

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (THM)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(A) AUTHORIZING THE DEBTORS TO PAY PREPETITION TAXES AND FEES IN
THE ORDINARY COURSE OF BUSINESS, AND (B) GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") seek entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the "Proposed Interim Order"), and a final order, substantially in the form attached hereto as **Exhibit B** (the "Proposed Final Order"): authorizing (a) the Debtors to remit and pay certain accrued and outstanding prepetition Taxes and Fees (as defined herein) in the ordinary course of their business and consistent with past practices, (b) the Banks (as defined herein) to honor and process checks and transfers related to such payments, and (c) granting related relief. In support of this motion (this "Motion"), the Debtors rely upon and incorporate by reference the *Declaration of David R. Campbell in Support of Chapter 11 Petitions and First Day Pleadings* (the "First Day Declaration"),² filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

¹ The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors' proposed claims and noticing agent at www.kccllc.net/Petersen.

² Capitalized terms used but not otherwise defined in this Motion have the meanings ascribed to them in the First Day Declaration.



JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are sections 105(a), 363(b), 507(a)(8), 541, 1107(a), and 1108 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”).

BACKGROUND

4. On the date hereof (the “Petition Date”), each Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors comprise one of the largest nursing home operators in the United States and works in partnership with physicians, skilled nurses and other health care providers in order to provide various healthcare and rehabilitation services for elderly citizens in Illinois, Missouri, and Iowa. Among other services, the Debtors provide assisted and supportive living, skilled nursing care, respite care, memory care, hospice, local medical

transportation, radiology, and pharmacy services. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to these Chapter 11 Cases is set forth in the First Day Declaration.

5. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. To date, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) has not appointed an official committee in the Chapter 11 Cases and no request has been made for the appointment of a trustee or an examiner.

THE DEBTORS’ TAXES AND FEES

6. In the ordinary course of their business, the Debtors collect, incur, remit, withhold, and/or pay various taxes (each, a “Tax” and collectively, the “Taxes”) and must pay certain license and/or registration fees (each, a “Fee” and collectively, the “Fees”) to various federal, state, and local taxing and regulatory authorities (each, a “Taxing Authority” and collectively, the “Taxing Authorities”).

7. The Debtors also use, in the ordinary course of their business, a third-party service provider, ADP, Inc., (“ADP”) to facilitate the payment certain of the Taxes and Fees. Such services include, amongst others, calculating payroll taxes, collecting payroll taxes from the Debtors during each payroll run, and remitting such payroll taxes to the Taxing Authorities on the Debtors’ behalf when due.

8. The Debtors estimate that, as of the Petition Date, the total amount of prepetition Taxes and Fees currently owed to the Taxing Authorities is approximately \$14,483,016.32 in the aggregate. Additionally, the Debtors estimate that approximately \$1,687,597.80 in Taxes and Fees have accrued as of the Petition Date that will become due and owing prior to the entry of a final

order, and are comprised entirely of current tax obligations and are not in respect of any “catch-up” payments (except with respect to certain trust fund tax obligations that are not property of the Debtors’ estates).

9. The Debtors seek authority to make payments where: (a) Taxes and Fees accrue or are incurred in the ordinary course of business postpetition; (b) Taxes and Fees accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; or (c) Taxes and Fees incurred for prepetition periods may become due after the commencement of the Chapter 11 Cases.

10. The Taxes and Fees are summarized as follows:

Category	Description	Approximate Amount Due as of the Petition Date
Real and Personal Property Taxes	<p>The Debtors pay property taxes directly to Taxing Authorities with respect to long-term care facilities, offices, workplace locations, and any personal movable property that the Debtors use in the operation of their businesses (the “<u>Real and Personal Property Taxes</u>”).</p> <p>The Debtors pay Real and Personal Property Taxes to the relevant Taxing Authorities on a quarterly, semi-annual, or annual basis, depending on the applicable jurisdiction.</p>	The Debtors are current with respect to the Real and Property Taxes.
Corporate Income Taxes	<p>In the ordinary course of operating their businesses, the Debtors incur state and federal income taxes (the “<u>Corporate Income Taxes</u>”). Generally, the Debtors pay Corporate Income Taxes on an annual basis.</p> <p>In 2023, the Debtors paid approximately \$9,976.00 in Income Taxes to the applicable Taxing Authorities.</p>	The Debtors are current with respect to Corporate Income Taxes.
Business Fees	The Debtors incur and remit certain permitting and licensing fees, regulatory fees, including CMS fees, and other fees paid to governmental agencies associated with	The Debtors are current with respect to the Business Fees.

