

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

In re:

SC HEALTHCARE HOLDING, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Joint Administration Requested)

**EMERGENCY MOTION OF X-CALIBER FUNDING LLC FOR AN ORDER  
(I) DISMISSING THE SUBJECT CHAPTER 11 CASES, (II) FOR ABSTENTION, OR  
(III) APPOINTMENT OF RECEIVER AS THE CHAPTER 11 TRUSTEE**

X-Caliber Funding LLC, in its capacity as servicer for U.S. Bank, N.A., as trustee of XCAL 2019-IL-1 MORTGAGE TRUST (“Lender”), by and through its undersigned counsel, respectfully moves the Court for an order directing dismissal of the chapter 11 cases of Debtors El Paso HCC, LLC; Flanagan HCC, LLC; Kewanee AL, LLC; Knoxville AL, LLC; Legacy Estates AL, LLC; Marigold HCC LLC; Monmouth AL LLC; and Polo LLC (collectively, “Subject Owner Debtors”) and Debtors 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 Operator Debtors” and together with Subject Owner Debtors, “Subject Debtors”) pursuant to Sections 1112(b) and 349(a) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) or pursuant to the abstention provision under Section 305(a)(1) of the Bankruptcy Code, or in the alternative, for appointment of receiver as the chapter 11 trustee pursuant to Section 1104(a) of the Bankruptcy Code (this “Motion”). In support

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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.kccellc.net/Petersen](http://www.kccellc.net/Petersen).



of this Motion, Lender respectfully submits the supporting Declaration of Jeff Deines filed herewith (the “Lender Declaration”), the Declaration of Paige Tinkham filed herewith (the “Tinkham Declaration”), and the exhibits annexed thereto and represents as follows:

**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’ GLPL 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 had an inoperative lift meaning that residents in a wheelchair could not access other floors, 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. 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 objections 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.

9. As detailed below, the bankruptcy proceedings must be dismissed because the Receivership Order (as defined below) deprived Subject Debtors of authority to file for bankruptcy. And even if that were not the case, the bankruptcy proceedings should be dismissed because they were filed in bad faith – and because the Court can and should abstain from undoing the receivership which remains the best course forward for all constituents. In the alternative, Lender seeks appointment of Receiver as the chapter 11 trustee for Subject Debtors. Receiver is in the best position to serve as chapter 11 trustee for Subject Debtors given that he has been managing and overseeing Subject Debtors operations for the last two months.

### **JURISDICTION AND VENUE**

10. 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. § 157(b).

11. Venue of this Motion in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

12. The statutory predicates for the relief requested herein are §§ 105(a), 305(a)(1), 349(a), 1104(a) and 1112(b) of the Bankruptcy Code and related Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

### **BACKGROUND**

13. Lender has concurrently filed a Motion to Excuse Receiver’s Compliance with 11 U.S.C. § 543(a) & (b) and objections to Debtors’ requests 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. The \$40 Million Loan to Subject Debtors.**

14. Subject Owner Debtors are owners of real property on which Subject Operator Debtors 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”).

15. 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 as Exhibit A and Exhibit B, respectively, to the Declaration of Jeff Deines filed in support hereof (the “Lender Declaration”).

16. 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.

17. 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 as Group Exhibit C to the Lender Declaration.

18. 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 attaches as Group Exhibit D to the Lender Declaration.

19. 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 as Group Exhibit E to the Lender Declaration.

20. 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 as Group Exhibit F to the Lender Declaration.

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

21. 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.

22. 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**

23. 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.

24. 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.

25. Receiver was further authorized to borrow funds from Lender during the receivership. *Id.* at ¶ 20.<sup>2</sup>

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

26. 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.

27. 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 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

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<sup>2</sup> 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.

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.

28. 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. 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).

34. 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.

35. 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 lift meaning that residents in a wheelchair could not access other floors; 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.

36. 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.

37. 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.

38. 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.

39. 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.

