IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: JOERNS WOUNDCO HOLDINGS, INC., *et al.*, Debtors.[1]	Chapter 11 Case No. 19-11401 (___) Joint Administration Pending

DECLARATION OF JOHN REGAN IN SUPPORT OF THE DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY PLEADINGS

I, John Regan, pursuant to 28 U.S.C. § 1746, declare under penalty of perjury that:

1. I am the Senior Vice President and Chief Financial Officer of Joerns WoundCo Holdings, Inc. ("**WoundCo**"), a corporation organized under the laws of the state of Delaware and the ultimate parent of the other debtors and debtors in possession in the above-captioned cases (collectively, and together with WoundCo, the "**Debtors**" or the "**Company**").

2. To minimize any disruption to the Debtors' businesses, preserve their enterprise value, and ensure a smooth transition into the Debtors' chapter 11 cases (the "**Chapter 11 Cases**"), the Debtors are asking this Court for various types of relief in the "first day" applications and motions (collectively, the "**First Day Pleadings**") referenced herein.[2] I submit this declaration in support of the Debtors' (a) voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") filed on the date hereof (the

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[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, include: Joerns WoundCo Holdings, Inc. (3555); Dynamic Medical Systems, LLC (6816); Global Medical, LLC (0696); Joerns LLC (3625); Joerns Healthcare, LLC (1510); Joerns Healthcare Mexico Holdings I LLC (2869); Joerns Healthcare Mexico Holdings II LLC (2942); Joerns Healthcare Parent LLC (2727); Joerns Services LLC (3441); RecoverCare, LLC (1634); RCJH Cambridge Technologies, LLC (5541); RCJH Merger Sub I, LLC (3709); and Scott Technology, LLC (8047). The address of the Debtors' corporate headquarters is 2430 Whitehall Park Drive, Suite 100, Charlotte, NC 28273.

[2] Unless otherwise defined herein, capitalized terms herein shall have the meanings ascribed to them in the relevant First Day Pleadings filed contemporaneously herewith.

"**Petition Date**") and (b) the First Day Pleadings. I am over the age of 18, competent to testify, and authorized to submit this declaration (the "**Declaration**") on behalf of the Debtors.

3. I have been Senior Vice President and Chief Financial Officer of the Company since August 29, 2016. I have a Masters in Business Administration, five (5) years of public accounting experience at Coopers & Lybrand (now PricewaterhouseCoopers) serving mainly manufacturing clients, and over 20 years in the private sector where I assumed different senior finance roles. These roles included financial responsibilities for companies ranging in revenue from $80 million to $3 billion, with extensive experience in strategic planning, financial reporting and analysis, treasury and cash management as well as restructuring.

4. Based on my time with the Debtors, my review of relevant documents, and my discussions with other members of the Debtors' management team, I am familiar with the Debtors' day-to-day operations, business and financial affairs, and books and records. Except as otherwise noted, all facts set forth in the Declaration are based on my personal knowledge, my discussions with other members of the Debtors' management team, my review of relevant documents, or my opinion based on my experience and knowledge of the Debtors' industry, operations, and financial condition. In making this Declaration, I have relied in part on information and materials that my colleagues at the Company and the Company's advisors have, as applicable, gathered, prepared, verified, and provided to me, in each case under my ultimate supervision, at my direction, and for my benefit in preparing this Declaration. Unless otherwise indicated, any financial information contained in this Declaration is unaudited and subject to change, but is accurate to the best of my knowledge. Such information is presented on a consolidated basis for the Debtors, except where specifically noted. If I were called to testify as a witness in this matter, I would testify competently to the facts set forth herein.

5. This Declaration is divided into two parts. Part I provides a background of, among other things, the Debtors' business operations, their workforce, their capital structure, and the events leading up to the filing of these Chapter 11 Cases. Part II summarizes the relief being sought in and sets forth the relevant facts in support of each First Day Pleading.

PART I

BACKGROUND

A. The Debtors' Business

6. The Company is a leading vertically-integrated manufacturer, distributor, and service provider of medical bed frames, therapeutic support surfaces,[3] patient lifts and repositioning devices,[4] and negative pressure wound therapy devices,[5] among other types of durable medical equipment. The Company's products include a number of industry-leading brands, such as the Ultracare® XT bed frame and Hoyer® lifts. Founded as the Joerns Brothers Furniture Company in 1889, the Company entered the healthcare industry in 1960 with the mission of improving the lives of people who need care (as well as those of their families and care providers) through unparalleled service, dedication, and compassion.

7. In August 2010, Quad-C Partners VII, L.P. and Quad-C Partners VII Co-Investment Fund, L.P. acquired a majority of the Company. In May 2014, WoundCo consummated a merger-of-equals with a portfolio company of Aurora Capital that owned the RecoverCare business (the "**Merger**"). The Merger created one of the leading healthcare equipment businesses in the United States. Today, with a strategically developed national

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[3] A therapeutic support surface is a medical mattress that is designed to help prevent and heal wounds amongst other therapeutic functions.

[4] A patient lift or repositioning device is a device that is designed to help caregivers transfer and/or reposition patients with limited mobility.

[5] A negative pressure wound therapy device is a device used to treat acute and chronic wounds.

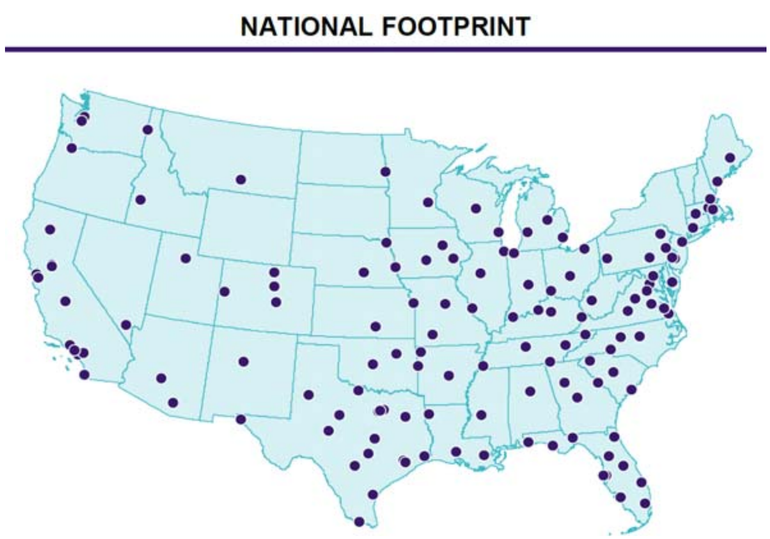
distribution infrastructure, and unmatched service capabilities and brand recognition, the Company has strong, timely, and efficient connections with leading healthcare providers across the care continuum. The Company has relationships with approximately 5,000 skilled nursing facilities, long-term care facilities, hospice agencies, and homecare agencies, as well as with the United States Department of Veterans Affairs ("**VA**") (providing products and services to paralyzed veterans in their homes and in VA healthcare facilities). In addition, the Company assists its customers with wound management, fall preventions, safe patient handling, spend and asset management, and regulatory compliance.

Manufacturing

8. The Company has industry-leading manufacturing capabilities, providing a competitive advantage in its key markets. In particular, the Company is vertically integrated with end-to-end supply chain capabilities. While a portion of the Company's products are sourced from key third party suppliers, the Company, through its ownership of non-debtor JHC de Mexico SRL de CV ("**Joerns Mexico**"), manufactures the majority of its products internally. Joerns Mexico operates a manufacturing facility in Mexico as a maquiladora, which is a 100% non-Mexican-owned manufacturing entity that enables the Company to incur lower labor costs, while nevertheless retaining the benefits of maintaining a United States headquarters and leveraging the tax and other benefits of free trade agreements. As a maquiladora, all raw materials and component parts used in Joerns Mexico's production must be purchased by the Debtors and shipped duty-free directly to Joerns Mexico. In exchange for the products produced by Joerns Mexico, the Debtors fund its day-to-day operations and provide long term strategic guidance. This vertical integration is key to the Company's success, as it allows the Company to provide high quality products at lower costs, thus achieving better profit margins.

9. With high quality products, the Company enjoys strong brand recognition, as well as strategic relationships with nearly all of the top 50 post-acute providers. The Company also counts, among its customers, individuals, skilled nursing facilities, long-term acute care hospitals, short-stay acute care hospitals, inpatient rehabilitation facilities, assisted and independent living facilities, hospice agencies, homecare agencies, and, as noted above, the VA (collectively, the "**Customers**"). The Customers, in turn, utilize the Debtors' products to provide post-acute care to approximately 35,000 patients a day.

Distribution Network



10. Further, the Company distinguishes itself through its logistics and distribution network, which permits the Company to deliver products to Customers throughout the United States. A global supply chain center located in Arlington, Texas supports a national distribution footprint consisting of 131 service or distribution locations ("**Equipment Tech Centers**") across the country. The Arlington facility manages the logistics of the Company's distribution network, warehousing and shipping Company products directly to Customers, the Equipment Tech Centers, or outside the United States. The Arlington Facility also manages quality assurance efforts, regulatory affairs, and the conduct of certain product research and development. The

Company also operates field operation centers in Chatsworth, California and Charlotte, North Carolina from which customer service and engagement functions and activities are performed. The Company's corporate headquarters are located in Charlotte, North Carolina, where the majority of the Company's management and administrative functions are performed.

11. Thanks to this infrastructure and its resulting superior route density, the Company executes approximately 62,000 transactions per month, including deliveries, repairs, retrievals, and shipments of products. As its Customers often need to adapt quickly to the needs of their patients, the Company operates 24 hours a day/7 days a week/365 days a year, supplying equipment and services to its Customers using the most advanced asset management technology and logistics system available.

Rental Business

12. The Company generates revenue by renting the Company's products to its Customers. Customers initiate a transaction to rent equipment from the Debtors by calling the Company's customer service call center or by accessing the MyJHC online ordering portal. The Company has approximately 75 customer service representatives and dispatchers located between its Charlotte, North Carolina headquarters and its Chatsworth, California satellite office. As noted above, the Debtors' Customers can initiate a rental order 24 hours per day, any day of the year, including all holidays.

13. After receiving a rental order request, the Company's dispatch department communicates the request to the appropriate Company field service technicians ("**FST**"), who are locally placed in the Equipment Tech Centers. The Company's FSTs, who are known by the purple shirts that they wear every day, are the heart of the Debtors' rental business. The Company has approximately 635 FSTs located throughout the United States, serving more than

1,000 Customers each day. The FSTs respond to Customers' requests by delivering and assembling the ordered products, then demonstrating how to properly use the equipment. Timely delivery and installation are critical to the success of the Company's business and to the comfort and speedy recovery of its Customers' patients.

14. Customers can initiate a service repair or pickup of the equipment in a similar fashion. The FSTs return used or damaged equipment to one of the Equipment Tech Centers, where the equipment is properly repaired, cleaned, and stored. Joerns, including all of the Company's Equipment Tech Centers, is accredited by The Joint Commission, a national non-profit accreditation organization that accredits over 21,000 health care companies in the United States.

Direct Sale Business

15. The Company also generates revenue through direct sales to Customers. In connection with the Company's direct sale or "capital" business, Customers initiate orders to purchase equipment by calling a Company customer service representative located in the Charlotte, North Carolina headquarters. The ordered equipment is then shipped directly to the Customer. In addition, Customers can purchase equipment in large order quantities through the Company's sales account executives in the field. The equipment from these orders is also shipped directly to the Customer.

Workforce

16. The Debtors have approximately 1,100 total employees, five of whom are part-time employees.

17. Approximately 837 of the Company's employees are paid on an hourly basis, and approximately 237 are paid on a salaried basis. Generally speaking, the salaried employees

include the upper management team, employees in supervisory and departmental management roles, sales representatives, and other administrative professionals such as accounting and legal staff. The hourly employees generally include FSTs, customer services representatives, dispatchers, and customer engagement representatives.

18. Approximately 726 of the Company's employees are directly involved in the tasks required to provide products to Customers, including ordering, delivering, retrieving, and cleaning products. Roughly 294 employees perform back-office administrative, billing, and IT support.

19. In addition to their employees, the Debtors contract with approximately 57 independent sales representatives to drive direct sales with distributors or other customers not covered by the Company's sales representatives.

Foreign Affiliates

20. In addition to Joerns Mexico, the Debtors have non-Debtor affiliates operating in Canada, the Netherlands, Belgium, and the United Kingdom (the "**Foreign Affiliates**"). The Foreign Affiliates are standalone entities with operations that are independent from the Debtors. The Foreign Affiliates are not Debtors in these Chapter 11 Cases. Nonetheless, the Foreign Affiliates are a material source of revenue for the Debtors given that they purchase products and corporate services (Finance, IT, Audit, and Legal) from the Debtors (including products manufactured by Joerns Mexico).