Category	Description	Approximate Amount Due as of the Petition Date
	conducting business pursuant to state and local laws (the “ <u>Business Fees</u> ”). In 2023, the Debtors paid approximately \$207,258.00 in Business Fees to the applicable authorities.	
Bed Taxes and Penalties	The Debtors incur state taxes on occupied beds. Prior to the Petition Date, these taxes are paid three months in arrears. ³	\$14,482,807.32
Other Taxes	The Debtors remit other taxes and fees required to operate their businesses in certain jurisdictions.	\$209.00
Approximate Total		\$14,483,016.32

11. The Debtors believe that failing to remit or pay the Taxes and Fees could materially disrupt the Debtors’ business operations in several ways. *First*, failing to remit or pay certain of the Taxes and Fees likely would cause the Debtors to lose their ability to conduct business in certain jurisdictions, which would mean that residents in those jurisdictions would lose the care that they desperately need. *Second*, the Governmental Authorities could initiate audits, suspend operations, file liens, or seek to lift the automatic stay, which would unnecessarily divert the Debtors’ attention from the restructuring process. *Third*, failing to remit or pay Taxes and Fees could potentially subject certain of the Debtors’ directors and officers to claims of personal liability, which likely would distract those key persons from their duties related to the Debtors’ restructuring. *Fourth*, unremitted or unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, which could negatively impact the Debtors’ business or the restructuring process.

³ Accrued Bed Taxes and Penalties are incorporated as an offset to cash collections, as represented in the DIP Budget. The Approximate Amount Due as of the Petition Date listed herein is an accrual, for which the actual payments are offset against payor receipts.

Moreover, the Debtors collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Taxing Authorities, and these funds may not constitute property of the Debtors' estates. Accordingly, the Debtors seek authority to pay the Taxes and Fees in the ordinary course of their businesses consistent with historic practice as set forth more fully herein.

RELIEF REQUESTED

12. By this Motion, the Debtors seek the authority, pursuant to sections 105(a), 363, 507(a) and 541(d) of the Bankruptcy Code, to pay Taxes and Fees owed to the Taxing Authorities, including those which accrued pre-petition but were not yet due, provided that the aggregate amount of such payments shall not exceed \$1,687,597.80, in the aggregate, prior to the entry of a final order.

13. In addition, to the extent any check issued or electronic transfer initiated prior to the Petition Date to satisfy any prepetition obligation on account of Taxes or Fees has not cleared as of the Petition Date, the Debtors request that the Court authorize the Debtors' cash management banks (the "Banks"), when requested by the Debtors, in their sole discretion, to receive, process, honor and pay such checks or electronic transfers, provided that there are sufficient funds available in the applicable accounts to make such payments. The Debtors also seek authorization to issue replacement checks, or to provide for other means of payment to the Taxing Authorities, to the extent necessary to pay such outstanding Taxes or Fees owing for periods prior to the Petition Date, as well as those Taxes and Fees subsequently determined upon audit to be owed for periods prior to the Petition Date.

BASIS FOR RELIEF REQUESTED

A. The Court Should Authorize the Debtors' Payment of Taxes and Fees

14. There are numerous bases for granting the relief requested in this Motion, including that: (a) certain Taxes are not property of the estates; (b) the Debtors' directors and officers may

face personal liability for certain unpaid Taxes, distracting them unnecessarily from the Debtors' efforts in the Chapter 11 Cases; (c) portions of the Taxes and Fees may be entitled to priority status pursuant to section 507(a)(8) of the Bankruptcy Code; (d) section 363 of the Bankruptcy Code gives the Debtors authority to remit payment on account of such Taxes and Fees in the ordinary course of business; and (e) section 105 of the Bankruptcy Code and the Court's general equitable powers permit the Court to grant the relief sought.

15. Section 541(d) of the Bankruptcy Code provides, in relevant part, that “[p]roperty in which the debtor holds, as of the commencement of the case, only legal title and not an equitable interest . . . becomes property of the estate under subsection (a)(1) or (a)(2) of this section only to the extent of the debtor's legal title to such property, but not to the extent of any equitable interest in such property that the debtor does not hold.” 11 U.S.C. § 541(d).

