

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Objection Deadline: April 16, 2024 at 4:00 p.m. (ET)

Hearing Date: April 23, 2024 at 11:00 a.m. (ET)

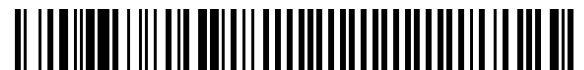
**DEBTORS' MOTION FOR ENTRY OF AN ORDER DISMISSING THE
CHAPTER 11 CASE OF PETERSEN MT4, LLC AND GRANTING RELATED RELIEF**

The above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”) seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”): (i) voluntarily dismissing the chapter 11 case of Petersen MT4, LLC (“MT4”), Case No. 24-10569, without prejudice and (ii) modifying the caption of these jointly administered cases to remove MT4 as a debtor. In further support of this motion (this “Motion”), the Debtors respectfully state as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. The Debtors confirm their consent, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the

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, whose cases are being jointly administered, 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 is available on a website of the Debtors’ claims and noticing agent at www.kccllc.net/Petersen.



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District of Delaware (the “Local Rules”), to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

3. The bases for the relief requested herein are sections 105(a), 305(a), and 1112(b) of title 11 of the United States Code (the “Bankruptcy Code”), Rules 1017 and 2002(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

BACKGROUND

4. On March 20, 2024 (the “Petition Date”), the Debtors each commenced with the Court a voluntary case (the “Chapter 11 Cases”) under the Bankruptcy Code. The Debtors, with the exception of some inactive entities, are authorized to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. As of the date of this Motion, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) has not appointed an official committee of unsecured creditors and no trustee or examiner has been appointed in the Chapter 11 Cases.

6. The factual background regarding the Debtors, including their business operations, capital and debt structure, and the events leading to the filing of these Chapter 11

Cases is set forth in the *Declaration of David R. Campbell in Support of Chapter 11 Petitions and First Day Pleadings* [Docket No. 44] (the “First Day Declaration”).²

MT4

7. MT4 is an Illinois limited liability company that is 100% owned by its sole member, Mark B. Petersen, and is a borrower on two HUD-insured loans under which X-Caliber Capital LLC (“X-Caliber”) is the lender. MT4 is also the master tenant under two separate leases—(a) the lease of property owned by non-Debtor Charleston HCC, LLC which MT4 then subleases to Charleston HCO, LLC and (b) the lease of property owned by Cumberland HCC, LLC which MT4 then subleases to Cumberland HCO, LLC.

8. On February 6, 2024, X-Caliber commenced an action by filing the *Verified Complaint* (the “Complaint”) in the United States District Court for the Central District of Illinois, Urbana Division against non-Debtor affiliates Charleston HCC, LLC, Charleston HCO, LLC, Cumberland HCC, LLC, and Cumberland HCO, LLC (the “Charleston et al. Entities”) asserting certain claims. *See X-Caliber Capital LLC v. Charleston HCC, LLC et al.* (Case No. 2:24-cv—2034) (N.D. Ill. 2024) [Docket No. 1]. MT4 is also named as a defendant in the Complaint. Alongside the Complaint, X-Caliber filed an emergency motion for the appointment of a receiver. *See 2:23-cv-2034* [Docket No. 4].

9. On February 13, 2024, the *Charleston et al.* court appointed the Receiver over the *Charleston et al.* Entities and all of their respective assets—specifically granting the Receiver “the sole authority to file petitions(s) for protection under 11 U.S.C. 101, *et seq.* on behalf of Defendants and to take any and all actions Receiver deems necessary and appropriate with

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

respect thereto and make any and all filing related thereto.” See 2:23-cv-2034 [Docket No. 13] (the “*Charleston et al. Receivership Order*”).³

10. On March 20, 2024, the Debtors’ advisors, in connection with filing 140 other voluntary petitions, filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code for MT4. After conferring with X-Caliber and X-Caliber’s counsel, the Debtors agreed to seek voluntary dismissal of MT4 while the parties determine the most efficient path forward with respect to MT4.

RELIEF REQUESTED

11. By this Motion, the Debtors request entry of an order dismissing MT4’s chapter 11 case without prejudice and modifying the caption of these jointly administered cases to remove MT4 as a debtor in the jointly administered Chapter 11 Cases. The Debtors seek this relief with the consent of X-Caliber.

BASIS FOR RELIEF

12. The Debtors submit that the Court should dismiss MT4’s case without prejudice to the Debtors’ ability to seek further relief from the Court should the Debtors believe appropriate cause exists. While the Debtors do not believe that MT4 is subject to the *Charleston et al. Receivership Order*, out of an abundance of caution, the Debtors seek to dismiss the case pending further determination that issue.

