

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 24-10443 (THM)

Joint Administration Requested

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO PAY PREPETITION CLAIMS OF CERTAIN  
CRITICAL VENDORS AND (II) 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”): (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain prepetition claims of critical vendors as the Debtors deem appropriate in their business judgment and in the ordinary course of business, and in accordance with the procedures proposed in this motion (this “Motion”), (b) authorizing the Banks (as defined herein) to honor and process related checks and transfers, and (c) granting related relief. The Debtors intend to condition payment of the Critical Vendor Claims on the Critical Vendors’ agreement to: (a) accept such payments in satisfaction of prepetition claims; (b) as applicable, apply payments satisfying Critical Vendor Claims, in the first instance, against claims such Critical Vendors hold which arise under section 503(b)(9) of the title 11 of the United States Code, 11

<sup>1</sup> 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](http://www.kccllc.net/Petersen).



U.S.C. §§ 101-1532 (the “Bankruptcy Code”), and (c) continue to provide supplies or services to the Debtors during these Chapter 11 Cases on, (i) the most favorable trade terms, practices, and programs (including credit limits, rebates, discounts, pricing, timing of payments, availability, and other applicable terms and programs) in place during the 12 months before the Petitions Date (as defined below), and (ii) such other terms as the Debtors and the Critical Vendor may mutually agree upon ((i) and (ii) together, “Customary Trade Terms”). In support of 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”),<sup>2</sup> filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully state as follows:

### **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.

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

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), 503(b), 1107(a), and 1108 of 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 work 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.

### **DEBTORS’ CRITICAL VENDORS**

6. In the ordinary course of business, the Debtors make payments to certain essential trade vendors and service providers (collectively, the “Critical Vendors”). If the claims held by

the Critical Vendors are not satisfied, their resulting unwillingness to continue to provide inventory and services to the Debtors could cause an interruption of the Debtors' businesses, frustrate the Debtors' attempts at reorganization, and jeopardize the Debtors' ability to maintain the safety and health of residents. The Debtors estimate that they owe approximately \$12,870,507.77 to Critical Vendors as of the Petition Date (the "Critical Vendor Claims").

7. Notably, the Critical Vendors provide goods and services that are essential for the day-to-day operations of the Debtors' facilities and, consequently, the Debtors ability to maximize the estates' going concern value, whether through a sale or otherwise. As further detailed in the First Day Declaration, those goods and services make it possible for the Debtors to maintain safe and hospitable facilities wherein the Debtors' residents can receive the care and attention that they need. Moreover, many of the Debtors' facilities are located in remote locations where, in certain instances, there is only one particular Critical Vendor that can provide the goods and/or services required by the Debtors to maintain safe and hospitable facilities.

8. The Debtors, in consultation with their advisors, have thoroughly reviewed their business relationships and identified certain vendors, the loss of whose particular goods or services would cause immediate and irreparable harm to the Debtors' estates. In identifying Critical Vendors, the Debtors, together with their advisors, undertook a comprehensive process to ensure that, among other criteria, only vendors that are necessary to preserve the value of the estates have been designated as Critical Vendors. In connection therewith, the Debtors generally considered the following criteria:

- whether a particular vendor is a sole source supplier or service provider, including whether the Debtors' selection of a vendor is limited by geography;
- whether the services provided by the vendor are so vital, or the vendors' operations are so commingled with the Debtors' business, that even the briefest disruption would cause significant harm to the Debtors' operations;

- whether the Debtors would be unable to obtain comparable products or services from alternative sources on a cost-effective basis within a reasonable timeframe;
- whether the Debtors' inventory levels or service coverage is sufficient to meet resident demands while an alternative vendor is located;
- whether a vendor meeting the foregoing criteria is able or likely to refuse providing essential products or services to the Debtors if their prepetition balances are not paid;
- whether the business relationship between the Debtors and the supplier is governed by a contract and the relative relationship between the amount owed to the vendor and the costs the Debtors would incur if the vendor ceased performance due to non-payment and the Debtors had to take an enforcement action against the vendor; and
- whether the vendor holds a valid claim under section 503(b)(9) of the Bankruptcy Code.

