IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE

In re

Chapter 11

SC HEALTHCARE HOLDING, LLC, et al.,

Case No. 24-10443 (TMH)

Debtors.1

(Jointly Administered)

Ref. Docket Nos. 264, 341, 569 & 614

DECLARATION OF MARK L. MYERS IN SUPPORT OF DEBTORS' SELECTION OF SUCCESSFUL BIDDERS AND THE PROPOSED SALE TRANSACTIONS

Pursuant to 28 U.S.C. § 1746, I, MARK L. MYERS, declare as follows:

- 1. My name is Mark L. Myers. I am over the age of 18 and have personal knowledge of the matters discussed in this declaration (this "Declaration").²
- 2. I am a Managing Director at Walker & Dunlop Investment Sales, LLC ("<u>WD</u>"), the investment sales broker for SC Healthcare Holding, LLC and its debtor affiliates, as debtors and debtors in possession (collectively, the "<u>Debtors</u>") in the above-captioned Chapter 11 Cases.
- 3. I make this Declaration in support of the Debtors' proposed sale of their assets (the "Assets") to the successful bidders (collectively, the "Successful Bidders") selected at the auction (the "Auction"), which began at 11:00 a.m. (prevailing Eastern Time) on July 2, 2024, and concluded at approximately 9:05 a.m. (prevailing Eastern Time) on July 3, 2024, pursuant to that

² Capitalized terms not immediately defined herein have the meaning ascribed to them in the First Myers Declaration, the Second Myers Declaration, the Bid Procedures Order, the Bidding Procedures, or the Successful Bidder Notice, all as defined herein, as applicable.



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.

certain Order (I) Approving (A) Bidding Procedures and (B) Assumption and Assignment Procedures and (III) Granting Related Relief [Docket No. 341] (the "Bid Procedures Order", and the bidding procedures attached as Exhibit 1 thereto, the "Bidding Procedures").

- 4. Specifically, this Declaration summarizes the marketing process for the Debtors' assets, including the events of the Auction. This Declaration further explains that the proposed accepted bids are the highest and best bids for the subject Assets.
- 5. Except as otherwise indicated, all facts set forth in this Declaration are based upon my personal knowledge, information supplied to me by other employees of WD and members of the Debtors' management, professionals, and advisors, my review of relevant documents, or my professional opinion based upon my experience and knowledge of the Debtors' industry, operations, and financial condition. If called to testify, I could and would testify competently as to the facts set forth herein. I am authorized to submit this Declaration.
- 6. I have previously provided a detailed description of my educational and professional background and qualifications, including my experience with investment sales of seniors housing and long-term care facilities, in the Amended Declaration of Mark L. Myers in Support of Debtors' (X) Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Security Interests and Superpriority Administrative Expense Status, (III) Granting Adequate Protection to Certain Prepetition Secured Credit Parties, (IV) Modifying the Automatic Stay, (V) Authorizing the Debtors to Enter into Agreements with JMB Capital Partners Collateral, (VI) Scheduling a Final Hearing, and (VIII) Granting Related Relief; and (Y) Omnibus Objectionn to (A) the Emergency Motion for an Order (I) Dismissing the Subject Chapter 11 Cases, (II) For Abstention, or (III) Appointment of Receiver as the Chapter 11 Trustee and (B) the Emergency Motion to Excuse Receiver's

Compliance with 11 U.S.C. § 543(a) & (b) [Docket No. 288] (the "First Myers Declaration"). In the First Myers Declaration, I also described the Debtors' extensive marketing efforts for the sale of the Assets from the Petition Date through approximately May 2024, and the estimated valuations of such Assets.

- 7. In the *Declaration of Mark Myers in Support of the Debtors' Proposed Bid Protections* [Docket No. 592] (the "Second Myers Declaration" and, together with the First Myers Declaration, the "Previous Declarations"), I summarized the arm's-length, bona fide nature of the negotiations for the Bid Protections (as defined in the Second Myers Declaration) since May 2024, my observation and professional opinion that the Bid Protections reflected customary market terms, and that the Stalking Horse Bidder was critical to the success of the Debtors' sale process.
- 8. I discuss and reiterate certain aspects of the Previous Declarations herein and otherwise incorporate the remainder of the Previous Declarations by reference herein.