A. Dismissal of MT4’s Case Is Warranted Under Section 1112(b) of the Bankruptcy Code.

13. Under section 1112(b) of the Bankruptcy Code, a court may dismiss a debtor’s chapter 11 case “for cause.” 11 U.S.C. § 1112(b); *In re Albany Partners, Ltd.*, 749 F.2d 670, 674

³ MT4 was not a party to the *Charleston et al. Receivership Order*. The Debtors reserve all rights related thereto, but out of an abundance of caution seek to dismiss MT4 from these Chapter 11 Cases without prejudice.

(11th Cir. 1984); *In re Blunt*, 236 B.R. 861, 864 (Bankr. M.D. Fla. 1999). Section 1112(b) of the Bankruptcy Code states, in pertinent part, “on request of any party in interest or the United States trustee or bankruptcy administrator, and after notice and a hearing, the court may . . . dismiss a case under this chapter . . . for cause” A determination of cause is made by the court on a case-by-case basis. *Albany Partners*, 749 F.2d at 674. In addition, the decision to dismiss a case is particularly delegated to the bankruptcy court’s sound discretion. *See In re Camden Ordinance Mfg. Co. of Arkansas, Inc.*, 1999 WL 587790, at *2 (Bankr. E.D. Pa. 1999) (citing *In re Atlas Supply Corp.*, 837 F.2d 1061, 1063 (5th Cir. 1988)).

14. The legislative history of section 1112(b) of the Bankruptcy Code and relevant case authority indicate that a court has wide discretion to use its equitable powers to dispose of a debtor’s case. H.R. Rep. No. 595, 95th Cong., 1st Sess. 405 (1977); S.Rep. No. 989, 95th Cong., 2d Sess. 117 (1978), reprinted in 1978 U.S.C.C.A.N. 57878; *see also In re Preferred Door Co.*, 990 F.2d 547, 549 (10th Cir. 1993) (stating that a court has broad discretion to dismiss a bankruptcy case); *In re Sullivan Cent. Plaza I, Ltd.*, 935 F.2d 723, 728 (5th Cir. 1991) (stating that a determination of whether cause exists under section 1112(b) of the Bankruptcy Code “rests in the sound discretion” of the bankruptcy court); *In re Koerner*, 800 F.2d 1358, 1367 & n.7 (5th Cir. 1986) (stating that a bankruptcy court is afforded “wide discretion” under section 1112(b) of the Bankruptcy Code); *Albany Partners*, 749 F.2d at 674 (same).

15. Section 1112(b) of the Bankruptcy Code provides a nonexclusive list of sixteen grounds for dismissal. 11 U.S.C. § 1112(b)(4)(A)-(P); *Frieouf v. U.S.*, 938 F.2d 1099, 1102 (10th Cir. 1991) (stating that section 1112(b) of the Bankruptcy Code’s list is nonexhaustive); *In re Blunt*, 236 B.R. at 864 (same). By its express language, section 1112(b) is made nonexclusive by its use of the phrasing “the term ‘cause’ includes” which makes clear that “cause,” as it is

used in section 1112(b), might include grounds for dismissal beyond those enumerated specifically in 1112(b)(4).

16. Here, cause exists to dismiss MT4's chapter 11 case because there is ambiguity as to whether the *Charleston et al.* Receivership Order applies to MT4 and, in any event, the non-Debtor affiliates of MT4 that are also obligors to X-Caliber under the same facility remain subject to the *Charleston et al.* Receivership Order which provides that the "Receiver shall . . . have the sole authority to file petition(s) for protection under [the Bankruptcy Code] on behalf of the Defendants." See *Charleston et al.* Receivership Order ¶ 8. Thus, unless or until relief from the *Charleston et al.* Receivership Order is granted, the Debtors submit that MT4 is best served to remain a non-Debtor.

17. Once a court determines that cause exists to dismiss a chapter 11 case, the court must also evaluate whether dismissal is in the best interests of the estate and creditors. See *In re Superior Sliding & Window, Inc.*, 14 F.3d 240, 243 (4th Cir. 1994); *In re Mazzocone*, 183 B.R. 402, 411 (Bankr. E.D. Pa. 1995), aff'd 200 B.R. 568 (E.D. Pa. 1996); *In re Warner*, 83 B.R. 807, 809 (Bankr. M.D. Fla. 1988).

18. Here, dismissal is in the best interests of the Debtors' creditors because dismissal of MT4's case will avoid costly litigation in these Chapter 11 Cases. The Debtors have elected to file this Motion to avoid potential litigation with the Receiver regarding the applicability of the *Charleston et al.* Receivership Order to MT4. Moreover, the Debtors intend to seek relief from the *Charleston et al.* Receivership Order so that MT4 and the *Charleston et al.* Entities can be filed alongside their debtor-affiliates in these Chapter 11 Cases. Therefore, dismissing MT4's case without prejudice at this juncture is in the best interest of the Debtors' estates and their

creditors because it will allow the Debtors to pursue the least contentious and most efficient path toward potentially bringing MT4 into these Chapter 11 Cases.

