

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

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Joint Administration Requested)

**EMERGENCY MOTION OF X-CALIBER FUNDING LLC
TO EXCUSE RECEIVER'S COMPLIANCE WITH 11 U.S.C. § 543(a) & (b)**

X-Caliber Funding LLC, in its capacity as servicer for U.S. Bank, N.A., as trustee of XCAL 2019-IL-1 MORTGAGE TRUST, as lender ("Lender"), by and through its undersigned counsel, hereby moves (this "Motion") for entry of an order pursuant to Section 543(d) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") excusing compliance with Sections 543(a) and (b) of the Bankruptcy Code by the receiver appointed over Debtors El Paso HCC, LLC; Flanagan HCC, LLC; Kewanee AL, LLC; Knoxville AL, LLC; Legacy Estates AL, LLC; Marigold HCC LLC; Monmouth AL LLC; Polo LLC; El Paso HCO, LLC; Flanagan HCO, LLC; CYE Kewanee HCO, LLC; CYE Knoxville HCO, LLC; Legacy HCO, LLC; Marigold HCO, LLC; CYE Monmouth HCO LLC; and Polo HCO, LLC (collectively, "Subject Debtors"). In support of this Motion, Lender states 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.



PRELIMINARY STATEMENT

1. Subject Debtors own and operate eight (8) of the seventy-two (72) senior care facilities subject to these chapter 11 filings. Lender is Subject Debtors' senior secured creditor with liens on all of their assets (including, without limitation, accounts receivable and real estate) to secure a loan with a current outstanding balance in excess of \$31 million. The facilities owned by the other 125 Debtors have their own lenders, owners and operators and their loans are not cross-collateralized with Subject Debtors' assets.

2. On January 25, 2024, the United States District Court for the Northern District of Illinois (the "District Court") appointed Michael F. Flanagan, a senior care expert with decades of experience, as receiver ("Receiver") over all of Subject Debtors' operations and assets following Subject Debtors' default under its loan obligations to Lender.

3. As detailed below, upon Receiver's appointment, he found the receivership facilities in complete financial and physical disarray. Debtors were under investigation for physical and sexual abuse at a facility and had significant health and safety findings from the State. Vendors had shut off or threatened to shut off services and critical vendors were owed over \$4.6 million, \$3.5 million of which was over 90 days old. Employees were using their own money to purchase supplies at the facilities. Debtors' PLGL insurance had terminated retroactively to January 2023 for non-payment. Medicaid was actively recouping over \$1.7 million in past due bed taxes. An MDS nurse had been working with an expired license for over a year, there was no infection preventionist at a facility, and numerous administrators didn't have a license. One facility's bus had an inoperative lift meaning that residents in a wheelchair could not access receive rides from the facility, at another facility a generator had not been repaired and it went out during

the dangerously cold winter freeze, and at another facility the memory care unit and dining room are shut down due to water leaks.

4. Without a doubt, Debtors completely disregarded the health, safety and welfare of the residents and should not be trusted with control and management of Subject Facilities again. And this disregard was not limited to the recent months due to a lack of cash. Debtors' egregious conduct was repetitive over a number of years preceding the receivership.

5. Since his appointment, Receiver and his retained management company have stabilized the situation to ensure proper resident care and are working toward and/or have secured long term solutions. Moreover, Receiver has completely separated Subject Debtors from the rest of the Petersen enterprise. Receiver has secured GLPL insurance for Subject Debtors and paid, with funding from Lender, the non-refundable premium. Receiver has entered into new contracts with vendors. Receiver has moved billing, payroll and all operational management from the Petersen centralized management to management by his own new manager. Receiver has cleared health and safety survey issues at the facilities and is working with the Illinois Department of Public Health to implement plans to correct Subject Debtors' years of neglect. All of these efforts were funded by Lender.

