGGINS: I'm sorry, Your Honor.

12 (Brief pause.)

13 THE COURT: Is it the unsecured creditors trust?

14 MR. HIGGINS: Yes.

15 (Brief pause.)

16 THE COURT: I'm making this up.

17 MR. HIGGINS: Yeah. Your Honor, I think we would
18 also need to add a reservation of rights on behalf of the
19 Debtor and the unsecured creditors to oppose any such relief.

20 THE COURT: Well, you can not oppose it on the
21 grounds that you have bare legal title.

22 MR. WARNER: Right. This order does not determine
23 whether Phipps has bare legal title in anything.

24 MR. HIGGINS: Or we could -- how about this, Your
25 Honor. If Gerald Phipps --

1 (Brief pause.)

2 MR. HIGGINS: I would request that the Debtors be
3 added, Your Honor.

4 MR. JUDD: The Debtors won't exist.

5 MR. HIGGINS: Well, the Debtors have funds that are
6 going to be collected accounts receivable and you sent a draft
7 complaint which names the Debtors.

8 MS. MINSHEW: And I would suggest the old officers
9 and directors as well.

10 MR. JUDD: But the named party in the complaint is
11 going to be Mark Shapiro on behalf of the Debtor pursuant to
12 the terms of the plan.

13 MR. WARNER: That's not necessarily correct, Your
14 Honor. There is a potential litigation by Phipps could assert
15 that it's going after something that the estate only has bare
16 legal title in. The Debtor has the right to contest that as
17 does the trust.

18 (Brief pause.)

19 THE COURT: How is that?

20 MR. HIGGINS: That works, Your Honor.

21 MS. MINSHEW: Entity or person.

22 THE COURT: Pardon me?

23 MS. MINSHEW: Entity or person.

24 THE COURT: I think under the Code person includes
25 entity and entity does include person so I think I can change

1 it to person and get there.

2 MS. MINSHEW: Thank you.

3 THE COURT: Does that work?

4 MR. JUDD: I just want to make sure that we're not
5 -- there's no -- we can go to -- we're going to file a lawsuit
6 in State Court in the next couple of weeks after confirmation.
7 That's not a violation or there's no injunction enjoining us
8 from filing that lawsuit.

9 MR. HIGGINS: We're reserving all rights, Your
10 Honor.

11 MR. WARNER: Yes. This is not the time and place to
12 ask for an advisory opinion of whether I'm violating the stay,
13 or the injunction or anything else. If he thinks he has bare
14 legal title and it's -- that's all they're going after then
15 it'll be addressed at that time.

16 MR. JUDD: No, that's not correct, Your Honor. The
17 plan provides that any person seeking -- filing claims against
18 non-debtor parties, there's no injunction to that, we've opted
19 out. And the Debtor can be included in those lawsuits in its
20 nominal capacity. That's specifically a term of the plan and
21 we can file that lawsuit.

22 THE COURT: Right. I do think there may be a
23 difference between doing it before the effective date and
24 after the effective date.

25 MR. JUDD: Well, I'm saying effective date.

1 MR. ENGLISH: Your Honor, I only rose to confirm
2 what you said about the definition of entity and person. They
3 are cross-referenced. Entity does include person.

4 THE COURT: Person included entity?

5 MR. ENGLISH: It does.

6 THE COURT: They each include each other?

7 MR. ENGLISH: They do. Entity includes person.

8 MR. JUDD: One excludes the government, I think.

9 THE COURT: And does person include entity?

10 MR. ENGLISH: Person includes individual
11 partnerships, corporation; does not include a governmental
12 unit.

13 THE COURT: Okay. So we're okay with this language
14 then, just to say. And I think this preserves everybody's
15 rights. I don't want to authorize anything or not authorize
16 anything other than people can argue about it. But since
17 there's no injunction -- there's no discharge here after the
18 effective date, you know, people can fight over rights but
19 these are now going to be contractual rights, right?

20 MR. HIGGINS: Understood, Your Honor.

21 Next, Your Honor, is the informal objection of the
22 taxing authority. Just so the Court can see it and the
23 parties in the courtroom, paragraph 28 already includes the
24 agreed-upon language.

25 Yes. The taxing authority is 28 and the Comptroller

1 is 29, Your Honor.

2 Oh, wait a minute. Are they backwards?

3 Your Honor, the point is that the language that has
4 been agreed upon was included in the confirmation order by
5 both the taxing authorities and the Texas Comptroller.

6 THE COURT: Thank you.

7 MR. WARNER: Your Honor, could you go back to the
8 Phipps language that we were just working through, please?

9 I just wanted to make sure that the language was
10 beneficial interest in funds as opposed to a claim. That's
11 fine. Thank you, Your Honor.

12 MR. JUDD: Well, let -- I don't think this then --
13 if he's distinguishing on funds compared to claims, I think
14 the Court sustained our objection as to the plan does not
15 enjoin us pursuing the claims against the non-debtor parties
16 or the D&O claims -- the D&O claims. Oh, back up.

17 THE COURT: And my understanding was that the
18 dispute was who can pursue claims arising out of a trust fund
19 issue.

20 MR. JUDD: Correct.

21 THE COURT: So it's funds. It's claims to funds
22 that are trust funds; it's not claims generally, right?

23 MR. JUDD: Correct. Well, if it's a -- it's a claim
24 that's being brought against the directors and officers for
25 violation of misappropriation of the funds.

1 MR. HIGGINS: That could be a derivative claim owned
2 by the Debtor, Your Honor.

3 MR. JUDD: No. The trust fund statute is very
4 specific on who the beneficiaries are. The Debtor is not a
5 beneficiary, it's clear. The Debtor could not sue its own
6 directors and officers for transfer of those funds.

7 So to the extent that -- and to be clear, we all
8 understand after the effective date that Phipps is going to
9 file the lawsuit in State Court against the officers and
10 directors and the Debtor in its nominal capacity only.

11 THE COURT: So I want to look back at the language
12 we were looking at initially in the plan because that's where
13 this came up. You were concerned that there was language in
14 the plan that was transferring to the trust rights that were
15 broader than you thought should be transferred. So take me to
16 that language again. I think we were looking at definitions.

17 MR. JUDD: So on page 4 of the plan, paragraph 30,
18 there's the general statement of, "D&O claims means any and
19 all rights against Debtors' current and former directors and
20 officers." And it includes the statement "misuse of company
21 funds." That's a pretty broad statement which could include
22 misuse of company funds in violation of the Texas Trust Fund
23 Act.

24 MR. WARNER: Your Honor, the trust fund issue is
25 essentially almost an in rem issue. They have a right to

1 chase the funds if they were misused. That doesn't mean that
2 all causes of action for misuse they get a pass on and they
3 can pursue.

4 THE COURT: Under the Texas Trust Fund statute, if
5 the funds existed and were diverted by a director, is that
6 director liable to the beneficial owner of the funds?

7 I think that they could sue that director but only
8 if the funds on the date of transfer were solely for their
9 benefit and otherwise they would have to come back to the
10 estate.

11 So if everybody agrees that's the right statement of
12 law I think I can add something here that will fix the
13 problem. Let's see if it works.

14 MR. HIGGINS: I agree that that's a correct
15 statement of the law, Your Honor.

16 (Brief pause.)

17 THE COURT: Does that work?

18 MR. JUDD: That's correct. Under the statute we can
19 get a judgment. It's almost strict liability against any
20 officer and director regardless. That's correct.

21 MR. HIGGINS: You need to add that if they assert
22 such a claim than any person with standing may contest whether
23 the unsecured creditors trust has only bear legal title in all
24 other defenses. There's certainly no stipulation and nobody
25 believes that one, any officer or director received the funds

1 or whether or not they were even trust funds.

2 MS. MINSHEW: Your Honor, I believe Chapter 162 it
3 says intentional diversion instead of wrongful. It's
4 intentional.

5 THE COURT: Well, the case law though holds that the
6 intentional diversion has to be wrongful. Because, as you'll
7 recall, there are the cases where you have trust funds from
8 Project A and the Debtor then uses those trust funds to
9 complete Project B. And I believe that the holdings from the
10 Fifth Circuit are that there is no liability so long as you
11 use them for non-wrongful purposes. This was intended to deal
12 with diversion not for personal use. I do think under the
13 case law it has to be wrongful.

14 MR. JUDD: I believe, Your Honor, I don't think
15 that's an accurate reading of the case law. I believe the
16 case law -- you're talking about the case law for non-
17 dischargeability claims against officers and directors.

18 And what the Fifth Circuit said, to meet the burden
19 under 523 that's the standard, if they used it for overhead or
20 if they used it for something else. But under State Law for
21 liability of the officers and directors we don't have to prove
22 that it went to Project B; all that we have to say is that it
23 was diverted.

24 MR. HIGGINS: We disagree with that proposition for
25 the record, Your Honor.

1 MS. MINSHEW: We disagree as well.

2 (Brief pause.)

3 MR. HIGGINS: That's exactly what I was going to
4 suggest, Your Honor.

5 MS. MINSHEW: It's under Chapter 162 of the Texas
6 Property Code.

7 THE COURT: Well, no, it's applicable law because I
8 think there could be case law that -- I don't want to try and
9 resolve this question. So whatever it is under applicable
10 law, it has to have been something you could assert, right?
11 Does that language now work?

12 MR. HIGGINS: Do we need -- can we take out the word
13 "intentionally," Your Honor? Because you've added the
14 workable law for it's diverted funds in (indiscernible).

15 MS. MINSHEW: Wrongfully.

16 MR. JUDD: Intentional. It's under applicable law,
17 I don't --

18 THE COURT: Okay.

19 MR. WARNER: Yeah, Your Honor, diverted funds may be
20 just too narrow. It's just any person that's violated
21 applicable law and then this Court is not interpreting
22 applicable law. I mean -- leave it? Never mind. I've been
23 told to leave it.

24 THE COURT: Okay. I think there's a point at which
25 it becomes so general that we don't have any meaning to it.

1 MR. WARNER: I defer to the older gentlemen in this
2 room.

3 (Laughter.)

4 MR. HIGGINS: Unfortunately, Your Honor, that's
5 becoming true.

6 THE COURT: All right. So let me hear any
7 objections to paragraph 35.

8 MR. JUDD: Your Honor, does it make sense at the
9 first of the paragraph to provide that "Notwithstanding the
10 foregoing --" or "Notwithstanding anything provided in this
11 order --" well, no, I think you've compensated for that
12 towards the end. Okay. I'm sorry.

13 THE COURT: Okay. Are you okay with 35?

14 MR. Higgins: Yes, Your Honor.

15 THE COURT: All right. What else do we need to do
16 today?

17 MR. ENGLISH: Your Honor, I think technically that
18 motion to strike and motion to compel was also set today. I
19 don't know if we need to address it.

20 THE COURT: Are you withdrawing your motion to
21 compel?

22 MR. HIGGINS: Withdrawn, Your Honor.

23 THE COURT: We will show that ECF Number 827 is
24 withdrawn. Anything else set for today?

25 MR. ENGLISH: No, Your Honor.

1 THE COURT: Okay. So I am going to print and sign
2 this order but we need to attach the plan to it.

3 MR. HIGGINS: I believe it is an exhibit, is it not?

4 THE COURT: Do I have a copy -- are there any
5 attachments besides the plan that goes to this order?

6 MR. HIGGINS: One second.

7 (Brief pause.)

8 MR. HIGGINS: It's just the plan, Your Honor, as the
9 attachment and it's the second amended plan on the docket.
10 We're looking for the docket number right now.

