

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ROME DIVISION**

**IN RE:** ) **CHAPTER 11**  
 )  
**REGIONAL HOUSING & COMMUNITY** ) **PROPOSED**  
**SERVICES CORP., et al.,** ) **Jointly Administered Under**  
 ) **CASE NO. 21- 41034**  
**Debtors.** )

**MOTION FOR ORDER AUTHORIZING PAYMENT OF PRE-PETITION WAGES,  
PAYROLL TAXES, CERTAIN EMPLOYEE BENEFITS, RELATED EXPENSES, AND  
OTHER COMPENSATION TO EMPLOYEES AND INDEPENDENT CONTRACTORS**

COME NOW the above-captioned debtors and debtors and debtors-in-possession (collectively, the “**Debtors**”)<sup>1</sup> in the above-styled proposed jointly administered case (the “**Case**”), by and through the undersigned counsel, and make and file this Motion, respectfully showing the Court as follows:

**Relief Requested**

1.

By this Motion, the Debtors seek authority to pay the Obligations (as herein defined) that become payable during the pendency of this Chapter 11 Case and to continue at this time their practices, programs, and policies with respect to employees, as such practices, programs, and policies were in effect as of the Petition Date. Furthermore, because it is difficult for the Debtors to determine with precision the accrued pre-petition amount for many of the Obligations, to the extent that the Debtors subsequently determine that there are any additional outstanding

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<sup>1</sup> The Debtors in these chapter 11 cases include: Regional Housing & Community Services Corporation, RHCSC Columbus AL Holdings LLC, RHCSC Columbus Health Holdings LLC, RHCSC Douglas AL Holdings LLC, RHCSC Douglas Health Holdings LLC, RHCSC Gainesville AL Holdings LLC, RHCSC Gainesville Health Holdings LLC, RHCSC Montgomery I AL Holdings LLC, RHCSC Montgomery I Health Holdings LLC, RHCSC Montgomery II AL Holdings LLC, RHCSC Montgomery II Health Holdings LLC, RHCSC Rome AL Holdings LLC, RHCSC Rome Health Holdings LLC, RHCSC Savannah AL Holdings LLC, RHCSC Savannah Health Holdings LLC, RHCSC Social Circle AL Holdings LLC, and RHCSC Social Circle Health Holdings LLC.



Obligations related to the programs and policies described herein, the Debtors request authority to pay such pre-petition amounts. The Debtors similarly request that they be authorized to pay any cost or penalty incurred by any recipient of Obligations in the event that a check issued by the Debtors for payment of the Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

### **Jurisdiction**

2.

This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. Consideration of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this proceeding is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Background**

3.

On August 26, 2021, (the "**Petition Date**"), the Debtors each filed a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to operate their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

4.

No request has been made for the appointment of a trustee or examiner, and no committee has been appointed in this Case.

5.

Information about the Debtors' businesses and the events leading up to the Petition Date can be found in the Declaration of Katie Goodman in Support of First Day Applications and Motions (the "**Goodman Declaration**") which is incorporated herein by reference.

### The Compensation Obligations

6.

The Debtors employ approximately 166 employees and/or independent contractors and are obligated under various wage structures and other programs designed to provide benefits for such employees. The continued services of their employees are vital to the Debtors' continued operations and their ultimate ability to reorganize.

7.

As described more fully below, the Debtors have incurred certain pre-petition obligations that remain unpaid as of the Petition Date because they accrued, either in whole or in part, prior to the Petition Date. Even though arising prior to the Petition Date, these obligations (collectively, the "**Obligations**") will become due and payable in the ordinary course of the Debtors' businesses on and after the Petition Date. These Obligations can generally be categorized as follows: (i) wages, salaries, and other compensation; (ii) payroll taxes; (iii) 401(k) defined contribution plan obligations; (iv) health and welfare benefits; (v) other benefits. These Obligations are described generally as follows:

- *Wages, salaries, and other compensation* consist of pre-petition wages, salaries and commissions owed to employees or independent contractors (the "**Payroll Obligations**"). The Debtors process payroll twice a month. The next payroll is September 7, 2021 and covers the period from August 15, 2021 through and including August 31, 2021. The pre-petition portion of the Payroll Obligations total approximately \$132,342.32. The combined pre-petition Payroll Obligations and the post-petition wages, salaries and commissions for the relevant pay period total approximately \$220,570.53. This gross amount includes certain deductions described separately below, such as payroll taxes owed by the employees, defined plan contributions, and employee funded benefits. As of the Petition Date, some Payroll Obligations were unpaid because (a) they constitute salary, wages and commissions earned prior to the Petition Date but unpaid as of the Petition Date, or (b) certain paychecks issued pre-petition remained uncashed on the Petition Date. The Debtors estimate that the gross amount of the Payroll Obligations owed as of the Petition Date is approximately \$132,342.32.