16. Certain of the Taxes may constitute so-called “trust fund” taxes to be collected from third parties and held in trust for payment to certain of the Taxing Authorities. *See, e.g., Begier v. Internal Revenue Serv.*, 496 U.S. 53, 57–60 (1990) (holding that certain taxes are property held by the debtor in trust for another and, as such, do not constitute property of the estate); *City of Farrell v. Sharon Steel Corp. (In re Sharon Steel Corp.)*, 41 F.3d 92, 98–103 (3d Cir. 1994) (finding that funds withheld from employees' paychecks may be subject to a trust, and thus not property of a debtor's estate, even where such funds were commingled with the debtor's other property); *Official Comm. of Unsecured Creditors of the Columbia Gas Transmission Corp. v. Columbia Gas Sys. Inc. (In re Columbia Gas Sys. Inc.)*, 977 F.2d 1039, 1051 (3d Cir. 1993) (determining that funds required to be collected by federal law-created trust was not property of debtors' estates); *EBS Pension LLC v. Edison Bros. Stores, Inc. (In re Edison Bros., Inc.)*, 243 B.R. 231, 235 (Bankr. D. Del. 2000) (noting that property held in trust, whether constructively or expressly, does not become

part of the estate when the debtor files its bankruptcy petition); *In re Am. Int'l Airways, Inc.*, 70 B.R. 102, 103 (Bankr. E.D. Pa. 1987) (finding that funds held in trust for federal excise taxes are not property of a debtor's estate and, therefore, are not available for distribution to creditors); *Shank v. Washington State Dep't of Revenue (In re Shank)*, 792 F.2d 829, 833 (9th Cir. 1986) (finding that sales tax required by state law to be collected by sellers from their customers is a "trust fund" tax and not released by bankruptcy discharge); *DeChiaro v. N.Y. State Tax Comm'n*, 760 F.2d 432, 435–36 (2d Cir. 1985) (same). Although the Debtors do not have any equitable interest in these Taxes, the Debtors seek authority to transfer such Taxes out of an abundance of caution.

17. In states that have enacted laws providing that certain of the Taxes constitute trust fund taxes, officers and directors of the collecting debtor entity may be held personally liable for nonpayment of such Taxes. *See, e.g., In re Am. Motor Club, Inc.*, 139 B.R. 578, 581-83 (Bankr. E.D.N.Y. 1992) (stating "[i]f the employer fails to pay over the trust fund taxes, the IRS may collect an equivalent amount directly from officers or employees of the employer who are responsible for collecting the tax" and finding director personally liable for unpaid taxes) (citing *United States v. Energy Res. Co.*, 495 U.S. 545, 547 (1990)); JOHN F. OLSEN, ET AL., *Director & Officer Liability: Indemnification and Insurance* § 3.21, at 3-20.27 (2008) ("some states hold corporate officers personally liable for any sales tax and penalty owed and not paid by the corporation, regardless of cause"). To the extent any accrued Taxes of the Debtors were unpaid as of the Petition Date, the Debtors' officers and directors may be subject to lawsuits in such jurisdictions during the Chapter 11 Cases. Such potential lawsuits would prove extremely distracting for (a) the Debtors, (b) the named officers and directors whose attention to the Debtors' Chapter 11 Cases may be required, and (c) this Court, which might be asked to entertain various

motions seeking injunctions with respect to the potential state court actions. Thus, it is in the best interest of the Debtors' estates to eliminate the possibility of the foregoing distraction.

18. It is also likely that a significant portion of the Taxes and Fees are entitled to priority payment status pursuant to section 507(a)(8) of the Bankruptcy Code. *See* 11 U.S.C. § 507(a)(8)(A) (taxes measured on gross income); *id.* at § 507(a)(8)(C) (debtor's liability in connection with "trust fund" taxes); *id.* at § 507(a)(8)(E) (excise taxes).⁴ Under any chapter 11 plan, these priority Taxes and Fees must be paid in full and in regular cash installments over a five (5) year period from the date of the order for relief. *See id.* at § 1129(a)(9)(C)(i)-(ii). Additionally, such Taxes and Fees must be paid in the order of priority no less favorable than the treatment given to the most favored general unsecured claims. *See id.* at § 1129(a)(9)(C)(iii). Finally, any chapter 11 plan must provide the same treatment for those Taxes and Fees that constitute secured claims that, were they unsecured, would have been priority tax claims under section 507(a)(8) of the Bankruptcy Code. *See id.* at § 1129(a)(9)(D). Thus, in most cases, the payment of the Taxes and Fees that are entitled to such priority in the ordinary course of the Debtors' business only affects the timing of the payment and does not prejudice the rights of other creditors of the Debtors.

