

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. 7 & 82

**CERTIFICATION OF COUNSEL REGARDING *REVISED*
PROPOSED FINAL ORDER (I) PROHIBITING UTILITY COMPANIES FROM
DISCONTINUING, ALTERING, OR REFUSING SERVICE, (II) DEEMING UTILITY
COMPANIES TO HAVE ADEQUATE ASSURANCE OF FUTURE PAYMENT,
(III) ESTABLISHING PROCEDURES FOR RESOLVING REQUESTS FOR
ADDITIONAL ASSURANCE, AND (IV) GRANTING RELATED RELIEF**

On March 20, 2024, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed the *Debtors’ Motion for Entry of Interim and Final Orders (I) Prohibiting Utility Companies from Discontinuing, Altering, or Refusing Service, (II) Deeming Utility Companies to Have Adequate Assurance of Future Payment, (III) Establishing Procedures for Resolving Requests for Additional Assurance, and (IV) Granting Related Relief* [Docket No. 7] (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. 82] (the “Interim Order”). Pursuant to the Interim Order, any objections or responses to entry of

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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”).

Prior to the Objection Deadline, the Debtors received an informal response from the Hartford Insurance Company (“Hartford”) 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], which have been resolved through discussions with Hartford and 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 Hartford 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.

[Remainder of page intentionally left blank]

Dated: April 22, 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

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ALTERING, OR REFUSING SERVICE, (II) DEEMING UTILITY COMPANIES TO
HAVE ADEQUATE ASSURANCE OF FUTURE PAYMENT, (III) ESTABLISHING
PROCEDURES FOR RESOLVING REQUESTS FOR ADDITIONAL ASSURANCE,
AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) seeking entry of a final order (this “Final Order”) authorizing: (a) prohibiting utility companies from discontinuing, altering, or refusing service to the Debtors on account of prepetition invoices, (b) deeming the utility companies to have received adequate assurance of future payment, (c) establishing procedures for resolving requests for additional assurance of payment, and (d) granting related relief, all as more fully set forth in the Motion; and upon the statements of counsel made in support of the relief requested in the Motion at the hearing before this Court, if any; and it appearing that this Court has jurisdiction to consider the Motion 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

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

dated February 29, 2012; and it appearing that venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Debtors having consented to the Court entering an order in the event this matter is deemed a non-core proceeding; and no further or other notice of the Motion is required under the circumstances; and this Court having previously entered that certain *Interim Order (I) Prohibiting Utility Companies From Discontinuing, Altering, Or Refusing Service, (II) Deeming Utility Companies to Have Adequate Assurance of Future Payment, (III) Establishing Procedures for Resolving Request for Additional Assurance, and (IV) Granting Related Relief* [Docket No. 82]; and it appearing that the relief requested in the Motion and provided for herein is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation thereon; and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized to pay on a timely basis, in accordance with the budget and their prepetition practices, all undisputed invoices for Utility Services rendered by the Utility Companies to the Debtors after the Petition Date.
3. Subject to the Adequate Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Adequate Assurance Deposit, as a condition to the Debtors receiving such Utility Services; *provided* that no Utility Company will be bound by the terms of this Final Order until such Utility Company receives notice of this Final Order.

4. Subject to the terms of this Final Order, as adequate assurance for the payment of Utility Services, the Debtors shall make a cash deposit, to the extent one has not already been made pursuant to the Interim Order, in the amount of \$323,542.53 which satisfies, on an aggregate basis, the estimated costs for Utility Services provided by each Utility Company on the Utility Company List for 50% of one month, calculated based on the Debtors' estimated average payments over the three month period prior to the Petition Date (the "Adequate Assurance Deposit"), into a segregated account of the Debtors at a bank that is party to a Uniform Depository Agreement with the U.S. Trustee (the "Adequate Assurance Deposit Account") under the Debtors' control for the benefit of Utility Companies, except those Utility Companies that agree in writing to a lesser amount. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

5. No liens, including, for the avoidance of doubt, DIP Liens (as defined in the DIP Motion [Docket No. 38] and any order entered by this Court related thereto), shall attach to the Adequate Assurance Deposit Account, except as to any reversionary interest of the Debtors.

6. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

7. The following Adequate Assurance Procedures are hereby approved on a final basis:

- (a) If a Utility Company is not satisfied with the Proposed Adequate Assurance and seeks additional assurance of payment in the form of a deposit, letter of credit, prepayment, or otherwise, it must serve an request (an "Additional Assurance Request") upon (i) the Debtors, 830 W. Trailcreek Drive, Peoria, IL 61614, Attn: David R. Campbell; and (ii) proposed co-counsel to the Debtors (a) Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, IL 60601, Attn: Daniel J. McGuire (dmcguire@winston.com) and Gregory M. Gartland (ggartland@winston.com), and 200 Park Avenue, New York, NY 10166, Attn: Carrie V. Hardman (chardman@winston.com), and (b) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 N. King St.,

Wilmington, DE 19801, Attn: Shella Borovinskaya (sborovinskaya@ycst.com) and Carol E. Cox (ccox@ycst.com) (collectively, the “Notice Parties”);

- (b) Each Additional Assurance Request must (i) be made in writing; (ii) set forth all location(s) for which Utility Services are provided and the relevant account number(s); (iii) include a summary of the Debtors’ payment history relevant to the affected account(s); (iv) describe any deposits or other security currently held by the requesting Utility Company; and (v) identify and explain the basis of the Utility Company’s proposed adequate assurance requirement under section 366(c)(2) of the Bankruptcy Code;
- (c) Upon the Notice Parties’ receipt of an Additional Assurance Request at the addresses set forth in subparagraph (a) above, the Debtors shall promptly negotiate with such Utility Company to resolve such Utility Company’s Additional Assurance Request;
- (d) If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company (each, an “Adequate Assurance Dispute”), the Debtors shall, upon reasonable notice, schedule the matter for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (a “Determination Hearing”);
- (e) Pending resolution of any such Adequate Assurance Dispute, any such Utility Company shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the chapter 11 cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- (f) The Debtors may, in their discretion, resolve any Adequate Assurance Dispute by mutual agreement with the requesting Utility Company without further notice to the Court or any other party-in-interest and may, in connection with any such agreement, provide a Utility Company with additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent the Debtors believe that such additional assurance is reasonable in the exercise of their business judgment and the Debtors may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Company’s estimated two-week utility expense; and
- (g) The portion of the Adequate Assurance Deposit attributable to each Utility Company may be returned to the Debtors, without further order of the Court, on the earlier of (i) the reconciliation and payment by the Debtors of

the Utility Company's final invoice following the Debtors' termination of Utility Services from such Utility Company, provided that such Utility Company does not dispute that it has been paid in full for post-petition services and (ii) the effective date of any chapter 11 plan in these chapter 11 cases.

8. The Debtors are authorized to add Additional Utility Companies to the Utility Service list; *provided* that promptly upon the discovery of an Additional Utility Company, the Debtors will increase the Adequate Assurance Deposit by an amount equal to approximately 50% of the Debtors' estimated average monthly payment for each Additional Utility Company, unless such Additional Utility Company agrees in writing to a lesser amount or is paid in advance for Utility Services; *provided, further*, that no Additional Utility Company will be bound by the terms of this Final Order until such Additional Utility Company receives notice of this Final Order.

9. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are

valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

11. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

12. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

EXHIBIT B

Blackline

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Upon the motion (the “Motion”)² filed by the above-captioned debtors and debtors in possession (each, a “Debtor” and collectively, the “Debtors”) seeking entry of a final order (this “Final Order”) authorizing: (a) prohibiting utility companies from discontinuing, altering, or refusing service to the Debtors on account of prepetition invoices, (b) deeming the utility companies to have received adequate assurance of future payment, (c) establishing procedures for resolving requests for additional assurance of payment, and (d) granting related relief, all as more fully set forth in the Motion;~~and this Court having entered the Interim Order [Docket No. —],~~ and upon the statements of counsel made in support of the relief requested in the Motion at ~~[—]~~;