6. Not surprisingly, since Receiver's appointment and implementation of his management company, employees reported significantly improved morale at receivership facilities. Employees have stated that they would not stay if Debtors' enterprise was returned to management. Families of residents at Debtors' facilities that are not subject to receivership have called asking to be admitted to receivership facilities under receivership. Vendors (including critical vendors such as therapy providers) have cut off services to Debtors' non-receivership

facilities, but have continued to provide services to receivership facilities due to the appointment of Receiver and his management company.

7. Transferring management of Subject Debtors' facilities back to Subject Debtors is not an easy or quick task. It would take significant time and money and have adverse effects on employees, residents and the facilities themselves.

8. Through this Motion, Lender seeks an order, pursuant to Bankruptcy Code Section 543, relieving the Receiver from turning over estate assets, so that he can continue to oversee the Subject Debtors' senior care facilities and ensure continuity of care for and services to the hundreds of residents housed therein. Concurrently herewith, Lender is filing a motion to dismiss Subject Debtors' chapter 11 cases so that the receiver can continue administering Subject Debtors' assets or, in the alternative, for appointment of receiver as chapter 11 trustee of Subject Debtors.

9. Subject Debtors' petition for bankruptcy is not about effectuating a reorganization. Subject Debtors' financial and operational condition renders that a virtual impossibility. Rather Subject Debtors' bankruptcy petition is merely a pretext to try to circumvent the District Court's receivership order, reappoint the management team that caused Subject Debtors to fall into financial and operational ruin, and improperly cross-collateralize assets to require performing assets to support non-performing assets within the Petersen enterprise. As set forth in Lender's objection to the DIP Financing and Cash Collateral Motion, this cross-collateralization cannot be permitted and Subject Debtors should not be allowed to so abuse the Bankruptcy Code.

10. Accordingly, Lender is filing this Motion to request relief from Section 543 of the Bankruptcy Code because turnover of Subject Debtors' property and business is not in the interest of creditors (or any other key constituent).

JURISDICTION AND VENUE

11. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. section 157(b).

12. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

13. The statutory predicates for the relief requested herein are §§ 105(a) and 543(d) of the Bankruptcy Code and related Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”).

BACKGROUND

14. Lender has concurrently filed a Motion to Dismiss the Subject Debtors’ Bankruptcy Cases and an objection to Debtors’ motion to use cash collateral and obtain debtor-in-possession financing. The factual background supporting the filings is identical, but Lender is including the same background in each filing for ease of reference and convenience of the court.

A. \$40 Million Loan to Subject Debtors.

15. Subject Debtors are owners of real property on which they operate the following assisted living and skilled nursing facilities:

- a. Subject Owner Debtor El Paso HCC, LLC owns the real property located at 850 East 2nd Street, El Paso, IL 61738 (the “El Paso Real Property”) on which Subject Operator Debtor El Paso HCO, LLC operates El Paso Health Care Center, a 123-bed licensed skilled nursing facility (the “El Paso Facility”).
- b. Subject Owner Debtor Flanagan HCC, LLC owns the real property located at 201 East Falcon Highway, Flanagan, IL 61740 (the “Flanagan Real Property”) on which Subject Operator Debtor Flanagan HCO, LLC operates Flanagan Rehab & Health Care Center, a 75-bed licensed skilled nursing facility (the “Flanagan Facility”).
- c. Subject Owner Debtor Kewanee AL, LLC owns the real property located at 141 South Junior Avenue, Kewanee, IL 61443 (the “Kewanee Real Property”) on

which Subject Operator Debtor CYE Kewanee HCO, LLC operates Courtyard Estates of Kewanee, a 35-bed licensed assisted care living facility (the “Kewanee Facility”).