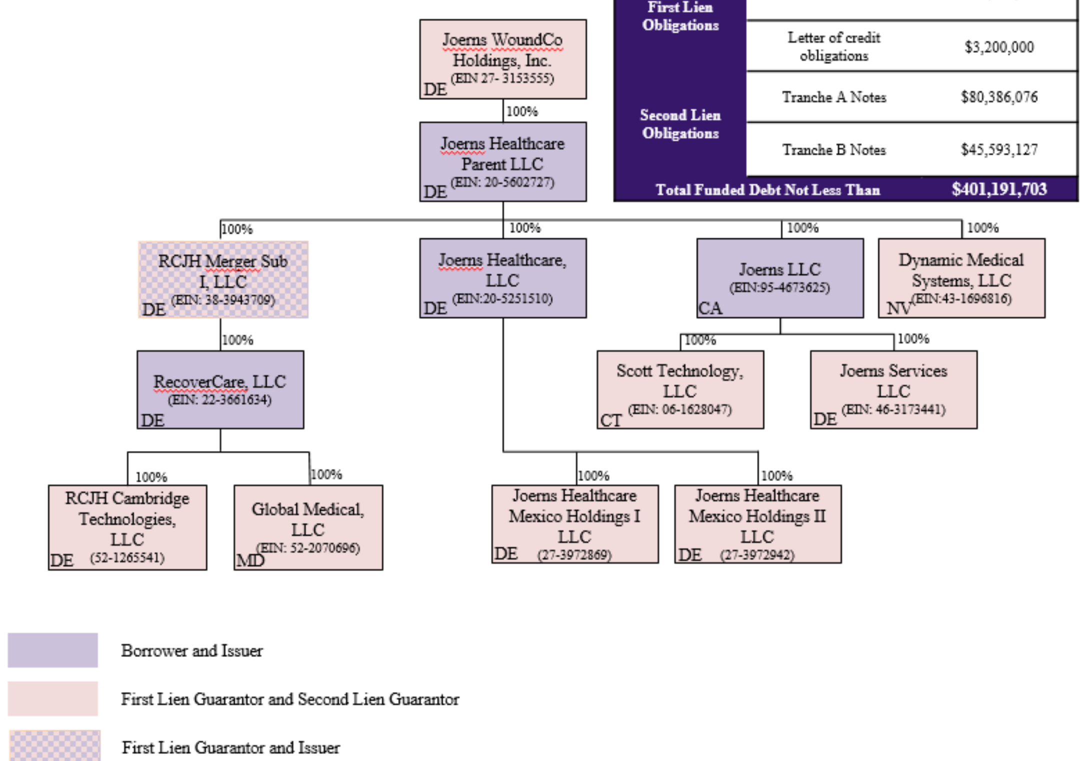
B. The Debtors' Capital Structure

21. As of the Petition Date, each of the Debtors is an obligor with respect to two types of secured debt: (i) the First Lien Credit Agreement and (ii) the Second Lien Note Purchase Agreement (each as defined below, collectively, the "**Secured Debt**," and the lenders thereunder,

the "**Secured Lenders**"). The Secured Debt is secured by substantially coextensive liens on, and security interests in, substantially all of the Debtors' assets.

22. The approximate aggregate principal amount of the Debtors' prepetition indebtedness under the Secured Debt outstanding as of June 24, 2019 in order of lien and structural priority is summarized as follows:

Capital Structure	Obligation	Outstanding Amount Not Less Than
First Lien Obligations	First Lien Term Loans	$272,012,500
	Letter of credit obligations	$3,200,000
Second Lien Obligations	Tranche A Notes	$80,386,076
	Tranche B Notes	$45,593,127
Total Funded Debt Not Less Than		$401,191,703



First Lien Obligations

23. The Debtors are party to that certain Second Amended and Restated Credit Agreement, dated as of May 9, 2014 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "**First Lien Credit Agreement**," and the

indebtedness thereunder, the "**First Lien Obligations**")[6] by and among Joerns Healthcare, LLC ("**JHO**"), Joerns LLC ("**Joerns LLC**"), Joerns Healthcare Parent, LLC ("**Joerns Parent**") and RecoverCare, LLC ("**RecoverCare**"), as borrowers (collectively, the "**Borrowers**"), the other Debtors, as additional "Credit Parties" (each, a "**First Lien Guarantor**"), the lenders from time to time party thereto (the "**First Lien Lenders**") and Ankura Trust Company, LLC, as administrative agent for the First Lien Lenders (the "**First Lien Agent**" or "**Ankura**"). The proceeds of the advances under the First Lien Credit Agreement were used (i) to refinance prior indebtedness (including the outstanding term loan under the First Amended and Restated Credit Agreement), (ii) to pay a portion of the merger consideration in connection with the Merger described above, (iii) to pay fees, costs and expenses in connection with the First Lien Credit Agreement, the Merger and general corporate costs and expenses, (iv) to fund a portion of a dividend to the equityholders of WoundCo immediately prior to giving effect to the Merger, and (v) for working capital, other general corporate purposes, and capital expenditures.

24. Pursuant to the First Lien Credit Agreement, term loans in an approximate aggregate principal amount of $272,012,500.00 (the "**First Lien Term Loans**") and letter of credit obligations in an approximate aggregate face amount of $3,200,000 remained outstanding immediately prior to the Petition Date. The First Lien Term Loans were set to mature on May 9, 2020. Immediately prior to the Petition Date, the First Lien Term Loans accrued interest at a rate of LIBOR + 8%.[7] Interest on LIBOR rate loans under the First Lien Credit Agreement is payable on the last day of the interest period applicable to such loan. The First Lien Credit

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6 The First Lien Credit Agreement amended and restated that certain First Amended and Restated Credit Agreement, dated as of March 29, 2013 (the "**First Amended and Restated Credit Agreement**"), which amended and restated that certain Credit Agreement, dated as of August 6, 2010.

7 Immediately prior to the Petition Date, the First Lien Term Loans were accruing interest based on three month LIBOR plus an applicable margin of 6%, plus an additional 2% of default interest which began accruing on March 31, 2019 as a result of the EBITDA Defaults (as defined below).

Agreement also includes a revolving credit facility (the "**First Lien Revolver**") under which no revolving loans were outstanding as of the Petition Date.

25. Pursuant to that certain Guaranty and Security Agreement, dated as of August 6, 2010 (as amended by certain pledge agreements thereafter, the "**First Lien Security Agreement**"), each Borrower and each First Lien Guarantor (i) granted to the First Lien Agent for the benefit of the First Lien Lenders and the other Secured Parties (as defined in the First Lien Credit Agreement) a lien on and security interest in all of its right, title and interest in substantially all of its assets and (ii) "jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety," all of the First Lien Obligations of each Borrower (except, each Borrower only guaranteed the obligations of each other Borrower). First Lien Security Agreement §§ 2.1 and 3.1.

Second Lien Obligations

26. The Debtors are also party to that certain Second Lien Note Purchase Agreement, dated as of March 15, 2017 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "**Second Lien Note Purchase Agreement**," and the indebtedness thereunder, the "**Second Lien Obligations**") by and among JHO, Joerns LLC, Joerns Parent, RCJH Merger Sub I, LLC, and RecoverCare, as issuers (collectively, the "**Issuers**," and each individually, an "**Issuer**"), the other Debtors, as additional "Note Parties" (each, a "**Second Lien Guarantor**"), the purchasers from time to time party thereto (the "**Second Lien Lenders**"), and U.S. Bank National Association, as agent for the Second Lien Lenders (the "**Second Lien Agent**"). Pursuant to the Second Lien Note Purchase Agreement, the Issuers issued two tranches of notes (the "**Tranche A Notes**" and "**Tranche B Notes**," respectively, and collectively, the "**Notes**"). The Tranche A Notes are senior in payment priority

to the Tranche B Notes such that all obligations in respect of the Tranche A Notes, including accrued unpaid interest, must be repaid in full before any payments can be applied to repayment in respect of the Tranche B Notes. In connection with the issuance of the Notes, WoundCo also issued to the Second Lien Lenders warrants representing approximately 15% of the fully diluted equity of WoundCo (the "**Warrants**").

27. The original principal under the Tranche A and Tranche B notes was $55,000,000.00 and $30,000,000.00, respectively, all of which remained outstanding immediately prior to the Petition Date. The proceeds of the Notes were used to (i) pay down accounts payable, (ii) repay amounts outstanding under the First Lien Revolver, and (iii) pay fees, costs and expenses incurred in connection with the Second Lien Note Purchase Agreement and general corporate costs and expenses. The Tranche A Notes and the Tranche B Notes each were set to mature on September 14, 2022. Immediately prior to the Petition Date, the Tranche A Notes accrued interest at a rate of LIBOR + 16.5%, and the Tranche B Notes accrued interest at a fixed interest rate of 19.0%, plus, in each case, an additional 200 basis points in default interest, if demanded. Since October 8, 2018, interest on both the Tranche A Notes and the Tranche B Notes has been payable in kind (i.e., each interest payment is capitalized to the outstanding principal each fiscal quarter), such that the aggregate outstanding principal amount as of June 24, 2019 was no less than $80,386,076 in respect of the Tranche A Notes and no less than $45,593,127 in respect of the Tranche B Notes.

28. Pursuant to that certain Guaranty and Security Agreement, dated as of March 15, 2017 (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "**Second Lien Security Agreement**"), each Issuer and each Second Lien Guarantor (i) granted to the Second Lien Agent for the benefit of the Second Lien Lenders a lien

on and security interest in all of its right, title, and interest in substantially all of its assets and (ii) "jointly and severally, absolutely, unconditionally and irrevocably guarantees, as primary obligor and not merely as surety," all of the Second Lien Obligations of each Issuer (except, each Issuer only guaranteed the obligations of each other Issuer). Second Lien Security Agreement §§ 2.1 and 3.1.

Intercreditor Agreement

29. Contemporaneously with the execution of the Second Lien Note Purchase Agreement, on March 15, 2017, the First Lien Agent and the Second Lien Agent entered into an intercreditor agreement (as amended, restated, supplemented, or otherwise modified from time to time prior to the date hereof, the "**ICA**") covering "all property and interests in property and proceeds thereof now owned or hereafter acquired by any Obligor in or upon which a Lien (including any Liens granted in an Insolvency Proceeding), is granted or required or purported to be granted by such Obligor in favor of any Secured Creditor as security for all or any part of the Obligations whether or not such Lien is valid, perfected or enforceable." ICA § 1.1. The Second Lien Obligations are lien-subordinated to the First Lien Obligations pursuant to the terms of the ICA.

Trade and Other General Unsecured Claims

30. As of the Petition Date, the Debtors are liable on general unsecured claims, principally relating to ordinary course obligations related to the operation of the business (vendors, employees etc.).

Equity Interests

31. As of the Petition Date, Debtor WoundCo had one class of common stock, the majority of which was held by Quad-C Partners VII, L.P., Quad-C Partners VII Co-Investment

Fund, L.P., and Aurora Equity Partners III L.P. In addition to the common stock, WoundCo has issued Warrants to its Second Lien Lenders and options to certain current and former members of management. All the other Debtors' equity interests are wholly-owned by the Debtor entity immediately above it on the organizational chart depicted above.

C. Events Leading to Debtors' Chapter 11 Filing

32. A number of factors have contributed to a decline in the Company's earnings and liquidity, which has left the Company unable to carry the full weight of its obligations under the Secured Debt and made this chapter 11 filing a necessary step to implement a restructuring plan to de-lever the Company's balance sheet with the tools available under the Bankruptcy Code.

Post Acute Sector Disruption

33. The Company has been adversely impacted by the challenges faced by the post-acute sector, which is a key end market. Post-acute providers have experienced multi-year occupancy rate declines while simultaneously seeing increases in the costs of providing patient care and structural changes in reimbursement instituted by the Centers for Medicare and Medicaid Services not yet offset by countervailing demographic trends. These structural changes include, among other things, higher operational costs driven by increasing regulatory burdens, lower reimbursement rates instituted by Centers for Medicare and Medicaid Services for patients, and patient migration to home health care. The decline in occupancy rates has led to reduced demand for the Company's products and services, particularly in the rental segment, which is a major component of the Company's business.