9. Applying these criteria, the Debtors examined each of their prepetition vendor relationships to determine which vendors were truly critical to the continued operation of the Debtors' businesses. In addition to these factors, the Debtors and their advisors examined the health of each vendor relationship, their familiarity with the chapter 11 process, and the extent to which each vendor's prepetition claims could be satisfied elsewhere in the chapter 11 process.

10. As a result of this analysis, and although many different types of vendors and third parties service the Debtors' businesses, the Debtors are only seeking relief pursuant to this Motion with respect to those vendors and service providers that meet the above-referenced criteria and truly are critical to the Debtors' business and avoiding any disruption or value-destruction associated with the commencement of these Chapter 11 Cases. In each instance, the Debtors will only pay a Critical Vendor Claim if the Debtors determine that payment is in the best interest of the Debtors and their estates and that payment of such Critical Vendor is necessary to avoid immediate and irreparable harm to the estates.

11. As further described in the First Day Declaration, as of the Petition Date, the Debtors estimate that approximately \$562,989.90 in Critical Vendor Claims are outstanding which are expected to become due prior to a final hearing on this Motion.

12. The Debtors' Critical Vendors generally fall into one or more of the following categories:

a. **Operational Vendors** – Several of the Debtors' Critical Vendors are providers of the various supplies that are essential to the daily operation of the Debtors' healthcare facilities. The operational vendors include, but are not limited to, food distributors, information technology and systems providers, mechanical supply providers, hospitality vendors, and various operational equipment (including maintenance of such equipment) and service providers. These operational vendors are critical for the Debtors to maintain their ability continue to adequately care for their residents without interruption.

b. **Healthcare Vendors** – Several of the Debtors' Critical Vendors are providers of the essential healthcare supplies that are required for the daily care of the residents in the Debtors' facilities. The healthcare vendors include, but are not limited to, pharmacy vendors and medical device and equipment providers. The healthcare vendors are essential to the Debtors' operations and ability to provide uninterrupted and adequate care for their residents.

13. The Debtors receive certain supplies on an order-by-order basis (and, in most cases, without a supply contract). As of the Petition Date, the Debtors believe that they owe Critical Vendors approximately \$451,371.97 on account of goods received by the Debtors within the 20 days immediately prior to the Petition Date (claims related to such goods, the "503(b)(9) Claims"). After closely analyzing the scope of potential 503(b)(9) Claims, the Debtors expect that the majority of the 503(b)(9) Claims will come due prior to a final hearing on this Motion. The Debtors seek to have Critical Vendors which hold 503(b)(9) Claims apply any postpetition payment received under the Proposed Orders (as defined below) in the first instance against such Critical Vendors' 503(b)(9) Claims(s), in full or in part, as applicable. As discussed below, the Debtors believe that, to the extent Critical Vendor Claims qualify as 503(b)(9) Claims, in full or in part, payment at the outset of these proceedings will not prejudice the estates, as it merely affects

the timing of payment given the need to satisfy such claims in connection with a proposed plan of reorganization or liquidation, whereas non-payment Critical Vendor Claims which qualify as 503(b)(9) Claims would have a devastating impact on the estates and the Debtors' ability to care for their residents and progress through these Chapter 11 Cases.

14. The Debtors believe that the Critical Vendors may immediately stop existing shipments and services, refuse to provide future shipments and services, and/or would immediately tighten credit terms if the Debtors do not have authority to satisfy the Critical Vendors' prepetition claims on the terms set forth in the Proposed Orders (as defined below). Given that the success of the Debtors' business and the care of the Debtors' residents depends on, among other things, their ability to (i) provide operational and healthcare supplies and services, and (ii) continue to employ skilled nurses, these disruptions would have an immediate and detrimental impact on operations and resident care.