11 THE COURT: Hold on.

12 MR. HIGGINS: 772, I believe, Your Honor.

13 (Brief pause.)

14 THE COURT: Okay. So I've got the confirmation
15 order that has been signed, followed by the first amended plan
16 which was 772. I want to make sure everybody thinks I put
17 this together right. It's what's about to get docketed.
18 Everybody okay?

19 MR. ENGLISH: We're good.

20 MR. HIGGINS: Perfect.

21 THE COURT: Mr. Castor (phonetic), they're in the
22 "P" drive in the Neighbors file and it's ready to docket.

23 What else do we need to do today?

24 MR. ENGLISH: Your Honor, the Debtors have nothing
25 further and would like to thank the Court and your staff, as

1 always, for accommodating us.

2 THE COURT: Of course. Anyone else have anything we
3 haven't taken up today?

4 MR. WARNER: The Committee thanks the Court as well.
5 Thank you so much.

6 THE COURT: All right. You all have a good weekend.
7 Thank you.

8 (Proceedings concluded at 12:14 p.m.)

9 * * * * *

10 *I certify that the foregoing is a correct transcript*
11 *to the best of my ability due to the condition of the*
12 *electronic sound recording of the proceedings in the above-*
13 *entitled matter.*

14 /S./ MARY D. HENRY

15 CERTIFIED BY THE AMERICAN ASSOCIATION OF
16 ELECTRONIC REPORTERS AND TRANSCRIBERS, CET**337
17 JUDICIAL TRANSCRIBERS OF TEXAS, LLC
18 JTT TRANSCRIPT #60381
19 DATE FILED: JUNE 6, 2019
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ENTERED
09/06/2018

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

In re:

**NEIGHBORS LEGACY HOLDINGS, INC.,
et al.,**

Debtors.¹

§
§ **Chapter 11**
§
§ **Case No. 18-33836**
§
§ **(Jointly Administered)**
§

**ORDER APPROVING DEBTORS' EMERGENCY MOTION TO REJECT
ADMINISTRATIVE SERVICES AGREEMENT**

[Relates to Doc. No. 227]

The above-referenced debtors and debtors-in-possession (collectively, the “Debtors”) filed their emergency motion (the “Motion”)² to authorize and approve the rejection of a certain Administrative Services Contract *nunc pro tunc*. 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**

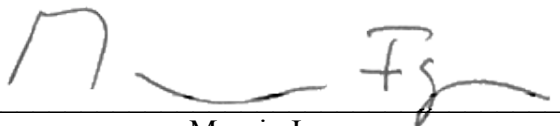
¹ Due to the large number of Debtors in these chapter 11 cases, a complete list of the Debtors and the last four digits of their tax identification numbers is not provided herein. A complete list of such information may be obtained on the website of the Debtors’ proposed claims and noticing agent at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

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



1. The Motion is granted.
2. The requirements of Bankruptcy Code section 365 and Federal Rule of Bankruptcy Procedure 6006 have been satisfied.
3. The Management and Administrative Services Agreement entered into between Neighbors Health, LLC (“NH”) and Neighbors Telehealth, LLC (“NTH”), attached as **Exhibit A** to this Order, is hereby rejected as of August 31, 2018.
4. The Debtors reserve all rights to contest any rejection or damage claims that may be asserted by NTH.
5. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.
6. Counsel for the Debtors is directed to serve a copy of this Order on the parties that received service of the Motion within three (3) business days of the entry of this Order and to file a certificate of service with the Clerk of Court.

Signed: September 06, 2018



Marvin Isgur
United States Bankruptcy Judge

Exhibit A

Administrative Services Agreement

ADMINISTRATIVE SERVICES AGREEMENT

This Administrative Services Agreement (this “Agreement”) is entered into between Neighbors Health, LLC, a Texas limited liability company (“NH”), and Neighbors Telehealth, LLC, a Texas limited liability company (the “Company”), to be effective as of the 31st day of March, 2017 (“Effective Date”).

Recitals:

WHEREAS, the Company provides health care access via electronic means of communication between patients and healthcare providers (hereafter the “Company Business”).

NOW, THEREFORE, the Company and NH, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledged, agree as follows:

1. Engagement of NH

The Company hereby engages NH to provide administrative services for the Company, subject to the terms and conditions set forth herein.

- a. NH will perform administrative services in accordance with the policies, procedures, rules and directives as adopted and amended by the Company and will answer directly to the Company.
- b. The administrative services to be delivered by NH shall include, without limitation, the Administrative Services outlined in Section 2 of this Agreement, and such additional services as shall be necessary and appropriate to provide for the operation of the Company’s business without interruption.
- c. NH shall perform its services hereunder, including the Administrative Services, in compliance with the requirements of all applicable federal, state, regional and local laws, rules, regulations and orders, including those applicable to the provision of services to patients covered by federal health care programs.

2. Administrative Services

The administrative services to be provided by NH hereunder shall be sufficient to support the Company’s ongoing business operations in all respects, including, without limitation, the following:

- a. Staffing and Human Resources. NH and its affiliates shall have the sole responsibility for hiring, firing and supervising all non-professional employees, shall administer payroll and benefits, provide necessary employee training and certification, and shall maintain personnel records in compliance with state and federal laws.

- b. Accounting. NH will supervise and manage all accounting, including tax compliance and tax return preparation, accounts payable administration, billing and collection services of the Company.
- c. Financial Planning and Forecasting. NH will create, implement and review annual budgets for the Company. NH will be responsible for taking all actions that NH deems necessary to implement the approved budget.
- d. Cash Management, Banking and Treasury. NH, as agent of the Company, will maintain bank accounts, and shall both have the right to make deposits and withdrawals from any such bank account in connection with operations of the Company. NH will not have the authority to borrow money or execute any promissory notes on Company's behalf without the consent of the Company.
- e. Administer Insurance Programs. NH will maintain policies of general liability, premises liability and any other insurance that it deems appropriate to insure NH, the Company, and NH's employees and agents against any liability resulting from NH or NH's employees' acts or omissions during the Term of this Agreement.
- f. Executive Operations Management. NH will advise the Company as to any equipment needs, maintenance or operational issues that are necessary for the continued operation of the Company. NH will be responsible for negotiating and preparing service contracts and developing managed care contracts that NH deems necessary for the operation of the Company.
- g. Marketing. NH will create, implement and administer marketing programs for the Company. NH will be responsible for taking all actions that NH deems necessary to deliver and communicate the Company's services to the community.
- h. Branding. NH, as agent of the Company, will be responsible for maintaining and implementing the name, logo, slogan and/or design scheme associated with the Company.
- i. Information Technology. NH will supervise and manage the application and utilization of computers and telecommunications equipment to store, retrieve, transmit and manipulate the Company's data.
- j. Facilities Management Oversight. NH shall have the sole responsibility of providing oversight of the Company's infrastructure, instrumentation and equipment. NH will create, implement and review the policies, procedures and requirements for properly and adequately maintaining and managing the Company Business. NH shall identify and manage appropriate vendor relationships for supplies and equipment.
- k. Policies and Procedures. NH will create, implement and review policies and procedures for the operation of the Company Business and the sound administration of the Company's facilities.

- l. Licensure. NH shall have the sole responsibility of taking all actions and performing all services that NH deems necessary to ensure that all licenses held by the Company are properly maintained in good standing.
- m. Compliance Training. NH shall have the sole responsibility of taking all actions to ensure the Company's employees are properly educated on the laws, regulations and policies that apply to their day-to-day job responsibilities. NH will be responsible for taking all actions that NH deems necessary to provide training to the Company's employees on workplace discrimination and harassment, dealings with competitors, protecting trade secrets, record management, IT and all areas of professional competence.
- n. Such other services as shall be (i) reasonably related to those specific services set forth above, or (ii) reasonably necessary, at NH's sole discretion, to support the Company's operations.

(the foregoing referred to collectively as the "Administrative Services"). The Company agrees to provide NH with access to, and/or copies of, the Company's business information sufficient to enable NH's personnel to perform the Administrative Services. NH agrees that all such information relating to the Company's business shall be treated as strictly confidential and shall not be disclosed to any person absent the Company's advance written consent except as may be necessary for NH's accounting, tax preparation and financial reporting purposes.

3. Expenses

- a. The Company shall reimburse NH's reasonable out of pocket expenses incurred in connection with the performance of NH's services under this Agreement, subject to NH's provision of appropriate documentation for such expenses.

4. Term

This Agreement shall become effective on the Effective Date and shall remain effective thereafter for as long as the Company operates the Company Business, unless (i) terminated by either Party by giving advance written notice to the non-terminating Party not less than ninety (90) days prior to the next succeeding anniversary of the Effective Date (in which case, the Agreement shall remain in full force and effect until the next succeeding anniversary of the Effective Date), or (ii) terminated by the written agreement of the Parties, or (iii) terminated for cause in accordance with Section 6 of the Business Agreement attached hereto as Exhibit A.

5. Indemnification

The Company agrees to indemnify NH, and hold NH and its officers, directors, shareholders, employees and representatives harmless from any and all claims, losses and liabilities of all descriptions arising during the Term of this Agreement and relating to (i) any claim for property damage, personal injury and/or wrongful death caused in whole or in part by any act or omission of the Company, (ii) any agreement, written or verbal, to which the Company is a party, including any agreement entered into on behalf of the Company by NH, (iii) the Company's business

liabilities, and (iv) any breach by the Company of any term of this Agreement; excluding, however, any claim, loss or liability arising as a result of (a) NH's sole negligence or (b) any breach by NH of any term of this Agreement.

6. Miscellaneous

- a. Controlling Law. The interpretation and enforcement of this Agreement shall be governed by the internal laws of the State of Texas.
- b. Confidentiality. NH shall take all reasonable efforts to maintain the confidentiality of all of the Company's confidential or proprietary business information.
- c. Business Records. The Company's business records, books of account, limited liability company records and other proprietary files shall remain at all times the property of the Company, and the Company and its Members shall have full access to all such records and files at all times.
- d. No Assignment. This Agreement and the Parties' respective rights, duties, obligations and entitlements arising hereunder, shall not be assigned except pursuant to a written agreement signed by the Company and NH.
- e. Authorization. The Company and NH represent and warrant, one to another, that the execution of this Agreement by their undersigned representative and the performance of all obligations arising hereunder have been duly authorized by all necessary corporate actions.
- f. No Third-Party Beneficiaries. There are no third parties intended to be beneficiaries of any obligation or right assumed by NH or the Company under this Agreement.
- g. HIPAA. NH and the Company have executed a business associate agreement attached hereto as Exhibit A.

[Signature Page to Follow]

SIGNED to be effective as of the Effective Date:

“NH:” NEIGHBORS HEALTH, LLC

By: 
Setul Patel
President and Chief Executive Officer

“THE COMPANY:” NEIGHBORS TELEHEALTH, LLC


By: 
Rajan Popat
Executive Medical Director

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is entered into between Neighbors Telehealth, LLC, a Texas limited liability company ("Covered Entity"), and Neighbors Health, LLC, a Texas limited liability company ("Business Associate"), to be effective as of the 31st day of March, 2017 ("Effective Date").

WHEREAS, the Covered Entity is a covered entity, as such term is defined under HIPAA, and as such is required to comply with the requirements thereof regarding the confidentiality and privacy of Protected Health Information;

WHEREAS, Business Associate has entered into an agreement with Covered Entity pursuant to which Business Associate will provide Covered Entity with administrative support; and

WHEREAS, by providing the administrative support, Business Associate shall become a business associate of Covered Entity.