- d. Subject Owner Debtor Knoxville AL, LLC owns the real property located at 415 East Main Street, Knoxville, IL 61448 (the “Knoxville Real Property”) on which Subject Operator Debtor CYE Knoxville HCO, LLC operates Courtyard Estates of Knoxville, a 32-bed licensed assisting care living facility (the “Knoxville Facility”).
- e. Subject Owner Debtor Legacy Estates AL, LLC owns the real property located at 1200 West Broadway, Monmouth, IL 61462 (the “Legacy Real Property”) on which Subject Operator Debtor Legacy HCO, LLC operates Legacy Estates of Monmouth, a 59-bed licensed assisted care living facility (the “Legacy Facility”).
- f. Subject Owner Debtor Marigold HCC LLC owns the real property located at 275 East Carl Sandburg Drive, Galesburg, IL 61401 (the “Marigold Real Property”) on which Subject Operator Debtor Marigold HCO, LLC operates Marigold Rehab & Health Care Center, a 172-bed licensed skilled nursing facility (the “Marigold Facility”).
- g. Subject Owner Debtor Monmouth AL LLC owns the real property located at One Courtyard Boulevard, Monmouth, IL 61462 (the “Monmouth Real Property”) on which Subject Operator Debtor CYE Monmouth HCO LLC operates Courtyard Estates of Monmouth, a 51-bed licensed assisted care living facility (the “Monmouth Facility”).
- h. Subject Owner Debtor Polo LLC owns the real property located at 703 East Buffalo Street, Polo, IL 61064 (the “Polo Real Property” and collectively with the El Paso Real Property, the Flanagan Real Property, the Kewanee Real Property, the Knoxville Real Property, the Legacy Real Property, the Marigold Real Property, and the Monmouth Real Property, the “Subject Real Properties” and each a “Subject Real Property”) on which Subject Operator Debtor Polo HCO, LLC operates Polo Rehab & Health Care Center, an 81-bed licensed skilled nursing facility (the “Polo Facility” and collectively with the El Paso Facility, the Flanagan Facility, the Kewanee Facility, the Knoxville Facility, the Legacy Facility, the Marigold Facility, and the Monmouth Facility, the “Subject Facilities” and each a “Subject Facility”).

16. Lender provided Subject Debtors a term loan in the original principal amount of Forty Million and No/100 Dollars (\$40,000,000) (the “Term Loan” and together with all other obligations owed under the Loan Agreement, the “Obligations”). The Term Loan is governed by that certain Amended and Restated Loan Agreement dated as of February 24, 2021 (as

supplemented, modified, amended, restated or replaced from time to time, the “Loan Agreement”) and evidenced by that certain Promissory Note in the original principal amount of \$40,000,000 dated as of October 31, 2019 (as supplemented, modified, amended, restated or replaced from time to time, the “Note”). True and correct copies of the Loan Agreement and Note are attached at Exhibit A and Exhibit B, respectively, to the Declaration of Jeff Deines filed in support hereof (the “Lender Declaration”).

17. The Obligations are secured by all assets of Subject Debtors. In connection therewith, pursuant to Section 3.11 of the Loan Agreement, Subject Debtors each granted Lender a security interest in, *inter alia*, all of their “Rents” (as defined in the Loan Agreement and which definition is incorporated herein), which includes, among other things, all rents, rent equivalents, accounts, cash, issues, profits, charges for services rendered (excluding resident trust funds), and other payment and consideration of whatever form or nature received by or paid to or for the account of or benefit of Subject Debtors or any of their agents or employees from any and all sources arising from or attributable to Subject Real Properties, including all receivables for rendering of services by Operator Debtors. See Loan Agreement, Exhibit A to the Lender Declaration at § 3.11.

18. Subject Debtors are required to deposit all of their Rents in their cash management accounts, over which Lender was provided control rights pursuant to Deposit Account Control Agreements dated as of March 23, 2020 and April 20, 2022 and Deposit Account Instructions and Service Agreements (Government Healthcare Receivables) dated as of March 20, 2020 and March 23, 2020 (collectively and as each was/is supplemented, modified, amended, restated or replaced from time to time, the “Account Agreements”). True and correct copies of the Account Agreements are attached at Group Exhibit C to the Lender Declaration.

19. Lender filed UCC financing statements with the Illinois Secretary of State and respective counties where the Subject Real Properties are located reflecting its liens. True and correct copies of the UCC financing statements are attached at Group Exhibit D to the Lender Declaration.