34. Further, the general post-acute sector disruption has placed many of the Company's Customers under significant financial pressure, resulting in several bankruptcy filings, increased mergers and acquisition activity to divest under-performing facilities, and

proactive cost reduction efforts, as well as fewer equipment purchases. At the same time, the Debtors undertook aggressive cost reduction efforts and exited non-core business activities in response to the resulting contraction in patients served. But these efforts produced limited success as the patient declines were driven not only by a reduction in the number of facilities served but by the fewer patients per facility staying shorter periods. The Company still required a relatively high fixed-cost structure and resources to serve even these lower patient populations.

Customer Collections

35. Further, because of the above described and related issues, a number of the Company's Customers have experienced liquidity issues that have slowed the Company's collection efforts and forced the Company to record higher level of bad debt expenses in each of 2016, 2017, 2018, and the first two quarters of 2019.

Constrained Liquidity Issues

36. As a consequence of these issues, the Company has experienced significant liquidity constraints since 2016. Available cash eroded as a result of revenue declines, cash collection issues from Customers, and some necessary large infrastructure investments. In turn, constrained liquidity resulted in supply chain disruptions, which further eroded its core capital and rental businesses. Such supply disruptions inevitably led to stock shortages that opened the door for the Company's competitors to opportunistically exploit the Company's distress. Despite executing significant cost reduction efforts—workforce eliminations, exiting non-core business activities, and other discretionary cost eliminations—as well as obtaining cash infusions from Second Lien Lenders in March and June 2017, the Company still faced EBITDA erosion and liquidity strain as a result of the post-acute sector disruption.

37. During calendar year 2018, due to a decrease in the performance of the Company, the Debtors experienced defaults on certain financial and reporting covenants under the First Lien Credit Agreement and the Second Lien Notes Purchase Agreement. To address these defaults, on October 8, 2018, (a) the Debtors, the First Lien Lenders and the First Lien Agent entered into that certain Waiver and Fifth Amendment to Second Amended and Restated Credit Agreement, and (b) the Debtors, the Second Lien Lenders and the Second Lien Agent entered into that certain Waiver and Third Amendment to Second Lien Note Purchase Agreement. Pursuant to these agreements, among other things, (1) the First Lien Lenders, the First Lien Agent, the Second Lien Lenders and the Second Lien Agent waived the specified defaults therein, (2) the Debtors acknowledged and agreed that the First Lien Agent would engage FTI Consulting and King & Spalding LLP as advisors, and (3) the Debtors agreed to certain milestones with the goal of consummating a sale or restructuring process in the first half of 2019. In connection with the Waiver and Third Amendment to Second Lien Note Purchase Agreement, the Warrants were amended to, among other things, increase the Warrants to represent 15% of the fully-diluted equity of WoundCo.

38. Thereafter, the Debtors breached a financial covenant under each of the First Lien Credit Agreement and the Second Lien Notes Purchase Agreement as of March 31, 2019, when their Adjusted EBITDA (as that term is defined under each of the First Lien Credit Agreement and the Second Lien Note Purchase Agreement) for the fiscal quarter ended March 31, 2019 fell below the respective $40 million and $36.4 million required thresholds (the "**EBITDA Defaults**"). *See* First Lien Credit Agreement § 6.3, Second Lien Notes Purchase Agreement § 6.3.

39. On May 31, 2019, the Company missed an interest payment of approximately $5.9 million under the First Lien Credit Agreement, resulting in an Event of Default on June 4, 2019, after the expiration of the applicable cure period.

40. To address these and certain other defaults, the Company entered into a forbearance agreement on May 20, 2019 with the First Lien Agent and the requisite First Lien Lenders (as amended, the "**Forbearance Agreement**"), under which the First Lien Lenders and First Lien Agent agreed to refrain from exercising remedies on account of such defaults. The Forbearance Agreement was amended several times to extend the forbearance period.

D. Out-of-Court Restructuring Efforts

41. To resolve its liquidity issues and successfully navigate through the industry headwinds described above, the Company recognized the necessity to its business to reduce the Company's debt burden. That need has led the Company to file these Chapter 11 Cases with the support of the majority of the Secured Lenders.

Sale Process

42. In November 2018, at the direction of WoundCo's board of directors, the Company engaged in a process to market and sell its assets as a going-concern to a third party. Such process is also required under the amendments to both the First Lien Credit Agreement and the Second Lien Notes Purchase Agreement, as described above.

43. On November 16, 2018, in its capacity as the Company's counsel, White & Case LLP retained Moelis & Company LLC ("**Moelis**") as an investment banker. In December of 2018, Moelis launched a broad outreach to a total of 69 parties (eleven strategic and 58 sponsor parties). Of these, 34 (six strategic and 28 sponsors) signed nondisclosure agreements and

received marketing materials. Seven of these 34 parties ultimately submitted indications of interest to acquire the Company (the "**IoI Parties**").

44. In February 2019, in its capacity as the Company's counsel, White & Case LLP engaged Conway MacKenzie, Inc., as a financial advisor to, among other things, assist the Company in responding to information requests from potential investors, buyers, or capital providers, as well as their respective professional advisors.

45. Ultimately, five of the IoI Parties chose to move forward with management presentations, which presentations concluded on March 15, 2019. While some of the IoI Parties conducted a limited amount of additional due diligence, by mid-April it became clear that none wished to make a bid (or offer a refinancing transaction).

Restructuring Negotiations

46. As the prospects for consummating a sale diminished, the Company commenced discussions with its Secured Lenders about alternative financial restructuring transactions on either a fully consensual basis or through a chapter 11 proceeding. A group of first lien lenders holding approximately 76% of the claims in respect of the First Lien Obligations organized into a steering committee (the "**First Lien Steering Committee**") and retained FTI Consulting and King & Spalding LLP as advisors to engage with the Company, and dialogue began in earnest. The Company also engaged with PineBridge and Cetus Funds (who, together with certain co-investors, are holders of 100% of the Second Lien Obligations) on terms for a financial restructuring.

47. To galvanize the discussions, the Company sent a non-binding term sheet setting forth terms of a financial restructuring transaction to the respective advisors to the First Lien Steering Committee and the Second Lien Lenders on April 12, 2019. After several exchanges

with the Company, the First Lien Steering Committee proposed a version of the term sheet acceptable to its members that was shared with the Second Lien Lenders on May 17, 2019.

48. In the weeks that followed, the Second Lien Lenders responded with proposals of their own, eventually engaging in direct negotiations with the First Lien Steering Committee and the Debtors. After weeks of intense, arm's-length negotiations, the Company, the First Lien Steering Committee and the Second Lien Lenders reached an agreement on a global, consensual restructuring through a prepackaged chapter 11 bankruptcy, with certain First Lien Lenders providing debtor-in-possession financing.

E. The RSA and Pre-Packaged Chapter 11 Plan

49. On June 21, 2019, the parties entered into a restructuring support agreement (the "**RSA**")[8] and restructuring term sheet. The RSA contemplates a financial restructuring transaction (the "**Restructuring Transaction**") to de-lever the Company's balance sheet through the implementation of a prepackaged plan of reorganization (the "**Prepackaged Plan**").[9] The Prepackaged Plan, which reflects the terms of the RSA, provides for, among other things: (a) the First Lien Lenders to receive 95% of newly issued common equity interests (the "**New Common Stock**") in the reorganized Debtors (the "**Reorganized Debtors**") (subject to dilution by the Backstop Fee (as defined below) and a management equity incentive plan) in exchange for their claims; (b) the Second Lien Lenders to receive 5% of the equity interest in the Reorganized Debtors (subject to dilution by the Backstop Fee and the management equity incentive plan) in

[8] The RSA is attached as **Exhibit B** to the Disclosure Statement (as defined below).

[9] This summary of the RSA, the Prepackaged Plan and the DIP Financing (as defined below) does not contain all material terms and conditions and is qualified in its entirety, including the defined terms they use (whether or not defined within the summary), by the provisions of the RSA, the Prepackaged Plan and the DIP Financing related agreements and documents, as applicable. To the extent that there are any conflicts between the summary herein, on the one hand, and the RSA, the Prepackaged Plan and the DIP Financing agreements and documents, as applicable, on the other, the terms of the RSA, Prepackaged Plan and the DIP Financing agreements and documents, as applicable, shall govern.

exchange for their claims; (c) the general unsecured claims to be paid in full or reinstated; and (d) a cancellation of existing equity in WoundCo without any distribution to the holders on account thereof. I also understand that the sponsors of the Debtors support the Prepackaged Plan.

50. To fund the Chapter 11 Cases, provide working capital, and fund interest, fees and certain other payments thereunder, certain First Lien Lenders (each, a "**DIP Lender**" and collectively, the "**DIP Lenders**") will provide a secured superpriority priming debtor in possession non-amortizing financing ("**DIP Financing**") comprised of (a) a new money credit facility in an aggregate principal amount not to exceed $40 million (the "**New Money DIP Facility**," and the loans thereunder, the "**New Money DIP Loans**") and (b) a roll-up DIP facility (the "**Roll-Up DIP Facility**," and the loans thereunder, the "**Roll-Up DIP Loans**," and together with the New Money DIP Loans, the "**DIP Loans**"), pursuant to which each DIP Lender will obtain an additional claim (a "**Roll-Up DIP Claim**," and collectively, the "**Roll-Up DIP Claims**") on a dollar-for-dollar basis for every dollar of New Money DIP Loans disbursed by such DIP Lenders from and after the entry of the order approving the DIP Facility on an interim basis (the "**Interim DIP Order**"), which Roll-Up DIP Claims will be used to satisfy and discharge such DIP Lenders' First Lien Obligations in an amount equal to the aggregate principal amount of New Money DIP Loans. The DIP Financing will automatically convert into an exit facility (the "**Exit Facility**") upon the effective date of the Prepackaged Plan (the "**Effective Date**").

51. The Company believes that the Restructuring Transaction will maximize value for its stakeholders and that the availability of the DIP Financing is essential to the Company's continued operations and ability to consummate the Restructuring Transaction. Upon its full

implementation, the Prepackaged Plan will effect a significant deleveraging of the Debtors' capital structure by wiping out approximately $320 million in principal amount of prepetition funded debt. The allowed general unsecured claims will be paid in the ordinary course or be otherwise unimpaired. The Exit Facility will also provide the Debtors with sufficient liquidity to continue funding their operations and necessary capital expenditures to insure that the Company will be not only competitive but will remain an industry leader going forward.

F. Solicitation and the Need for Prompt Confirmation of the Prepackaged Plan

52. The proposed Restructuring Transaction embodied in the RSA and the Prepackaged Plan are described in detail in the disclosure statement (the "**Disclosure Statement**") in connection with the Prepackaged Plan. Under the Prepackaged Plan, the only impaired classes of claims entitled to vote on the Prepackaged Plan are the claims of the First Lien Lenders and Second Lien Lenders. The RSA also contemplates that the Debtors were to commence solicitation of the Prepackaged Plan before the Petition Date.

53. Accordingly, on June 21, 2019, the Debtors began soliciting acceptance or rejection of the Prepackaged Plan from the First Lien Lenders and the Second Lien Lenders. Concurrently herewith, the Debtors have requested this Court set a combined hearing to approve the adequacy of the information contained in the Disclosure Statement and confirm the Prepackaged Plan (the "**Combined Hearing**"). In addition, because the Debtors have received substantial support for the Prepackaged Plan and no unsecured creditors will be impaired by the Prepackaged Plan, the Debtors are requesting that the Court set only two hearings in these Chapter 11 Cases: (i) the initial hearing to consider (A) the relief requested in the First Day Pleadings, as described more fully herein, and (B) the scheduling of the Combined Hearing, and (C) related relief, and (ii) the Combined Hearing, at which the Court would (A) consider all

requests for relief on a final basis in connection with the First Day Pleadings, (B) consider approval of the Disclosure Statement, and (C) consider confirmation of the Prepackaged Plan.

54. It is important that these matters be considered, and that the Debtors bring their formal restructuring to a successful conclusion, quickly. The terms of the DIP Financing and RSA require consummation of the Prepackaged Plan to occur no later than 52 days following the Petition Date, or August 15, 2019.

PART II

FIRST DAY PLEADINGS

55. In furtherance of these objectives, the Debtors expect to file, and respectfully request that this Court approve, the First Day Pleadings. I have reviewed each of the First Day Pleadings and respective proposed orders (including the respective exhibits thereto), and the facts set forth therein are true and correct to the best of my knowledge, information, and belief. Moreover, I believe that the relief sought in each of the First Day Pleadings (a) is vital to enabling the Debtors to make the transition to, and operate in, chapter 11 with minimum interruption or disruption to the Debtors' business, or loss of productivity or value, and (b) is critical to consummating the Restructuring Transaction and exiting the Chapter 11 Cases. The Debtors' attorneys have explained to me the customary practices with regard to the requested relief in chapter 11 business reorganization cases and the rationale for these pleadings.