NOW, THEREFORE, the Covered Entity and Business Associate, for good and valuable consideration, the receipt and sufficiency of which are duly acknowledge, agree as follows:

1. Definitions (alternative approaches)

- a. Catch-all definition. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.
- b. Business Associate. "Business Associate" shall mean Neighbors Health, LLC.
- c. Covered Entity. "Covered Entity" shall have the meaning set forth in the introductory paragraph above.
- d. Individual. "Individual" shall have the same meaning as the term "individual" in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- e. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- f. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- g. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR § 164.103.

- h. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2. Obligations and Activities of Business Associate

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
- b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- f. Business Associate agrees to provide access within five (5) business days of a written request by Covered Entity to Protected Health Information in a Designated Record Set, if any, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR § 164.524.
- g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if any, that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 within five (5) business days of a written request by Covered Entity.
- h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity within five (5) business days of a written request by Covered Entity, for purposes of determining Covered Entity's compliance with the Privacy Rule.
- i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528. In the event of a disclosure, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of

the Protected Health Information disclosed; and (iv) a brief statement of the purpose of such disclosure.

- j. Business Associate agrees to provide to Covered Entity or an Individual, within two (2) business days of a written request by Covered Entity, information collected in accordance with Section 2i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

3. Permitted Uses and Disclosures by Business Associate

- a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).
- d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with § 164.502(j)(1).

4. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with

45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

6. Term and Termination

- a. Term. The Term of this Agreement shall be effective as of the date set forth above and shall terminate upon the termination or expiration of the Administrative Services Agreement and when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.
- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
 - i. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not cure the breach or end the violation within ten (10) business days of Business Associate's receipt of notice from Covered Entity of the breach;
 - ii. Immediately terminate this Agreement and the Administrative Services Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
 - iii. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Effect of Termination.
 - i. Except as provided in Paragraph b of this Section 6, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - ii. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. In any

such event, Business Associate shall immediately extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.
- c. Survival. The respective rights and obligations of Business Associate under Section 6c of this Agreement shall survive the termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.


[Signature Page to Follow]

SIGNED to be effective as of the Effective Date:

NEIGHBORS HEALTH, LLC, Business Associate

By: 
Setul Patel
President and Chief Executive Officer

“THE COMPANY:” NEIGHBORS TELEHEALTH, LLC

By: 
Rajan Popat
Executive Medical Director

Form 205
(Revised 05/11)

Submit in duplicate to:
Secretary of State
P.O. Box 13697
Austin, TX 78711-3697
512 463-5555
FAX: 512 463-5709
Filing Fee: \$300



**Certificate of Formation
Limited Liability Company**

This space reserved for office use.

FILED
In the Office of the
Secretary of State of Texas
SEP 14 2016
Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Neighbors Telehealth, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Thomas	G.	Gruenert	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

10800 Richmond Avenue	Houston	TX	77042
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3—Governing Authority

(Select and complete either A or B and provide the name and address of each governing person.)

☒ A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

☐ B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

GOVERNING PERSON 1				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
Setul	G.	Patel		
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
12330 Bend Creek Lane	Pearland	TX	USA	77584
<i>Street or Mailing Address</i>	<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Form 205

RECEIVED

SEP 14 2016

Secretary of State

EXHIBIT C

GOVERNING PERSON 2					
NAME (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
Rajan		Popat			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>		<i>Suffix</i>	
OR					
IF ORGANIZATION					
<i>Organization Name</i>					
ADDRESS					
1010 Reinhart Avenue		Sugar Land	TX	USA	77479
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

GOVERNING PERSON 3					
NAME (Enter the name of either an individual or an organization, but not both.)					
IF INDIVIDUAL					
Sohail		Alam			
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>		<i>Suffix</i>	
OR					
IF ORGANIZATION					
<i>Organization Name</i>					
ADDRESS					
7505 Fannin Street, Suite 312		Houston	TX	USA	77054
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country</i>	<i>Zip Code</i>

Article 4 – Purpose

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

See attached Addendum A

Organizer

The name and address of the organizer:

Thomas G. Gruenert

Name

10800 Richmond Avenue

Street or Mailing Address

Houston

City

TX 77042

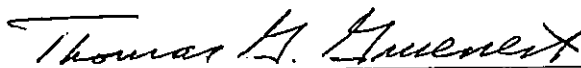
*State Zip Code***Effectiveness of Filing** (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: September 9, 2016*Signature of organizer*

Thomas G. Gruenert

Printed or typed name of organizer

ADDENDUM
TO
CERTIFICATE OF FORMATION
LIMITED LIABILITY COMPANY

ARTICLE 5

The members of the Company shall have the power, on behalf of the Company, to indemnify persons for whom indemnification is permitted by Sections 8.101 et. seq. of the Texas Business Organizations Code (the "Code"), to the fullest extent permissible under the Code, and may purchase such liability, indemnification and/or other similar insurance as the members from time to time shall deem necessary or appropriate, in their discretion.

The Company may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a member, officer, employee or agent of the Company or who is or was serving at the request of the Company as a director, member, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, limited liability company, partnership, joint venture, sole proprietorship, trust employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Company or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Company would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article 5 shall be cumulative of any other power of the members and/or any rights to which such a person or entity may be entitled by law, the Certificate of Formation and/or regulations of the Company, contract, other agreement, vote or otherwise.

ARTICLE 6

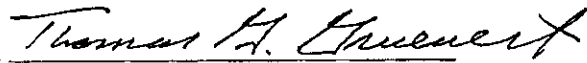
Pursuant to Article 1302-7.06, Texas Miscellaneous Corporation Laws Act, as amended, no member of the company shall be liable, personally or otherwise, in any way to the company or its members for monetary damages caused in any way by an act or omission occurring in the members' capacity as the only members of the company, except as otherwise expressly provided by Article 1302-7.06.B, as amended.

ARTICLE 7


Any action required to be taken at any annual or special meeting of the members of the Company and/or any action that may be taken at any annual or special meeting of the members of the Company, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by a member or members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all members entitled to

vote on the action were present and voted. Such action shall be taken in accordance with any applicable provisions of the Code.

IN WITNESS WHEREOF, I have hereunto set my hand, this 9th day of September, 2016.

A handwritten signature in cursive script, reading "Thomas G. Gruenert". The signature is written in dark ink and is positioned above a horizontal line.

Thomas G. Gruenert

Form 509 (Revised 06/15) Submit with relevant filing instrument. Filing Fee: None	 Consent to Use of Similar Name	
---	--	--

(1) Neighbors Telehealth Services, LLC

Name and file number of the entity or individual who holds the existing name on file with the secretary of state

consents to the use of

(2) Neighbors Telehealth, LLC

Proposed name

as the name of a filing entity or foreign filing entity in Texas for the purpose of submitting a filing instrument to the secretary of state.

(3) The undersigned certifies to being authorized by the holder of the existing name to give this consent. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument.

Date:

9/14/16

By: Neighbors Health, LLC, its Sole Member


Signature of Authorized Person

Setul G. Patel

Name of Authorized Person (type or print)

President and Chief Executive Officer

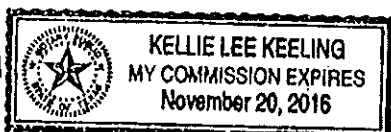
Title of Authorized Person, if any (type or print)

State of Texas

County of Harris

This instrument was acknowledged before me on 14th by September
(date) (name of authorized person)

(Seal)




Notary Public's signature

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Carlos H. Cascos
Secretary of State

Office of the Secretary of State

May 26, 2016

Capitol Services Inc
P O Box 1831
Austin, TX 78767 USA

RE: Neighbors Telehealth Services, LLC
File Number: 802466372

It has been our pleasure to file the certificate of formation and issue the enclosed certificate of filing evidencing the existence of the newly created domestic limited liability company (llc).

Unless exempted, the entity formed is subject to state tax laws, including franchise tax laws. Shortly, the Comptroller of Public Accounts will be contacting the entity at its registered office for information that will assist the Comptroller in setting up the franchise tax account for the entity. Information about franchise tax, and contact information for the Comptroller's office, is available on their web site at <http://window.state.tx.us/taxinfo/franchise/index.html>.

The entity formed does not file annual reports with the Secretary of State. Documents will be filed with the Secretary of State if the entity needs to amend one of the provisions in its certificate of formation. It is important for the entity to continuously maintain a registered agent and office in Texas. Failure to maintain an agent or office or file a change to the information in Texas may result in the involuntary termination of the entity.

If we can be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure

EXHIBIT D

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: William Johnson

Fax: (512) 463-5709
TID: 10285

Dial: 7-1-1 for Relay Services
Document: 672690430002

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Carlos H. Cascos
Secretary of State

Office of the Secretary of State

CERTIFICATE OF FILING OF

Neighbors Telehealth Services, LLC
File Number: 802466372

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Formation for the above named Domestic Limited Liability Company (LLC) has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

The issuance of this certificate does not authorize the use of a name in this state in violation of the rights of another under the federal Trademark Act of 1946, the Texas trademark law, the Assumed Business or Professional Name Act, or the common law.

Dated: 05/25/2016

Effective: 05/25/2016



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.

Carlos H. Cascos
Secretary of State

Form 205
(Revised 05/11)

Submit in duplicate to:
 Secretary of State
 P.O. Box 13697
 Austin, TX 78711-3697
 512 463-5555
 FAX: 512 463-5709
Filing Fee: \$300



Certificate of Formation
Limited Liability Company

This space reserved for office use.

FILED
 In the Office of the
 Secretary of State of Texas
MAY 25 2016
Corporations Section

Article 1 – Entity Name and Type

The filing entity being formed is a limited liability company. The name of the entity is:

Neighbors Telehealth Services, LLC

The name must contain the words "limited liability company," "limited company," or an abbreviation of one of these phrases.

Article 2 – Registered Agent and Registered Office

(See instructions. Select and complete either A or B and complete C.)

☐ A. The initial registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The initial registered agent is an individual resident of the state whose name is set forth below:

Thomas	G.	Gruenert	
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>

C. The business address of the registered agent and the registered office address is:

11200 Broadway Street, Suite 2344	Pearland	TX	77584
<i>Street Address</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

Article 3—Governing Authority

(Select and complete either A or B and provide the name and address of each governing person.)

☒ A. The limited liability company will have managers. The name and address of each initial manager are set forth below.

☐ B. The limited liability company will not have managers. The company will be governed by its members, and the name and address of each initial member are set forth below.

GOVERNING PERSON 1				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
First Name	M.I.	Last Name	Suffix	
OR				
IF ORGANIZATION				
Neighbors Health, LLC				
Organization Name				
ADDRESS				
11200 Broadway Street, Suite 2320	Pearland	TX	USA	77584
Street or Mailing Address	City	State	Country	Zip Code

GOVERNING PERSON 2				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

GOVERNING PERSON 3				
NAME (Enter the name of either an individual or an organization, but not both.)				
IF INDIVIDUAL				
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>	<i>Suffix</i>	
OR				
IF ORGANIZATION				
<i>Organization Name</i>				
ADDRESS				
<i>Street or Mailing Address</i>		<i>City</i>	<i>State</i>	<i>Country Zip Code</i>

Article 4 – Purpose

The purpose for which the company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the Texas Business Organizations Code.

Supplemental Provisions/Information

Text Area: [The attached addendum, if any, is incorporated herein by reference.]

See attached addendum.