20. Subject Debtors each granted Lender a mortgage on their respective Subject Real Property to secure the Obligations pursuant to the following Fee and Leasehold Mortgages, Assignments of Leases and Rents and Security Agreements (collectively, and as each was/is supplemented, modified, amended, restated or replaced from time to time, the “Mortgages”):

- a. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors El Paso HCC, LLC and El Paso HCO, LLC with respect to the El Paso Real Property recorded in Woodford County on November 7, 2019 (File No. 1904548).
- b. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Flanagan HCC, LLC and Flanagan HCO, LLC with respect to the Flanagan Real Property recorded in Livingston County on November 7, 2019 (File No. 2019R-04374).
- c. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Kewanee AL, LLC and CYE Kewanee HCO, LLC with respect to the Kewanee Real Property recorded in Henry County on November 7, 2019 (File No. 20-1905807).
- d. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Knoxville AL, LLC and CYE Knoxville HCO, LLC with respect to the Knoxville Real Property recorded in Knox County on November 7, 2019 (File No. 1059281).
- e. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Legacy Estates AL, LLC and Legacy HCO, LLC with respect to the Monmouth Real Property recorded in Warren County on November 8, 2019 (File No. 2019R-2142).
- f. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Marigold HCC LLC and Marigold HCO, LLC with respect to the Marigold Real Property recorded in Knox County on November 7, 2019 (File No. 1059285).

- g. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Monmouth AL LLC and CYE Monmouth HCO LLC with respect to the Monmouth Real Property recorded in Warren County on November 8, 2019 (File No. 2019R-2154).
- h. Fee and Leasehold Mortgage, Assignment of Leases and Rents and Security Agreement dated as of October 31, 2019 by Subject Debtors Polo LLC and Polo HCO, LLC with respect to the Polo Real Property recorded in Ogle County on November 8, 2019 (File No. 201906436).

True and correct copies of the Mortgages are attached at Group Exhibit E to the Lender Declaration.

21. Each Subject Debtor assigned all of its respective rents and leases to Lender to secure the Obligations pursuant to the following Fee and Leasehold Assignments of Leases and Rents (collectively, and as each was/is supplemented, modified, amended, restated or replaced from time to time, the “Assignments of Leases and Rents”):

- a. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Flanagan HCC, LLC and Flanagan HCO, LLC recorded in Livingston County on November 7, 2019 (File No. 2019R-04375).
- b. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Kewanee AL, LLC and CYE Kewanee HCO, LLC recorded in Henry County on November 7, 2019 (File No. 20-1905808).
- c. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Knoxville AL, LLC and CYE Knoxville HCO, LLC recorded in Knox County on November 7, 2019 (File No. 1059282).
- d. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Legacy Estates AL, LLC and Legacy HCO, LLC recorded in Warren County on November 8, 2019 (File No. 2019R-2143).
- e. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Marigold HCC LLC and Marigold HCO, LLC recorded in Knox County on November 7, 2019 (File No. 1059286).
- f. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Monmouth AL LLC and CYE Monmouth HCO LLC recorded in Warren County on November 8, 2019 (File No. 2019R-2155).

- g. Fee and Leasehold Assignment of Leases and Rents dated as of October 31, 2019 by Subject Debtors Polo LLC and Polo HCO, LLC recorded in Ogle County on November 8, 2019 (File No. 201906437).

True and correct copies of the Assignments of Leases and Rents are attached at Group Exhibit F to the Lender Declaration.

B. The Loan Has Matured and Subject Debtors Have Failed to Repay the Obligations.

22. Subject Debtors were subject to a ransomware attack in October 2023 that caused them to lose access to their billing systems for a number of the Subject Facilities. Subject Debtors failed to inform Lender until months later (December 2023) and claim that their finances had been crippled by the attack.

23. Events of Default occurred under the Loan Agreement as a result thereof, and on December 29, 2023, Lender accelerated the Obligations under the Loan Agreement. A true and correct copy of the acceleration notice is attached as Exhibit G to the Lender Declaration. Subject Debtors have, to date, failed to repay the Obligations.