B. Dismissal of MT4's Case Is Warranted Under Section 305(a)(1) of the Bankruptcy Code.

19. Alternatively, cause exists to dismiss MT4's chapter 11 case pursuant to section 305(a) of the Bankruptcy Code, which provides, in pertinent part:

- (a) The court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if—
 - (1) the interests of creditors and the debtor would be better served by such dismissal or suspension.

11 U.S.C. § 305(a).

20. In applying section 305(a) of the Bankruptcy Code, courts have considered a wide range of factors, including, but not limited to:

- (a) economy and efficiency of administration;
- (b) whether federal proceedings are necessary to reach a just and equitable solution;
- (c) whether there is an alternative means of achieving an equitable distribution of assets; and
- (d) whether the debtor and the creditors are able to work out a less expensive out-of-court arrangement which better serves the interests in the case.

See In re Crown Village Farm, LLC, Case No. 09-11522 (KG), U.S. Bankr. LEXIS at *24 (Bankr. D. Del. June 12, 2009) (enumerating section 305(a) factors and denying motion only because dismissal or abstention would have a deleterious effect on the administration of the debtor's chapter 11 case "which would languish while core issues were tried elsewhere"); *see also In re Mazzocone*, 200 B.R. 568, 575 (E.D. Pa. 1996). However, "the exact factors to be considered and the weight to be given to each of them is highly sensitive to the facts of each individual case." *Mazzocone*, 200 B.R. at 575.

21. Dismissal of MT4's case is warranted under section 305(a)(1) for the same reasons that "cause" exists to dismiss MT4's case pursuant to section 1112(b) of the Bankruptcy Code—because there is ambiguity as to whether the *Charleston et al.* Receivership Order applies to MT4, dismissal will permit the Debtors to pursue the least contentious and most efficient path toward prosecution of these Chapter 11 Cases.

NOTICE

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

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

Dated: April 2, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT & TAYLOR,
LLP**

/s/ Shella Borovinskaya

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*Proposed Counsel for the Debtors and Debtors in
Possession*

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

In re

SC HEALTHCARE HOLDING, LLC *et al.*

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Objection Deadline: April 16, 2024 at 4:00 p.m. (ET)

Hearing Date: April 23, 2024 at 11:00 a.m. (ET)

NOTICE OF MOTION

PLEASE TAKE NOTICE that, on April 2, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of an Order Dismissing the Chapter 11 Case of Petersen MT4, LLC and Granting Related Relief* (the “Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”).

PLEASE TAKE FURTHER NOTICE that any objections to the Motion must be filed on or before **April 16, 2024 at 4:00 p.m. (ET)** (the “Objection Deadline”) with the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the proposed undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

PLEASE TAKE FURTHER NOTICE THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON APRIL 23, 2024 AT 11:00 A.M. (ET) BEFORE THE HONORABLE THOMAS M. HORAN, UNITED STATES BANKRUPTCY COURT JUDGE FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 5TH FLOOR, COURTROOM NO. 6, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

¹

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Dated: April 2, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
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*Proposed Counsel for the Debtors and
Debtors in Possession*

Exhibit A

Proposed Order

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

In re

SC HEALTHCARE HOLDING, LLC *et al.*,

Debtors.¹

Chapter 11

Case No. 24-10443 (TMH)

Jointly Administered

Ref. Docket No. _____

**ORDER DISMISSING THE CHAPTER 11 CASE
OF PETERSEN MT4, LLC AND GRANTING RELATED RELIEF**

Upon the Motion² of the above-captioned debtors and debtors in possession (each, a “Debtor” and, collectively, the “Debtors”), for entry of an order (i) dismissing the chapter 11 case of Petersen MT4, LLC (“MT4”), Case No. 24-10569, without prejudice and (ii) modifying the caption of these jointly administered cases to remove MT4 as a debtor; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that venue of this proceeding and the Motion in this district is permissible pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having

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

reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court., if any (the “Hearing”); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. The chapter 11 case of MT4, Case No. 24-10569, shall be dismissed without prejudice pursuant to sections 305(a)(1) and 1112(b) of the Bankruptcy Code upon entry of this Order.
3. As soon as reasonably practicable, the Clerk of this Court shall reflect the dismissal of Case No. 24-10569 in the docket of Case No. 24-10443 and the dockets for those cases being jointly administered under Case No. 24-10443 and shall close Case No. 24-10569.
4. The right of MT4 to file a future petition for relief under chapters 7 or 11 of the Bankruptcy Code is preserved to the fullest extent allowed by, among other sections, section 349 of the Bankruptcy Code.
5. Following dismissal of MT4’s chapter 11 case, MT4 shall not be held liable for any claim that has been filed or asserted against any other Debtor in the Chapter 11 Cases.
6. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.
7. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.