Organizer

The name and address of the organizer:

Thomas G. Gruenert

Name

11200 Broadway Street, Suite 2344

Pearland

TX 77584

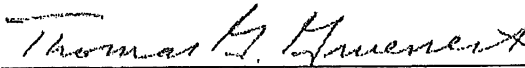
*Street or Mailing Address**City**State**Zip Code***Effectiveness of Filing** (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of the future event or fact, other than the passage of time. The 90th day after the date of signing is: _____

The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned affirms that the person designated as registered agent has consented to the appointment. The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized to execute the filing instrument.

Date: May 24, 2016

Signature of organizer

Thomas G. Gruenert

Printed or typed name of organizer

ADDENDUM
TO
CERTIFICATE OF FORMATION
LIMITED LIABILITY COMPANY

ARTICLE 5

The members of the Company shall have the power, on behalf of the Company, to indemnify persons for whom indemnification is permitted by Sections 8.101 et. seq. of the Texas Business Organizations Code (the "Code"), to the fullest extent permissible under the Code, and may purchase such liability, indemnification and/or other similar insurance as the members from time to time shall deem necessary or appropriate, in their discretion.

The Company may purchase and maintain liability, indemnification and/or other similar insurance on behalf of itself, and/or for any person who is or was a member, officer, employee or agent of the Company or who is or was serving at the request of the Company as a director, member, officer, trustee, employee, agent or similar functionary of another foreign or domestic corporation, limited liability company, partnership, joint venture, sole proprietorship, trust employee benefit plan or other enterprise, against any liability asserted against and/or incurred by the Company or person serving in such a capacity or arising out of his/her/its status as such a person or entity, whether or not the Company would otherwise have the power to indemnify such person against that liability.

The power to indemnify and/or obtain insurance provided in this Article 5 shall be cumulative of any other power of the members and/or any rights to which such a person or entity may be entitled by law, the Certificate of Formation and/or regulations of the Company, contract, other agreement, vote or otherwise.

ARTICLE 6


Pursuant to Article 1302-7.06, Texas Miscellaneous Corporation Laws Act, as amended, no member of the company shall be liable, personally or otherwise, in any way to the company or its members for monetary damages caused in any way by an act or omission occurring in the members' capacity as the only members of the company, except as otherwise expressly provided by Article 1302-7.06.B, as amended.

ARTICLE 7

Any action required to be taken at any annual or special meeting of the members of the Company and/or any action that may be taken at any annual or special meeting of the members of the Company, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by a member or members having not less than the minimum number of votes that would be necessary to take such action at a meeting at which all members entitled to

vote on the action were present and voted. Such action shall be taken in accordance with any applicable provisions of the Code.

IN WITNESS WHEREOF, I have hereunto set my hand, this 24th day of May, 2016.


Thomas G. Gruchert

**OPERATING AGREEMENT
OF
NEIGHBORS TELEHEALTH SERVICES, LLC**

A Texas Limited Liability Company

This Operating Agreement (this "*Agreement*"), dated to be effective as of May 26, 2016, is adopted, executed and agreed to, for good and valuable consideration, by the sole Member (as defined below) of NEIGHBORS TELEHEALTH SERVICES, LLC, a Texas limited liability company.

**ARTICLE 1
DEFINITIONS**

1.01 *Definitions.* As used in this Agreement, the following terms have the respective meanings set forth below or set forth in the provision following such term:

Adjusted Capital Account – a Capital Account determined and maintained for each Member throughout the term of this Agreement, the balance of which shall be equal to such Member's Capital Account balance, modified as follows:

- (a) increased by the amount, if any, of such Member's share of the Minimum Gain of the Company as determined under Treasury Regulation Section 1.704-2(g)(1);
- (b) increased by the amount, if any, of such Member's share of the Minimum Gain attributable to Member Nonrecourse Debt of the Company pursuant to Treasury Regulation Section 1.704-2(i)(5);
- (c) increased by the amount, if any, of such Member's share of the Member's Modified 752 Share of Recourse Debt;
- (d) increased by the amount, if any, that such Member is treated as being obligated to contribute subsequently to the capital of the Company as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(c);
- (e) decreased by the amount, if any, of cash that is reasonably expected to be distributed to such Member, but only to the extent that the amount thereof exceeds any offsetting increase in such Member's Capital Account that is reasonably expected to occur during (or prior to) the tax year during which such distributions are reasonably expected to be made as determined under Treasury Regulation Section 1.704-1(b)(2)(ii)(d)(6); and

- (f) decreased by the amount, if any, of loss and deduction that is reasonably expected to be allocated to such Member pursuant to Code Section 704(e)(2) or 706(d), Treasury Regulation Section 1.751-1(b)(2)(ii) or Treasury Regulation Section 1.704-1(b)(2)(iv)(k).

Affiliate – (a) with respect to any Person who is a natural person, (i) each entity that such Person Controls, and (ii) each member of such Person's immediate family; and (b) with respect to any person that is an entity, (i) each entity that such person Controls, (ii) each person that Controls such Person, and (iii) each entity that is under common Control with such Person.

Arbitration Notice – Section 12.01(b).

Arbitrator – Section 12.02(a).

Assignee – any Person that acquires Membership Rights or any portion thereof (including an Interest) through a Disposition. The Assignee of a deceased Member is the Person or Persons to whom the deceased Member's Membership Rights are bequeathed, or by whom they are inherited, pursuant to the deceased Member's duly-probated will or a probate court order applying the laws of intestate succession. The Assignee of a dissolved Member is the shareholder, partner, member or other equity owner or owners of the dissolved Member to whom such Member's Membership Rights are assigned by the Person conducting the liquidation or winding up of such Member. The Assignee of a Bankrupt Member is the Person or Persons (if any) to whom such Bankrupt Member's Membership Rights are assigned by order of the bankruptcy court or other governmental authority having jurisdiction over such Bankruptcy; or, in the event of a general assignment for the benefit of creditors, the creditor to which such Membership Rights are assigned. In the case of a Divorce, the Assignee is the spouse of the applicable Member. In the case of a Spouse's Death, the Assignee is the Person or Persons to whom the spouse's (or former spouse's) Spouse's Fraction is bequeathed, or by whom it is inherited, pursuant to the deceased spouse's (or former spouse's) duly-probated will or a probate court order applying the laws of intestate succession.

BOC – The Texas Business Organizations Code, as the same maybe amended from time to time.

Bankruptcy or Bankrupt – with respect to any Person, that (a) such Person (i) makes a general assignment for the benefit of creditors; (ii) files a voluntary bankruptcy petition; (iii) becomes the subject of an order for relief or is declared insolvent in any federal or state bankruptcy or insolvency proceedings; (iv) files a petition or answer seeking for such Person a reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law; (v) files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against such Person in a proceeding of the type described in subclauses (i) through (iv) of this clause (a); or (vi) seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of such Person's or of all or any substantial part of such Person's

properties; or (b) against such Person, a proceeding seeking reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under any Law has been commenced and 120 Days have expired without dismissal thereof or with respect to which, without such Person's consent or acquiescence, a trustee, receiver, or liquidator of such Person or of all or any substantial part of such Person's properties has been appointed and 90 Days have expired without the appointment's having been vacated or stayed, or 90 Days have expired after the date of expiration of a stay, if the appointment has not previously been vacated.

Book Depreciation – for each fiscal year (or other period for which Book Depreciation must be computed) the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset, except that, if the Book Value of an asset differs from its adjusted tax basis at the beginning of the year, Book Depreciation will be an amount which bears the same ratio to Book Value at the beginning of the year as the federal income tax depreciation, amortization or other cost recovery deduction for the year bears to the beginning adjusted tax basis; provided, however, that if the adjusted tax basis of the asset at the beginning of the year is zero, Book Depreciation will be determined by the Member using any reasonable method.

Book Value – with respect to any asset, the adjusted basis of the asset for federal income tax purposes, adjusted as provided in Section 7.04.

Business Day – any day other than a Saturday a Sunday, or a holiday on which national banking associations in the State of Texas are closed.

Capital Account – the account to be maintained by the Company for each Member in accordance with Treasury Regulation Section 1.704-1(b)(2)(iv) and, to the extent not inconsistent therewith, the following provisions:

- (a) a Member's Capital Account shall be credited with the cash or Net Agreed Value of the Member's Capital Contributions, the amount of any Company liabilities assumed by the Member, the Member's distributive share of Profit and any item of income or gain specially allocated to the Member pursuant to the provisions of Article 6 and
- (b) a Member's Capital Account shall be debited with the amount for cash and the Net Agreed Value of any Company property distributed to the Member, the amount of any liabilities of the Member assumed by the Company (or which are secured by property contributed by the Member to the Company), the Member's distributive share of Loss and any item of expenses or losses specially allocated to the Member pursuant to the provisions of Article 6.

If any Interest is transferred pursuant to the terms of this Agreement, the transferee shall succeed to the Capital Account of the transferor to the extent the Capital Account is attributable to the transferred Interest; provided, however, that if the transfer causes a

termination of the Company under Code Section 708(b)(1)(B), the Capital Accounts of the Members shall be adjusted in conformance with Treasury Regulation Section 1.704-1(b)(2)(iv)(I). A Member that has more than one Interest shall have a single Capital Account that reflects all of its Interests, regardless of the class of Interest owned by that Member and regardless of the time or manner in which it was acquired.

Capital Contribution – with respect to any Member, the amount of money and the initial Book Value of any property (other than money) contributed to the Company by the Member. Any reference in this Agreement to the Capital Contribution of a Member shall include a Capital Contribution of his predecessors in interest.

Capital Transaction – any transaction that results in the Company's receipt of cash or other consideration other than Capital Contributions, including proceeds of sales or exchanges or other Dispositions of property not in the ordinary course of business, financings, refinancings, condemnations, recoveries of damage awards, and insurance proceeds that, in accordance with generally accepted accounting principles, are considered capital in nature.

Certificate – Section 2.01.

Code – the United States Internal Revenue Code of 1986, as amended from time to time. All references herein to sections of the Code shall include any corresponding provision or provisions of succeeding Law.

Commitment – subject in each case to adjustments on account of Dispositions of Membership Rights permitted by this Agreement, in the case of a Member executing this Agreement as of the date of this Agreement or a Person acquiring those Membership Rights, the amount contributed by as its Commitment.

Company – Neighbors Telehealth Services, LLC, a Texas limited liability company.

Continuation Election – Section 13.01(b).

Control – the possession, directly or indirectly, through one or more intermediaries, of the following: (a) in the case of a corporation, more than 50% of the outstanding voting securities thereof; (b) in the case of a limited liability company, partnership, limited partnership or venture, the right to more than 50% of the distributions therefrom (including liquidating distributions); (c) in the case of a trust or estate, more than 50% of the beneficial interest therein; (d) in the case of any other entity, more than 50% of the economic or beneficial interest therein; or (e) in the case of any entity, the power or authority, through ownership of voting securities, by contract or otherwise, to direct the management, activities or policies of the entity.

Day – a calendar day; provided, however, that, if any period of Days referred to in this Agreement shall end on a Day that is not a Business Day, the expiration of such period shall be automatically extended until the first succeeding Business Day.

Default – with respect to any Member, (a) the failure of such Member to contribute, within 10 Days of the date required, all or any portion of a Capital Contribution that such Member is required to make as provided in this Agreement; or (b) the failure of a Member to comply in any material respect with any of its other agreements, covenants or obligations under this Agreement (other than its agreement not to Withdraw from the Company in Section 3.04), or the failure of any representation or warranty made by a Member in this Agreement to have been true and correct in all material respects at the time it was made, in each case if such default is not cured by the applicable Member within 30 Days of its receiving notice of such default from any other Member (or, if such default is not capable of being cured within such 30-Day period, if such Member fails to promptly commence substantial efforts to cure such default or to prosecute such curative efforts to completion with continuity and diligence).