C. Order Appointing Receiver Over Subject Debtors.

24. On January 23, 2024, Lender filed a receivership action against each Subject Debtors in the United States District Court for the Northern District of Illinois (the “District Court”) captioned as *X-Caliber Funding LLC v. El Paso HCC, LLC et al.* (Case No. 24-cv-50034) (the “Receivership Proceeding”). Lender’s request for appointment of a receiver was granted by the District Court on January 25, 2024 and Michael F. Flanagan (the “Receiver”), an attorney with three decades of experience in the nursing home industry as receiver, was immediately appointed receiver of Subject Debtors, the Subject Facilities, and all of their respective assets. A true and

correct copy of the receiver order (the “Receiver Order”) is attached at Exhibit A to the Declaration of Paige Tinkham (“Tinkham Declaration”) filed herewith.

25. Pursuant to the Receiver Order, Subject Debtors were divested of possession and control of all of their assets until the receivership is terminated and were enjoined from taking any action with respect thereto. Receiver Order ¶¶ 5 & 27. The District Court further ordered: “No legal actions ... or any other acts or proceedings under any federal, state or municipal statute, regulation or by-law shall be taken or continued against Receiver or the Receivership Assets, or any part thereof, without leave of this Court first being obtained.” *Id.* at ¶ 28.

26. Receiver was further authorized to borrow funds from Lender during the receivership. *Id.* at ¶ 20.²

D. Debtors’ Mismanagement, Financial Distress, and Endangerment of Health, Safety and Welfare of Residents.

27. Upon Receiver’s appointment over the Subject Debtors and the other receivership Debtors (collectively, the “Receivership Facilities” and each a “Receivership Facility”), he found the facilities in complete financial and physical disarray.

28. The Receivership Facilities are subject to a number of health and safety concerns. One Receivership Facility is under investigation for physical and sexual abuse, which Debtors and

² Since Mr. Flanagan’s appointment as Receiver for Subject Debtors, he was also appointed receiver over affiliates in the following proceedings. These affiliates have not filed for bankruptcy. (a) The case captioned as *Capital Funding, LLC v. Batavia, LLC, et al.*, Case No. 1:24-cv-00888 (pending in the U.S. District Court for the Northern District of Illinois, Eastern Division), filed by Capital Funding, LLC (“Capital Funding”) against Debtors Batavia, LLC; Timbercreek HCC, LLC; Fondulac, LLC; Bloomington, LLC; Sunset HCC, LLC; Eastside, LLC; Cisne, LLC; Benton HCC, LLC; and Ozark HCC, LLC, in which Mr. Flanagan was appointed as receiver over the defendants in such case and their assets on February 8, 2024; and (b) The case captioned as *X-Caliber Capital LLC v. Charleston HCC, LLC, et al.*, Case No. 2:24-cv-02034 (pending in the U.S. District Court for the Central District of Illinois, Urbana Division), filed by X-Caliber Capital LLC (“X-Caliber Capital”) against Debtors Charleston HCC, LLC; Cumberland HCC, LLC; Petersen MT4, LLC; Charleston HCO, LLC; and Cumberland HCO, LLC, in which Mr. Flanagan was appointed as receiver over the defendants in such case and their assets on February 13, 2024.

their ownership ignored resulting in citations and Receivership Facility's possible future loss of licensure. One Receivership Facility is a special focus facility. Several Receivership Facilities have abuse icons. Receivership Facilities have an average of 1.5 star rating where the national average is 3.1 stars. Receivership Facilities have received numerous complaints regarding administration and safety, as well as state reports on lack of available food for residents. Receivership Facilities have not had adequate tracking for infection, falls, and skin issues.

29. Debtors were subject to a number of plans of correction, but failed to carry them out, including with respect to training. Employees at one Receivership Facility reported that Debtors exchanged scheduled paychecks for employee signatures attesting to in-service training that never took place.