40. 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.**

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

42. 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.*

**BASIS FOR RELIEF REQUESTED**

**I. The Subject Chapter 11 Cases should be dismissed for "Cause" pursuant to Section 1112(b) of the Bankruptcy Code.**

43. Section 1112(b) of the Bankruptcy Code provides that the Court "*shall* convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate," upon a showing of "cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate." 11 U.S.C. § 1112(b) (emphasis added). Dismissal of a chapter 11 petition is "committed to the sound discretion of the bankruptcy court or district court."

*Official Comm. of Unsecured Creditors v. Nucor Corp. (In re SGL Carbon Corp.)*, 200 F.3d 154, (3d Cir. 1999).

44. A request for dismissal under Section 1112(b) must be scheduled by the Court no later than 30 days after filing of the motion, and must be decided by the Court no later than 15 days after commencement of the hearing, unless the movant expressly consents to a continuance for a specific period of time or “compelling circumstances” prevent the Court from meeting the time limits. 11 U.S.C. § 1112(b)(3).

45. Here, the Court should dismiss Subject Debtors’ bankruptcy cases because Subject Debtors’ members lacked authority to approve Subject Debtors’ bankruptcy petitions; and because the bankruptcy petitions were filed in bad faith.

**A. Subject Debtors Did Not Have Authority to File for Bankruptcy.**

46. Courts have held that a limited liability company’s lack of authority to file for bankruptcy is “cause” to dismiss the company’s bankruptcy case. *In re NNN 123 North Wacker, LLC*, 510 B.R. 854, 858 (Bankr. N.D. Ill. 2014); *see also Price v. Gurney*, 324 U.S. 100, 106 (1945) (“If the District Court finds that those who purport to act on behalf of the corporation have not been granted authority by local law to institute the proceedings, it has no alternative but to dismiss the petition”).

47. Once a receiver is appointed under federal law, the authority of company’s managers and officers is removed and vested in the receiver. *See SEC v. Spence and Green*, 612 F. 2d 896, 903 (5<sup>th</sup> Cir. 1980) (“As a general rule a receiver, standing in the shoes of management, holds the sole right absent some sort of shareholder derivative action to direct the litigation of the corporation with whose care he is entrusted.”); *First Savings & Loan Ass’n v. First Federal Savings & Loan Ass’n.*, 531 F. Supp. 251, 255 (D. Haw. 1981) (“When a receiver is appointed for



a corporation, the corporation's management loses the power to run its affairs and the receiver obtains all of the corporation's powers and assets."); *see also In re Gen-Air Plumbing & Remodeling*, 208 B.R. 426, 430 (Bankr. N.D. Ill. 1997) (finding that a receiver stands in the place of managers and officers regarding authority to file a bankruptcy petition).

48. Applying this principle, courts have made clear that corporate entities that are subject to a federal receivership lack authority to seek bankruptcy protection. *See Big Shoulders Capital LLC v. San Luis & Rio Grande R.R.*, No. 19 C 9029, 2019 WL 6117578 (N.D. Ill. Nov. 18, 2019) (upholding court's authority to enjoin parties other than the receiver from filing a bankruptcy petition and holding creditors that filed involuntary petition violated injunction); *Sino Clean Energy, Inc. v. Seiden (In re Sino Clean Energy, Inc.)*, 901 F.3d 1139 (9<sup>th</sup> Cir. 2018) (holding that company's board of directors did not have authority to file the bankruptcy petition because at the time of filing, the board of directors were replaced by the receiver); *c.f. United States v. Royal Business Funds Corp.*, 724 F.2d 12, 16 (2d Cir. 1983); *see also SEC v. Bartlett*, 422 F.2d 475 (8th Cir. 1970); *SEC v. Lincoln Thrift Asso.*, 577 F.2d 600 (9th Cir. 1978).<sup>3</sup>

49. In *Big Shoulders*, the District Court for the Northern District of Illinois entered an order appointing a receiver that provided a broad injunction against commencing suit or proceeding against or affecting the debtors or the receivership assets. *Big Shoulders Capital*, 2019