A. Administrative and Procedural First Day Pleadings

Joint Administration Motion[10]

56. The Debtors are requesting that the Chapter 11 Cases be jointly administered for procedural purposes only. As set forth above, the Debtors are affiliated with each other, with

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[10] *Motion of Debtors for Entry of an Order Directing Joint Administration of the Debtors' Chapter 11 Cases Pursuant to Bankruptcy Rule 1015(B)* (the "**Joint Administration Motion**").

WoundCo as the ultimate parent of all other Debtors. The Debtors anticipate that notices, applications, motions, other pleadings, hearings, and orders in these Chapter 11 Cases may affect all of the Debtors. Therefore, joint administration will avoid unnecessary time and expense of duplicative motions, applications, orders, and other papers, without harming the rights of any parties.

Consolidated Creditor Matrix Motion[11]

57. I have been advised that, pursuant to Rule 2002-1(f)(v) of the Local Rules of the United States Bankruptcy Court for the District of Delaware (the "**Local Bankruptcy Rules**"), each debtor or its duly retained agent in jointly administered cases is required to file and maintain a separate creditor mailing matrix. However, I have also been advised that the Court is permitted to modify the Local Bankruptcy Rules if it is "in the interest of justice." Del. Bankr. L.R. 1001-1(c). I believe that allowing the Debtors to maintain a single consolidated list of creditors, in lieu of filing a separate creditor matrix for each Debtor, is warranted and in the best interest of the estates.

58. The Debtors have contemporaneously filed an application to retain Epiq Corporate Restructuring as claims and noticing agent (the "**Claims and Noticing Agent**") and as agent for the Office of the Clerk of Court (the "**Clerk's Office**") to assist the Clerk's Office with, among other things, the notices to be provided in these Chapter 11 Cases. The Claims and Noticing Agent has prepared a consolidated list of creditors and potential parties-in-interest (the "**Creditor List**") based on the names and addresses that the Debtors maintained in their databases or were otherwise readily ascertainable by the Debtors prior to the Petition Date. The

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11 *Motion of Debtors for Entry of Interim and Final Orders: (I) Waiving Creditor Matrix Requirements; (II) Authorizing Debtors to Redact Certain Personal Identification Information for Individual Creditors; And (III) Granting Related Relief* (the "**Consolidated Creditor Matrix Motion**").

Creditor List is in a format ordinarily used by the Claims and Noticing Agent and may not comply with all or some of the various requirements under the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") for a creditor matrix

59. Furthermore, I believe that cause exists to authorize the Debtors to redact address information of individual creditors—many of whom are the Debtors' current or former employees. The Debtors are extremely focused on maintaining the morale of their employees and on not doing anything in the Chapter 11 Cases to disrupt their workforce. The inclusion of personal information, such as employee addresses, may expose the Debtors' employees to risk of identity theft insofar as it links a particular name to a particular company and situation, and to a particular home address. The inclusion of this information may also otherwise do harm to the Debtors' efforts to minimize the disruption on their employees associated with the Chapter 11 Cases. The inclusion of such personal information is also unnecessary insofar as the Debtors may provide an unredacted version to the U.S. Trustee and the Court upon request.

60. Accordingly, the Debtors request that the Court waive the creditor matrix requirements, authorize the Debtors to file a consolidated Creditor List and to redact address information for individual creditors, and deem such Creditor List adequate and sufficient. Under the circumstances, reformatting the consolidated list, preparing and filing separate formatted creditor matrices, and otherwise complying with the creditor matrix requirements will unnecessarily burden the Debtors and result in duplicate mailings, without any corresponding benefit to the estates.

Protected Health Information ("PHI") Motion[12]

61. Pursuant to the PHI Motion, the Debtors request entry of an order authorizing certain procedures to maintain and protect the confidentiality of PHI as required by the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"), while providing required disclosure in these Chapter 11 Cases (the "**Privacy Procedures**").

62. HIPAA and its corresponding regulations impose stringent standards on healthcare providers and establish significant penalties for any health care provider that uses or discloses PHI. *See* 42 U.S.C. § 1302d, et. seq. and 45 C.F.R. § 164.502. Although I do not believe that the Debtors are a health care provider or a "healthcare business" as defined in the Bankruptcy Code, I understand that certain Debtors (collectively, the "**PHI Handling Debtors**")[13] qualify under HIPAA as "covered entities"[14] and/or as "business associates,"[15] and as such are prohibited from disclosing "individually identifiable health information." 45 C.F.R. § 164.502. HIPAA defines "individually identifiable health information" as any information relating to the individual's "past, present, or future physical or mental health or condition…, the provision of health care to [the] individual, or the past, present, or future

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[12] *Motion of Debtors for Interim and Final Orders Authorizing Certain Procedures to Maintain and Protect the Confidentiality of Protected Health Information as Required by Applicable Privacy Rules* (the "**PHI Motion**").

[13] Even though the Debtors believe HIPAA applies only to the PHI Handling Debtors, the Debtors, out of an abundance of caution, seek the relief requested in the PHI Motion (including application of the Privacy Procedures) in respect of all the Debtors.

[14] Such qualification is based on the facts that the PHI Handling Debtors furnish, bill, and are paid for equipment that relates to the health of individuals who ultimately use it, and that they transmit health-related information to billing vendors, insurance vendors, attorneys (e.g., in connection with product liability claims and lawsuits, complying with subpoenas, etc.), and other parties to carry out financial and administrative activities in the ordinary course of their business.

[15] A "business associate" is a person who, on behalf of a covered entity, "creates, receives, maintains, or transmits protected health information" for a function or activity regulated by 45 C.F.R. § 160.103, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, and certain patient safety activities. 45 C.F.R. § 160.103. As part of their business relationships and contractual obligations, the PHI Handling Debtors collect PHI on behalf of their Customers who are "covered entities" to, among other things, consult with such Customers about their needs for the Debtors' products and to assist them by supplying such products in connection with their qualifying patient safety activities.

payment for the provision of health care to the individual" that also "identifies the individual" or for "which there is a reasonable basis to believe that the information can be used to identify the individual." 42 U.S.C. § 1320d(6). Subject to certain limited exclusions, individually identifiable health information is referred to as "protected health information" under HIPAA (i.e., PHI).

63. The Debtors are concerned that the requirements to maintain PHI confidentiality under HIPAA may conflict with the requirements to disclose information under the Bankruptcy Code, specifically the duty to file a list of all creditors under section 521(a)(1)(A) of the Bankruptcy Code, the duty to maintain a mailing matrix under Local Bankruptcy Rule 2002-1(f)(v), and the duty to file Schedules and Statements under section 521(a)(1)(B)(i) of the Bankruptcy Code. The Debtors therefore respectfully request that such PHI be protected through the proposed Privacy Procedures set forth above pursuant to section 107(c) of the Bankruptcy Code, which allows a bankruptcy court, for cause, to protect an individual if disclosure would create an undue risk of unlawful injury. *See also* Bankruptcy Rules 9037(d) (allowing a bankruptcy court to require redaction of information for cause) and 9018 (providing procedure for invoking the Court's power under section 107); 11 U.S.C. § 105(a) (authorizing the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.").[16]

64. The Debtors believe that the relief requested in the PHI Motion appropriately balances the need to maintain confidential PHI under HIPAA with the need for adequate

[16] Further, removing "identifiers of the individual or of relatives, employers, or household members of the individual" such as "[n]ames," and replacing such identifiers with "a code or other means of record identification," as the Debtors propose by means of the Privacy Procedures, is one of the prescribed "[i]mplementation specifications" under HIPAA listed as a "requirement[] for de-identification of protect health information" by which "[a] covered entity may determine that health information is not individually identifiable health information." 45 C.F.R. § 164.514(b).

disclosure under the Bankruptcy Code. Given the nature of any information and the danger of revealing even the identity of individuals to whom any of the Debtors owe HIPAA duties who are the end-users of the Debtors' products, confidentiality in this context is of paramount importance.

Claims and Noticing Agent Motion[17]

65. The Debtors seek to retain Epiq Corporate Restructuring, LLC ("**Epiq**") as the Claims and Noticing Agent. The Debtors anticipate that there will be a large number of entities to be noticed in these Chapter 11 Cases. Epiq was one of the three court-approved companies that provided proposals to the Debtors to act as the Claims and Noticing Agent in the Chapter 11 Cases. The Debtors selected Epiq because of its experience and expertise in chapter 11 case administration and because the rates that Epiq offered the Debtors for its services are competitive and reasonable given Epiq's reputation and expertise.

66. The Debtors understand that Epiq is one of the country's leading chapter 11 case administrators with vast experience in noticing and claims processing. By appointing Epiq as the noticing and claims agent in the Chapter 11 Cases, parties in interest will benefit from Epiq's significant experience and the efficient and cost-effective methods it has developed.

B. Operational Motions

Cash Management Motion[18]

67. *Cash Management System*. Prior to the Petition Date, and in the ordinary course of their business, the Debtors maintained a cash management system designed to, among other

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17 *Debtors' Application for Entry of an Order Appointing Epiq Corporate Restructuring, LLC as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the "**Claims and Noticing Agent Motion**").

18 *Motion of the Debtors for Interim and Final Orders: (I) Authorizing Continued Use of Existing Cash Management System, Bank Accounts, and Business Forms and Payment of Related Prepetition Obligations; (II) Waiving Certain Deposit Requirements; and (III) Authorizing Continuance of Intercompany Transactions* (the "**Cash Management Motion**").

things, efficiently collect, concentrate, and disburse the funds generated by the Debtors' business operations (such system, the "**Cash Management System**"). In particular, the Cash Management System is comprised of five bank accounts (the "**Bank Accounts**"), all of which are maintained by Wells Fargo & Company ("**Wells Fargo**") and held by Joerns Parent. A chart reflecting the flow of funds through the Bank Accounts in the Cash Management System is attached as **Exhibit C** to the Cash Management Motion and incorporated herein by reference. A list of the Bank Accounts is attached as **Exhibit D** to the Cash Management Motion and incorporated herein by reference. The Cash Management System allows the Debtors to control the administration of these Bank Accounts.

68. Here, requiring the Debtors to adopt a new, segmented cash management system during these Chapter 11 Cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors' operations. In light of the size and complexity of the Debtors' operations, any disruption of the Cash Management System could have severe adverse effects on the Debtors' restructuring efforts, the cost of which would ultimately be borne by the Debtors' creditors and other stakeholders. Maintaining the current Cash Management System will facilitate the Debtors' smooth transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies.

69. Although the Debtors maintain the Bank Accounts as part of an established Cash Management System, I have been informed that the U.S. Department of Justice, Office of the United States Trustee: Guidelines for Debtors-in-Possession Guidelines ("**U.S. Trustee Guidelines**") include certain requirements which, if not waived, would require the Debtors (as debtors in possession) to take certain actions with respect to prepetition Bank Accounts in order for the U.S. Trustee to supervise administration of the Chapter 11 Cases. I have also been

informed that under the U.S. Trustee Guidelines, debtors in possession must, among other things, close prepetition bank accounts and open new "debtor in possession" operating, payroll, and tax accounts at an authorized depository, and that the U.S. Trustee Guidelines prohibit disbursements other than by numbered checks, which checks must bear the applicable debtor's case name and case number, a "debtor in possession" designation and an indication of the account type. Under the circumstances, I believe that waiving compliance with the U.S. Trustee Guidelines and authorizing continued use of the Bank Accounts and the Business Forms (as defined below) is appropriate and in the best interests of the estates.

70. The Bank Accounts are all maintained at Wells Fargo, a financially stable banking institution that I understand is an authorized depository in the District of Delaware, insured by the FDIC up to applicable limits, and a party to a Uniform Depository Agreement with the U.S. Trustee. The Debtors' continued use of the Bank Accounts will allow the Debtors to smoothly and orderly transition into chapter 11, and best serves all parties in interest, as it will minimize disruption of the Debtors' business. Moreover, the changeover required by the U.S. Trustee Guidelines is unnecessary because the Debtors' existing Cash Management System allows the Debtors to differentiate between prepetition and postpetition transactions, account balances, and obligations. The Debtors are able to maintain records of all transfers within the Cash Management System to the same extent they were recorded by the Debtors before the commencement of these Chapter 11 Cases. As a result, the Debtors will be able to document and record the transactions occurring within the Cash Management System for the benefit of all parties in interest.