19. Courts have also authorized debtors to pay costs similar to the Taxes and Fees under section 363(b)(1) of the Bankruptcy Code, which provides that "the trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Under this section, a court may authorize a debtor to pay certain prepetition claims. *See In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) (citing *In re Penn Central Transp. Co.*,

⁴ For bankruptcy purposes, a tax is characterized as "(a) [a]n involuntary pecuniary burden, regardless of name, laid upon the individual or property; (b) [i]mposed by, or under authority of the legislature; (c) [f]or the public purposes, including the purposes of defraying expenses of government or undertakings authorized by it; [and] (d) [u]nder the police or taxing power of the state." *LTV Steel Co., Inc. v. Shalala (In re Chateaugay Corp.)*, 53 F.3d 478, 498 (2d Cir. 1995) (citation omitted).

467 F.2d 100, 102 n.1 (3d Cir. 1972)) (holding that the court is authorized under section 105(a) of the Bankruptcy Code to allow immediate payment of prepetition claims of vendors found to be critical to the debtor's continued operation); *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that "if payment of a claim which arose prior to [the commencement of the bankruptcy case] is essential to the continued operation of the . . . [business] during [the bankruptcy case], payment may be authorized even if it is made out of [the] corpus"). To use property, "the debtor must articulate some business justification, other than the mere appeasement of major creditors." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). As discussed herein, the Debtors' failure to pay the Taxes and Fees could adversely impact their ability to operate in the ordinary course of business.

20. Additionally, authority for satisfying the Taxes and Fees also may be found in sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors, operating their businesses as debtors in possession under sections 1107(a) and 1108, are fiduciaries "holding the bankruptcy estate[s] and operating the business[es] for the benefit of [their] creditors and (if the value justifies) equity owners." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002). Implicit in the duties of a chapter 11 debtor in possession is the duty "to protect and preserve the estate, including an operating business's going-concern value." *Id.* Courts have noted that there are instances in which a debtor in possession can fulfill its fiduciary duty "only . . . by the preplan satisfaction of a prepetition claim." *Id.* The *CoServ* court specifically noted that preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment "is the only means to effect a substantial enhancement of the estate," *id.*, and also when the payment was to "sole suppliers of a given product." *Id.* at 498. The court provided a three-pronged test for

determining whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's prepetition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

CoServ, L.L.C., 273 B.R. at 498.

21. The Debtors submit that payment of the Taxes and Fees meets each element of the *CoServ* court's standard. Any failure to pay the Taxes and Fees could impair the Debtors' ability to continue their business operations. Any unexpected or inopportune interruption of the Debtors' operations during the course of these Chapter 11 Cases could diminish estate value and frustrate the Debtors' chapter 11 efforts. Therefore, the Debtors can only meet their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code by payment of the Taxes and Fees in the ordinary course of business.

22. Finally, section 105(a) of the Bankruptcy Code provides that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." The purpose of section 105(a) is "to assure the bankruptcy courts power to take whatever action is appropriate or necessary in aid of the exercise of their jurisdiction." See COLLIER ON BANKRUPTCY ¶ 105.01 (Richard Levin & Henry J. Sommer eds., 16th ed.). Thus, section 105 essentially codifies the bankruptcy court's inherent equitable powers. See *Just for Feet*, 242 B.R. at 826 (finding that "to invoke the necessity of payment doctrine, a debtor must show that payment of the pre-petition claims is critical to the debtor's [continued operation]."); *In re Columbia Gas Sys., Inc.*, 136 B.R. 930, 939 (Bankr. D. Del. 1992) (recognizing that "[i]f payment of a pre-petition claim is essential to the continued operation of [the debtor], payment may be authorized"); See

also Mgmt. Tech. Corp. v. Pardo, 56 B.R. 337, 339 (Bankr. D.N.J. 1985) (noting that the court's equitable power is derived from section 105 of the Bankruptcy Code).