15. To ensure that each Critical Vendor continues providing supplies and/or services on Customary Trade Terms for the duration of these Chapter 11 Cases, the Debtors seek authority, but not direction, to execute binding trade agreements (the "Trade Agreements"). The Trade Agreements may include, without limitation, the following terms:

- a. The Critical Vendor will continue to provide goods and/or services in the ordinary course under the Customary Trade Terms;
- b. Payments of Critical Vendor Claims will be applied, in the first instance, against 503(b)(9) Claim(s) held by such Critical Vendors, and the Critical Vendor will agree to not assert any 503(b)(9) Claim(s) or reclamation claims against the Debtors;
- c. Upon receipt of the payment of a Critical Vendor Claims, the Critical Vendor shall release all liens against the Debtors;
- d. The Critical Vendor will not separately seek payment from the Debtors on account of any prepetition claim outside the terms of the Trade Agreement or a chapter 11 plan confirmed in the Debtors' Chapter 11 Cases; and

- e. In the event that the Critical Vendor fails to satisfy its obligations arising under the Trade Agreement, the Critical Vendor will return some or all of the amount paid on account of the Critical Vendor Claim.

16. To the extent that a Critical Vendor refuses to execute a Trade Agreement, the Debtors also seek authority to pay Critical Vendor Claims without execution of a Trade Agreement if the Debtors determine, in their business judgment, that it is in the best interest of the Debtors' estates. Irrespective of whether a Critical Vendor executes a Trade Agreement, the Debtors reserve the right to seek repayment of Critical Vendor Claims if any Critical Vendor refuses to provide goods or services on Customary Trade Terms or refuses to waive or release claims, liens, and other rights and remedies in connection with satisfaction of Critical Vendor Claims.

17. The Debtors currently enjoy favorable trade terms with many of their Critical Vendors. The Debtors believe that many of the Critical Vendors may be unfamiliar with the chapter 11 process and unwilling to continue to do business with the Debtors on normal trade terms without relief from the Court with respect to outstanding prepetition claims. It may be the case that certain of these Critical Vendors may be party to prepetition agreements. The Debtors will make every effort to obtain continued performance from such vendors and, where applicable, would seek to enforce the automatic stay against vendors who refuse to perform under valid prepetition agreements. However, due to the integrated nature of the services provided, limited availability of comparable vendors, and length of time it would take to obtain an order enforcing the automatic stay and/or replace such vendor, it is vitally important—for the health and welfare of their residents—that the Debtors continue to receive such services and goods without even the slightest disruption. The Debtors, therefore, believe it is critical that they have the discretion to satisfy, if necessary, certain prepetition claims held by Critical Vendors notwithstanding the fact that they may be party to a valid prepetition agreement.

**RELIEF REQUESTED**

18. By this Motion, the Debtors seek entry of the Proposed Interim Order and the Proposed Final Order (together, the “Proposed Orders”), (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay the Critical Vendor Claims as the Debtors deem appropriate in their business judgment and in the ordinary course of business, and in accordance with the procedures proposed in this Motion, (b) authorizing banks and other financial institutions (the “Banks”) to honor and process related checks and transfers, and (c) granting related relief.

**BASIS FOR RELIEF**

**I. The Court Should Grant the Relief Requested in this Motion Pursuant to Sections 105(a) and 363(b) of the Bankruptcy Code.**

19. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 826 (D. Del. 1999) (finding that payment of prepetition claims to certain trade vendors was “essential to the survival of the debtor during the chapter 11 reorganization”); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a bankruptcy court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (*In re James A. Phillips, Inc.*), 29 B.R. 391, 398 (S.D.N.Y. 1983). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a) and 363(b) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

20. Pursuant to section 363(b) of the Bankruptcy Code, payment of prepetition obligations may be authorized where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). Indeed,

courts have recognized that there are instances when a debtor's fiduciary duty can "only be fulfilled by the preplan satisfaction of a prepetition claim." *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002).

21. In addition, the Court may authorize payment of prepetition claims in appropriate circumstances based on section 105(a) of the Bankruptcy Code. Section 105(a) codifies the Court's inherent equitable powers to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." Under section 105(a), courts may authorize payments of prepetition obligations when essential to the continued operation of a debtor's businesses. *See Just for Feet*, 242 B.R. at 825. Specifically, the Court may use its power under section 105(a) of the Bankruptcy Code to authorize payment of prepetition obligations pursuant to the "necessity of payment" rule (also referred to as the "doctrine of necessity"). *Ionosphere Clubs*, 98 B.R. at 176.