Default Rate – a rate per annum equal to the lesser of (a) 10.0%, and (b) the maximum rate permitted by Law.

Dispose, Disposing or Disposition – with respect to any asset (including Membership Rights or any portion thereof, including an Interest), a sale, assignment, transfer, conveyance, gift, exchange or other disposition of such asset, whether such disposition be voluntary, involuntary or by operation of Law, including the following: (a) in the case of an asset owned by a natural person, a transfer of such asset upon the death of its owner, whether by will, intestate succession or otherwise; (b) in the case of an asset owned by an Entity, (i) a merger or consolidation of such Entity, (ii) a conversion of such Entity into another type of Entity, or (iii) a distribution of such asset in connection with the dissolution, liquidation, winding-up or termination of such Entity (unless, in the case of dissolution, such Entity's business is continued without the commencement of liquidation or winding-up); and (c) a disposition in connection with, or in lieu of, a foreclosure of an Encumbrance; but such terms shall not include the creation of an Encumbrance.

Dispute – Section 12.01(a).

Disputing Party – Section 12.01(a).

Dissolution Event – Section 13.01(a).

Divorce – the establishment of a Spouse's Fraction as a result of the divorce or other termination of the marital relationship of any Member (other than by death), or upon the partition of community of property or other Disposition of property between a Member and such Member's spouse.

Encumber, Encumbering, or Encumbrance – the creation of a security interest, lien, pledge, mortgage or other encumbrance, whether such encumbrance be voluntary, involuntary or by operation of Law.

Expel, Expelled or Expulsion – the expulsion or removal of a Member from the Company as a member.

Including – “including, without limitation,”.

Interest – a Person’s share of the income, gain, loss, deduction and credits of, and the right to receive distributions from, the Company.

Law – any applicable constitutional provision, statute, act, code (including the Code), law, regulation, rule, ordinance, order, decree, ruling, proclamation, resolution, judgment, decision, declaration, or interpretative or advisory opinion or letter of a governmental authority.

Liquidation Sharing Ratio – Section 13.02(d).

Member(s) – the Person(s) executing this Agreement as of the date of this Agreement as the only members of the Company.

Member Nonrecourse Deductions – the meaning assigned to that term in Treasury Regulation Section 1.704-2(i).

Member Nonrecourse Debt – the meaning assigned to that term in Treasury Regulation Section 1.704-2(b)(4).

Member Nonrecourse Minimum Gain – the meaning assigned to that term in Treasury Regulation Section 1.704-2(i)(2).

Membership Rights – with respect to any Member, (a) that Member’s status as a Member; (b) that Member’s Interest; (c) all other rights, benefits and privileges enjoyed by that Member (under the Act, the Articles, this Agreement or otherwise) in its capacity as a Member, including that Member’s rights to vote, consent and approve and otherwise to participate in the management of the Company; and (d) all obligations, duties and liabilities imposed on that Member (under the Act, the Articles, this Agreement or otherwise) in its capacity as a Member, including any obligations to make Capital Contributions.

Minimum Gain – the meaning assigned to that term in Treasury Regulation Section 1.704-2(d).

Modified 752 Share of Recourse Debt – of any Member, as of any date, the aggregate amount of economic risk of loss that such Member and all Related Persons to such Member are treated as bearing with respect to such liability pursuant to Treasury

Regulation Section 1.752-2 with respect to any Company liability (or portion thereof) that is neither a Nonrecourse Liability nor a Company liability that is treated as a "member nonrecourse debt" under Treasury Regulation Section 1.704-2(b)(4) (determined, as of the date in question, by assuming, for purposes of Treasury Regulation Section 1.752-2, that the Company constructively liquidates on such date (within the meaning of Treasury Regulation Section 1.752-2) except that all Company properties shall be deemed thereunder to be transferred in fully taxable exchanges for an aggregate amount of cash consideration equal to their respective book values and such consideration shall be deemed thereunder to be used, in the appropriate order of priority, in full or partial satisfaction of all Company liabilities).

Net Agreed Value – (a) in the case of any property contributed to the Company, the Book Value of the Company's property reduced by any indebtedness either assumed by the Company upon the contribution of the property or to which such property is subject when contributed; and (b) in the case of any property distributed to a Member, the Book Value of such property reduced by any indebtedness either assumed by such Member upon such distribution or to which such property is subject at the time of distribution.

Net Capital Proceeds – the proceeds received by the Company in connection with a Capital Transaction after the payment of costs and expenses incurred by the Company in connection with such Capital Transaction, including brokers' commissions, loan fees, loan payments, other closing costs and the cost of any alteration, improvement, restoration or repair of any Company property necessitated by or incurred in connection with such Capital Transaction and, if the Capital Transaction is a financing or refinancing, after the payment of any Company indebtedness that is repaid in connection with such financing or refinancing.

Net Cash Flow – all cash funds derived from operations of the Company (including interest received on reserves), without reduction for any non-cash charges, but less cash funds used to pay current operating expenses and to pay or establish reasonable reserves for future expenses, debt payments, and capital improvements. Net Cash Flow shall not include proceeds or costs included in the determination of Net Capital Proceeds but shall be increased by the reduction of any reserve previously established.

Nonrecourse Deductions – the meaning assigned that term in Treasury Regulation Section 1.704-2(b)(1).

Nonrecourse Liability – the meaning assigned that term in Treasury Regulation Section 1.704-2(d).

Officer – any Person appointed as an officer of the Company, but such term does not include any Person who has ceased to be an officer of the Company.

Person – the meaning assigned that term in Article 1.02(A)(4) of the Act and also includes a governmental authority and any other entity.

Proceeding – Section 9.01.

Profit and Loss – For each fiscal year of the Company (or other period for which Profit or Loss must be computed), the Company's taxable income (not including income allocated pursuant to Section 5) or loss (not including loss or deduction allocated pursuant to Section 5) determined in accordance with Code Section 703(a), with the following adjustments:

- (a) all items of income, gain, loss and deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in computing taxable income or loss;
- (b) any tax-exempt income of the Company, not otherwise taken into account in computing Profit or Loss, shall be included in computing taxable income or loss;
- (c) any expenditures of the Company described in Code Section 705(a)(2)(B) (or treated as such pursuant to Treasury Regulation Section 1.704-1(b)(2)(iv)(i)) and not otherwise taken into account in computing Profit or Loss, shall be subtracted from taxable income or loss;
- (d) gain or loss resulting from any disposition of Company property shall be computed by reference to the Book Value of the property;
- (e) in lieu of the depreciation, amortization or cost recovery deductions allowable in computing taxable income or loss, there shall be taken into account Book Depreciation; and
- (f) if the Book Value of an asset of the Company is adjusted, any increase or decrease in the Book Value of the asset as a result of the adjustment shall be treated as gain or loss, respectively, from the disposition of the asset and shall be taken into account in computing Profits or Losses.

Related Person – with respect to any Member, any Person who is related to such Member within the meaning of Treasury Regulation Section 1.752-4(b).

Securities Act – Securities Act of 1933, as amended.

Shares – shares of the Company's Membership Interests as represented by certificates issued by the Company.

Sharing Ratio – subject in each case to adjustments on account of Dispositions of Membership Rights permitted by this Agreement, (a) in the case of a Member executing this Agreement as of the date of this Agreement or a Person acquiring those Membership Rights, the percentage specified for that Member as its Sharing Ratio on the signature

pages hereof, and (b) in the case of membership rights issued pursuant to Section 3.03, the Sharing Ratio established pursuant thereto.

Tax Matters Member – Section 10.03.

Terminating Capital Transaction – any Capital Transaction that is entered into in connection with or will result in the dissolution, winding up and termination of the Company.

Treasury Regulations – the regulations promulgated by the United States Department of the Treasury pursuant to and in respect of provisions of the Code. All references herein to sections of the Treasury Regulations shall include any corresponding provision or provisions of succeeding, similar, substitute proposed or final Treasury Regulations.

Voting Ratio – with respect to any Member, a Member's respective percentage of the total voting power of the Company that is equal to such Member's Sharing Ratio; provided however, that, if a Member shall have Disposed of all or any portion of its Interest but shall have retained its other Membership Rights, such member shall be deemed, solely for purposes of determining such Member's Voting Ratio, to continue to hold the Sharing Ratio attributable to the Interest that was the subject of such Disposition

Withdraw, Withdrawing or Withdrawal – the withdrawal, resignation or retirement of a Member from the Company as a member. Such terms shall not include any Dispositions of Membership Rights (which are governed by Section 3.04), even though the Member making a Disposition may cease to be a Member as a result of such Disposition.

Other terms defined herein have the meanings so given them.

1.02 ***Construction.*** Unless the context requires otherwise; (a) the gender (or lack of gender) of all words used in this Agreement includes the masculine, feminine, and neuter; (b) references to Articles and Sections refer to Articles and Sections of this Agreement; and (c) references to Exhibits are to the Exhibits attached to this Agreement, each of which is made a part hereof for all purposes.

ARTICLE 2 ORGANIZATION

2.01 ***Formation.*** The Company has been organized as a Texas limited liability company by the filing of a Certificate of Formation ("Certificate") under and pursuant to the Act and the issuance of a Certificate of Filing for the Company dated May 25, 2016 by the Secretary of State of Texas.

2.02 *Name.* The name of the Company is "Neighbors Telehealth Services, LLC" and all Company business must be conducted in that name or such other names that comply with the law as the Members may select.

2.03 *Registered Office; Registered Principal Office; Other Offices.* The Registered Office of the Company required by the Act to be maintained in the State of Texas shall be the office identified in the Certificate and the Company shall maintain records there as required by Article 2.22 of the Act. The Company may have such other offices as the Members may designate.

2.04 *Purposes.* The purposes of the Company are those set forth in the Certificate.

2.05 *Foreign Qualifications.* Prior to the Company's conducting business in any jurisdiction other than Texas, the Members shall cause the Company to comply, to the extent procedures are available and those matters are reasonably within the control of the Members, with all requirements necessary to qualify the Company as a foreign limited liability company in that jurisdiction. The Members shall execute, acknowledge, swear to, and deliver all certificates and other instruments conforming with this Agreement that are necessary or appropriate to qualify, continue, and terminate the Company as a foreign limited liability company in all such jurisdictions in which the Company may conduct business.

2.06 *Term.* The Company commenced on the date the Secretary of State of Texas issued a certificate of formation for the Company and shall continue in existence for the period fixed in the Certificate for the duration of the Company, or such earlier time as this Agreement may specify.

2.07 *No State-Law Partnership.* The Members intend that the Company not be a partnership (including a limited partnership) or joint venture, and that no Member be a partner or joint venturer of any other Member, for any purposes other than federal and state tax purposes, and this Agreement may not be construed to suggest otherwise.

ARTICLE 3 MEMBERSHIP; DISPOSITIONS OF INTERESTS

3.01 *Member(s).* The Members of the Company are the Persons executing this Agreement as of the date of this Agreement as the only Members, are admitted to the Company as the only Members effective contemporaneously with the execution by such Persons of this Agreement.

