

UNITED STATES DEPARTMENT OF JUSTICE
OFFICE OF THE UNITED STATES TRUSTEE
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ACTING UNITED STATES TRUSTEE
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

IN RE: § CASE NO.
§
NEIGHBORS LEGACY HOLDINGS, § 18-33836 (MI)
INC., *et al.*, § (Chapter 11)
§ Jointly Administered
§
§ Hearing Date:
DEBTORS¹ § August 8, 2018, at 10:00 a.m.

**OBJECTION OF UNITED STATES TRUSTEE REGARDING DEBTORS’
EMERGENCY MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING
DEBTORS TO (I) CONTINUE OPERATING THEIR CASH MANAGEMENT
SYSTEM, (II) HONOR CERTAIN PREPETITION OBLIGATIONS, (III) MAINTAIN
EXISTING BUSINESS FORMS, AND (IV) GRANTING RELATED RELIEF**

TO THE HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE:

COMES NOW, the Acting United States Trustee for Region 7, by and through the undersigned counsel, who respectfully files this Objection regarding the Debtors’ Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Operating Their Cash Management System, (II) Honor Certain Prepetition Obligations, (III) Maintain

¹Due 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.



Existing Business Forms, and (IV) Granting Related Relief (“Cash Management Motion”) [Dkt. No. 9], and represents as follows:

I. Preliminary Statement

1. Section 345(b) of the Bankruptcy Code and the United States Trustee’s Operating Guidelines and Reporting Requirements (the “Guidelines”) were promulgated to make sure that bankruptcy estate funds are safeguarded against loss. Without these protections, the bankruptcy estate funds are at risk in the event of a failure by any of the banks. Accordingly, the Acting United States Trustee requests that the Cash Management Motion be denied to the extent it seeks a waiver of section 345(b).

II. Jurisdiction, Venue & Constitutional Authority to Enter a Final Order

2. The Court has jurisdiction to consider this matter under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2). Venue is proper in this district under 28 U.S.C. § 1408.

3. The Court has constitutional authority to enter a final order in this matter. If it is determined that the bankruptcy judge does not have the constitutional authority to enter a final order or judgment in this matter, the Acting United States Trustee consents to the entry of a final order or judgment by this Court in this matter.

4. Henry G. Hobbs, Jr. is the duly appointed Acting United States Trustee for Region 7, Southern and Western Districts of Texas, under 28 U.S.C. § 581(a)(7).

5. Pursuant to 11 U.S.C. § 307, the Acting United States Trustee has standing to appear and be heard on any issue in a case or proceeding under the Bankruptcy Code.

6. Pursuant to 28 U.S.C. § 586(a)(3), the Acting United States Trustee is statutorily obligated to monitor the administration of cases commenced under the Bankruptcy Code, 11

U.S.C. § 101 *et seq.* Specifically, the Acting United States Trustee is charged with a number of supervisory responsibilities in reorganization bankruptcy cases under chapter 11 of the Bankruptcy Code, including monitoring the progress of such cases and taking such actions as the Acting United States Trustee deems to be appropriate to prevent undue delay in such progress. 28 U.S.C. § 586(a)(3)(G).

III. Factual Background

A. General Information

7. On July 12 and 23, 2018 (“Petition Dates”), the Debtors filed petitions seeking relief under chapter 11 of the Bankruptcy Code. Since the orders for relief under chapter 11 were entered, the Debtors have operated as debtors in possession under 11 U.S.C. §§ 1107(a) and 1108. No trustee or examiner has been appointed in these chapter 11 cases.

8. On July 12 and August 1, 2018, the Court entered the Orders directing joint administration of these bankruptcy cases. *See* Dkt. Nos. 10 and 136.

9. On July 12, 2018, the Debtors filed the Emergency Motion (I) for Entry of an Order (A) Approving Auction and Bid Procedures, Including Bid Protections, and (B) Authorizing and Scheduling an Auction for the Sale of the Debtors’ Assets, and (II) for Entry of an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of all Liens, Claims, Encumbrances, and Interests, and (B) Authorizing the Assumption and Assignment of Executory Contracts and Unexpired Leases (the “Sale Motion”). *See* Dkt. No. 20. The Sale Motion contains the Stalking Horse Agreement for sale of the assets pertaining to the Houston-area emergency centers for \$32.0 million.

10. On July 23, 2018, the Debtors filed the Stalking Horse Agreement for sale of the assets pertaining to the non-Houston area emergency centers for \$5.0 million.