71. For these reasons, as well as to avoid delays in payments to administrative creditors, to ensure as smooth a transition into chapter 11 as possible, and to aid in the Debtors'

efforts to maximize the value of their estates, I believe the Debtors should be permitted to continue to use their Cash Management System, including transferring funds for purposes of intercompany transactions between Debtors and other Debtors and affiliated non-Debtors in the ordinary course of business (the "**Intercompany Transactions**"). I also believe the Debtors must be able to maintain their existing Bank Accounts and open new and close existing accounts, as needed, and pay the appropriate Cash Management Fees.

72. The Debtors' personnel, located at the Debtors' headquarters in Charlotte, North Carolina, oversee all cash receipt and disbursement activity in the Cash Management System. This centralization facilitates the Debtors' cash forecasting, monitoring of collections, approval of disbursement of funds, preservation of capital, and management of liquidity requirements. It also reduces administrative expenses by facilitating the movement of funds and development of more timely and accurate balance and presentment information.

73. As described further below, Joerns Parent receives revenues and makes payments on behalf of all Debtors. In addition, the Cash Management System facilitates Intercompany Transactions that are critical to the Debtors' business. If the Debtors are unable to maintain their Cash Management System, the Debtors' operations will be severely impeded. The Debtors, with the assistance of their advisors, have implemented protocols to ensure that only claims arising postpetition and certain claims arising prepetition (if payment of such prepetition claims is approved by this Court) will be paid by the Debtors.

74. *Receipts*. The Debtors generate revenues primarily from two lines of business: (i) the sale of durable medical equipment (the "**Capital Business**"); and (ii) the leasing of durable medical equipment (the "**Rental Business**"). Customer payments are received in several

forms, including paper checks, wire and automated clearing house ("**ACH**") transfers, and credit cards (credit card payments are processed through CenPOS®, a third party payment processor).

75. Except for some revenues generated from the sale and rental of durable medical equipment to the VA ("**VA Receipts**"), all Capital Business revenues are deposited into Joerns Parents' main operating account (Acct. # ********0162) (the "**Main Account**") and all Rental Business revenues are deposited into a separate Joerns Parent lockbox account (Acct. # ********9231) (the "**Rental Account**"). VA Receipts are primarily deposited into a separate Joerns Parent account (Acct. # ********9209) (the "**VA Account**"), although VA Receipts may also be deposited into the Rental Account or Main Account. The Rental Account and VA Account are zero balance accounts that have their funds swept into the Main Account on a daily basis.

76. *Disbursements*. Funds in the Main Account are used to pay the Debtors' operating expenses and some expenses of Joerns Mexico, as detailed below. Joerns Parent maintains two Wells Fargo disbursement accounts for payroll-related disbursements (Acct. # ********0175) (the "**Payroll Account**") and vendor payments (Acct. # ********5477) (the "**AP Account**"). Both the Payroll Account and AP Account are zero balance accounts that are funded daily by the Main Account based upon the amount of disbursements that the Debtors expect to clear through such accounts.[19] The AP Account, however, can only process check payments and, thus, vendor payments requiring an ACH or wire transfer are disbursed directly from the Main Account.

[19] All transfers between the Bank Accounts occur within the same bank and thus ACH and wire transfers are not needed. Transfers are initiated by Wells Fargo and any excess funding is swept to the Main Account to zero out the balance at the end of the day. If any Bank Account carries a negative balance, funds are transferred to that account from the Main Account to zero out the balance.

77. *Cash Management System Fees*. From time to time, and in the ordinary course of business, the Debtors incur obligations for the maintenance of the Cash Management System. These obligations primarily consist of (a) amounts owed to Wells Fargo for the maintenance of and services related to the Bank Accounts ("**Bank Fees**") and (b) amounts owed to CenPOS® on account of credit card payment processing fees ("**CenPOS Fees**" and, together with the Bank Fees and other fees and obligations relating to the maintenance of the Cash Management System, the "**Cash Management Fees**"). Bank Fees average approximately $22,000 per month and are automatically deducted from the Main Account on the 11th day of each month. CenPOS Fees average approximately $45,000 per month and are based on flat per transaction fees plus a percentage of total transactions for a particular month. CenPOS Fees are automatically deducted from the Main Account on the 10th day of each month on account of the prior month's accrued fees. The Debtors estimate that accrued, unpaid, and undisputed prepetition amounts outstanding as of the date hereof on account of the Cash Management Fees total less than $54,000 in the aggregate.

78. *Business Forms*. The Debtors use various business forms, such as checks, invoices, letterhead, and other business and marketing materials in the ordinary course of business (the "**Business Forms**"). Because the Business Forms were used prepetition, they do not reference the Debtors' current status as debtors in possession. Requiring the Debtors to change existing Business Forms would unnecessarily distract the Debtors from their restructuring efforts and impose needless expenses on the estates. Thus, the Debtors request that they be authorized to use their existing Business Forms without placing a "Debtor-In-Possession" legend on each.

79. *Intercompany Transactions and Intercompany Claims*. In the ordinary course of business, the Debtors engage in various Intercompany Transactions with other Debtors and non-Debtor affiliates. These Intercompany Transactions reduce administrative costs and ensure the orderly and efficient operation of the Debtors' enterprise. In particular, Joerns Parent receives revenue payments on behalf of the Debtors, and in turn funds their operating expenses. These Intercompany Transactions are recognized through an intercompany payable to the transferor Debtor and a receivable from the transferee Debtor. Consistent with their prepetition practice, the Debtors can track and ascertain all Intercompany Transfers between Debtors.

80. As discussed earlier, Joerns Mexico produces approximately 60% of the products sold by the Debtors and is a maquiladora that does not generate revenue. As a result, its bank accounts are funded by Joerns Parent via weekly (if not more frequent) wire transfers from the Main Account in amounts needed for Joerns Mexico to satisfy its obligations. Additionally, pursuant to its maquiladora status, all raw materials and component parts used in Joerns Mexico's production are purchased by the Debtors and shipped directly to Joerns Mexico duty free. The Debtors maintain records of all transfers and can ascertain, trace, and account for all of the Intercompany Transactions with Joerns Mexico.

81. The Debtors also transact with the Foreign Affiliates. The Foreign Affiliates' operations are independent from the Debtors' operations, though the Debtors and Foreign Affiliates exchange goods and services pursuant to various intercompany agreements. Specifically, the Foreign Affiliates (a) purchase finished goods from the Debtors, mainly mattresses and bed frames produced by Joerns Mexico, and (b) receive corporate services from the Debtors (legal, information technology, corporate finance, and audit). These Intercompany Transactions between Debtors and Foreign Affiliates are accounted for as intercompany payables

and receivables. The Debtors maintain records of all transfers and can ascertain, trace, and account for all of the Intercompany Transactions with the Foreign Affiliates.

82. The Intercompany Transactions are critical to the efficient operation of the Debtors' business and are part of the Debtors' ordinary course of business. Therefore, the Debtors need authority to continue engaging in the Intercompany Transactions. Consistent with the Company's prepetition practice, the Debtors can maintain records of all transfers and ascertain, trace, and account for all of the Intercompany Transactions during the Chapter 11 Cases.

Utilities Motion[20]

83. In connection with the operation of their businesses and management of their facilities, the Debtors obtain gas, water, cable, electric, waste removal, telephone, internet, security, and other similar utility services (collectively, "**Utility Services**"). Approximately 226 utilities (as such term is used in section 366 of the Bankruptcy Code) provide Utility Services to the Debtors (such providers, "**Utility Providers**"). Each office, service center, distribution center, and other facility of the Debtors across the country typically has multiple utility accounts with local Utility Providers (the "**Provider Accounts**"). There are approximately 700 Provider Accounts across the country. A list of the Utility Providers and corresponding Provider Accounts is attached to the Utilities Motion as **Exhibit C** and incorporated herein by reference.[21]

84. The Debtors' estimated total average monthly utility payment to the Utility

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[20] *Motion of Debtors for Interim and Final Orders: (I) Approving Debtors' Proposed Form of Adequate Assurance of Payment to Utility Providers; (II) Establishing Procedures for Resolving Objections by Utility Providers; and (III) Prohibiting Utility Providers from Altering, Refusing, or Discontinuing Services* (the "**Utilities Motion**").

[21] The listing of any entity on **Exhibit C** is not an admission that any listed entity is a utility within the meaning of section 366 of the Bankruptcy Code. The Debtors reserve the right to assert at any time that any entity listed on **Exhibit C** is not entitled to adequate assurance pursuant to section 366 of the Bankruptcy Code. The Debtors further reserve the right to terminate the services of any Utility Provider at any time and to seek an immediate refund of any utility deposit without giving effect to any right of setoff or recoupment or claim asserted by a Utility Provider against the Debtors.

Providers is approximately $475,000 (the "**Monthly Cost**"). In general, the Debtors have established a good payment history with the Utility Providers and have made payments on a regular and timely basis. To the best of my knowledge, there are no material defaults or arrearages with respect to the Debtors' undisputed Utility Services invoices as of the Petition Date.

85. As adequate assurance, the Debtors propose to establish a newly-created, interest-bearing, segregated account (the "**Utility Deposit Account**") and place a deposit amount equal to approximately one half (1/2) of the monthly cost into the Utility Deposit Account. The Debtors estimate that the Utility Deposit will total approximately $238,000.00 and will be made within 20 days after the Petition Date.

86. Utility Services provided to the Debtors by Utility Providers are critical to the conduct of the Debtors' businesses, as termination or interruption of the Utility Services could result in the Debtors' inability to operate. Accordingly, maintaining the Utility Services on an uninterrupted basis during the Chapter 11 Cases is essential to preserving and maximizing the value of the estates for the benefit of all stakeholders.

Insurance Motion[22]

87. In connection with the operation of their business, the Debtors maintain the following categories of insurance: (a) general liability, including product liability, umbrella, excess umbrella, cargo, and foreign non-admitted liability coverage[23] (the "**General Liability**

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[22] *Motion of Debtors for Entry of an Interim and Final Order Authorizing the Debtors to: (I) Maintain Existing Insurance Policies and Pay All Insurance Obligations Arising Thereunder; (II) Renew, Revise, Extend, Supplement, Change, or Enter into New Insurance Policies and Insurance Premium Financing Agreements; and (III) Continue to Honor Premium Financing Obligations* (the "**Insurance Motion**").

[23] The Debtors pay for foreign non-admitted liability and property policies that insure buildings, inventory and personal assets located abroad. The Foreign Affiliates pay their own local insurance policy premiums, including for local admitted general liability, locally admitted employment liability, and auto insurance.

Policies"); (b) property insurance, including foreign non-admitted property insurance (the "**Property Policies**"); (c) base business automobile, excess automobile, and business travel accident insurance (the "**Auto Policies**"), (d) workers'-compensation insurance ("**Workers' Comp Policy**"); (e) medical professional liability insurance (the "**Medical Professional Policy**"); (f) directors' and officers' insurance ("**D&O Policy**" and together with (a) through (e), the "**Insurance Policies**"). WoundCo is the primary policy holder under the Insurance Policies and maintains insurance coverage on behalf of the other Debtors as additional named insureds. The Debtors are required to maintain the Insurance Policies pursuant to their leases and supplier, vendor, and customer contracts. Additionally, because the Company is a durable medical equipment ("**DME**") provider, it is required by law to maintain certain of the Insurance Policies. I believe the coverage types, levels, and premiums for the Insurance Policies are generally typical for comparably-sized companies in the Debtors' industry. The Insurance Policies are all essential to the ongoing operation of the Debtors' businesses. A chart summarizing the policies, premiums, and third-party insurance carriers (the "**Insurance Carriers**") for each of the Insurance Policies is attached as **Exhibit C** to the Insurance Motion and incorporated herein by reference.[24]

88. For the current policy periods, the applicable insurance premiums under the Insurance Policies total approximately $4.8 million, of which $3 million is outstanding as of the Petition Date and will become due during the Chapter 11 Cases in the ordinary course.[25]

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[24] The Debtors believe that **Exhibit C** is a complete list of its Insurance Policies. However, to the extent that any Insurance Policy has been omitted from that list, the Debtors request that the order granting the relief sought in the Insurance Motion apply to any and all of the Debtors' Insurance Policies in connection with the Insurance Obligations. **Exhibit C** includes all policies paid for by the Debtors for informational purposes only. The Company does not have any self-insured insurance arrangements.

[25] These numbers are without applicable taxes, fees, surcharges but include financing amounts.