30. Debtors were delinquent in paying their critical vendors, including for food, pharma, staffing, and rehabilitation and many of these vendors were threatening to or already had shut off services. This finding coincides with information provided by Subject Debtors to Lender before the receivership actions were filed that showed over \$4.6 million owing to critical vendors, \$3.5 million of which was over 90 days old as of November 2023.

31. Debtors were so strapped for cash that employees reported using their own money to purchase medical supplies for the Receivership Facilities. And, upon Receiver's appointment, the manager it retained had to buyout all of the inventory at the local Walmart to ensure proper supplies (wound care supplies, diabetic supplies, incontinence briefs, body and hand soap, laundry detergents) until an agreement could be reached with supply vendors (previous vendors had terminated services due to non-payment). The new manager had to purchase personal protective equipment for staff as there were none at the Receivership Facilities. The new manager had to

obtain feeding solutions for residents' dependent on tube feeding because there was no supply at the Receivership Facilities.

32. Debtors failed to make a required payment for GLPL insurance and it was cancelled for all Debtors' facilities in December 2023, retroactive to January 2023.

33. Subject Debtors were subject to recoupment for failing to pay bed taxes to the tune of over \$1.7 million for the Subject Facilities, which recoupment had already been implemented on a monthly basis by Medicaid and is ongoing.

34. Debtors were subject to a consolidated management system, very uncommon for these types of facilities. All decisions for and processing of admissions, care and financials were made by Debtors' enterprise headquarters, resulting in a bottleneck. This consolidated process also resulted in comingling of funds amongst Debtors' enterprise. Subject Debtors had an intercompany receivable of over \$14.9 million from other Debtors as of September 2023 (the most recent information Subject Debtors provided to Lender). The situation was further exacerbated when the ultimate owner of the Debtors' enterprise, Mark Petersen became unavailable in 2023 (his whereabouts or reason for being unavailable are not publicly known to Lender).

35. Staffing issues were rampant at the Receivership Facilities: an MDS nurse had been working with an expired license for over a year, there was no infection preventionist at a facility, numerous Receivership Facility administrators didn't have a license and the list goes on with lack of training and oversight. Moreover, upon Receiver's appointment, Debtors' ownership pulled staff from the Receivership Facilities on a Friday leaving the Receivership Facilities understaffed and creating crisis staffing throughout the weekend.

36. Debtors' headquarters had put a hold on all capital improvements resulting in significant health and safety issues. For example, one Receivership Facility had an inoperative

bus lift meaning that residents in a wheelchair could not use the bus; at another Receivership Facility a generator had not been repaired and it went out during the dangerously cold February freeze; at another Receivership Facility the memory care unit and dining room were shut down due to water leaks; at another Receivership Facility residents had to be evacuated from their rooms due to water damage but their belongings were left in their rooms; one Receivership Facility only had an alarm alert in the breakroom rendering staff unable to hear the alarm if they were in resident rooms; there is water damage at many of the Receivership Facilities; there are foundation hazards; insufficient kitchen equipment for quality meal preparation; inoperable HVAC and water heaters; peeling wallpaper; and duct taped carpeting.

37. Even after Receiver was appointed, Debtors made concerted efforts to remove employees from Receivership Facilities, shift high touch residents to Receivership Facilities, remove equipment, supplies, and vehicles from Receivership Facilities and even issued statements to the Receivership Facilities claiming the receivership orders would soon be null due to an imminent bankruptcy filing.

38. Since his appointment, Receiver and his retained management company have stabilized the situation to ensure proper resident care and are working toward and/or have secured long term solutions.

39. Receiver has separated operations from the former consolidated management at Debtors' headquarters and is not reliant on those centralized operations. Receiver has secured GLPL insurance for the Receivership Facilities. Receiver has entered into new contracts with vendors. Receiver has moved billing, payroll and all operational management from the centralized management to management by his own new manager.