23. Numerous courts have utilized section 105 of the Bankruptcy Code to authorize payment of a debtor's prepetition obligations in order to preserve and maximize the value of the debtor's estate under the "necessity of payment doctrine". See, e.g., *Miltenberger v. Logansport, C. & S.W. Ry. Co.*, 106 U.S. 286, 311-12 (1882) (recognizing the existence of judicial power to authorize a debtor in a reorganization case to pay prepetition claims where such payment is essential to the continued operation of the debtor); see also *In re Lehigh & New England Ry. Co.*, 657 F.2d at 581 (courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *Ionosphere Clubs*, 98 B.R. at 176-77 (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 528 (1984)); *In re Penn Cent. Transp. Co.*, 467 F.2d at 102 n.1 (holding necessity of payment doctrine permits "immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims shall have been paid"); *In re Just for Feet, Inc.*, 242 B.R. at 824-45 (noting that in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191-92 (Bankr. D. Del. 1994) (same).

24. For these reasons, authorizing the Debtors to pay, in their discretion, the prepetition Taxes and Fees will help the Debtors avoid serious disruption to their operations that would result from the nonpayment of such Taxes and Fees, including the distraction and adverse effect on morale that could result from liability for nonpayment imposed upon the Debtors' directors and officers. Furthermore, nonpayment of these obligations may cause Taxing Authorities to take precipitous action, including, but not limited to, filing liens, initiating audits, suspending

operations, or seeking to lift the automatic stay, all of which could disrupt the Debtors' day-to-day operations and endanger resident care, impose significant costs on the Debtors' estates, and destroy the going-concern value of the Debtors' business. Finally, unpaid Taxes and Fees may result in penalties, the accrual of interest, or both, any of which could negatively impact the Debtors' business or the reorganization process.

B. Cause Exists to Authorize the Debtors' Financial Institutions to Honor Checks and Electronic Fund Transfers

25. The Debtors further request that the Banks be authorized, when requested by the Debtors, in their sole discretion, to process, honor and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay prepetition Taxes and Fees, whether those checks or electronic fund transfers were presented prior to or after the Petition Date, and to make other transfers, provided that sufficient funds are available in the applicable account to make such payments. The Debtors represent that each of these checks and transfers can be readily identified as relating directly to the authorized payment of prepetition Taxes and Fees. Accordingly, checks and transfers, other than those relating to authorized payments, will not be honored inadvertently. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment as approved pursuant to this Motion.

26. Based on the foregoing, the Debtors submit that the relief requested is necessary and appropriate, is in the best interests of their estates and creditors and should be granted in all respects.

RESERVATION OF RIGHTS⁵

27. Nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors', or any other party in interest's, right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed

⁵ Nothing in this Motion should be construed as impairing the Debtors' right to contest the amount of any Tax or Fee that may be claimed by any Taxing Authority, and the Debtors expressly reserve all of their rights with respect thereto.

as an admission as to the validity of any particular claim or a waiver of the Debtors', or any other party in interest's, rights to subsequently dispute such claim.

SATISFACTION OF BANKRUPTCY RULE 6003(b)

28. Pursuant to Bankruptcy Rule 6003(b), any motion seeking to use property of the estate pursuant to section 363 of the Bankruptcy Code or to satisfy prepetition claims within twenty-one (21) days of the Petition Date requires the Debtors to demonstrate that such relief "is necessary to avoid immediate and irreparable harm." The Debtors believe that, among other things, the success of their chapter 11 efforts will require them to remain in good standing with the Taxing Authorities, and that any unanticipated disruption in their business operations, and any distractions caused by attending to any issues related to any failure to pay the Taxing Authorities on account of the Taxes and Fees, would substantially diminish or impair the Debtors' efforts to preserve and maximize estate value. Thus, if the relief requested herein is not granted, the Debtors' failure to satisfy the Taxes and Fees would cause the Debtors' estates immediate and irreparable harm by detracting from, and potentially derailing, the Debtors' chapter 11 efforts.