22. Indeed, the United States Court of Appeals for the Third Circuit recognized the "necessity of payment" doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981). The Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating courts may authorize payment of prepetition claims when there "is the possibility that the creditor will employ an immediate economic sanction, failing such payment"); *See also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the 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 have been paid"); *Just for Feet*, 242 B.R. at 824–25 (noting that, in the Third Circuit, debtors may pay

prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

23. Allowing the Debtors to pay Critical Vendor Claims, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code: preserving going-concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999). As demonstrated by the First Day Declaration, the proposed Critical Vendor Payments are necessary to ensure uninterrupted, continued operation of the Debtors’ healthcare facilities and, in turn, preserve and enhance the value of the estates. The Critical Vendor Payments have been thoughtfully considered and, if authorized, will increase the Debtors’ going-concern value as the Debtors implement a postpetition sale process.

## **II. The Debtors Should Be Authorized to Pay Critical Vendor Claims Under Sections 1107(a) and 1108 of the Bankruptcy Code.**

24. The Critical Vendor Payments also are authorized under sections 1107 and 1108 of the Bankruptcy Code. The Debtors, operating their business as debtors in possession under Bankruptcy Code sections 1107(a) and 1108, are fiduciaries for their estates. *See In re Marvel Entm’t Grp., Inc.*, 140 F.3d 463, 474 (3d Cir. 1998) (citation omitted); *In re CoServ, LLC*, 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.” *CoServ*, 273 B.R. at 497.

25. The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of the debtor’s fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate . . . .” *Id.* There, the court provided a

three-pronged test to determine whether a preplan payment on account of a prepetition claim was a valid exercise of a debtor's fiduciary duty, stating:

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

*Id.* at 498.

26. The Critical Vendor Claims meet each of the *CoServ* factors. First, it is critical that the Debtors deal with the Critical Vendors because the Critical Vendors provide inventory, goods, and services necessary to the Debtors' ongoing operations and ultimately the health and safety of the residents. Second, the Debtors believe that the Critical Vendors would otherwise be unwilling or unable to provide inventory, goods, and services to the Debtors on a postpetition basis if their prepetition balances are not paid. Accordingly, not paying Critical Vendor Claims would harm the Debtors financially because losing access postpetition to the necessary goods and services provided by the Critical Vendors could force the Debtors to halt ongoing operations and potentially put residents' health at risk. Third, the Debtors and their advisors have examined other options short of paying Critical Vendor Claims and have determined that, to avoid any unexpected or inopportune interruptions to their operations, there is no practical alternative to payment of the Critical Vendor Claims. Therefore, the Debtors submit that the Critical Vendor Claims are a sound exercise of their fiduciary duties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

**III. Failure to Make Timely Payment of the Critical Vendor Claims Would Threaten the Debtors' Ability to Operate.**

27. It is imperative that the Debtors be authorized to pay the Critical Vendor Claims in order to ensure these essential services provided are available to the Debtors without interruption so that the Debtors can continue to provide safe and hospitable facilities to their residents. If the Debtors are authorized to satisfy Critical Vendor Claims, the Debtors believe that the value of the Debtors' business will be enhanced for the benefit of the Debtors' estates and their creditors.

28. If the relief requested herein is not granted, the Critical Vendors may refuse to provide goods or services, undermining the Debtors' ability to care for their residents and thereby causing immediate and irreparable harm to the Debtors and their estates. For this reason, the Debtors believe that, in the exercise of their sound business judgment, payment of the Critical Vendor Claims as set forth herein is necessary and appropriate under the circumstances.

**IV. Processing of Checks and Electronic Fund Transfers Should Be Authorized**

29. The Debtors have sufficient funds to pay the amounts described in this Motion in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and DIP financing. Under the Debtors' existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. The Debtors do not believe that checks or wire transfer requests, other than those relating to authorized payments, will be honored inadvertently. The Debtors respectfully request that the Court authorize and direct all the Banks, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this Motion. The Debtors further request that all of the Banks be authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved pursuant to this Motion.

**SATISFACTION OF BANKRUPTCY RULE 6003(b)**

30. 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 obtaining immediate authority to pay Critical Vendor Claims, in accordance with the Proposed Interim Order, is vital to their continued viability and the safety and welfare of their residents. Specifically, the Debtors believe that any delay or interruption in supply of the goods and services provided by the Critical Vendors, however temporary it might be, would severely harm the Debtors’ business operations given the importance of the key products and supply chain services these parties provide. Thus, the Debtors submit that the requirements of Bankruptcy Rule 6003(b) are met and that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates.