40. Not surprisingly, since Receiver's appointment and implementation of his management company, employees reported significantly improved morale at Receivership Facilities. Employees have stated that they would not stay if Debtors' enterprise was returned to management. Families of residents at Debtors' facilities that are not subject to receivership have called asking to be admitted to Receivership Facilities under receivership. Vendors (including critical vendors such as therapy providers) have cut off services to Debtors' non-receivership facilities, but have continued to provide services to Receivership Facilities due to the appointment of Receiver and his management company.

41. While the foregoing only provides highlights of Subject Debtors' egregious lack of attention to Subject Facilities and is not an exhaustive list, it clearly demonstrates Subject Debtors, and Debtors' enterprise as a whole, complete disregard for the health, safety and welfare of the residents and inability and/or lack of commitment to manage Subject Facilities.

E. The Chapter 11 Cases.

42. On March 20, 2024 (the "Petition Date"), Debtors filed their chapter 11 petitions (collectively, the "Chapter 11 Petitions") with this Court.

43. As of the Petition Date, at least \$31,768,617.20 was due and owing to Lender under the Loan Agreement by Subject Debtors. Lender Declaration at ¶13. Interest, fees and costs continue to accrue under the Loan Agreement. *Id.*

RELIEF REQUESTED

44. Through this Motion, Lender hereby seek entry of an order, substantially in the form attached hereto as Exhibit A, excusing Receiver's compliance with Sections 543(a) and (b)

of the Bankruptcy Code.

BASIS FOR RELIEF REQUESTED

45. Sections 543(a) and (b) of the Bankruptcy Code provide that a custodian with knowledge of the commencement of a bankruptcy case, may not take any action with respect to the property in its possession and/or control and must turnover such property to the debtor, except such action as is necessary to preserve the property. The burden of proof in a turnover proceeding rests on the party seeking turnover. *Maggio v. Zeitz*, 333 U.S. 56 (1948).

46. Section 543(d) of the Bankruptcy Code provides that “after notice and hearing” a custodian may be excused from the turnover requirements of that section. *Dill v. The Dime Savings Bank. FSB (In re Dill)*, 163 B.R. 221, 224 (E.D.N.Y. 1994). This section is “intended to provide flexibility when there is no useful purpose to be served by turnover.” *In re Plantation Inn Partners*, 142 B.R. 561, 564 (Bankr. S.D. Ga. 1992).

47. The central inquiry under section 543(d) is whether requiring the turnover of the property is in the interests of creditors. The Bankruptcy Code does not define what “interests of creditors” means, but bankruptcy courts have formulated a list of relevant factors to consider, including: (1) whether the debtor will use the turnover property for the benefit of the creditors; and (2) whether there has been mismanagement by the debtor. *See Id.*; *Constable Plaza Associates*, 125 B.R. 98 at 103-04 (Bankr. S.D.N.Y. 1991) (citing cases); *In re Northgate Terrace Apartments, Ltd.*, 117 B.R. 328, 332 (Bankr. S.D. Ohio 1990); *Powers Aero Marine Services*, 42 B.R. 540, 54-45 (Bankr. S.D. Tex. 1984); *In re CCN Realty Corp.*, 19 B.R. 526 (Bankr. S.D.N.Y. 1982).

48. The interests of the debtor are not part of the criteria considered when applying section 543(d)(1). *See 4 Collier on Bankruptcy*, ¶ 543.05 at 543-12 (15th Ed. 1993) (“section 543(d)(1) does not require an analysis of the interests of the debtor”).

49. There is no question, here, that there is a history of mismanagement by Subject Debtors and that Subject Debtors cannot be trusted to use the turnover property for the benefit of its creditors.

50. Subject Debtors' management proved utterly incapable of effectively overseeing the Subject Debtors' facilities. As detailed above, the nursing home facilities were subject to catastrophic operational defects, including allegations of physical and sexual abuse, lack of required training for medical personnel and the absence of the most basic medical equipment. Likewise, even a cursory review of Subject Debtors' existing financials reveals a complete failure. Subject Debtors' lack sufficient cash flow to run their facilities, owe millions of dollars to crucial vendors, and have no path to profitability.

