

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 Nos. 26 & 85

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

On March 21, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors and (II) Granting Related Relief* [Docket No. 26] (the “Motion”). A proposed form of order approving the Motion on a final basis was attached to the Motion as Exhibit B (the “Proposed Final Order”).

On March 22, 2024, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order approving the Motion on an interim basis [Docket No. 85] (the “Interim Order”). Pursuant to the Interim Order, any objections or responses to entry of the Proposed Final Order were to be filed and served by April 16, 2024 at 4:00 p.m. (ET) (as may have been extended by the Debtors for any party, the “Objection Deadline”).

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 <http://www.kccllc.net/Petersen>.



Prior to the Objection Deadline, the Debtors received an informal response to the Motion from the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”) and the Official Committee of Unsecured Creditors (the “Committee”) filed the *Reservation of Rights of the Official Committee of Unsecured Creditors to Certain of the Debtors’ Second Day Motions* [Docket No. 176], each of which have been resolved through a revised form of order (the “Revised Proposed Order”), a copy of which is attached hereto as **Exhibit A**. For the convenience of the Court and other interested parties, a blackline comparing the Revised Proposed Order against the Proposed Final Order is attached hereto as **Exhibit B**.

WHEREFORE, as the Debtors did not receive any objections or responses other than that described herein, and the U.S. Trustee and the Committee do not object to entry of the Revised Proposed Order, the Debtors respectfully request that the Court enter the Revised Proposed Order without further notice or hearing at the Court’s earliest convenience.

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Dated: May 13, 2024
Wilmington, Delaware

Respectfully submitted,

**YOUNG CONAWAY STARGATT &
TAYLOR, LLP**

/s/ Shella Borovinskaya

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*Proposed Counsel for the Debtors and
Debtors in Possession*

EXHIBIT A

Revised 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

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Ref. Docket Nos. 26 & 85

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

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

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

to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), as applicable, and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record of the Hearing; and this Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest; and this Court having previously entered that certain *Interim Order (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors, and (II) Granting Related Relief* [Docket No. 85] (the "Interim Order"); and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis.
2. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay certain prepetition Critical Vendors Claims, in an amount not to exceed \$12,870,507.77, inclusive of those Critical Vendor Claims satisfied or paid under the Interim Order; *provided that* to the extent reasonably practicable and no later than three (3) business days prior to making any such payments greater than \$50,000, the Debtors shall deliver to the U.S. Trustee and counsel to the official committee of unsecured creditors (the "Committee") a notice that shall include (a) a list of proposed Critical Vendors to be paid, (b) the total Critical Vendor Claims and 503(b)(9) Claims owed to such Critical Vendors and (c) the amounts the Debtors propose to pay such Critical Vendors.

3. Payment made to applicable Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, to the extent that Critical Vendors hold such claims, in whole or in part, as applicable.

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

5. The Debtors are authorized, but not directed, to pay Critical Vendor Claims, in the event that no Trade Agreement has been executed if the Debtors determine, in the reasonable exercise of their business judgment and in consultation with the Committee, that a formal Trade Agreement is unnecessary or cannot be reached to ensure a Critical Vendor's continued performance on Customary Trade Terms and such vendor acknowledges (in writing, which may

be email) that it will continue providing services as agreed with the Debtors or otherwise be subject to the provisions of the Final Order with respect to such payment.

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

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

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

9. The Banks shall be, and hereby are, authorized, when requested by the Debtors in their sole discretion, to process, honor, and pay any and all checks or electronic fund transfers drawn on the Debtors' bank accounts to pay the Critical Vendor, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Final Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment; (d) the payment due; (e) the Debtor or Debtors that made the payment; (f) the payment date; and (g) the nature of the goods or services provided by the payee. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and the Committee every thirty days beginning upon entry of this Final Order.

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

12. Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against the Debtors or their estates; (b) as a waiver of the Debtors' right or the Committee's right to dispute any claim, lien, or trust; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of the Debtors' rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

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

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

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

EXHIBIT B

Blackline

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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 Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"), as applicable, and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon the record of the Hearing; and this Court having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and parties in interest; and this Court having previously entered that certain *Interim Order (I) Authorizing the Debtors to Pay Prepetition Claims of Certain Critical Vendors, and (II) Granting Related Relief* [Docket No. 85] (the "Interim Order"); and after due deliberation and sufficient cause appearing therefor,

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10. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Final Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment; (d) the payment due; (e) the Debtor or Debtors that made the payment; (f) the payment date; and (g) the nature of the goods or services provided by the payee. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee and the Committee every thirty days beginning upon entry of this Final Order.

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12. ~~11.~~ Nothing in the Motion or this Final Order, or the Debtors' payment of any claims pursuant to this Final Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against the Debtors or their estates; (b) as a waiver of the Debtors' right or the Committee's right to dispute any claim, lien, or trust; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the

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

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

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