- *Payroll taxes* consist of federal, state, and local income taxes, social security, and Medicare taxes. The payroll taxes include the amounts owed by the employees that the Debtors withhold from the gross amount of the employees' wages or salary as well as the amounts separately owed by the Debtors. As of the Petition Date, the Debtors estimate that employer owed portion of the pre-petition Payroll Taxes totals approximately \$10,896.50.
- *Health and welfare benefits.* The Debtors sponsor several health and welfare benefit plans for their employees, including insurance plans relating to medical, health, dental, vision, disability, and life insurance (collectively, the "**Health and Welfare Plans**"). The Debtors and employees pay the premiums related to the Health and Welfare Plans. As of the Petition Date, the Debtors estimate that the pre-petition amount owed for Health and Welfare Plans total approximately \$6,411.99
- *Other benefits.* The Debtors customarily offer various other employee benefit policies and programs, including reimbursing eligible employees who incur business expenses in the ordinary course of performing their duties on behalf of the Debtors. Such reimbursement obligations include travel and entertainment expenses incurred by the employees through the use of their own funds or credit cards. Because the employees do not always submit claims for reimbursement promptly, it is difficult for the Debtors to determine the exact amount of reimbursement expense obligations outstanding at any particular time. Nevertheless, the Debtors estimate that, as of the Petition Date, the reimbursement expense obligations to be paid to employees aggregate approximately \$1,750.00.

### **Relief Requested**

8.

The Debtors seek authority to pay the Obligations that become due and owing during the pendency of this Chapter 11 Case and to continue at this time their practices, programs, and policies with respect to their employees as such practices, programs, and policies were in effect as of the Petition Date. Furthermore, because it is difficult for the Debtors to determine with precision the accrued amount for many of the Obligations, to the extent that the Debtors subsequently determine that there are any additional outstanding Obligations related to the programs and policies described herein, the Debtors request authority to pay such pre-petition

amounts. The Debtors similarly requests that they be authorized to pay any cost or penalty incurred by their employees in the event that a check issued by the Debtors for payment of the Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases.

**Basis for Relief**

**A. Cause Exists to Authorize the Payment of the Employee Obligations.**

9.

Pursuant to Sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code, a debtor's employees' claims for "wages, salaries, or commission, including vacation, severance, and sick leave pay" earned within 180 days before the Petition Date, and claims against the Debtors for contributions to employee benefit plans arising from services rendered within 180 days before the Petition Date, are afforded unsecured priority status to the extent the claims do not exceed the statutory limits. 11 U.S.C. §§ 507(a)(4)–(5).

10.

The Debtor believes that substantially all of the Obligations constitute priority claims. No employees are entitled to payment of Obligations which exceed the statutory limit provided in Sections 507(a)(4) and 507(a)(5), therefore, the Debtor submits that payment of such amounts at this time is necessary and appropriate.

11.

With respect to payment of other Obligations, this Court has authority to grant the relief requested herein pursuant to Sections 363(b) and 105(a) of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code provides that "[t]he trustee, after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides, in relevant part, that "[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the

provisions of this title.” 11 U.S.C. § 105(a). Pursuant to Section 105(a) of the Bankruptcy Code, a bankruptcy court has broad authority to enforce the provisions of the Bankruptcy Code either under the specific statutory language of the Bankruptcy Code or under equitable doctrines. Courts within this jurisdiction have entered similar orders providing for the payment of pre-petition employee compensation and benefits. See, e.g., In re Brown Industries, Inc., Case No. 21-41010 (Bankr. N.D. Ga. August 26, 2021) (Bonapfel, J.); In re Hutcheson Medical Center, Inc., et al., Case No. 14-42863 (Bankr. N.D. Ga. November 25, 2014) (Bonapfel, J.); In re Beaulieu Group, LLC, et al., Case No. 17-41677 (jointly administered) (Bankr. N.D. Ga. July 18, 2017) (Diehl, J.); In re P-D Valmiera Glass USA Corp., Case No. 19-59440 (Bankr. N.D. Ga. June 19, 2019) (Bonapfel, J.); In re Virginia-Highland Restaurant, LLC and Restaurant 104 LLC, Case No. 20-70718 (jointly administered) (Bankr. N.D. Ga. October 26, 2020) (Ellis-Monro, J.).