3.02 *Representations and Warranties.* The Members hereby represent and warrant to the Company as follows:

- (a) that Member has duly executed and delivered this Agreement, and it constitutes the legal, valid and binding obligation of that Member enforceable against it in accordance with its terms (except as may be limited by bankruptcy, insolvency or similar laws of general application

and by the effect of general principles of equity that permit the exercise of judicial discretion, regardless of whether considered at law or in equity, and except that any indemnification provisions may be limited by applicable securities laws and public policy);

- (b) that Member's authorization, execution, delivery, and performance of this Agreement do not and will not (i) conflict with, or result in a breach, default or violation of, (A) any contract or agreement to which that Member is a party or is otherwise subject, or (B) any Law, order, judgment, decree, writ, injunction or arbitral award to which that Member is subject; or (ii) require any consent, approval or authorization from, filing or registration with, or notice to, any governmental authority or other Person, unless such requirement has already been satisfied;
- (c) that Member is acquiring his or her Membership Rights for investment, solely for the Member's own beneficial account and not with a view to or any present intention or directly or indirectly selling, transferring, offering to sell or transfer, participating in any distribution or otherwise Disposing of all or a portion of his or her Membership Rights; and such Member acknowledges that the Membership Rights have not been registered under the Securities Act or any other applicable federal or state securities laws, and that the Company has no intention, and shall not have any obligation, to register or to obtain an exemption from registration for the Membership Rights or to take action so as to permit sales pursuant to the Securities Act (including Rules 144 and 144A thereunder).

3.03 *Creation of Additional Membership Rights.* Additional Membership Rights may be created and issued to existing Members or to other Persons, and such other Persons may be admitted to the Company as Members, at the direction of the Members, collectively, on such terms and conditions as the Members may determine at the time of admission. The terms of admission or issuance must specify the Sharing Ratios and the Commitments applicable thereto and may provide for the creation of different classes or groups of members and having different rights, powers, and duties. The Members may reflect the creation of any new class or group in an amendment to this Agreement indicating the different rights, powers, and duties, and such amendment need be executed only by the Members. Any such admission is effective only after the new Member has executed and delivered to the Members an instrument containing the notice address of the new Member, the Assignee's ratification of this Agreement and agreement to be bound by them, and its confirmation that the representations and warranties in Section 3.02 are true and correct with respect to it.

3.04 *Withdrawal.* A Member does not have the right to Withdraw; provided, however, a Member shall have the power to Withdraw at any time in violation of this Agreement. If a Member exercises such power in violation of this Agreement, such Withdrawing Member shall be liable to the Company and the other Members for all monetary damages suffered by them as a result of such Withdrawal. In no event shall the Company or any Member have the right,

through specific performance or otherwise, to prevent a Member from Withdrawing in violation of this Agreement.

3.05 Information.

- (a) In addition to the other rights specifically set forth in this Agreement, each Member and each Assignee is entitled to all information to which that Member or Assignee is entitled to have access pursuant to the BOC, under the circumstances and subject to the conditions therein stated. The Members (on behalf of themselves and their Assignees) agree, however, that the Members may determine, due to contractual obligations, business concerns, or other considerations, that certain information regarding the business, affairs, properties, and financial condition of the Company should be kept confidential and not provided to some or all other Members or Assignees, and that it is not just or reasonable for those Members or Assignees (or representatives thereof) to examine or copy that information. An Assignee shall not have any of the rights to require information or account of transactions of the Company or to make inspection of the books and records of the Company, except to the extent such rights are also conferred on Assignees pursuant to the BOC.
- (b) The Members (on behalf of themselves and their Assignees) acknowledge that they may receive information from or regarding the Company in the nature of trade secrets or that otherwise is confidential, the release of which may be damaging to the Company or Persons with which it does business. Each Member and Assignee shall hold in strict confidence any information it receives regarding the Company that is identified as being confidential (and if that information is provided in writing, that is so marked) and may not disclose it to any Person other than another Member, except for disclosures (i) compelled by Law (but the Member or Assignee must notify the Members promptly of any request for that information, before disclosing it if practicable), (ii) to advisers or representatives of the Member or Assignee, but only if the recipients have agreed to be bound by the provisions of this Section 3.05(b), or (iii) of information that a Member or Assignee also has received from a source independent of the Company that the Member or Assignee reasonably believes obtained that information without breach of any obligation of confidentiality. The Members (on behalf of themselves and their Assignees) agree that breach of the provisions of this Section 3.05(b) may cause irreparable injury to the Company for which monetary damages (or other remedy at law) are inadequate in view of (i) the complexities and uncertainties in measuring the actual damages that would be sustained by reason of the failure of a Member or Assignee to comply with such provisions, (ii) the uniqueness of the Company business and the confidential nature of the information

described in this Section 3.05(b). Accordingly, the Members (on behalf of themselves and their Assignees) agree that the provisions of this Section 3.05(b) may be enforced by specific performance.

- (c) Each Member shall reimburse the Company for all costs and expenses incurred by the Company in connection with the Member's inspection and copying of the Company's books and records.

3.06 *Liability to Third Parties.* No Member shall be liable for the debts, obligations or liabilities of the Company, including under a judgment decree or order of a court.

3.07 *Spouses of Members.* Spouses of the Members do not become Members as a result of such marital relationship.

3.08 *Prohibition Against Transfer.* No Member may voluntarily sell, assign, transfer, encumber any Interest in the Company without the prior unanimous written consent of the Members, and shall not pass title to said Interest in the absence of such consent, and any such prohibited transfer, if made, shall be void and without force or effect.

ARTICLE 4 MEMBERSHIP INTERESTS

4.01 *Capital Contributions in Exchange for Interests in the Company.* Initially, Persons making (or agreeing to make) Capital Contributions to the Company shall, upon the execution of this Agreement by such Persons and the receipt by the Company of said Capital Contributions, become Members of the Company with the Membership Rights provided for in this Agreement.

4.02 *No Certificates Representing Membership Interests.* No certificates representing the ownership of Membership Interests in the Company shall be issued. Rather, the Company shall maintain a Membership list reflecting the name and address of each Member.

ARTICLE 5 RIGHTS OF MEMBERSHIP INTERESTS

5.01 *Rights of Membership Interests*

- (a) *Voting.* The Members owning Membership Interests shall have proportionate voting rights of the Company with regard to any matter permitted to be voted on by Law, each Member's Voting Ratio to be identical to such Member's Sharing Ratio.
- (b) *Distributions.* Distributions from the net cash flow of the Company or net proceeds of any refinancing may be declared and paid to holders of Membership Interests to the extent that funds are available therefore.

ARTICLE 6 CAPITAL CONTRIBUTIONS

6.01 *Initial Contributions.* Contemporaneously with the execution by such Member of this Agreement, each Member shall make their initial Capital Contributions which, in the aggregate, shall not exceed \$1,000.00 (One Thousand Dollars).

6.02 *Capital Accounts.* A Capital Account shall be established and maintained for each Member.

ARTICLE 7 ALLOCATIONS AND DISTRIBUTIONS

7.01 *Distributions on Dissolution and Winding Up.* Upon the dissolution and winding up of the Company, all available proceeds distributable to the Members as determined under Section 13.02 shall be distributed to all Members.

7.02 *Allocations of Profit and Loss.* Profit and Loss of the Company shall be allocated as follows:

- (a) Loss shall be allocated to the Members in their Sharing Ratios.
- (b) Profit shall be allocated to the Members in their Sharing Ratios.

7.03 *Allocation of Net Gains or Net Losses from the Dissolution and Winding Up of the Company.*

- (a) *Net Gains.* Net gain resulting from a sale of the Company's property upon the dissolution and winding up of the Company shall be allocated to the Members in their respective Liquidation Sharing Ratios.
- (b) *Net Loss.* After adjusting the Capital Accounts for distributions and allocations, net loss resulting from a sale of the Company's assets upon the dissolution and winding up of the company shall be allocated to the Members in their respective Liquidation Sharing Ratios.

7.04 *Adjustment of Book Value.* Book Value with respect to any asset of the Company for any purpose shall be the asset's adjusted tax basis for federal income tax purposes. The Book Value of each asset will be increased or decreased to reflect any adjustment to the adjusted basis of the asset under Code Section 734(b) or 743(b), but only to the extent that the adjustment is taken into account in determining Capital Accounts under Treasury Regulation Section 1.704-1(b)(2)(iv)(m). Book Value will be adjusted by Book Depreciation, and gain or loss on a disposition of any asset shall be determined by reference to such assets Book Value as adjusted herein. The determination of the fair market value of property as required under this Section 7.04 shall be determined by the Members using any reasonable method of valuation.

7.05 Tax Allocations.

- (a) Except as otherwise provided in this Section 7.05, each item of income, gain, loss, deduction and credit determined for federal income tax purposes shall be allocated among the Members in the same manner as each correlative item of income, gain, loss, deduction and credit is allocated to the Members for purposes of maintaining their respective Capital Accounts.
- (b) Under Code Section 704(c) and Treasury Regulation Section 1.704-1(b)(2)(iv)(d)(3), income, gain, loss and deduction with respect to any asset contributed to the capital of the Company, solely for federal income tax purposes, shall be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset for federal income tax purposes and the initial Book Value. If the Book Value of any asset is adjusted under Section 7.04, subsequent allocations of income, gain, loss and deduction, solely for federal income tax purposes, will be allocated among the Members so as to take into account any variation between the adjusted tax basis of the asset and its Book Value as adjusted in the manner required under Treasury Regulation Section 1.704-3(a)(6). The allocations required by this Section 7.05 shall be made collectively by the Members.

7.06 Stop Loss. Notwithstanding any other provision hereof to the contrary, no Loss (or item of loss or deduction) of the Company shall be allocated to a Member if such allocation would result in a deficit balance in such Member's Adjusted Capital Account. Such Loss (or item of loss or deduction) shall be allocated among the Members whose Adjusted Capital Account balances are positive in proportion to such positive balances to the extent necessary to reduce the balances of such other Member's positive Adjusted Capital Accounts balances to zero, it being the intention of the Members that no Member's positive Adjusted Capital Account balance shall fall below zero while any other Member's positive Adjusted Capital Account balance has a positive balance.

7.07 Nonrecourse Deductions. All Nonrecourse Deductions shall be allocated among the Members in their Sharing Ratios.

**ARTICLE 8
MANAGEMENT**

8.01 Management by Manager. Management of the Company is reserved to a Manager. The operations of the Company will be conducted by the Manager. The initial Manager will be Neighbors Health, LLC, a Texas limited liability company.

ARTICLE 9 INDEMNIFICATION

9.01 *Right to Indemnification.* Subject to the limitations and conditions as provided in this Article 9, each Person who was or is made a party or is threatened to be made a party to or is involved in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative (hereinafter a "*Proceeding*"), or any appeal in such a Proceeding or any inquiry or investigation that could lead to such a Proceeding, by reason of the fact that he or she, or a Person of whom he or she is the legal representative, is or was a Member of the Company shall be indemnified by the Company to the fullest extent permitted by the BOC, as the same exist or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than said Law permitted the Company to provide prior to such amendment) against judgments, penalties (including excise and similar taxes and punitive damages), fines, settlements and reasonable expenses (including attorneys' fees) actually incurred by such Person in connection with such Proceeding, and indemnification under this Article 9 shall continue as to a person who has ceased to serve in the capacity which initially entitled such Person to indemnity hereunder. The rights granted pursuant to this Article 9 shall be deemed contract rights, and no amendment, modification or repeal of this Article 9 shall have the effect limiting or denying any such rights with respect to actions taken or Proceedings arising prior to any such amendment, modification or repeal. It is expressly acknowledged that the indemnification provided in this Article 9 could involve indemnification for negligence or under theories of strict liability.

9.02 *Advance Payment.* The right to indemnification conferred in this Article 9 shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred by a Person of the type entitled to be indemnified under Section 9.01 who was, is or is threatened to be made a named defendant or respondent in a Proceeding in advance of the final disposition of the Proceeding and without any determination as to the Person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such Person in advance of the final disposition of a Proceeding, shall be made only upon delivery to the Company of a written affirmation by such Person of its good faith belief that it has met the standard of conduct necessary for indemnification under this Article 9 and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it shall ultimately be determined that such indemnified Person is not entitled to be indemnified under this Article 9 or otherwise.