29. For this reason and those set forth above, the Debtors respectfully submit that Bankruptcy Rule 6003(b) has been satisfied, and the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

WAIVER OF STAY UNDER BANKRUPTCY RULE 6004(h)

30. The Debtors seek a waiver of any stay of the effectiveness of an order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), "[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). As set forth above and in the First Day Declaration, the relief requested herein is essential to prevent immediate and

irreparable damage to the Debtors' operations, going-concern value and their efforts to pursue a resolution to these Chapter 11 Cases. To implement the foregoing successfully, the Debtors request that the Proposed Interim Order and Proposed Final Order each include a finding that the Debtors have established cause to exclude such relief from the fourteen day stay period under Bankruptcy Rule 6004(h).

31. For this reason and those set forth above, the Debtors submit that ample cause exists to justify a waiver of the fourteen day stay imposed by Bankruptcy Rule 6004(h).

NOTICE

32. Notice of this Motion has been given to the following parties or, in lieu thereof, to their counsel, if known: (a) the U.S. Trustee; (b) the holders of the forty (40) largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Department of Justice; (h) the Prepetition Lenders; (g) the DIP Lender; (h) the Taxing Authorities; (i) the Banks; and (j) any party that has requested notice pursuant to Bankruptcy Rule 2002. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of the page intentionally left blank]

WHEREFORE, the Debtors respectfully request that this Court grant the relief requested herein and such other and further relief as is just and proper.

Dated: March 21, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Shella Borovinskaya

Andrew L. Magaziner (No. 5426)
Shella Borovinskaya (No. 6758)
Carol E. Cox (No. 6936)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253
Email: amagaziner@ycst.com
sborovinskaya@ycst.com
ccox@ycst.com

and

WINSTON & STRAWN LLP

Daniel J. McGuire (*pro hac vice* pending)
Gregory M. Gartland (*pro hac vice* pending)
35 W. Wacker Drive
Chicago, IL 60601
Telephone: (713) 651-2600
Facsimile: (312) 558-5700
T: (312) 558-5600
Email: dmcguire@winston.com
Email: ggartland@winston.com

and

Carrie V. Hardman (*pro hac vice* pending)
200 Park Avenue
New York, New York 10166
Telephone: (212) 294-6700
Facsimile: (212) 294-4700
Email: chardman@winston.com

*Proposed Counsel for the Debtors and
Debtors in Possession*

EXHIBIT A

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (THM)

(Jointly Administered)

Ref. Dkt. No. ____

**INTERIM ORDER (A) AUTHORIZING THE DEBTORS TO PAY PREPETITION
TAXES AND FEES IN THE ORDINARY COURSE OF BUSINESS, AND
(B) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) seeking entry of an interim order (this “Interim Order”): authorizing (a) the Debtors to pay certain Taxes and Fees to Taxing Authorities in the ordinary course of business, (b) banks and financial institutions to honor and process checks and transfers related to such payments, and (c) granting related relief; and upon the First Day Declaration; and upon the statements of counsel made in support of the relief requested in the Motion at the hearing before the Court; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that venue of the Chapter 11 Cases and the Motion in this district is proper

¹ The last four digits of SC Healthcare Holding, LLC’s tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors’ proposed claims and noticing agent at www.kccllc.net/Petersen.

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

pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Debtors having consented to the Court entering an order in the event this matter is deemed a non-core proceeding; and this Court having reviewed the Motion and having heard the statements in support of the relief requested in the Motion at a hearing before this Court; and it appearing that proper and adequate notice of the Motion has been given under the circumstances and in accordance with the Bankruptcy Rules and Local Rules and that no other or further notice is necessary; and it appearing that the relief requested in the Motion and provided for herein is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized to: (a) pay and remit the obligations that arose or accrued in the ordinary course of business on account of the Taxes and Fees prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these Chapter 11 Cases at such time when the Taxes and Fees are payable and (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis; *provided*, that the Debtors shall not pay Taxes and Fees in excess of \$1,687,597.80 that arose or accrued in the ordinary course of business prior to the Petition Date pending entry of a final order; *provided further*, that in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any “straddle” amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from this Court requiring a return of such amounts.

3. The Debtors are authorized to pay any amounts that later come due as the result (or conclusion) of any pending or future audits in connection with their Taxes and Fees in the ordinary course of business.

4. Nothing in this Interim Order shall be construed as authorizing the Debtors to pay any amounts on account of past-due taxes or to prepay any taxes, except with respect to trust fund taxes that do not constitute property of the Debtors' estates.