89. *General Liability Policies*. The General Liability Policies are underwritten by various Insurance Carriers, including Federal Insurance Company (Chubb), Noetic Specialty Insurance, Lexington Insurance, Travelers Property Casualty, and ACGS Marine. The General Liability Policies provide base and excess coverage for general corporate and product liability losses that the Company may incur. The General Liability Policies were most recently renewed on May 31, 2019 and provide coverage through May 31, 2020. The premiums related to the General Liability Policies are estimated at $726,703 for the policy period and remain due but unpaid as of the Petition Date. The Debtors therefore seek authorization to pay any outstanding amounts relating to the General Liability Policies during the period between the Petition Date and the Combined Hearing (the "**Interim Period**") in the ordinary course of business.

90. *Property Policies*. The Property Policies provide property damage and related liability coverage for the Debtors' offices and facilities throughout the United States, and are underwritten by Travelers Property Casualty. The Property Policies provide coverage through May 31, 2020 and the related premiums total approximately $327,375. The Company financed the Property Policies premiums through a premium financing agreement with AFCO Insurance Premium Finance (the "**PFA**") dated January 28, 2019. Pursuant to the PFA, the Company made an initial down payment of approximately $66,000 and must make nine monthly payments of approximately $30,000 payable on the 28th day of each month. As of the Petition Date, five installments totaling approximately $150,000 and one premium adjustment fee of approximately $20,000 (payable in a single installment directly to the insurance provider) remain outstanding, and the Debtors seek authorization to continue making these installment payments as they come due during and after the Interim Period in the ordinary course of business.

91. *Auto Policies*. The Auto Policies consist of an auto insurance policy (the "**Auto Insurance Policy**"), an auto excess policy (the "**Auto Excess Policy**"), and a business travel accident policy ("**Business Travel Accident Policy**"). The Auto Insurance Policy pays the total of all benefits, damages, and expenses resulting from any accident for which the Debtors are legally liable. Without the Auto Insurance Policy, the Company would not be able to use its vehicles to deliver its products and would effectively be forced to shut down its operations. The Auto Insurance Policy is underwritten by Federal Insurance Company and was recently renewed to provide coverage through May 31, 2020. As of the Petition Date, the initial down payment of $275,397 and nine (9) monthly installments of approximately $90,000 are outstanding, totaling approximately $1,082,400, and the Debtors seek relief to make these payments relating to the Auto Insurance Policy as they come due during and after the Interim Period in the ordinary course of business.

92. The Auto Excess Policy, underwritten by Axis Specialty Insurance Co., provides coverage for auto claims between $1 million and $3 million, and was recently renewed to provide coverage through May 31, 2020. Claims over $3 million are covered under the lead umbrella policy that is encompassed in the description of the General Liability Polices referred to above. The Auto Excess Policy premium for the current policy period totaled $307,741 and is paid in full as of the Petition Date. Out of an abundance of caution, the Debtors seek authorization to pay any amounts relating to the Auto Excess Policy during and after the Interim Period in the ordinary course of business.

93. The Business Travel Accident Policy, underwritten by National Union Fire Insurance Company (AIG), provides property and other coverage for business travel accident liability across the United States. The current Business Travel Accident Policy provides

coverage through December 28, 2021. The Business Travel Accident Policy premium for the current policy period totaled $7,360 and is paid in full as of the Petition Date. Out of an abundance of caution, the Debtors seek authorization to pay any amounts relating to the Business Travel Accident Policy during and after the Interim Period in the ordinary course of business.

94. *Workers' Compensation.* In accordance with applicable laws, the Debtors maintain workers' compensation insurance (the "**Workers' Comp Policy**") that pays employees the total of all benefits, damages, and expenses resulting from any accident or disease for which the Debtors are legally liable and provides coverage across all jurisdictions in which the Debtors operate. Failure to maintain workers'-compensation insurance could result in administrative or legal proceedings against the Debtors and their officers and directors. The Workers' Comp Policy is underwritten by Federal Insurance Company and the current policy provides coverage through December 28, 2019. The premium for the current policy period under the Workers' Comp Policy is approximately $2,199,748, of which the Debtors paid an initial down payment of $586,720 and will pay the remainder in nine (9) monthly installments of $179,225 to be paid on the 28th day of each month. As of the Petition Date, the Debtors have four installments outstanding, totaling approximately $671,000 and seek authorization to continue to make these payments as they come due and in the ordinary course of business. In addition to the Workers Comp Policy, the states of Ohio and Washington both require employers to pay a fee directly to the state's workers' compensation program. The quarterly fee to such states depends on how many employees the Debtors have in those states. The Debtors seek authority to make these payments as they become due during and after the Interim Period in the ordinary course of business.

95. Additionally, payments due under the Workers' Comp Policy are subject to adjustment in an annual audit process. To the extent such audit process results in an adjustment related to the prepetition period, the Debtors seek authorization during and after the Interim Period to make such adjustment payments as necessary. As of the Petition Date, approximately 23 claims were pending under the Workers' Comp Policy. Accordingly, it is vital that the Workers' Comp Policy be duly maintained to ensure that these claims will be processed and paid by Federal Insurance Company, not only for the benefit of the Debtors but also to support the injured workers, as ultimate beneficiaries. There is no deductible with respect to the Workers' Comp Policy and the limit on coverage is $1 million per accident. Claims over $1 million are covered by the lead umbrella policy, which is encompassed in the description of the General Liability Policies referred to above. Accordingly, the Debtors do not expect that they will incur any obligations with respect to the pending claims.

96. *Medical Professionals Policy*. The Medical Professionals Policy, underwritten by Markel/Evanstan Insurance, provides coverage for losses arising from any negligent clinical advice that may be provided by RecoverCare and DMS account managers, who are medical professionals that may from time to time provide advice to customers regarding the Company's products. The current Medical Professional Policy provides coverage through July 31, 2019. The total premium of $5,644 was paid in full on September 30, 2018. The Debtors believe no further premium payments remain outstanding in connection with the Medical Professionals Policy, but in an abundance of caution, seek authorization to pay any amounts relating to the Medical Professionals Policy during and after the Interim Period in the ordinary course of business.

97. *D&O Policies*. The D&O Policies provide base and excess coverage for employment practices liability, as well as kidnapping and ransom coverage (the "**D&O Policies**"). The D&O Policies are underwritten by Federal Insurance Company, Arch Insurance Company, and Starr Surplus Lines Insurance Company. All D&O Policies provide coverage through September 30, 2019. The premiums related to the D&O Policies total approximately $140,044, which were paid in full on September 30, 2018 (the effective date of the D&O Policies). The Debtors believe no further premium payments remain outstanding in connection with the D&O Policies, but in an abundance of caution, the Debtors seek authorization to pay any amounts relating to the D&O Policies during and after the Interim Period in the ordinary course of business.

98. *Insurance Brokers*. The Debtors typically obtain the Insurance Policies through their insurance broker USI Insurance Services LLC ("**USI**"). USI assists the Debtors with the procurement and negotiation of the Insurance Policies, the payment of premiums,[26] and the handling and reporting of many claims. This allows the Debtors to obtain Insurance Policies at competitive rates and in a cost-effective manner. In exchange, USI receives administrative fees paid for by the Debtors (the "**Broker Fees**"). The Broker Fees for the current period totaled $270,000 and were partially paid in installments prior to the Petition Date. As of the Petition Date, approximately $70,000 of Brokers Fees remain outstanding, and the Debtors seek authorization to make this payment as it comes due during and after the Interim Period in the ordinary course of business. Additionally, the Debtors seek relief to continue utilizing USI in the ordinary course of business.

[26] With the exception of the Property Policies (pursuant to which the Debtors make all payments directly to AFCO Insurance Premium Finance) the Debtors generally pay the down payment and installment components of the insurance premiums to USI, which then transmits those funds to the applicable Insurance Carriers.

99. *The CMS Bond*. In the ordinary course of business the Debtors maintain a surety bond for the Centers for Medicare and Medicaid Services ("**CMS**") guaranteed through Zurich American Insurance Company (the "**CMS Bond**"). The CMS Bond is required by Medicare and Medicaid for accreditation purposes and allows the Debtors to bill insurance carriers for the Company's products being purchased directly by patients. While the Debtors do not receive Medicare reimbursement for patients covered by Medicare and Kaiser Permanente, Kaiser Permanente requires a proof of a claim denial from CMS before reimbursing a patient's medical costs. Accordingly, the Debtors routinely bill CMS for such patients with the understanding that the claim will be denied as there is no Medicare procedural reimbursement code for the Debtors' products. To generate the claim denial, however, the Debtors must bill CMS and CMS requires bonding for all DME suppliers. The Debtors likewise receive Medicaid reimbursement from MediCal, California's Medicaid system, for which the CMS Bond is also required. The CMS Bond is for $50,000 and expires on October 15, 2019. While the annual premium of $1,000 for the current period was paid in full, the Debtors will be obligated to renew the CMS Bond upon expiration and, thus, seek authority to do so during and after the Interim Period when such renewal is required in the ordinary course of business.

100. *The Importer Bond*. In the ordinary course of business, the Debtors also maintain a surety bond for import duties (the "**Importer Bond**" and, together with the CMS Bond, the "**Surety Bonds**") guaranteed through Expeditors International. The Importer Bond is required by U.S. Customs and Border Protection for insurance on import duties assessed against the Debtors. The Importer Bond is for $50,000 and expires October 29, 2019. The annual premium of $550 for the current period is paid in full. Nonetheless, the Company is obligated to renew the

Importer Bond and, thus, seeks authority to do so during and after the Interim Period when such renewal is required in the ordinary course of business.

101. I believe that that there is a strong business justification for authorizing the Debtors to maintain their Insurance Policies, pay the insurance obligations arising thereunder or in connection therewith, including, but not limited to, premiums, deductibles, administration costs, and brokers' fees, and renew or enter into the new insurance policies, as applicable. The insurance coverage provided under the Insurance Policies is necessary and critical to the Debtors' ongoing operations. The Insurance Policies are required by various state and federal regulations and by contracts that govern the Debtors' business. Disruption of the Debtors' insurance coverage would expose the Debtors to serious risks, including: (a) the incurrence of direct liability for the payment of claims that otherwise would have been payable by the Insurance Carriers; (b) the occurrence of material costs and other losses that would have otherwise been reimbursed by the Insurance Carriers; (c) the loss of good-standing certification to conduct business in states that require the Debtors to maintain certain levels of insurance coverage; (d) the inability to obtain similar types of insurance coverage; and (e) the incurrence of higher costs for obtaining new insurance coverage. Moreover, while the Debtors question the right of any insurer to terminate the Insurance Policies for non-payment of premiums, any litigation associated with such alleged termination would be contested and, thus, very costly to the Debtors' estates. Granting the relief requested the Insurance Motion would avoid these consequences and would allow the Debtors' business operations to continue without interruption during the Chapter 11 Cases.

Taxes Motion[27]

102. In the ordinary course of their business, the Debtors incur various tax liabilities and have generally paid such tax liabilities (including sales and use taxes, income taxes, franchise taxes, property taxes, gross receipts taxes, business and occupational taxes, and any other taxes, as further described below, the "**Taxes**") as they became due. The Debtors are subject to the following Taxes:

103. *Sales and Use Taxes*. The Debtors incur certain sales taxes (the "**Sales Taxes**") and use taxes (the "**Use Taxes**," and together with the Sales Taxes, the "**Sales and Use Taxes**"). The Sales Taxes are calculated on the basis of statutorily mandated percentages. The Use Taxes arise from the Debtors' purchase of taxable fixed assets, supplies, or services where a sales tax is not paid. Purchases without sales tax primarily occur when property or services are purchased from vendors that have no nexus to the resident state of the Debtors. Such vendors are not obligated to charge or remit sales taxes for sales to parties outside the state of the vendor's operations. Nevertheless, purchasers (such as the Debtors) are obligated to self-assess and pay Use Taxes, when applicable, to the states in which the purchasers operate. The Debtors file Sales and Use Taxes annually in approximately 42 states. Accrued Sales and Use Taxes become due at various times in the year, depending on the individual state requirements. On average, the Debtors pay approximately $485,000 of Sales and Use Taxes per month. As of the Petition Date, the Debtors believe approximately $1 million of Sales and Use Taxes are accrued and unpaid and additional accrued amounts will become due during the expected pendency of these Chapter 11 Cases. The Debtors seek authorization to pay the Sales and Use Taxes as they become due, in an

[27] *Motion of the Debtors for an Interim and Final Order Authorizing the Debtors to Pay Certain Prepetition Taxes and Assessments and Related Obligations* (the "**Taxes Motion**").

amount not to exceed $1 million, during and after the Interim Period in the ordinary course of business.