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<sup>3</sup> Courts have held that appointment of a receiver under *state* law does not deprive officers and directors of the authority to seek bankruptcy protection. But those cases are inapposite here because they are rooted in the notion that federal bankruptcy law preempts state receivership law. *See In re Corporate & Leisure Event Prods.*, 351 B.R. 724 (Bankr. D. Ariz. 2006) (concluding state law is preempted by federal bankruptcy law and that an eligible debtor is not barred from filing bankruptcy due to state receivership order); *In re Kreisers, Inc.*, 112 B.R. 996, 1000 (Bankr. D.S.D. 1990) (holding the pendency of a state court receivership may not bar the filing of a bankruptcy, but stating "[o]ne may file for bankruptcy unless the debtor . . . is involved with a federal receivership substantially underway"); *see also In re Cash Currency Exch.*, 762 F.2d 542, 552 (7th Cir. 1984) (stating "the exclusivity of an administrative receiver's title to all assets under state law is irrelevant to the determination whether a particular entity may file for bankruptcy relief" and "a corporation may not be precluded by state law from availing itself of federal bankruptcy"). These cases are inapposite here, where the receivership was implemented under federal law, which is not preempted.

WL 6117578, at \*2. Thereafter, a group of unsecured creditors filed an involuntary petition against the debtor. *Id.* at \*3. The court held the bankruptcy should not proceed because the receiver was managing numerous entities with commingled assets and allowing the filing of petitions would undermine the purpose of the receivership and preventing adequate protection of estate assets. *Id.* at \*5. The court’s ruling was rooted in the fact that the receivership offered a superior method than bankruptcy because it would keep the business operational and maximize the estate’s value. *Id.* at 6.

50. Similarly here, the District Court determined unequivocally that the receivership is the most appropriate course to ensure the retention of Subject Debtors’ business. Accordingly, the Receivership Order broadly provides that, Subject Debtors “shall in *all* respects comply with this Order, and are hereby enjoined and restrained from impeding or interfering in any manner with the exercise by Receiver of its rights, powers, and duties hereunder.” Receivership Order ¶ 5 (emphasis added). It further provides: “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. This language unequivocally deprives Subject Debtors of authority to seek bankruptcy protection. Yet, they have ignored the Receivership Order and filed their bankruptcy petitions anyway. This cannot be allowed. *See Big Shoulders Capital*, 2019 WL 6117578.

51. And that is particularly true here, where, in opposing implementation of the receivership, Subject Debtors argued that the appointing a receiver would be a waste of resources because they intended to file for bankruptcy imminently, which would mean that any resources spent on the receiver would be wasted. Transcript of Receivership Hearing attached as Exhibit B to the Tinkham Declaration, 18:2-24. In response, Lender’s counsel argued that it would seek

abstention of any bankruptcy filing because the Receiver would be in the best position to run Subject Debtors' businesses and stabilize the organization. *Id.* at 28:6-9. Faced with these arguments, the District Court granted the Receiver Motion. *Id.* at 80:18-83:20. It would not have done so if intended to allow Subject Debtors to circumvent the Receivership Order simply by following through with their threat to seek bankruptcy protection.

52. The Receivership Order was thus clearly intended to deprive Subject Debtors from seeking bankruptcy protection. *See Big Shoulders Capital*, 2019 WL 6117578, at \*5-6. This intent should be respected, and Subject Debtors' bankruptcy petitions should be dismissed.