THE STALKING HORSE BID AND THE RESULTS OF THE AUCTION

- 9. I would like to first describe the bids that were received leading up to and at the Auction, and describe which Bids were determined to be the Successful Bids. As summarized below, various configurations of bids were received, including one bid for a majority of the Debtors' portfolio, as well as bids for smaller subsets of the portfolio. The bids also included various mixes of financial and non-financial terms—all of which needed to be considered in evaluating the bids.
- 10. <u>Portfolio Bid</u>. Prior to the commencement of the Auction, and as previously discussed in the Second Myers Declaration, the Debtors received a Stalking Horse Bid for a portfolio of the Assets for \$118 million from Petersen Acquisitions, LLC, the acquisition entity formed by Cascade Capital Group, LLC ("<u>Cascade</u>"). In connection with its Stalking Horse Bid,

the Stalking Horse Bidder provided a purchase price allocation which identified the purchase price proposed on a facility-by-facility basis. The terms of the Stalking Horse Bid provided that the Stalking Horse Bid could be adjusted if the Debtors received and approved any credit bids (each, a "Credit Bid") for individual properties or a combination of properties that were included in the portfolio comprising the Stalking Horse Bid.

- 11. The Debtors subsequently received the following Credit Bids for individual properties (that were also included in the Stalking Horse Bid portfolio) by the Bid Deadline and at the Auction: (i) the Bank of Farmington submitted a Credit Bid for the full amount of its debt in the amount of approximately \$2.85 million plus a cash payment of \$309,806 for the Courtyard Estates of Farmington ("CYE Farmington"), and (ii) Hickory Point Bank & Trust submitted a Credit Bid in the amount of \$1.82 million plus a cash payment of \$209,346 for Courtyard Estates of Girard ("CYE Girard"). With respect to these properties, Cascade allocated \$1.6 million for CYE Farmington and \$240,000 for CYE Girard, respectively.
- 12. <u>SLF Bids</u>. Separately, the Debtors also received two competing bids for a smaller portfolio of their Assets, namely, the three senior living facilities: Courtyard Estates of Canton ("<u>CYE Canton</u>"), Courtyard Estates of Sullivan ("<u>CYE Sullivan</u>"), and Legacy Estates of Monmouth ("<u>Monmouth</u>," and collectively with CYE Canton and CYE Sullivan, the "<u>SLFs</u>," and each bid for the SLFs, an "<u>SLF Bid</u>"). The first SLF Bid was received from Vantage Senior Care, LLC ("<u>Vantage</u>"), and its initial bid was \$7.5 million, which, after multiple rounds of competitive bidding at Auction, increased to \$14.75 million. Of the \$14.75 million, \$5 million was allocated to CYE Canton, \$5 million was allocated to CYE Sullivan, and \$4.75 million was allocated to Monmouth. The second SLF Bid was from HP Developers, LLC ("<u>HP Developers</u>"), and its initial bid was for \$11 million, which increased to \$14.5 million at the Auction, of which \$6.625 million

was allocated to CYE Canton, \$6.625 million was allocated to CYE Sullivan, and \$1.25 million was allocated to Monmouth.