51. As the District Court held at the receiver hearing, the Receiver, who has decades of experience overseeing distressed nursing home facilities, is clearly in the best position to preserve and maximize the remaining value of Subject Debtors' assets for the benefit of its creditors. In contrast, it would be catastrophic for creditors (and the residents of the senior care facilities) if Subject Debtors' management, which oversaw the ruinous decline of Subject Debtors' businesses, were reinstated.

52. Moreover, since his appointment, Receiver has completely separated Subject Debtors from the rest of the Petersen enterprise. Receiver has secured GLPL insurance for Subject Debtors and paid, with funding from Lender, the non-refundable premium. Receiver has entered into new contracts with vendors. Receiver has moved billing, payroll and all operational management from the Petersen centralized management to management by his own new manager. Receiver has cleared health and safety survey issues at the facilities and is working with the Illinois

Department of Public Health to implement plans to correct Subject Debtors' years of neglect. All of these efforts were funded by Lender.

53. Undoing this process is not an easy or quick task. It would take significant time and money and have adverse effects on employees, residents and the facilities themselves. Employees and residents have said they will leave if Petersen is put back in control of the facilities.

54. As a result, all creditors and interested parties will benefit if the Receiver is able to continue to manage Subject Debtors' facilities. He can only do that if he is relieved of any obligation to relinquish control of Subject Debtors' assets to Subject Debtors' management.

55. Accordingly, Lender respectfully requests that the Court enter an order, pursuant to Section 543(d) of the Bankruptcy Code, relieving the Receiver from any obligation to turn over assets of Subject Debtors to the bankruptcy estate. *See Maggio*, 333 U.S. at 56; *Dill*, 163 B.R. at 224; *In re Plantation*, 142 B.R. at 564; *Constable*, 125 B.R. at 103-04; *In re Northgate*, 117 B.R. at 332; *Powers*, 42 B.R. at 545; *In re CCN*, 19 B.R. at 526.

NOTICE

56. Notice of this Motion shall be given to (a) the Debtors; (b) the Office of the United States Trustee for the District of Delaware; and (c) the Debtors' twenty (20) largest unsecured creditors as listed on the petition; and (d) all parties that have filed in this case a request for service under Fed. R. Bankr. P. 2002(i). Lender submits that no other or further notice need be provided.

WHEREFORE, Lender respectfully request this Court enter an order, substantially in the form attached hereto as Exhibit A, pursuant to Section 543(d) of the Bankruptcy Code, excusing the Receiver from compliance with Sections 543(a) and (b) of the Bankruptcy Code and ordering that the Receiver remain in possession and control of Subject Debtors' assets and governance so long as these bankruptcy cases of Subject Debtors remain pending.

Dated: March 21, 2024
Wilmington, Delaware

BLANK ROME LLP

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Counsel for X-Caliber Funding LLC

Exhibit A
(Proposed Order)

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

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,¹

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Joint Administration Requested)

Re. Dkt. No. ____

ORDER EXCUSING RECEIVER'S COMPLIANCE WITH 11 U.S.C. § 543(a) & (b)

This matter having come before this Court upon the *Motion of X-Caliber Funding LLC to Excuse Compliance with 11 U.S.C. § 543(a) & (b)* filed on March 21, 2024 (“Motion”),² proper notice of the Motion having been provided, a hearing having been held on the Motion, any objections to the Motion having been considered, and the Court otherwise being fully advised of the premises hereof, it is

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted as set forth herein.
2. In the interest of creditors and pursuant to 11 U.S.C. § 543(d), Receiver is excused from compliance with 11 U.S.C. § 543(a) & (b).
3. The Receiver shall remain in possession and control of Subject Debtor's assets and governance during the pendency of the chapter 11 cases of Subject Debtors.
4. The order appointing Receiver entered by the United States District Court for the

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 All undefined capitalized terms used herein shall have the meaning given to them in the Motion.

Northern District of Illinois shall remain in full force and effect and shall be unaffected by the filing of these chapter 11 cases.

5. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the implementation, interpretation, or enforcement of this Order.