53. Allowing Subject Debtors to file bankruptcy petitions would also undermine the purpose of the federal receivership. The court in *Big Shoulders Capital* explained that allowing anyone other than the receiver to file for bankruptcy would undermine the purpose of the federal receivership and prevent adequate protection of the estate's assets. *Big Shoulders Capital, LLC*, 2019 WL 6117578, at \*5. The court reasoned that the company was still operational, and the goal of keeping it operational was best served in the receivership. *Id.* The court further reasoned that Local Rule 66.1 of the Northern District of Illinois—the same local rule applicable to the Receivership Proceeding here—provides for administration similar to that in bankruptcy cases. *Id.*

**B. Subject Debtors' Chapter 11 Petitions Were Filed in Bad Faith.**

54. Even if the Court finds that Subject Debtors had authority to seek bankruptcy protection, the bankruptcy cases should still be dismissed because they were not filed in good faith.

55. “Good faith is a predicate to the right to file a petition in bankruptcy[.]” *In re JER/Jameson Mezz Borrower II, LLC*, 461 B.R. 293, 297 (Bankr. D. Del. 2011). “Chapter 11 bankruptcy petitions are subject to dismissal under § 1112 unless filed in good faith and the burden

is on the bankruptcy petitioner to establish good faith.” *In re 15375 Memorial Corp.*, 589 F.3d 605, 618 (3d Cir. 2009) (quotations omitted); *see also SGL Carbon Corp.*, 200 F.3d at 162 n.10.

56. The Third Circuit has adopted a fact-intensive, “totality of facts and circumstances” test to determine good faith. *SGL Carbon Corp.*, 200 F.3d at 165-66. The “good faith” inquiry is “based more on an objective analysis of whether the debtor has sought to step outside the ‘equitable limitations’ of Chapter 11 than the subjective intent of the debtor.” *15375 Memorial*, 589 F.3d at 618 n.8.

57. The Third Circuit has identified two essential elements for a “good faith” bankruptcy filing. First, the bankruptcy petition must “serve[] a valid bankruptcy purpose.” *See 15375 Memorial*, 589 F.3d at 618; *SGL Carbon*, 200 F.3d at 165. Second, the bankruptcy cannot be filed “merely to obtain tactical litigation advantage.” *Id.* These equitable limitations on the chapter 11 process are necessary to ensure that the hardship on particular creditors resulting from the exercise of the debtor’s considerable bankruptcy powers (the automatic stay, the exclusive right to propose a plan, the discharge of debts, etc.) are justified. *SGL Carbon*, 200 F.3d at 165-66; *see NMSBPCSLDHB, L.P. v. Integrated Telecom Express, Inc. (In re Integrated Telecom Express, Inc.)*, 384 F.3d 108, 120 n.4 (“The good faith requirement is necessitated as much by the hardship of Chapter 11 to certain interests as it is by the benefit to others.”).

58. “In making a determination of good faith, courts consider various factors that indicate whether the case has been filed for a legitimate reorganization purpose or only as a litigation tactic or for some other improper purpose.” *In re JER/Jameson*, 461 B.R. at 298-99 (citing *Primestone Inv. Partners L.P. v. Vornado PS, L.L.C. (In re Primestone Inv. Partners L.P.)*, 272 B.R. 554, 557 (D. Del. 2002)). The factors articulated in *Primestone* and its progeny are:

- (1) Single asset case; (2) Few unsecured creditors; (3) No ongoing business or employees; (4) Petition filed on eve of foreclosure;

(5) Two party dispute which can be resolved in pending state court action; (6) No cash or income; (7) No pressure from non-moving creditors; (8) Previous bankruptcy petition; (9) Prepetition conduct was improper; (10) No possibility of reorganization; (11) Debtor formed immediately prepetition; (12) Debtor filed solely to create automatic stay; and (13) Subjective intent of the debtor.

*See Primestone*, 272 B.R. at 557 (noting factors).

59. Nearly all of these factors weigh in favor of dismissal.

60. The second factor, which is intended to assess potential claims by other creditors supports dismissal because, while Subject Debtors have unsecured creditors who are not party to this motion, Lender, by virtue of its status as the first priority secured lender, has priority over claims by any such creditors and, in light of Subject Debtors' status, it is unlikely that any other creditors will receive a recovery in the bankruptcy.