- 13. <u>Successful Bidders</u>. As set forth in the *Amended Notice of Successful Bidders and Back-Up Bidder* [Docket No. 614] (the "<u>Successful Bidder Notice</u>"), the Debtors, in consultation with the Consultation Parties, selected four Successful Bidders at a meeting of the board of directors after the conclusion of the Auction:
 - (i) HP Developers was selected as the Successful Bidder for the SLFs with a purchase price of \$14.5 million, allocated as set forth above, for the reasons described below;
 - (ii) The Bank of Farmington was selected as the Successful Bidder for CYE Farmington with a Credit Bid in the amount of approximately \$2.85 million plus a cash payment of \$309,806;
 - (iii) Hickory Point Bank & Trust was selected as the Successful Bidder for CYE Girard with a Credit Bid in the amount of \$1.82 million and a cash payment of \$209,346; and
 - (iv) Petersen Acquisitions, LLC, as the Stalking Horse Bidder, was selected as the Successful Bidder for the remainder of the Debtors' skilled nursing facilities with a bid in the amount of approximately \$116 million.
- 14. In consultation with the Consultation Parties, the Debtors further selected Vantage as Back-Up Bidder to the SLF Bid of HP Developers for the SLFs, with an SLF Bid of \$14.75 million in the allocations set forth above.
- 15. Although Vantage nominally had a higher bid (\$14.75 million) compared to HP Developers' bid of \$14.5 million, HP Developers was chosen as the Successful Bidder for the SLFs given how HP Developers allocated its purchase price among the three properties. Specifically, HP Developers' bid allocated \$1.25 million to the Monmouth facility while Vantage's SLF Bid allocated \$4.75 million to Monmouth. There was a concern that Monmouth would have to be carved out of any winning SLF Bid (for the reasons discussed in one of the

Objections³ (as defined below)), which would effectively decrease HP Developers' Bid from \$14.5 million to \$13.25 million and Vantage's \$14.75 million SLF Bid to \$10 million. Following the Auction, Monmouth was carved out of the SLF Bid. Accordingly, HP Developers' SLF Bid was higher than Vantage's, and, therefore, deemed the highest and best bid for the SLFs.

THE SUCCESSFUL BIDS ARE THE HIGHEST AND BEST BIDS FOR THE DEBTORS' ASSETS

- 16. It is my understanding that, since the conclusion of the Auction, the Debtors have received several objections to the proposed Sale Transactions (collectively, the "Objections"). I would like to set forth certain facts that are relevant to some arguments raised in the Objections and to illustrate why the Successful Bids are the highest and best offers that the Debtors could secure. Overall, the Successful Bids are the product of a robust marketing process and a competitive Auction, and the market has demonstrated the value of the subject Assets.
- The prepetition marketing process. In the First Myers Declaration, I explained the marketing and sale process that the Debtors and their advisors undertook prior to the commencement of the Chapter 11 Cases and through approximately May 2024. As noted therein, WD was engaged before the commencement of the Chapter 11 Cases, in August 2023, to market certain of the Debtors' senior housing and nursing homes with the hope that closing a significant transaction would allow the Debtors to pay off the debt owed to certain of their secured lenders. First Myers Decl. ¶ 30. Thus, the marketing and sale process was underway before the Chapter 11 Cases and allowed WD to begin to systematically explore opportunities and test the market for the Debtors' portfolio. Further, the extended timeframe of this marketing process

See generally X-Caliber Funding LLC's and X-Caliber Capital, LLC's Notice of Non-Consent to Sale [Docket No. 610].

⁴ See Docket Nos. 601, 607, 609, 610, 611, 613 & 617.

overall has meant that WD had significant time to deepen its knowledge of the Assets and iterate creatively on the configurations of portfolio assets to offer to the market.

- The Chapter 11 sale process. At the commencement of the Chapter 11 Cases, WD broadened the marketing and sale process significantly, reaching out to approximately 500 potential buyers nationwide. *Id.* ¶ 31. WD was responsible for marketing nearly 90 facilities owned and/or operated by more than 140 entities, and WD made extensive efforts to procure competing bidders for the entire portfolio. By May 2024, WD secured approximately 20 bids, including a handful of bids for large portions of the Debtors' entire Asset portfolio. *Id.* ¶ 32. WD then engaged closely with those Bidders to secure the highest and best bids possible, to determine whether a Staking Horse Bid would emerge, and to develop market Bid Protections for a potential Stalking Horse—all while continuing to target and engage with new potential buyers. Second Myers Decl. ¶ 7.
- 19. The bids that were received in May 2024 included offers from Cascade for the entire portfolio and offers from two other bidders for subsets of the portfolio. While noteworthy, the crossover in the properties targeted by the other bidders would have left too many facilities unsold. WD, therefore, focused on improving Cascade's initial offer, ultimately negotiating with Cascade to increase its bid from \$105 million to \$118 million for 80 assets of the Debtors' portfolio. Cascade subsequently became the Stalking Horse Bidder.
- 20. With the Stalking Horse Bid for the majority of the Debtors' portfolio in hand, the Debtors considered designating either HP Developers or Vantage the stalking horse bidder for the SLFs. As discussed above, HP Developers and Vantage had submitted offers of \$11 million and \$7.5 million for the SLFs, respectively. Because both HP Developers and Vantage were so strongly interested in the SLFs, WD believed that there would be competitive bidding between