9.03 *Indemnification of Officers, Employees and Agents.* The Company may indemnify and advance expenses to an Officer, employee or agent of the Company to the same extent and subject to the same conditions under which it may indemnify and advance expenses to the Members under this Article 9.

9.04 *Appearance as a Witness.* Notwithstanding any other provision of this Article 9, the Company may pay or reimburse expenses incurred by any of the Members in connection with their appearance as a witness or other participation in a Proceeding at a time when it is not a named defendant or respondent in the Proceeding.

9.05 *Nonexclusivity of Rights.* The right to indemnification and the advancement and payment of expenses conferred in this Article 9 shall not be exclusive of any other right which the Members or other Person indemnified pursuant to Section 9.03 may have or hereafter acquire under any Law, provision of the Certificate or this Agreement, agreement, or vote of Members.

9.06 *Insurance.* The Company may purchase and maintain insurance, at its expense, to protect itself and any Person who is or was serving as one of the Members, Officer, employee or agent of the Company or is or was serving at the request of the Company as a member, director, officer, partner, venturer, proprietor, trustee, employee, agent or similar functionary of another foreign or domestic limited liability company, corporation, partnership, joint venture, sole proprietorship, trust, employee benefit plan or other enterprise against any expense, liability or loss, whether or not the Company would have the power to indemnify such Person against such expense, liability or loss under this Article 9.

9.07 *Member Notification.* To the extent required by Law, any indemnification of or advance of expenses to any one of the Members in accordance with this Article 9 shall be reported in writing to the Members with or before the notice or waiver of notice of the next Members' meeting or with or before the next submission to Members of a consent to action without a meeting and, in any case, within the 12-month period immediately following the date of the indemnification or advance.

9.08. *Savings Clause.* If this Article 9 or any portion hereof shall be invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify and hold harmless the Members or any other Person indemnified pursuant to this Article 9 as to costs, charges and expenses (including attorneys' fees), judgments, fines and amounts paid in settlement with respect to any action, suit or proceeding, whether civil, criminal, administrative, arbitratative or investigative to the full extent permitted by any applicable portion of this Article 9 that shall not have been invalidated and to the fullest extent permitted by Law.

ARTICLE 10 TAXES

10.01 *Tax Returns.* The Company shall prepare and timely file all federal, state and local tax returns required to be filed by the Company. Each Member shall furnish to the Company all pertinent information in its possession relating to the Company's operations that is necessary to enable the Company's tax returns to be timely prepared and filed. The Company shall deliver a copy of each such return to the Members on or before ten (10) business days prior to the due date of any such return, together with such additional information as may be required by the Members in order for the Members to file their individual returns reflecting the Company's operations. The Company shall bear the costs of the preparation and filing of its returns.

10.02 Tax Elections. The Company shall make the following elections on the appropriate tax returns:

- (a) to adopt the calendar year as the Company's fiscal year;
- (b) to adopt the accrual method of accounting and to keep the Company's books and records on the income-tax method;
- (c) if a distribution of the Company's property as described in Code Section 734 occurs or upon a transfer of Membership Rights as described in Code Section 743 occurs, on request by notice from any Member, to elect, pursuant to Code Section 754, to adjust the basis of Company's properties;
- (d) to elect to amortize the organizational expenses of the Company ratably over a period of 60 months as permitted by Section 709(b) of the Code; and
- (e) any other election the Members may deem appropriate and in the best interests of the Members.

Neither the Company nor the Members or any other Member may make an election for the Company to be excluded from the application of the provisions of subchapter K of chapter 1 of subtitle A of the Code or any similar provisions of applicable state law and no provision of this Agreement shall be construed to sanction or approve such an election.

10.03 Tax Matters Member.

- (a) The Members shall appoint the "tax matters member" (hereinafter referred to as the "Tax Matters Member") of the Company pursuant to Section 6231(a)(7) of the Code. The Tax Matters Member shall take such action as may be necessary to cause to the extent possible each other Member to become a "notice partner" within the meaning of Section 6223 of the Code. The Tax Matters Member shall inform each other Member of all significant matters that may come to its attention in its capacity as Tax Matters Member by giving notice thereof on or before the fifth Business Day after becoming aware thereof and, within that time, shall forward to each other Member copies of all significant written communications it may receive in that capacity.
- (b) The Tax Matters Member shall take no action without the authorization of the Members, other than such action as may be required by Law. Any cost or expense incurred by the Tax Matters Member in connection with its duties, including the preparation for or pursuance of administrative or judicial proceedings, shall be paid by the Company.

- (c) The Tax Matters Member shall not enter into any extension of the period of limitations for making assessments on behalf of the Members without first obtaining the consent of the Members. The Tax Matters Member shall not bind any Member to a settlement agreement without obtaining the consent of such members. Any Member that enters into a settlement agreement with respect to any Company item (within the meaning of Code Section 6231(a)(3)) shall notify the other Members of such settlement agreement and its terms within 90 Days from the date of the settlement.
- (d) No Member shall file a request pursuant to Code Section 6227 for an administrative adjustment of Company items for any taxable year without first notifying the other Members. If the other Members consent to the requested adjustment, the Tax Matters Member shall file the request for the administrative adjustment on behalf of the Members. If such consent is not obtained within 30 Days from such notice, or within the period required to timely file the request for administrative adjustment, if shorter, any Member, including the Tax Matters Member, may file a request for administrative adjustment on its own behalf. Any Member intending to file petition under Code Sections 6226, 6228 or other Code Section with respect to any item involving the Company shall notify the other Members of such intention and the nature of the contemplated proceeding. In the case where the Tax Matters Member is the Member intending to file such petition on behalf of the Company, such notice shall be given within a reasonable period of time to allow the other Members to participate in the choosing of the forum in which such petition will be filed.
- (e) If any Member intends to file a notice of inconsistent treatment under Code Section 6222(b), such Member shall give reasonable notice under the circumstances to the other Members of such intent and the manner in which the Members' intended treatment of an item is (or may be) inconsistent with the treatment of that item by the other Members.

ARTICLE 11

BOOKS, RECORDS, REPORTS, AND BANK ACCOUNTS

11.01 *Maintenance of Books.* The Members shall keep or cause to be kept at the principal office of the Company complete and accurate books and records of the Company, supporting documentation of the transactions with respect to the conduct of the Company's business and minutes of the proceedings of its Members. The records shall include, but not be limited to, complete and accurate information regarding the state of the business and financial condition of the Company; a copy of the Articles and this Agreement and all amendments thereto; a current list of the names and last known business, residence, or mailing addresses of all Members; each Member's Interest; and the Company's federal, state, and local tax returns.

11.02 *Accounts.* The Members shall establish one or more separate bank and investment accounts for the Company, which shall be maintained in the Company's name with financial institutions and firms that the Members determine. The Members may not commingle the Company's funds with the funds of any Member; provided, however, that the Company funds may be invested in a manner the same as or similar to any Member's investment of its own funds.

ARTICLE 12 ARBITRATION

12.01 *Submission of Disputes to Arbitration.*

- (a) This Article 12 shall apply to any of the following types of disputes (each a "*Dispute*"):
 - (i) any dispute as to any accounting or tax issue under this Agreement; or
 - (ii) except for disputes described in the foregoing paragraph (A) any dispute regarding the construction, interpretation, performance, validity or enforceability of any provision of the Certificate or this Agreement, or whether any Person is in compliance with, or breach of, any provisions of the Articles or this Agreement, or (B) any other dispute of a legal nature arising under the Certificate or this Agreement, it being intended that this Section 12.01(a)(i) shall not include any disputes of a purely business nature, such as disputes as to business strategy.

With respect to a particular Dispute, each Person that is a party to such Dispute (whether a Member or other Person) is referred to herein as a "*Disputing Party*."

- (b) If the disputing Parties are unable to resolve a dispute within a reasonable period of time after the commencement of the Dispute, any Disputing Party may submit such Dispute to binding arbitration under this Article 12 by notifying the other Disputing Parties (an "*Arbitration Notice*"). Arbitration pursuant to this Article 12 shall be the exclusive method of resolving Disputes other than through agreement of the Disputing Parties.

12.02 *Conduct of Arbitration.* Any arbitration conducted hereunder shall be conducted before a sole arbitrator selected by the agreement of the Disputing Parties. Absent such agreement, the Arbitrator shall be designated by the American Arbitration Association. The Arbitrator shall expeditiously (and, if possible, within 60 Days after the Arbitrator's selection) hear and decide all matters concerning the Dispute. Any arbitration hearing shall be held in the City of Houston, Texas. The Arbitration shall be conducted in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association (excluding rules

governing the payment of arbitration, administrative or other fees or expenses to the Arbitrator or such Association), to the extent that such Rules do not conflict with the terms of this Agreement. Except as expressly provided to the contrary in this Agreement, the Arbitrator shall have the power (a) to gather such materials, information, testimony and evidence as it deems relevant to the dispute before it (and each Member will provide such materials, information, testimony and evidence requested by the Arbitrator, except to the extent any information so requested is proprietary, subject to a third-party confidentiality restriction or to an attorney-client or other privilege) and (b) to grant injunctive relief and enforce specific performance. The responsibility for paying the costs and expenses of the arbitration, including compensation to the Arbitrator, shall be allocated among the Disputing Parties in a manner determined by the Arbitrator to be fair and reasonable under the circumstances. Each Disputing Party shall be responsible for the fees and expenses of its respective counsel, consultants and witnesses, unless the Arbitrator determines that compelling reasons exist for allocating all or a portion of such costs and expenses to one or more other Disputing Parties.

ARTICLE 13 DISSOLUTION, WINDING-UP AND TERMINATION

13.01 *Dissolution.*

- (a) Subject to Section 13.01(b), the Company shall dissolve and its affairs shall be wound up on the first to occur of the following events (each a "*Dissolution Event*"):
 - (i) the expiration of the period fixed for the duration of the Company in the Certificate;
 - (ii) the death, Expulsion, Withdrawal, dissolution or Bankruptcy of any Member, or the occurrence of any other event that terminates the continued membership of any Member in the Company;
 - (iii) entry of a decree of judicial dissolution of the Company; and
 - (iv) the occurrence of any event specified in the Certificate to cause dissolution (if any).
- (b) If a Dissolution Event described in subparagraphs (i), (ii) or (iv) of Section 13.01(a) shall occur and there shall be at least one other Member remaining, the Company shall not be dissolved, and the business of the Company shall be continued, if a Majority in Interest (calculated without reference to any Member with respect to whom a Dissolution Event described in subparagraph (iii) has occurred) so agree within 90 Days of the occurrence of such Dissolution Event (such agreement is referred to herein as a "*Continuation Election*").