11. On July 23, 2018, the Acting United States Trustee appointed the Official Committee of Unsecured Creditors. *See* Dkt. No. 87.

B. The Cash Management Motion

12. On July 12, 2018, the Debtors filed the Cash Management Motion. They maintain 89 active bank accounts. Cash Management Motion, ¶ 16. The active bank accounts are maintained at three (3) different banks, including Wells Fargo Bank, Bank of America, and BBVA Compass Bank. *Id.* at ¶ 61. Four (4) of the active bank accounts are maintained at Wells Fargo Bank and Bank of America, which are authorized depositories under the U.S. Trustee Guidelines. The remainder of the active bank accounts are maintained at BBVA Compass Bank, which is not an authorized depository.

13. On July 13, 2018, the Court entered the Interim Cash Management Order, which provided the Debtors with ninety (90) days to comply with the requirements of § 345 of the Bankruptcy Code. *See* Dkt. No. 37, ¶ 9. A final hearing on the Cash Management Motion is currently scheduled on August 8, 2018.

IV. Objection

A. Section 345(b)

14. Section 345(b) provides that a debtor's funds shall be insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States. 11 U.S.C. § 345(b). A debtor's funds may also be deposited in an entity that has posted a bond in favor of the United States or has deposited securities with the Federal Reserve Bank in an account maintained by the United States Trustee. *Id.* A court may waive the requirements of Section 345 upon the showing of "cause". *Id.*

B. The Debtors Have Not Established Cause

15. In the Cash Management Motion, the Debtors ask the Court for, among other things, authorization to waive the requirements of Section 345(b). The reasons proffered by the Debtors do not justify putting creditors at the risk of loss.

16. The Debtors essentially put forth three (3) reasons why they believe “cause” exists for this Court to waive the protections of section 345 of the Bankruptcy Code. First, the Debtors contend that a change from their current cash management system would be unduly burdensome to the Debtors’ operations. Cash Management Motion, ¶ 61. Second, the Debtors contend that BBVA Compass Bank is a financially stable banking institution. *Id.* Third, the Debtors have implemented internal control procedures to ensure that there are no unauthorized payments of prepetition obligations. *Id.*

17. If the Debtors are permitted to waive the protections of section 345(b), substantial bankruptcy estate funds will be placed at risk in the event of a failure by any of the banks in which the Debtors maintain funds. The cash balances at issue are substantial and need to be protected for the benefit of creditors, especially when and if the sales of assets are approved and consummated.

V. Conclusion

WHEREFORE, the Acting United States Trustee respectfully requests that the Court (i) deny the Cash Management Motion and (ii) grant such other relief as the Court deems appropriate and just.

Dated: August 3, 2018

Respectfully Submitted,

HENRY G. HOBBS, JR.
ACTING UNITED STATES TRUSTEE
REGION 7, SOUTHERN and WESTERN
DISTRICTS OF TEXAS

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CERTIFICATE OF CONFERENCE

I hereby certify that on August 3, 2018, I conferred with Eric M. English of Porter Hedges LLP, proposed general bankruptcy counsel for the Debtors, about the Objection raised by the Acting United States Trustee. Although the parties are continuing to negotiate a resolution of the matter and may reach such a resolution prior to the date and time of the scheduled hearing, the matter requires court determination at this time.

/s/ Hector Duran
Hector Duran

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served by electronic means via ECF transmission or BNC noticing to all Pacer System participants in these bankruptcy cases, on the 3rd day of August, 2018.

/s/ Hector Duran
Hector Duran

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

IN RE:	§	CASE NO.
	§	
NEIGHBORS LEGACY HOLDINGS, INC., et al.,	§	18-33836 (MI)
	§	(Chapter 11)
	§	Jointly Administered
DEBTORS¹	§	

ORDER DENYING CASH MANAGEMENT MOTION
[Relates to Dkt. No. 9]

CAME ON for consideration the Debtors’ Emergency Motion for Entry of Interim and Final Orders Authorizing the Debtors to (I) Continue Operating Their Cash Management System, (II) Honor Certain Prepetition Obligations, (III) Maintain Existing Business Forms, and (IV) Granting Related Relief (“Cash Management Motion”) [Dkt. No. 9], due notice and opportunity for a hearing having been given to all parties-in-interest and it having been shown to the satisfaction of the Court that cause exists under 11 U.S.C. § 345, it is hereby

ORDERED that the Cash Management Motion is **DENIED**.

SIGNED this _____ day of _____, 2018.

HONORABLE MARVIN ISGUR
UNITED STATES BANKRUPTCY JUDGE

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.