them at the Auction and, therefore, that it was not necessary to designate one of them as a stalking horse bidder for the SLFs or seek bid protections in connection with the disposition of those assets.

- 21. **The Auction.** In the immediate days leading up to the Auction and at the Auction itself, WD continued efforts to convince operators to submit bids that could rival the Stalking Horse Bid or the SFL Bids. I and other members of the Debtors' management team continued discussions with all potential bidders, and based on these discussions, we believed and expected that there was a meaningful possibility that a second bid for the majority of the portfolio would be submitted until the night before the Auction. WD engaged intensely with one particular entity and encouraged them to submit a bid to compete with the Stalking Horse Bid. However, the would-be competitive bidder advised us that the Debtors' portfolio included assets and operations outside its market expertise and, therefore, determined not to participate in the Auction process. We were also in discussions with another potential bidder (who is currently managing certain other non-Debtor Petersen assets in receivership) regarding the submission of a bid, but it ultimately advised that it did not want to expand further at this time. We also engaged with another bidder that advised us it was interested in acquiring a large portfolio of seniors housing. WD discussed various portfolio configurations and calculations with the potential bidder right up until the Bid Deadline, but it also decided not to participate at the Auction. WD also believed that the Debtors would receive a competitive bid from an Illinois owner and operator of nursing homes, but it did not materialize.
- 22. WD did succeed in procuring 12 formal bids for smaller portions of the portfolio, and hoped to combine these bids into a competitive bid against the Stalking Horse Bid. However, there were a significant number of properties for which no bid was made other than the one by Cascade. If the Debtors proceeded with these bids, which nonetheless left behind 10-20 properties,

the Debtors would have to sell those properties one by one for the remainder of the chapter 11 process. The Debtors, advised by WD and their other advisors, did not believe that it was in the best interests of the Debtors' estates to take on the associated wind-down and transaction costs of such a cumbersome process. Such wind-down and transaction costs would dwarf any small incremental increase in nominal value that could be obtained by that grouping of bids. Moreover, the overall average price per bed resulting from the bids for smaller portions of the portfolio was less than the average price per bed resulting from the Stalking Horse Bid. Accordingly, it was not feasible to develop a package bid that would be higher than the Stalking Horse Bid.

- 23. At the Auction, WD also spent hours negotiating with HP Developers and Vantage with respect to the terms of the asset purchase agreements for their SLF Bids. Once the Debtors had crafted comparably structured transactions, as reflected in the asset purchase agreement for each of HP Developers and Vantage, the Debtors conducted an auction for the SLFs to further encourage competitive bidding between HP Developers and Vantage. In the end, their bids increased several million dollars above the starting bid of \$11.5 million to \$14.5 million for HP Developers and \$14.75 million for Vantage, respectively. In other words, I believe that the Auction worked as intended.
- 24. As should be clear from the above, and based upon my work and involvement with the Debtors in their efforts to sell the Assets before and after the commencement of the Chapter 11 Cases, and the course of negotiations with bidders since May 2024, the Debtors' marketing and sale process, coordinated by WD and other advisors, was comprehensive and robust until the last moment of the Auction and the price secured at the Auction, therefore, reflects the best and highest offer available for the Debtors' assets.