104. *Federal Income and Franchise Taxes*. The Debtors pay certain taxes based on their income (the "**Federal Income Taxes**"). The Debtors typically pay Federal Income Taxes on an annual basis. The Debtors also pay franchise taxes (the "**Franchise Taxes**") to various federal, state, county, and city taxing, licensing, regulatory, and other authorities (the "**Authorities**") so that the Debtors can operate their business in the applicable taxing jurisdiction. Some states assess a flat Franchise Tax on all businesses and other states assess a Franchise Tax based upon some measure of income, gross receipts, net worth, or other measure of value. The Franchise Taxes are typically paid semi-annually. Accrued Federal Income Taxes and Franchise Taxes become due at various times in the year, depending on the individual state requirements. On average, the Debtors pay $62,000 annually in Federal Income and Franchise Taxes. As of the Petition Date, the Debtors believe they are current on all Federal Income Taxes and Franchise Taxes as of the Petition Date, but out of an abundance of caution, the Debtors seek authorization to pay the Federal Income and Franchise Taxes during and after the Interim Period in the ordinary course of business.

105. *Property Taxes*. Various state and local governments in jurisdictions where the Debtors operate have the authority to levy property taxes against the Debtors' leased and owned real and personal property (the "**Property Taxes**"). The frequency by which the Debtors pay Property Taxes varies by jurisdiction, but such Property Taxes are generally assessed on an annual basis. The Debtors currently pay Property Taxes to various Authorities in 34 states. Accrued Property Taxes become due at various times in the year, depending on the individual state requirements. As of the Petition Date, the Debtors believe approximately no more than

$265,000 of Property Taxes have accrued and will become due during the expected pendency these Chapter 11 Cases. The Debtors seek authorization to pay the Property Taxes, in an amount not greater than $265,000, during and after the Interim Period in the ordinary course of business.

106. *Gross Receipts and Business and Occupation Taxes*. Several Authorities require the Debtors pay a tax on total gross revenues (the "**Gross Receipts Taxes**"). In certain jurisdictions in which the Debtors operate, this form of tax is referred to as a business and occupation tax (together with the Gross Receipts Taxes, the "**Business and Occupation Taxes**"). The Debtors pay Business and Occupation Taxes to Authorities in Nevada, Ohio, Delaware, Texas, and Washington. While Business and Occupation Taxes are paid annually, they become due at various times in the year, depending on the individual state requirements. The Debtors pay approximately $115,000 of Business and Occupation Taxes on an annual basis. As of the Petition Date, the Debtors believe that approximately $15,000 of Business and Occupation Taxes are accrued and unpaid. The Debtors seek authorization to pay the Business and Occupation Taxes, in an amount not greater than $15,000, during and after the Interim Period in the ordinary course of business.

107. *Debtors' Assessments*. In the ordinary course of their business, the Debtors incur various regulatory and licensing fees and have generally paid such liabilities as they became due. The Debtors are subject to the following "Assessments":

108. *Regulatory and Medical Business Licensing Fees*. Various Authorities require the Debtors to pay regulatory and licensing fees (the "**Regulatory and Medical Business Licensing Fees**") to operate their business in the medical industry (collectively, the "**Regulatory and Medical Business Licenses**"). The Debtors must maintain anywhere from 700-800 federal, state, and local licenses. The Regulatory and Medical Business Licenses include, but are not

limited to, Federal Drug Administration ("**FDA**") registration fees, oxygen licenses, Board of Pharmacy licenses, sanitation licenses, and business licenses. The Debtors rely on a third-party vendor, CT Corp., to process and pay all Regulatory and Medical Business License Fees. The Debtors pay an average of approximately $200,000 in Regulatory and Medical Business License Fees annually. As of the Petition Date, the Debtors believe that approximately $57,000 of Regulatory and Medical Business Licensing Fees are accrued and unpaid. The Debtors seek authorization to pay the Regulatory and Medical Business License Fees, in an amount not greater than $57,000, during and after the Interim Period in the ordinary course of business.

109. *CMS Requirements*. The Debtors are required to maintain compliance with various standards to ensure that their products are eligible to receive reimbursement from CMS.[28] Based on the Company's direct provision to patients covered under Medicaid (MediCal) and Medicare Advantage plans and the Company's customers' status as direct providers, Joerns is required to meet CMS supplier standards. These standards include, but are not limited to, maintaining accreditation through an approved accrediting body (Joerns is accredited through the Joint Commission) and maintaining the CMS Bond described above (the "**CMS Requirements**"). As part of maintaining accreditation with the Joint Commission, every three years the Debtors pay $126,000 for re-accreditation and pay annual registration fees of approximately $2,720. As of the Petition Date the Debtors believe that all CMS Requirements have been met, but out of an abundance of caution, the Debtors seek authorization to pay any CMS Requirements during and after the Interim Period as they become due in the ordinary course of business.

[28] The CMS Bond is discussed more in detail in the discussion of the Insurance Motion above.

110. *Other Compliance Related Fees*. The Debtors must comply with numerous state and federal laws related to the healthcare industry, which may not involve the application of any fees assessed against the Debtors from any federal, state, or regulatory taxing authority. Instead, enforcement of the regulation or law could be based on the application of random or annually recurring audits, or the application of fines and/or penalties for infractions. Nonetheless, the Debtors incur various costs incidental to maintaining this compliance ("**Other Compliance Related Fees**"). On average, the Debtors pay $175,000 annually for Other Compliance Related Fees. As of the Petition Date the Debtors believe that approximately $47,000 in Other Compliance Related Fees are due. The Debtors seek authorization to pay the Other Compliance Related Fees, in an amount not to exceed $47,000, during and after the Interim Period in the ordinary course of business.

111. *Necessity of Paying the Taxes and Assessments*. The Debtors seek authorization, but not direction, to pay any accrued Taxes and amounts outstanding thereunder as of the Petition Date in an amount not to exceed $1.28 million in the aggregate, inclusive of Sales and Use Taxes, Federal Income Taxes, Franchise Taxes, Property Taxes, and Business and Occupation Taxes. The Debtors also seek authorization, but not direction, to pay any Assessments and amounts outstanding thereunder as of the Petition Date in amount not to exceed $104,000 in the aggregate, inclusive of Regulatory and Medical Business License Fees, CMS Requirements, and Other Compliance Related Fees during and after the Interim Period.

112. I believe the continued payment of the Taxes and Assessments on their normal due dates will ultimately preserve the resources of the Debtors' estates, thereby promoting the Debtors' prospects for a successful restructuring. If such obligations are not timely paid, the Debtors will be required to expend time and money to resolve a multitude of issues related to

such obligations, each turning on the particular terms of each Authority's applicable laws, including (a) whether the obligations are priority, secured, or unsecured in nature, (b) whether they are proratable or fully prepetition or postpetition obligations, and (c) whether penalties, interest, and attorneys' fees and costs can continue to accrue on a postpetition basis, and if so, whether such penalties, interest, and attorneys' fees and costs are priority, secured, or unsecured in nature.

113. I believe the Debtors may suffer clear and irreparable harm if the prepetition Taxes and Assessments are not paid when they become due and payable. Additionally, the Authorities may cause the Debtors to be audited if Taxes and Assessments are not paid immediately. Such audits will unnecessarily divert the Debtors' attention away from their efforts to maximize value. If the Debtors do not pay such amounts in a timely manner, the Authorities may attempt to revoke the Debtors' licenses, suspend the Debtors' operations and pursue other remedies that will harm the estates. In all cases, the Debtors' failure to pay Taxes and Assessments could have a material adverse impact on their ability to operate in the ordinary course of business. Any disputes that could impact their ability to conduct business in a particular jurisdiction could have a wide-ranging and adverse effect on the Debtors' operations as a whole.

114. Moreover, I understand that the federal government and many states in which the Debtors operate have laws providing that the Debtors' officers, directors or other responsible employees could, under certain circumstances, be held personally liable for the payment of certain Taxes and Assessments. To the extent any accrued Taxes or Assessments of the Debtors were unpaid as of the Petition Date in these jurisdictions, the Debtors' officers and directors could be subject to lawsuits during the pendency of the Chapter 11 Cases. In such event,

collection efforts by the Authorities would be extremely distracting for the Debtors and their directors and officers in their efforts to bring the Chapter 11 Cases to an expeditious conclusion.

Wages Motion[29]

115. *Wages and Salaries*. As of the Petition Date, the Debtors employ approximately 1,100 employees (the "**Employees**"). Of these, approximately 240 are salaried Employees, approximately 845 are full-time hourly Employees, and 10 are part-time hourly Employees.[30] Of the salaried Employees, approximately 45 are salespersons who receive commissions representing 30-40% of their compensation. The Employees provide a variety of essential functions, including business operations, customer care, commercial operations, field operations, product and project management, quality assurance, sales, marketing, and other essential functions. Retaining the Employees is critical to the Debtors' ability to operate and maximize value in these Chapter 11 Cases as their skills and understanding of the Debtors' operations, infrastructure, and customer base are essential to the effective operation of the Debtors' businesses.

116. In the ordinary course of business, the Debtors pay all of their hourly and salaried Employees on a bi-weekly basis, every other Thursday, two weeks in arrears[31] (the "**Hourly and Salary Wages**"). The Debtors' Hourly and Salary Wages (excluding any amounts paid in

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[29] *Motion of the Debtors for Interim and Final Orders to: (I) Authorize the Debtors to Pay Prepetition Wages and Compensation; (II) Authorize the Debtors to Continue Certain Employee Incentive and Expense Programs; (III) Authorize the Debtors to Continue Certain Health and Insurance Benefit Programs; (IV) Direct All Banks to Honor Prepetition Checks For Payment of Prepetition Employee Obligations; and (V) Grant Other Related Relief* (the "**Wages Motion**").

[30] Historically, the Debtors have employed temporary employees through various agencies. As of the Petition Date, the Debtors have hired approximately five temporary employees. The Debtors are seeking to make all payments due to the temporary staffing agencies through the *Motion of Debtors for Interim and Final Orders Authorizing Payment of Certain Prepetition Trade Claims in the Ordinary Course of Business* (the "**Pay All Motion**"), filed simultaneously herewith and described below.

[31] In the ordinary course of business and pursuant to California law, the Debtors also pay certain field service technicians in California an "on-call" wage, which compensates Employees while they are "on-call" regardless of whether or not they are called to work.

connection with the Employees' commissions, independent contractors' commissions, bonuses, and retention programs) are approximately $5,000,000 per month, including payroll taxes, benefit deductions, garnishments, and other miscellaneous deductions. As of the Petition Date, the Debtors owe approximately $1.4 million in unpaid and accrued prepetition Hourly and Salary Wages. The Debtors do not believe that any Employee is due Hourly and Salary Wages in excess of the Priority Cap.

117. For certain hourly Employees working in the collections department, the Debtors provide an accounts receivable bonus ("**A/R Bonus**").[32] The A/R Bonus is structured to give the collection department Employees the ability to receive a maximum bonus of $750 per quarter to incentivize these Employees to collect on outstanding customer accounts. If the collection effectiveness goal set by the Company is reached by each Employee, then each Employee receives an A/R Bonus. On average the Debtors pay $5,000 per quarter for A/R Bonuses and expect a similar amount to accrue and become due during the expected pendency of these Chapter 11 Cases.

118. *Commission-Based Employees.* The Debtors employ approximately 40 field-based sales representatives who receive commissions as a portion of their compensation (the "**Commissions**"). The Commissions are paid on a monthly basis in arrears under the Debtors' commission compensation plan ("**Commission Plan**"), meaning that commissions attributable to work performed in the current month are paid at the end of the following month. Amounts payable to Employees under the Commission Plan depend upon the Employees' performance,

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[32] Certain Employees will receive a bonus triggered by the reorganization of the Company as contemplated by the Prepackaged Plan. Although the Debtors are not seeking authority to pay such bonuses by the Wages Motion, such bonuses (which are included in prepetition agreements by the Company and such Employees) are being assumed by the Reorganized Debtors pursuant to the Prepackaged Plan and will be paid by the Reorganized Debtors after the Effective Date. The Debtors reserve all rights to assume such bonuses or to institute a key employee incentive program or a key employee retention program.

with various percentage-based incentive components under the Commission Plan being designed to reward eligible Employees for business growth in their respective territories and to align such Employees' interests with the operational goals and objectives of the Debtors. Commissions paid under the Commission Plan are an integral part of the aggregate compensation package for eligible Employees and provide substantial value to the Debtors' estates because they encourage such Employees to achieve important performance goals. The Commission Plan is critical to maintaining the morale and productivity of the Debtors' sales force and to maximizing the value of the Debtors' estates.