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the hearing before this Court, if any; and it appearing that this Court has jurisdiction to consider the Motion 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; and it appearing that venue of the Chapter 11 Cases and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that this matter is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Debtors having consented to the Court entering an order in the event this matter is deemed a non-core proceeding; and no further or other notice of the Motion is required under the circumstances; and this Court having previously entered that certain *Interim Order (I) Prohibiting Utility Companies From Discontinuing, Altering, Or Refusing Service, (II) Deeming Utility Companies to Have Adequate Assurance of Future Payment, (III) Establishing Procedures for Resolving Request for Additional Assurance, and (IV) Granting Related Relief* [Docket No. ~~18~~82]; and it appearing that the relief requested in the Motion and provided for herein is in the best interests of the Debtors, their estates, and their creditors; and after due deliberation thereon; and good and sufficient cause appearing therefor,

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3. ~~2.~~ Subject to the Adequate Assurance Procedures set forth below, no Utility Company may (a) alter, refuse, terminate, or discontinue Utility Services to, or discriminate against, the Debtors on the basis of the commencement of these chapter 11 cases or on account

of outstanding prepetition invoices or (b) require additional assurance of payment, other than the Adequate Assurance Deposit, as a condition to the Debtors receiving such Utility Services; *provided* that no Utility Company will be bound by the terms of this Final Order until such Utility Company receives notice of this Final Order.

4. ~~3.~~ Subject to the terms of this Final Order, as adequate assurance for the payment of Utility Services, the Debtors shall make a cash deposit ~~of an~~, to the extent one has not already been made pursuant to the Interim Order, in the amount of ~~approximately~~ \$323,542.53 which satisfies, on an aggregate basis, the estimated costs for Utility Services provided by each Utility Company on the Utility Company List for 50% of one month, calculated based on the Debtors' estimated average payments over the three month period prior to the Petition Date (the "Adequate Assurance Deposit"), into a segregated account of the Debtors at a bank that is party to a Uniform Depository Agreement with the U.S. Trustee (the "Adequate Assurance Deposit Account") under the Debtors' control for the benefit of Utility Companies, except those Utility Companies that agree in writing to a lesser amount. The Adequate Assurance Deposit shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.

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- (d) If the Debtors determine that a timely received Additional Assurance Request is not reasonable and are unable to reach an alternative resolution with the applicable Utility Company (each, an “Adequate Assurance Dispute”), the Debtors shall, upon reasonable notice, schedule the matter for the next regularly scheduled omnibus hearing to determine the adequacy of assurance of payment pursuant to section 366(c)(3) of the Bankruptcy Code (a “Determination Hearing”);
- (e) Pending resolution of any such Adequate Assurance Dispute, any such Utility Company shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of unpaid charges for prepetition services, the filing of the chapter 11 cases, or any objection to the adequacy of the Proposed Adequate Assurance;
- (f) The Debtors may, in their discretion, resolve any Adequate Assurance Dispute by mutual agreement with the requesting Utility Company without further notice to the Court or any other party-in-interest and may, in connection with any such agreement, provide a Utility Company with

additional adequate assurance of future payment, including, but not limited to, a cash deposit, prepayment, letter of credit, or other forms of security, without further order of the Court to the extent the Debtors believe that such additional assurance is reasonable in the exercise of their business judgment and the Debtors may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by an amount not exceeding the requesting Utility Company's estimated two-week utility expense; and

- (g) The portion of the Adequate Assurance Deposit attributable to each Utility Company may be returned to the Debtors, without further order of the Court, on the earlier of (i) the reconciliation and payment by the Debtors of the Utility Company's final invoice following the Debtors' termination of Utility Services from such Utility Company, provided that such Utility Company does not dispute that it has been paid in full for post-petition services and (ii) the effective date of any chapter 11 plan in these chapter 11 cases.

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9. ~~8.~~ Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion

or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

10. ~~9.~~ Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

11. ~~10.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

12. ~~11.~~ This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.