25. One Objection⁵ argues that the Auction should have been extended—following an initial extension granted at the request of the same objector, GMF Petersen, LLC ("GMF")—to allow GMF to compose a Credit Bid and to generally solicit additional bids. However, I do not believe, based upon the extensive prepetition and postpetition marketing process for the Debtors' assets, based upon the course of events at the Auction and discussions with bidders, that the Debtors could have secured a higher bid. As the Auction wound down on the afternoon and early evening of July 2, WD did not receive any indication from any bidder that the bids would improve with more time. GMF requested that the Auction be kept open, and the Debtors, in consultation with the Consultation Parties, granted that request and extended the Auction until the morning of July 3. By the morning of July 3, however, GMF had not submitted a bid. We did not believe it was necessary to extend the Auction several days or weeks, since we had only received such a request from GMF and none of the other bidders. We believe that our efforts at the Auction exhausted interest in the Assets, and further extending the Auction by days or weeks was unnecessary and could even have been detrimental. The chapter 11 process is expensive, and extending the Auction by days or weeks would have increased the cost. Accordingly, I do not believe that further extending the Auction would have yielded a better result than what was achieved.

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See generally Objection of GMF Petersen Note, LLC to Debtors' Motion for Entry of (A) An Order (I) Scheduling a Hearing on the Approval of the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, and the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (II) Approving Certain Bidding Procedures and Assumption and Assignment Procedures, and the Form and Manner of Notice Thereof, (III) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement, and (IV) Granting Related Relief; and (B) An Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Sale of All or Substantially All of the Debtors' Assets Free and Clear of All Encumbrances Other Than Assumed Liabilities and Permitted Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, and (IV) Granting Related Relief [Docket No. 611] (the "GMF Objection").

- 26. In the next section, I address the main arguments raised by stakeholders against the Sale Transactions.
- The difference in the initial valuation and the price secured at Auction illustrate the market at work. The GMF Objection also argues that the Sale Transactions should not be consummated because the \$118 million Stalking Horse Bid and the \$130.5 million price for the Debtors' assets secured at the Auction are lower from the initial valuations shared by the Debtors and their advisors at the outset of these Chapter 11 Cases. For the reasons set forth below, I believe that these arguments are without merit.
- 28. In the First Myers Declaration, I stated that I believed the total valuation for all of the Debtors' Assets was equal to \$177.5 million on the low-bound initial valuation, \$237.7 million for the middle range, and \$298.7 million on the higher bound. First Myers Decl. ¶ 25. I also noted, however, that these figures were estimates and forecasts, that they involved numerous and significant subjective assumptions, and that no outcome was guaranteed. *Id.* ¶ 27. This remains the case: a valuation estimate is only an estimate, and the market is the ultimate check and indicator of value.
- 29. First, in response to GMF's arguments that it was surprised by the \$118 Stalking Horse Bid as compared to the initial valuation, and that this valuation is much lower than expected, it should be noted that the value of the Stalking Horse Bid has been public knowledge since the Debtors filed the *Notice of Stalking Horse Bidder and Proposed Bid Protections* [Docket No. 564] on June 26, 2024. Most important, while the total price secured at Auction is lower than the expected initial valuation, the allocation ultimately ascribed to GMF collateral⁶ following the

For the purposes of this Declaration, "GMF collateral" refers to the single property on which GMF has a properly perfected first lien plus the properties on which GMF has a properly perfected second lien (and on which Sector Financial, Inc., and now its successor, Column Financial, Inc., holds a properly perfected first lien).

results of the Auction is in line with—and even higher than—what was allocated to GMF collateral in the initial valuation figures. Approximately \$91.2 million of the lower-bound \$177.5 million initial valuation was allocated to GMF collateral (as set forth in the First Myers Declaration), making up approximately 51% of the lower-bound initial valuation. Once the Stalking Horse Bid of \$118 million became public knowledge, approximately \$60.6 million should have been expected to be allocated to GMF collateral. However, the value that was ultimately secured for GMF collateral as part of the Stalking Horse Bid, \$63.8 million, was higher. In addition, the \$63.8 million figure excludes the SLF that is part of GMF's collateral package (CYE Sullivan), which secured an allocation of \$6.625 million as part of the winning SLF Bid by HP Developers. In other words, the value allocated to the GMF collateral in total as a result of the Auction (\$63.8 million + \$6.625 million, or \$70.425 million) is well in excess of what should have been anticipated based on the initial valuation allocation (\$60.6 million).