61. The ninth factor, which assesses the nature of Subject Debtors' prepetition conduct, is unquestionably satisfied. Prior to implementation of the Receivership, Subject Debtors engaged in incredible mismanagement of their entities. They commingled funds, ignored applicable regulations, mismanaged Subject Debtors' financials and put the safety of Subject Facilities' residents at risk. Subject Facilities have received, in many cases, the lowest possible safety grades from Medicare.com, and have been fined multiple times and cited for abuse. Put simply, Subject Debtors left Subject Facilities on the brink of financial and operational ruin and should not be trusted to continue operations. The ninth factor weighs strongly in favor of dismissal.

62. The first, fourth, and twelfth factors, which consider whether the bankruptcy filing was intended to avoid a court order or an imminent foreclosure, are also satisfied because the bankruptcy filing was clearly intended to circumvent the Receivership Order, and to avoid the imminent foreclosure of Subject Debtors' assets.

63. And, while the third factor is not applicable here because Subject Debtors' businesses are still technically operational, the sixth and tenth are satisfied because there is no real possibility of reorganization, and, consistent with the District Court's decision, the receivership provides the best chance to maintain the value of Subject Debtors' and Subject Facilities, thereby maximizing value for all key constituents. Likewise, the fifth factor supports dismissal because, in light of Subject Debtors' bleak financial and operational outlook, this is effectively a two-party dispute between Subject Debtors and Lender, their first priority secured lender.

64. In sum, the factors clearly support a finding that the bankruptcy filing was made in bad faith. The bankruptcy cases should be dismissed for this reason too.

## **II. In the alternative, the Court should abstain from hearing Subject Chapter 11 Cases.**

65. Even if the Court finds that dismissal is not mandatory, it should still dismiss the case under principles of abstention. Section 305(a)(1) expressly authorizes a bankruptcy court to dismiss an otherwise proper bankruptcy case at any time if "the interests of creditors and the debtor would be better served by such dismissal." *See* 11 U.S.C. § 305(a)(1). The decision to dismiss a bankruptcy case under section 305(a)(1) is left to the discretion of the bankruptcy judge. *See* 11 U.S.C. § 305(c); *In re EHT USI*, 630 B.R. 410, 433 (Bankr. D. Del. 2021) (quoting *In re Northshore Mainland Servs., Inc.*, 537 B.R. 192, 203 (Bankr. D. Del. 2015)).

66. In considering whether dismissal under section 305(a)(1) is warranted, "[c]ourts consider the following non-exclusive factors 'to gauge the overall best interests' of the debtor and creditors:

- (1) the economy and efficiency of administration; (2) whether another forum is available to protect the interests of both parties or there is already a pending proceeding in state court; (3) whether federal proceedings are necessary to reach a just and equitable solution; (4) whether there is an alternative means of achieving an equitable distribution of assets; (5) whether the debtor and creditors

are able to work out a less expensive out-of-court arrangement which better serves all interests in the case; (6) whether a non-federal insolvency has proceeded so far in those proceedings that it would be costly and time consuming to start afresh with the federal bankruptcy process; and (7) the purpose for which bankruptcy jurisdiction has been sought.”

*In re EHT USI*, 630 B.R. at 433-34 (citing *Northshore Mainland Servs., Inc.*, 537 B.R. at 203-04).

67. Applying these factors clearly favors abstention.

68. Most significantly, as previously held by the District Court, there is no doubt that each Subject Debtor’s estate is better served by remaining in receivership, which is less expensive and puts an independent fiduciary in charge of Subject Debtors and their assets. The Receiver has had full control over Subject Debtors’ assets since January 25, 2024 and has commenced the process of administering Subject Debtors and their assets since that time. *See In re O’Neil Village Care Corp.*, 88 B.R. 76, 80 (Bankr. W.D. Pa. 1988) (dismissing bankruptcy case where appointed receiver was supervising the operation and management of the debtor, hired professional management to restore administrative stability, was arranging necessary insurance, and was working to provide a financial workout of past-due accounts).