13.02 *Winding-Up and Termination.* On the occurrence of a Dissolution Event, unless a Continuation Election is made, the Members may appoint one or more Members as liquidator; provided, however that (i) no Member with respect to whom a Dissolution Event described in subparagraph (iii) of Section 13.01(a) has occurred shall serve as a liquidator, either in its capacity as a Member. The liquidator shall proceed diligently to wind up the affairs of the Company and make final distributions as provided herein and in the Act. The costs of winding up shall be borne as a Company expense. Until final distribution, the liquidator shall continue to operate the Company properties with all of the power and authority of all of the Members. The steps to be accomplished by the liquidator are as follows:

- (a) as promptly as possible after dissolution and again after final winding up, the liquidator shall cause a proper accounting to be made by a recognized firm of certified public accountants of the Company's assets, liabilities, and operations through the last calendar day of the month in which the dissolution occurs or the final winding up is completed, as applicable;
- (b) the liquidator shall cause notice to be mailed to each known creditor of and claimant against the Company;
- (c) the liquidator shall pay, satisfy or discharge from Company funds all of the debts, liabilities and obligations of the Company or otherwise make adequate provision for payment and discharge thereof (including the establishment of a cash escrow fund for contingent liabilities in such amount and for such term as the liquidator may reasonably determine); and
- (d) all remaining assets of the Company shall be distributed to the Members as follows:
 - (i) the liquidator may sell any or all Company property, including to Members, and any resulting gain or loss from each sale shall be computed and allocated to the Capital Accounts of the Members in accordance with the provisions of Article 7;
 - (ii) with respect to all Company property that has not been sold the fair market value of that property shall be determined and the Capital Accounts of the Members shall be adjusted to reflect the manner in which the unrealized income, gain, loss, and deduction inherent in property that has not been reflected in the Capital Accounts previously would be allocated among the Members if there were a taxable disposition of that property for the fair market value of that property on the date of distribution; and
 - (iii) Company property, including the proceeds of accounts receivable, shall be distributed among the Members in accordance with their respective Liquidation Sharing Ratios (as defined below), and

those distributions shall be made by the end of the taxable year of the Company during which the liquidation of the Company occurs (or, if later, 90 Days after the date of the liquidation).

All distributions in kind to the Members shall be made subject to the liability of each distributee for costs, expenses, and liabilities theretofore incurred or for which the Company has committed prior to the date of termination and those costs, expenses, and liabilities shall be allocated to the distributee pursuant to this Section 13.02. The distribution of cash and/or property to a Member in accordance with the provisions of this Section 13.02 constitutes a complete return to the Member of its Capital Contributions and a complete distribution to the Member of its Membership Rights and all the Company's property and constitutes a compromise to which all Members have consented. To the extent that a Member returns funds to the Company, it has no claim against any other Member for those funds.

13.03 Deficit Capital Accounts. No Member will be required to pay to the Company, to any other Member or to any third party any deficit balance which may exist from time to time in the Member's Capital Account.

13.04 Articles of Dissolution. On completion of the distribution of Company assets as provided herein, the Members (or such other Person or Persons as the BOC may require or permit) shall file Articles of Dissolution with the Secretary of State of Texas, cancel any other filings made pursuant to Section 2.05, and take such other actions as may be necessary to terminate the existence of the Company. Upon the issuance of a certificate of dissolution by the Secretary of State of Texas, the existence of the Company shall cease, except as may be otherwise provided by the BOC or other applicable Law.

ARTICLE 14 GENERAL PROVISIONS

14.01 Offset. Whenever the Company is to pay any sum to any Member, any amounts that Member owes the Company may be deducted from that sum before payment.

14.02 Notices. Except as expressly set forth to the contrary in this Agreement; all notices, requests or consents provided for or permitted to be given under this Agreement must be in writing and must be delivered to the recipient in person, by courier or mail or by facsimile, telegram, telex, cablegram or similar transmission; and a notice, request or consent given under this Agreement is effective on receipt by the Person to receive it. Whenever any notice is required to be given by Law, the Certificate or this Agreement, a written waiver thereof, signed by the Person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to the giving of such notice.

14.03 Entire Agreement; Supersedure. This Agreement constitutes the entire agreement of the Members and their Affiliates relating to the Company and supersedes all prior contracts or agreements with respect to the Company, whether oral or written.

14.04 *Effect of Waiver or Consent.* A waiver or consent, express or implied, to or of any breach or default by any Person in the performance by that Person of its obligations with respect to the Company is not a consent or waiver to or of any other breach or default in the performance by that Person of the same or any other obligations of that Person with respect to the Company. Failure on the part of a Person to complain of any act of any Person or to declare any Person in default with respect to the Company, irrespective of how long that failure continues, does not constitute a waiver by that Person of its rights with respect to that default until the applicable statute-of-limitations period has run.

14.05 *Amendment or Restatement.* This Agreement shall be amended or restated only by a written instrument adopted and executed by the Members.

14.06 *Binding Effect.* Subject to the restrictions on Dispositions set forth in this Agreement, this Agreement is binding on and shall inure to the benefit of the Members and their respective heirs, legal representatives, successors, and assigns.

14.07 *Governing Law; Severability.* THIS AGREEMENT IS GOVERNED BY AND SHALL BE CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS, EXCLUDING ANY CONFLICT-OF-LAWS RULE OR PRINCIPLE THAT MIGHT REFER THE GOVERNANCE OR THE CONSTRUCTION OF THIS AGREEMENT TO THE LAW OF ANOTHER JURISDICTION.

14.08 *Further Assurances.* In connection with this Agreement and the transactions contemplated hereby, each Member shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement and those transactions.

14.09 *Indemnification.* To the fullest extent permitted by Law, each Member shall indemnify the Company and each other Member and hold them harmless from and against all losses, costs, liabilities, damages, and expenses (including costs of suit and attorney's fees) they may incur on account of any breach by that Member of this Agreement.

14.10 *Counterparts.* This Agreement may be executed in any number of counterparts with the same effect as if all signing parties had signed the same document. All counterparts shall be construed together and constitute the same instrument.

[Signature page to follow]

IN WITNESS WHEREOF, the undersigned sole Member of NEIGHBORS TELEHEALTH SERVICES, LLC has executed this Operating Agreement, intending thereby to be bound in all respects by its terms, as of the effective date first set forth above.

NEIGHBORS HEALTH, LLC, Sole Member

By: 
John Decker, Chief Financial Officer

Address for Notice: 11200 Broadway Street, Suite 2320
Pearland, Texas 77584

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Carlos H. Cascos
Secretary of State

Office of the Secretary of State

September 12, 2016

Capitol Services Inc
P O Box 1831
Austin, TX 78767 USA

RE: Neighbors Telehealth Services, LLC
File Number: 802466372

It has been our pleasure to file the Certificate of Amendment for the referenced entity. Enclosed is the certificate evidencing filing. Payment of the filing fee is acknowledged by this letter.

If we may be of further service at any time, please let us know.

Sincerely,

Corporations Section
Business & Public Filings Division
(512) 463-5555

Enclosure

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: Paul Peterson

Fax: (512) 463-5709
TID: 10323

Dial: 7-1-1 for Relay Services
Document: 689051270002

Corporations Section
P.O.Box 13697
Austin, Texas 78711-3697



Carlos H. Cascos
Secretary of State

Office of the Secretary of State

CERTIFICATE OF FILING OF

Neighbors Telehealth Services, LLC
802466372

The undersigned, as Secretary of State of Texas, hereby certifies that a Certificate of Amendment for the above named entity has been received in this office and has been found to conform to the applicable provisions of law.

ACCORDINGLY, the undersigned, as Secretary of State, and by virtue of the authority vested in the secretary by law, hereby issues this certificate evidencing filing effective on the date shown below.

Dated: 09/09/2016

Effective: 09/09/2016



A handwritten signature in black ink, appearing to read "Cascos", followed by a horizontal line.


Carlos H. Cascos
Secretary of State

Come visit us on the internet at <http://www.sos.state.tx.us/>

Phone: (512) 463-5555
Prepared by: Paul Peterson

Fax: (512) 463-5709
TID: 10303

Dial: 7-1-1 for Relay Services
Document: 689051270002

Form 424 (Revised 05/11) Submit in duplicate to: Secretary of State P.O. Box 13697 Austin, TX 78711-3697 512 463-5555 FAX: 512/463-5709 Filing Fee: See instructions	 Certificate of Amendment	This space reserved for office use. <div style="text-align: center;"> FILED In the Office of the Secretary of State of Texas SEP 09 2016 Corporations Section </div>
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Entity Information

The name of the filing entity is:

Neighbors Telchealth Services, LLC

State the name of the entity as currently shown in the records of the secretary of state. If the amendment changes the name of the entity, state the old name and not the new name.

The filing entity is a: (Select the appropriate entity type below.)

- | | |
|---|---|
| <input type="checkbox"/> For-profit Corporation | <input type="checkbox"/> Professional Corporation |
| <input type="checkbox"/> Nonprofit Corporation | <input type="checkbox"/> Professional Limited Liability Company |
| <input type="checkbox"/> Cooperative Association | <input type="checkbox"/> Professional Association |
| <input checked="" type="checkbox"/> Limited Liability Company | <input type="checkbox"/> Limited Partnership |

The file number issued to the filing entity by the secretary of state is: 802466372

The date of formation of the entity is: May 25, 2016

Amendments

1. Amended Name

(If the purpose of the certificate of amendment is to change the name of the entity, use the following statement)

The amendment changes the certificate of formation to change the article or provision that names the filing entity. The article or provision is amended to read as follows:

The name of the filing entity is: (state the new name of the entity below)

The name of the entity must contain an organizational designation or accepted abbreviation of such term, as applicable.

2. Amended Registered Agent/Registered Office

The amendment changes the certificate of formation to change the article or provision stating the name of the registered agent and the registered office address of the filing entity. The article or provision is amended to read as follows:

Registered Agent
(Complete either A or B, but not both. Also complete C.)

☐ A. The registered agent is an organization (cannot be entity named above) by the name of:

OR

☒ B. The registered agent is an individual resident of the state whose name is:

Thomas	G.	Gruenert
<i>First Name</i>	<i>M.I.</i>	<i>Last Name</i>

The person executing this instrument affirms that the person designated as the new registered agent has consented to serve as registered agent.

C. The business address of the registered agent and the registered office address is:

10800 Richmond Ave.	Houston	TX	77042
<i>Street Address (No P.O. Box)</i>	<i>City</i>	<i>State</i>	<i>Zip Code</i>

3. Other Added, Altered, or Deleted Provisions

Other changes or additions to the certificate of formation may be made in the space provided below. If the space provided is insufficient, incorporate the additional text by providing an attachment to this form. Please read the instructions to this form for further information on format.

Text Area (The attached addendum, if any, is incorporated herein by reference.)

☐ Add each of the following provisions to the certificate of formation. The identification or reference of the added provision and the full text are as follows:

☒ Alter each of the following provisions of the certificate of formation. The identification or reference of the altered provision and the full text of the provision as amended are as follows:

New principal office address: 10800 Richmond Ave., Houston, TX 77042

Manager:

Neighbors Health, LLC - 10800 Richmond Ave., Houston, TX 77042

☐ Delete each of the provisions identified below from the certificate of formation.

Statement of Approval

The amendments to the certificate of formation have been approved in the manner required by the Texas Business Organizations Code and by the governing documents of the entity.

Effectiveness of Filing (Select either A, B, or C.)

- A. ☒ This document becomes effective when the document is filed by the secretary of state.
- B. ☐ This document becomes effective at a later date, which is not more than ninety (90) days from the date of signing. The delayed effective date is: _____
- C. ☐ This document takes effect upon the occurrence of a future event or fact, other than the passage of time. The 90th day after the date of signing is: _____
- The following event or fact will cause the document to take effect in the manner described below:

Execution

The undersigned signs this document subject to the penalties imposed by law for the submission of a materially false or fraudulent instrument and certifies under penalty of perjury that the undersigned is authorized under the provisions of law governing the entity to execute the filing instrument.

Date: _____

9/01/16

By: Neighbors Health, LLC, Sole Member

Signature of authorized person

Setul Patel, President and CEO

Printed or typed name of authorized person (see instructions)