- 30. Nonetheless, if it was concerned about the Stalking Horse Bid, the allocation that was ascribed to GMF collateral, or the value secured for the SLF that was part of GMF's collateral, GMF had an opportunity to submit a competing Credit Bid. But GMF never made any indication that it was considering submitting a bid until July 1—and, ultimately, it never submitted a bid.
- 31. Moreover, our initial valuation reflected the marketing process for *all* of the Debtors' assets at a *national* level. As discussed above, prior to the commencement of the Chapter 11 Cases, we had been conducting a targeted marketing process with a small portfolio of assets offered. Many of the parties in Illinois that were the focus of our marketing efforts pre-bankruptcy were already familiar with the Debtors and there was a ceiling to the price we believed we could secure based on this targeted search. Following the commencement of the Chapter 11 Cases, we broadened our search to national nursing home and facilities operators and

marketed the entire portfolio. Accordingly, the valuation prepared at the outset of these Chapter 11 Cases was adjusted upward to reflect these facts. WD prepared the valuation in the context of a nationwide marketing process based on our understanding of the market, the data, and the research we conducted. It was an estimate based on the available data at the time, and it proved to be higher than what the market decided it could support.

- 32. In addition, our initial valuation reflected the nascent stage of the (post-bankruptcy) marketing process before that marketing process was informed and enriched by the insights of hands-on nursing home and seniors housing operators. These operators truly understand what it takes to successfully run such healthcare businesses at this moment in time, and they have a pulse on the most recent industry trends and developments. Once WD engaged with them as part of the marketing and sale process, they were able to identify additional factors at play. As the marketing process got underway and WD engaged with those operators, negotiating with them and assisting them in conducting due diligence, the valuations the market could actually support at this specific moment in time crystallized.
- 33. Specifically, in the course of engaging more closely with Bidders after May 2024 and in the weeks leading up to the Auction, including with the Stalking Horse Bidder and the bidders for individual and smaller portfolio subsets, the Debtors learned that the cost of revamping and revitalizing certain of their facilities would be higher than what had been expected and what had been factored into the valuation. Further, and more significant, many of the potential buyers informed us that they expected it would be necessary to close 15-25 of the facilities included in the portfolio because they were located primarily in especially rural areas, and their growth could not be supported by the current rural population dynamics of those geographic regions.

- 34. The potential closure of facilities necessarily changes the valuation of the portfolio and the price that can be secured in the market. With this background, the Stalking Horse Bidder offered the Debtors the option of closing certain facilities themselves before agreeing on a final sale price. However, in consultation with the Debtors and their advisors, WD determined that this was not a viable option because of the cost and time it would take to close facilities. Closing facilities is a time-consuming and costly process in and of itself because it requires an operator to apply for closure with the government and to gradually find alternative placements for residents. The closure process could take approximately 60-90 days, although the facilities would still be required to maintain the same or similar levels of staffing for the duration of the process. It goes without saying that this would be an expensive and costly endeavor. In the context of an expensive chapter 11 process, the Debtors did not have the time or the resources to explore the potential closure of facilities before consummating a sale. Accordingly, the price secured at the Auction factors in the potential closure of certain facilities by the Successful Bidders, which we had not anticipated would be necessary at the outset of the Chapter 11 Cases.
- 35. Finally, based upon the feedback WD received from bidders in the course of the marketing and sale process, WD learned that the current financing conditions are still challenging and that many bidders were finding it difficult to access credit. Accordingly, the current economic context weighed heavily on the marketing process and the price that the Debtors could secure at the Auction.
- 36. For the reasons described herein, I believe that the marketing and sale process demonstrates the true and accurate market value for the subject Assets, that the sale is in the best interest of the Debtors and their estates, and more time would not generate any higher value for the subject Assets.

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I declare under penalty of perjury that the foregoing is true and correct to the best of my

knowledge.

Dated: July 8, 2024

Mark L. Myers Managing Director

Walker & Dunlop Investment Sales, LLC