69. 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.

70. He has reported that, upon assuming control of Subject Debtors’ facilities, he discovered multiple health and safety issues including, missing and insufficient medical supplies, a lack of chair lifts (necessary to move patients in wheelchairs), and improper capital repairs. In short, Subject Facilities were in disarray. He and his team have acted quickly to solve many of

these problems and to ensure that, in the short term, the safety of Subject Facilities' residents is protected – and, in turn, that Subject Facilities remain functioning effectively both financially and within the applicable regulatory framework.

71. Since Receiver's appointment and implementation of his management company, employees reported significantly improved morale at Subject 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 Subject Facilities under receivership. Vendors (including critical vendors such as therapy providers) have cut off services to non-receivership Debtor facilities, but have continued to provide services to Subject Facilities due to the appointment of Receiver and his management company. Moreover, Receiver has secured GLPL insurance for Subject Facilities.

72. The presence of a receivership would undoubtedly benefit the estate and preserve assets. *Big Shoulders Capital, LLC*, 2019 WL 6117578, at \*5 (allowing anyone other than the receiver to file for bankruptcy would undermine the purpose of a federal receivership and prevent adequate protection of the estate's assets); *O'Neil Village Care Corp.*, 88 B.R. at 80 ("The Debtor is in much better hands than it would be if control were returned to [the debtor's principals]. The work-out arrangement, already in motion, will provide an appropriate payment to the general creditors[.]"); *In re Michael S. Starbuck, Inc.*, 14 B.R. 134, 135 (Bankr. S.D.N.Y. 1981) ("Many services, already rendered in the administration of the receivership estate, would have to be repeated at additional expense to the estate. No advantage would accrue to the creditors if this matter were to proceed in the bankruptcy court. Rather, their best interests will be served by the continued administration of the equity receivership.").



73. Moreover, there is simply no benefit to having Subject Debtors' assets administered in a bankruptcy. The receivership proceeding is an efficient and effective mechanism to administer the estates. This is the quintessential two-party dispute where abstention is justified. *See, e.g., Steinman v. Spencer (In re Argus Group 1700)*, 206 B.R. 737, 755-57 (Bankr. E.D. Pa. 1996) (dismissing case that was essentially a two-party partnership dispute under section 305(a)(1)).

74. Abstention is also supported by the fact that neither Subject Debtors, nor any of their creditors, would be prejudiced by maintaining the receivership. To the contrary, as detailed extensively above, the receivership will maximize the value of all of Subject Debtors' assets.

75. Accordingly, the Subject Chapter 11 Cases should be dismissed pursuant to Bankruptcy Code section 305(a)(1). *See In re Fast Food Properties, Ltd. #1*, 5 B.R. 539, 540 (Bankr. C.D. Cal. 1980) ("It is obvious to me that this Chapter 11 case was filed solely for the purpose of frustrating the enforcement of the power of sale provision under Su-Jae's deed of trust and that the Chapter 11 case should be dismissed.").

### **III. Dismissal should be with prejudice.**

76. Dismissal for any of the reasons stated above should be with prejudice. A bankruptcy court may apply its inherent powers under §§ 105(a) and 349(a) to dismiss a debtor's case with prejudice and preclude the debtor from further filings, where the debtor has commenced its bankruptcy case for an improper purpose and in bad faith. *See Casse v. Key Bank Nat'l Assoc'n (In re Casse)*, 198 F.3d 327, 336 (2d Cir. 1999); *In re Bell*, 125 F. App'x 54, 57 (7th Cir. 2005).

77. Here, Subject Debtors' bad faith filing warrants dismissal with prejudice to ensure that there is no further interference with the Receiver and his administration of Subject Debtors and their assets in the Receivership Proceeding.