5. Notwithstanding the relief granted in this Interim Order and any actions taken pursuant to such relief, nothing in this Interim Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Interim Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Interim Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. The final hearing (the "Final Hearing") on the Motion shall be held on _____, 2024, at ___:___ .m., prevailing Eastern Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 5:00 p.m., prevailing Eastern Time, on _____, 2024. Objections must be filed and served on: (i) proposed counsel to the Debtors, (a) Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, IL 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Gregory M. Gartland (ggartland@winston.com), and 200 Park Avenue, New York, NY 10166, Attn: Carrie V. Hardman (chardman@winston.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 N. King St., Wilmington, DE 19801, Attn: Shella Borovinskaya (sborovinskaya@ycst.com) and Carol E. Cox (ccox@ycst.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King St., Suite 2207, Wilmington, DE 19801, Attn: Linda Richenderfer (linda.richenderfer@usdoj.gov) and Jon Lipshie (jon.lipshie@usdoj.gov); (iii) counsel to the DIP Lender Norton Rose Fulbright US LLP, 1301 Avenue of the Americas, New York, NY 10019, Attn: Robert M. Hirsh (robert.hirsh@nortonrosefulbright.com); and

(iv) counsel to any statutory committee appointed in these Chapter 11 Cases. If no objections are filed to the Motion, the Court may enter a Final Order without further notice or a hearing.

9. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief request set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the estates.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Exhibit B

Proposed Final Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (THM)

(Jointly Administered)

Ref. Dkt. Nos. ____ & ____

**FINAL ORDER (A) AUTHORIZING THE DEBTORS TO PAY PREPETITION
TAXES AND FEES IN THE ORDINARY COURSE OF BUSINESS,
AND (B) GRANTING RELATED RELIEF**

Upon the motion (the "Motion")² filed by the above-captioned debtors and debtors in possession (each, a "Debtor" and collectively, the "Debtors") seeking entry of a final order (this "Final Order") authorizing: (a) the Debtors to pay certain Taxes and Fees to Taxing Authorities in the ordinary course of business, (b) banks and financial institutions to honor and process checks and transfers related to such payments, and (c) granting related relief; and upon the First Day Declaration; and this Court having entered the *Interim Order (A) Authorizing the Debtors to Pay Prepetition Taxes and Fees in the Ordinary Course of Business, and (B) Granting Related Relief* [Docket No. [__]]; and upon the statements of counsel made in support of the relief requested in the Motion at the hearing before this Court, if any; and it appearing that this Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order*

¹ The last four digits of SC Healthcare Holding, LLC's tax identification number are 2584. The mailing address for SC Healthcare Holding, LLC is c/o Petersen Health Care Management, LLC 830 West Trailcreek Dr., Peoria, IL 61614. Due to the large number of debtors in these Chapter 11 Cases, for which the Debtors have requested joint administration, a complete list of the Debtors and the last four digits of their federal tax identification numbers is not provided herein. A complete list of such information will be made available on a website of the Debtors' proposed claims and noticing agent at www.kccllc.net/Petersen.

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

of Reference from the United States District Court for the District of Delaware dated February 29, 2012; and it appearing that venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Debtors having consented to the Court entering an order in the event this matter is deemed a non-core proceeding; and no further or other notice of the Motion is required under the circumstances; and it appearing that the relief requested in the Motion and provided for herein is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis as set forth in this Final Order.
2. The Debtors are authorized to: (a) pay and remit the obligations that arose or accrued in the ordinary course of business on account of the Taxes and Fees prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these Chapter 11 Cases at such time when the Taxes and Fees are payable and (b) pay Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis; *provided*, that the Debtors shall not pay Taxes and Fees in excess of \$1,687,597.80 that arose or accrued in the ordinary course of business prior to the Petition Date; *provided further*, that in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any “straddle” amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from this Court requiring a return of such amounts.

3. The Debtors are authorized to pay any amounts that later come due as the result (or conclusion) of any pending or future audits in connection with their Taxes and Fees in the ordinary course of business.

4. Nothing in this Final Order shall be construed as authorizing the Debtors to pay any amounts on account of past-due taxes or to prepay any taxes, except with respect to trust fund taxes that do not constitute property of the Debtors' estates.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Final Order or the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

6. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

9. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

10. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.