31. 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)**

32. 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 Orders 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).

33. 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).

### **RESERVATION OF RIGHTS**

34. 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, trust imposed on, 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 or trusts (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 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.

**NOTICE**

35. 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; (g) the Prepetition Lenders; (h) the DIP Lender; (i) the Banks; (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*

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*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.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (THM)

Jointly Administered

Ref. Docket No. \_\_\_\_

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY  
PREPETITION CLAIMS OF CERTAIN CRITICAL VENDORS,  
AND (II) GRANTING RELATED RELIEF**

Upon the Motion<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”): (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain prepetition claims of Critical Vendors in accordance with the procedures proposed in the Motion, (b) authorizing the Banks to honor and process related checks and transfers, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having 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; and the Debtors consenting to entry of a final order by this Court under Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper

<sup>1</sup> 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](http://www.kccllc.net/Petersen).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the First Day Declaration and the record of the Hearing; and this Court having found and determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, as contemplated by Bankruptcy Rule 6003(b), and such relief is in the best interests of the Debtors, their estates and creditors, and parties in interest, and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on an interim basis.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Critical Vendors Claims, in an amount not to exceed \$562,989.90, without further Court order.
3. Payment made to applicable Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, to the extent that Critical Vendors hold such claims, in whole or in part, as applicable.
4. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors (such agreement, a "Trade Agreement") to (a) continue—or recommence—providing goods and

services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the 12 months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the “Customary Trade Terms”), and (b) agree that such Critical Vendor shall not cancel any contract or agreement pursuant to which they provide goods or services to the Debtors. The Debtors reserve the right to require additional favorable trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be provided with a copy of this Interim Order and are deemed to have agreed to the terms and provisions of this Interim Order.

5. The Debtors are authorized, but not directed, to pay Critical Vendor Claims, in the event that no Trade Agreement has been executed if the Debtors determine, in their business judgment, that a formal Trade Agreement is unnecessary or cannot be reached to ensure a Critical Vendor’s continued performance on Customary Trade Terms and such vendor acknowledges (in writing, which may be email) that it will continue providing services as agreed with the Debtors or otherwise be subject to the provisions of the Interim Order with respect to such payment.

6. The Debtors may also, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has breached the terms and provisions of the Trade Agreement.

7. If any Critical Vendor accepts payment on account of a Critical Vendor Claim pursuant to the terms and conditions of a Trade Agreement and thereafter a Trade Agreement is terminated as set forth above, any such payment shall be deemed an unauthorized postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash

or goods, or, at the Debtors' option, may be applied as a credit against any outstanding postpetition claims held by such Critical Vendor. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendors Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs of recovery, including attorneys' fees. It being the express intention of this Court to return the parties to the *status quo* in effect as of the date of entry of this Interim Order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by the Debtors.

9. The Banks shall be, and hereby are, 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 the Critical Vendor Claims, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing in this Motion or Interim Order shall prejudice the Debtors' rights to request further authority from this Court, after notice and opportunity for a hearing, to pay any Critical Vendor Payments in excess of the cap set forth in paragraph 2 hereof.

11. Nothing in the Motion or this Interim Order, or the Debtors' payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim, lien, or trust; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of

any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

12. Notwithstanding anything to the contrary in this Interim Order or the Motion, the priority status of a creditor's claims, including that of claims arising under section 503(b)(9) of the Bankruptcy Code, shall not be affected by whether such creditor executes a Trade Agreement, or provides services or goods to the Debtors under Customary Trade Terms, or otherwise.

13. 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 Emily Hong (emily.hong@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.

14. Notwithstanding the relief granted in this Interim Order, any payment made or to be made by the Debtors pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget and in accordance with the DIP Loan Documents (each as defined in the Interim DIP Order) and the Interim DIP Order.

15. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order shall be immediately effective and enforceable upon its entry.

16. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied because the relief set forth in this Interim Order is necessary to avoid immediate and irreparable harm.

17. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation 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.<sup>1</sup>**

Chapter 11

Case No. 24-10443 (THM)

Jointly Administered

**Ref. Docket Nos. \_\_\_ & \_\_\_**

**FINAL ORDER AUTHORIZING THE DEBTORS TO (I) PAY PREPETITION CLAIMS  
OF CERTAIN CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF**

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Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain prepetition claims of Critical Vendors in accordance with the procedures proposed in the Motion, (b) authorizing the Banks to honor and process related checks and transfers, and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012; and the Debtors consenting to entry of a final order by this Court under Article III of the United States Constitution; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant

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<sup>1</sup> 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](http://www.kccllc.net/Petersen).

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meaning given to such terms in the Motion.

to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), as applicable, and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record of the Hearing; and this Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest; and this Court having previously entered that certain *Interim Order (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors, and (II) Granting Related Relief* [Docket No. [\_\_]] (the "Interim Order"); and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED on a final basis.
2. The Debtors are authorized, but not directed, in their sole discretion and in the reasonable exercise of their business judgment, to pay certain prepetition Critical Vendors Claims, in an amount not to exceed \$12,870,507.77, inclusive of those Critical Vendor Claims satisfied or paid under the Interim Order.
3. Payment made to applicable Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, to the extent that Critical Vendors hold such claims, in whole or in part, as applicable.
4. The Debtors shall undertake all appropriate efforts in the exercise of their sound business judgment to cause each Critical Vendor to enter into an agreement with the Debtors

(the “Trade Agreement”) to (a) continue—or recommence—providing goods and services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the 12 months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the “Customary Trade Terms”), and (b) agree that such Critical Vendor shall not cancel any contract or agreement pursuant to which they provide goods or services to the Debtors. The Debtors reserve the right to require additional favorable trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim. Any party that accepts payment from the Debtors on account of a Critical Vendor Claim shall be provided with a copy of this Final Order and are deemed to have agreed to the terms and provisions of this Final Order.

5. The Debtors are authorized, but not directed, to pay Critical Vendor Claims, in the event that no Trade Agreement has been executed if the Debtors determine, in their business judgment, that a formal Trade Agreement is unnecessary or cannot be reached to ensure a Critical Vendor’s continued performance on Customary Trade Terms and such vendor acknowledges (in writing, which may be email) that it will continue providing services as agreed with the Debtors or otherwise be subject to the provisions of the Final Order with respect to such payment.

6. The Debtors may also, in their sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Final Order, on the date the Debtors deliver notice to the Critical Vendor that the Critical Vendor has breached the terms and provisions of the Trade Agreement.

7. If any Critical Vendor accepts payment on account of a Critical Vendor Claim pursuant to the terms and conditions of a Trade Agreement and thereafter a Trade Agreement is terminated as set forth above, any such payment shall be deemed an unauthorized postpetition

transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtors in cash or goods, or, at the Debtors' option, may be applied as a credit against any outstanding postpetition claims held by such Critical Vendor. A Critical Vendor shall then immediately repay to the Debtors any payments made to it on account of its Critical Vendors Claim to the extent that such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less the Debtors' reasonable costs of recovery, including attorneys' fees. It being the express intention of this Court to return the parties to the *status quo* in effect as of the date of entry of this Final Order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The execution of a Trade Agreement by the Debtors shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by the Debtors.

9. The Banks shall be, and hereby are, 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 the Critical Vendor, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing in the Motion, the Interim Order, or this Final Order shall prejudice the Debtors' rights to request further authority from this Court, after notice and opportunity for a hearing, to pay any Critical Vendor Payments in excess of the cap set forth in paragraph 2 hereof.

11. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against the Debtors or their estates; (b) as a waiver of the Debtors' right to dispute any claim, lien, or trust; (c) as approval or assumption of any agreement, contract or

lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

12. Notwithstanding anything to the contrary in this Final Order, the Interim Order, or the Motion, the priority status of a creditor's claims, including that of claims arising under section 503(b)(9) of the Bankruptcy Code, shall not be affected by whether such creditor executes a Trade Agreement, or provides services or goods to the Debtors under Customary Trade Terms, or otherwise.

13. Notwithstanding any applicability of Bankruptcy Rule 6004(h), the terms and conditions of this Final Order shall be immediately effective and enforceable upon its entry.

14. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation of this Final Order.