12.

Other courts have also recognized the applicability of the “necessity of payment” doctrine with respect to the payment of pre-petition employee compensation and benefits. See, e.g., In re Chateaugay Corp., 80 B.R. 279 (S.D.N.Y. 1987) (under “necessity of payment” doctrine, it is appropriate for bankruptcy court to defer to debtor’s business judgment in permitting payment of certain workers’ compensation claims); In re Ionosphere Clubs, Inc., 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989) (“This rule recognized the existence of judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor.”); In re Gulf Air, Inc., 112 B.R. 152 (Bankr. W.D. La. 1989) (authorizing debtor-in-possession to pay pre-petition employee wages and benefits, and health, life, and workers’ compensation insurance premiums); In re Braniff, Inc., 218 B.R. 628, 633 (Bankr. N.D. Fla. 1998) (noting that debtor may pay pre-petition wages when necessary to

ensure employees remain on the job post-petition). The Debtors submit that, as illustrated below, application of the “necessity of payment” doctrine is wholly warranted in this Case.

13.

Any delay in paying the Obligations will adversely impact the Debtors’ relationship with their employees and will irreparably impair the employees’ morale, dedication, confidence, and cooperation. The Debtors must have the support of their employees in order for the Debtors’ reorganization efforts to succeed. At this early stage, the Debtors simply cannot risk the substantial damage to their businesses that would inevitably result from a decline in employees’ morale attributable to the Debtors’ failure to pay previously earned wages, salaries, benefits, and other similar items.

14.

Absent an order granting the relief requested in this Motion, the Debtors’ employees will suffer undue hardship and, in many instances, serious financial difficulties, as the amounts in question are needed to enable certain of the employees to meet their own personal financial obligations. The stability of the Debtors will thus be undermined, perhaps irreparably, by the possibility that otherwise loyal employees will seek other employment alternatives.

15.

The Debtors do not seek to alter their compensation, vacation, and other benefit policies in this Motion, and this Motion is not to be deemed an assumption or adoption of any agreement or policy providing for any such benefits. Instead, this Motion is intended only to permit the Debtors, in their discretion, to make payments consistent with those policies to the extent that, without the benefit of an order approving this Motion, such payments would be inconsistent with the Bankruptcy Code, and to permit the Debtors, in their discretion, to continue to honor their

practices, programs, and policies with respect to their employees as such practices, program, and policies were in effect as of the Petition Date.

**B. Applicable Banks Should Be Authorized to Honor and Pay Checks Issued and Make Other Transfers with Respect to the Obligations.**

16.

If the Court grants the relief sought herein, the Debtors request that all applicable banks and other financial institutions be authorized and directed, when requested by the Debtors and in the Debtors' sole discretion, to receive, process, honor and pay any and all checks drawn on the Debtors' accounts to pay the Obligations, whether those checks were presented prior to or after the Petition Date, and make other transfers necessary to implement these transactions, provided that sufficient funds are available in the applicable accounts to make the payments and transfers. The Debtors represent that each of these checks can be readily identified as relating directly to the authorized payment of the Obligations. Accordingly, the Debtors believes that checks and transfers other than those relating to such authorized payments will not be honored inadvertently.

17.

The Debtors similarly request that they be authorized to pay any cost or penalty incurred by their employees in the event that a check issued by the Debtors for payment of the Obligations is inadvertently not honored because of the filing of the Debtors' bankruptcy cases. Though the Debtors estimate any such costs or penalties to be *de minimis* in amount, if the Debtors are not authorized to pay such costs or penalties, then their employees will suffer the exact type of harm that this Motion seeks to prevent and the Debtors will suffer from loss of employee goodwill.



18.

Based on the foregoing, the Debtors submit the relief requested is necessary and appropriate, is in the best interests of their estates and creditors, and should be granted in all respects.

**Notice**

19.

Notice of this Motion has been provided to the Office of the United States Trustee, counsel to the Debtors' pre-petition secured lender, counsel to the Debtors' proposed debtor-in-possession lender, any other party asserting a security interest in assets of the Debtors, and the Debtors' thirty (30) largest unsecured creditors on a consolidated basis. In light of the nature of the relief requested, the Debtors submit that no further notice is necessary.

**Conclusion**

WHEREFORE, the Debtors respectfully request that this Court:

- (a) enter an order authorizing payment of the Obligations and authorizing the applicable financial institutions to honor and process all checks relating to Obligations; and
- (b) grant the Debtors such other and further relief as is just and proper.

This 27th day of August, 2021.

Respectfully submitted,

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