### **IV. In the Alternative, the Court Should Appoint Receiver as Chapter 11 Trustee of Subject Debtors.**

78. Section 1104(a) of the Bankruptcy Code provides that the Bankruptcy Court shall order the appointment of a trustee, at any time after commencement of the case but prior to confirmation of a plan, on request of a party in interest, and after notice and a hearing:

(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor;

(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor;

79. While the first prong of Section 1104(a) is triggered by management's bad acts or mismanagement, the second prong provides courts with "particularly wide discretion" to appoint a trustee even absent wrongdoing or mismanagement. *In re Bellevue Place Associates*, 171 B.R. 615, 623 (N.D. Ill. 1994). An order for appointment is mandatory if the court finds that either cause exists or that appointment is in the interest of the parties. *Official Comm. Of Asbestos Pers. Injury Claimants v. Sealed Air Corp. (In re W.R. Grace & Co.)*, 285 B.R. 148, 158 (Bankr. D. Del. 2002).

80. Cause is determined on a case-by-case basis, taking into account all relevant factors. *In re Sharon Steel Corp.*, 871 F.2d 1217, 1225 (3d Cir. 1989).

81. Evidence that current management grossly mismanaged the debtor's affairs prior to filing is cause for appointment of a trustee. *In re Crescent Beach Inn*, 22 B.R. 155, 159 (Bankr. D. Me. 1982).

82. As detailed above, there is no doubt that Subject Debtors grossly mismanaged their affairs prior to the petition date. The senior care 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.

83. 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.

84. Subject Debtors' hiring of a chief restructuring officer does not absolve this behavior. Moreover, the chief restructuring officer is leaving current management in place – the same management that has long neglected the facilities for their own gain and is clearly incompetent to manage affairs. Not only is this conduct unacceptable from a health and safety perspective, it severely depresses the value of the facilities in a sale process.

85. Appointment of a chapter 11 trustee, especially an independent professional with years of experience of overseeing senior care homes and has already been managing these homes as an independent court fiduciary of the United States District Court for the Northern District of Illinois is in the best interest of resident and creditors.

### **CONCLUSION**

86. For the foregoing reasons, Lender respectfully requests that this Court enter an order, in substantially the form attached hereto as Exhibit A, dismissing the Subject Chapter 11 Cases pursuant to Sections 1112(b) and/or 305(a) of the Bankruptcy Code, with prejudice, or in

the alternative, appointing Receiver as chapter 11 trustee of Subject Debtors and granting such other relief as may be just and appropriate.

Dated: March 21, 2024  
Wilmington, Delaware

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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.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 24-10443 (TMH)

(Joint Administration Requested)

Re. Dkt. No. \_\_\_\_

**ORDER DISMISSING CHAPTER 11 CASES**

This matter having come before this Court upon the *Emergency Motion of X-Caliber Funding LLC for an Order (I) Dismissing the Subject Chapter 11 Cases or (II) for Abstention* filed on March 21, 2024 (“Motion”),<sup>2</sup> proper notice of the Motion having been provided, a hearing having been held on the Motion on \_\_\_\_\_, 2024, any objections to the Motion have 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. The chapter 11 cases of Debtors El Paso HCC, LLC [24-10553]; Flanagan HCC, LLC [24-10562]; Kewanee AL, LLC [24-10576]; Knoxville AL, LLC [24-10579]; Legacy Estates AL, LLC [24-10454]; Marigold HCC LLC [24-10474]; Monmouth AL LLC [24-10457]; Polo LLC [24-10508]; El Paso HCO, LLC [24-10556]; Flanagan HCO, LLC [24-10565]; CYE Kewanee HCO, LLC [24-10496]; CYE Knoxville HCO, LLC [24-10501]; Legacy HCO, LLC [24-

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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.kcellc.net/Petersen](http://www.kcellc.net/Petersen).

<sup>2</sup> All undefined capitalized terms used herein shall have the meaning given to them in the Motion.

10459]; Marigold HCO, LLC [24-10479]; CYE Monmouth HCO LLC [24-10510]; and Polo HCO, LLC [24-10505]; are dismissed with prejudice.