119. The Debtors' average monthly payments for Commissions (based on the last four-months) are approximately $166,000. As of the Petition Date, the Debtors estimate that commission-eligible Employees have accrued approximately $300,000 of Commissions attributable to the portion of May, 2019 and the first part of June, 2019 prior to the Petition Date (which will become due at the end of June 2019). The Debtors do not believe that any Employee is due Commissions in excess of the Priority Cap. The Debtors request the authority, but not the direction, to pay Employees' Commissions in the ordinary course, in an amount not to exceed $300,000, including any amounts exceeding the Priority Cap, and, out of an abundance of caution, the Debtors request the authority to pay the Employees' postpetition Commissions in the ordinary course of business.

120. *Independent Sales Representatives.* In the ordinary course of business, the Debtors employ 57 independent sales representatives (the "**Independent Sales Representatives**"). The Independent Sales Representatives sell the Company's products and services to its markets, consisting of acute-care, skilled nursing and long-term care facilities. The Independent Sales Representatives work exclusively on a commission basis and are

compensated on a monthly basis along with the commission-based employees (the "**ISR Commissions**").

121. The Debtors' average monthly ISR Commissions (based on the last four-months) are approximately $68,000. As of the Petition Date, the Debtors estimate that $125,000 in ISR Commissions have accrued and are attributable to commissions earned in May 2019 and the beginning of June 2019 prior to the Petition Date (which will become due at the end of June and July 2019 respectively). The Debtors seek authority, but not direction, to pay the Independent Sales Representatives in the ordinary course of business. The Debtors do not believe that any Independent Sales Representative is due ISR Commissions in excess of the Priority Cap, however, out of an abundance of caution, the Debtors request the authority to pay Independent Sales Representatives' ISR Commissions in the ordinary course, including pursuant to the "Final Order" as defined in the Wages Motion (the "**Final Wages Order**") any amounts exceeding the Priority Cap.

122. *Payroll.* The Debtors' payroll process is administered by Automatic Data Processing, Inc. ("**ADP**"). The Debtors send ADP the net payroll amount, including payroll taxes, approximately two days before each payroll date. ADP initiates electronic fund transfers or issues checks to Employees, remits payroll taxes to government agencies, and handles garnishments as necessary. The Debtors pay ADP a fee of approximately $20,000 per month. As of the Petition Date, the Debtors believe they are current on any fees due to ADP, but out of an abundance of caution, request authority to make any payments for fees due to ADP in the ordinary course of business.

123. On June 20, 2019, the Debtors made their most recent company-wide payroll for the 14 day period ending June 14, 2019. On June 6, 2019, the Debtors made their most recent

Commission payment for the month ending April, 2019. These amounts were disbursed by ADP to Employees through electronic funds transfer and checks.

124. *Withholdings.* During each applicable payroll period, the Debtors routinely deduct certain amounts from their Employees' gross pay, including, without limitation, (a) pre-tax and after-tax deductions payable pursuant to the Employee benefit plans discussed herein (e.g., contributions relating to health care benefits, insurance premiums, garnishments, and 401(k) contributions) and (b) other miscellaneous deductions (collectively, the "**Deductions**"). The Deductions represent earnings that applicable authorities have designated for deduction from Employees' paychecks and, thus, may not be property of the Debtors' estates. On a monthly basis, ADP deducts and remits to appropriate third-party recipients the Deductions from the Employees' paychecks. As discussed above, the Hourly and Salary Wage amounts include such Deductions. Although the Debtors believe they already possess the power to do so, out of an abundance of caution, the Debtors request authority to direct ADP to continue deducting amounts from the applicable Employee's wages and salaries and forwarding Deductions to the appropriate third-party recipients on a postpetition basis, in the ordinary course of business, and consistent with past practices.

125. In addition to the Deductions, the Debtors are required by law to withhold amounts from employee paychecks related to federal income taxes, as well as Social Security and Medicare taxes for remittance to the appropriate taxing authority (collectively, the "**Withheld Amounts**"). The Debtors are also required to pay the employer portions of Social Security, Medicare, and Federal and State Unemployment Insurance (together with the Withheld Amounts, the "**Payroll Taxes**"). On a monthly basis, ADP deducts and remits to appropriate third-party recipients the Payroll Taxes from the Employees' paychecks. As discussed above,

the Hourly and Salary Wage amount includes such Payroll Taxes. Because the Payroll Taxes and unremitted Payroll Taxes may not be property of the Debtors' estates, the Debtors request that the Court authorize the Debtors to continue to direct ADP to transmit these amounts, to the appropriate parties in the ordinary course of business.

126. *Employee Incentive Programs and Expense Programs.* In the ordinary course of business, and as discussed in more detail below, the Debtors offer various types of standard employee incentive and expense reimbursement policies to retain and incentivize their Employees, including paid time off, expense reimbursement, supplemental retirement plans, and severance (collectively the "**Employee Incentive and Expense Programs**").[33] The Debtors maintain that these programs are essential and necessary to preserve the morale and good will of their Employees, who, in turn, are the backbone to the Debtors' ongoing business. Non-payment of the Employee Incentive and Expense Programs would be highly detrimental to the Debtors' estates.

127. *Paid Time Off.* The Debtors' full-time Employees are eligible to receive paid time off (the "**PTO**"). The Debtors offer two types of PTO: Personalized Paid Time Off ("**PPTO**") and Self-Managed Paid Time Off ("**SMPTO**"). The PPTO program entitles Employees days away from work with pay for vacation, personal time, illness, personal business, medical appointments, volunteer activities, and/or other activities of one's choice. The allocation of PPTO days is based on the years of service the Employee has provided. A limited number of unused hours for a current year may accrue and roll over to the next year. Employees

[33] The Debtors also provide an annual incentive plan ("**AIP Bonus**") that is given to all eligible Employees based on the achievement of Company-wide goals. The Debtors did not reach their AIP Bonus targets in 2018 and therefore did not make an AIP Bonus payment for that year. For 2019, the Debtors will set the 2019 AIP Bonus targets after the Effective Date, and thus, the Debtors are not seeking any relief as to AIP Bonuses at this time. If, however, the circumstances (and the posture of these Chapter 11 Cases) change, the Debtors reserve all rights to seek authority (to the extent necessary) from the Court with respect to the 2019 AIP Bonus target and payments under it.

who terminate their employment with the Debtors are entitled to receive payment for accrued but unused vacation days under the PPTO program.[34]

128. Select Employees whose performance expectations are based primarily on meeting certain specified business goals are governed by the Debtors' SMPTO program. The program allows these Employees to take time off as they need or desire and does not limit the amount of time Employees may take off, provided they are meeting work responsibilities and demonstrate a level of commitment and conscientiousness that is sufficient to satisfy their professional responsibilities to the Company and the Company's clients. The SMPTO covers absences for vacations, personal days, and short-term illnesses and does not cover extended absences due to injury or illness that might qualify them for leave under certain state and federal programs.

129. As of May 31, 2019 the Debtors estimate that the value of accrued and unused or unpaid vacation time under both the PPTO program and SMPTO program equals approximately $1,663,000. The Debtors must continue to honor and maintain the PPTO and SMPTO programs in the ordinary course of business in order to avoid any business or workforce disruption.

130. *Reimbursable Expenses*. In the ordinary course of business, the Debtors routinely reimburse Employees for certain expenses incurred within the scope of their employment, including expenses for travel, lodging, long-distance calls, ground transportation, meals, business entertainment, miscellaneous business expenses, and relocation expenses (collectively, the "**Reimbursable Expenses**"). Accordingly, the Reimbursable Expenses are incurred by Employees with the understanding that they will be reimbursed by the Debtors. The Debtors'

[34] Employees who become eligible to be under the SMPTO program will be entitled to receive any time accrued under the Company's regular PTO policy upon termination for any reason, but all of such Employee's PTO accrued under the PPTO program must be used before any hours may be used under the SMPTO program.

ability to pay the Reimbursable Expenses has a significant effect on the Debtors' sales force, which is the life blood of the Debtors' business. Specifically, the sales force is on the road incurring expenses to generate revenue for the Debtors, and, thus, the Debtors believe that payment of the Reimbursable Expenses is important to the morale of the Debtors' workforce, which, in turn, is critical to maximizing the value of the estates. The Reimbursable Expenses represent a relatively modest cost to the Debtors' estates in light of the overall benefits achieved.

131. Most charges, credits, and payments for Reimbursable Expenses are administered directly by the Company. The Debtors pay approximately $80,000 to $100,000 per month in Reimbursable Expenses. Because Employees may not always submit receipts for Reimbursable Expenses in a timely manner, the Debtors estimate that as of the Petition Date, no more than $6,000 of Reimbursable Expenses remain to be paid. The Debtors seek authority, but not direction, to continue paying the Reimbursable Expenses in the ordinary course of business.

132. *Relocation Assistance Program*. The Debtors offer select full time permanent Employees who relocate for business purposes reimbursement of expenses for relocation and rent ("**Relocation Assistance Program**"). Benefits under the Relocation Assistance Program include reimbursement of certain expenses related to the sale of a home, new home search, new home purchase, moving costs, and/or temporary rental payments, among others.[35] Reimbursable expenses under the Relocation Assistance Program (the "**Relocation Expenses**") are negotiated during the hiring process or throughout the Employees' tenure, and amounts are based on the Employee's position with the Company ranging between $5,000 for non-supervisory full time Employees to more than $20,000 for the Vice President and above. On average the Company pays approximately $40,000 in Relocation Expenses per quarter. As of the Petition Date, the

[35] The Debtors submit that the Relocation Expenses are not outside the ordinary course and therefore not subject to section 503(c)(3) of the Bankruptcy Code.

Debtors believe that no Relocation Expenses are outstanding. However, the Debtors must be able to continue the Relocation Assistance Program and to pay any Relocation Expenses during and after the Interim Period in the ordinary course of business in order to avoid any business or workforce disruption.

133. *Retirement Plan.* The Debtors also maintain a 401(k) profit-sharing Retirement Plan for select Employees (the "**Retirement Plan**") administered by Transamerica Financial Advisors, Inc. ("**Transamerica**"). The Retirement Plan offers the option of contributing on a pre-tax basis to a traditional 401(k) or on a post-tax basis to a Roth 401(k). Eligible Employees[36] may elect to contribute up to the annual IRS dollar limit (which varies annually) to the Retirement Plan. For Eligible Employees who elect to participate in either the traditional or Roth 401(k) Retirement Plans, the Debtors match 50% of each Eligible Employee's contributions up to a maximum of 5% of such Eligible Employee's annual compensation. On an annual basis, the Debtors expect to contribute approximately $2.4 million to Transamerica to fund retirement benefits, of which employees are responsible for approximately $1.8 million and the Debtors are responsible for approximately $600,000. The Debtors expect to pay annual service fees of $200,000 to Transamerica and Reliance Trust for administration of the Retirement Plan, $18,000 for third party administration and fiduciary services to Goldleaf Partners LLC, and $44,000 to New York Life Insurance Company to serve as a financial advisor to the Retirement Plan (collectively, the "**Retirement Plan Fees**"). The Retirement Plan Fees are deducted from Retirement Plan assets and therefore are not incremental to Retirement Plan contributions. The Debtors believe that no amounts are currently due on account of Employee contributions, matching contributions, servicing, or audit fees under the Retirement Plan. The Debtors believe

[36] An eligible Employee is one who is full time and has completed three months of service, or a part-time employee that has completed three months of service and is regularly scheduled for more than 1,000 hours of service ("**Eligible Employee**").

that performing their obligations under the Retirement Plan, including providing the prepetition matching contributions, is essential to maintaining Employee morale.

134. *Severance.* Pursuant to the Company's severance practices, the Debtors provide severance pay and benefits ("**Severance**") to certain former Employees. In addition to payment of a certain number of weeks' worth of wages, Severance benefits for a particular Employee may also include, at the discretion of senior management, payment for certain healthcare benefits (i.e. COBRA coverage assistance). The Company, in its discretion, will pay Severance to (a) certain selected Employees or (b) to Employees who have been laid off as a result of a workforce realignment. In both situations, Severance is paid only to Employees terminated without cause. Typically, the amount of Severance is equal to one week of service for each year of the terminated Employee's service with a minimum severance amount equal to four weeks' pay. Payments thereunder are made through the payroll process, in installments roughly commensurate to the Employee's bi-weekly wages prior to termination. Upon termination, all such employees are paid their accrued and unpaid salaries and/or wages in addition to any unused, accrued PTO and any Reimbursable Expenses incurred in connection with employment on the termination date or by the next payroll period. Health Benefits (as defined below) are continued through the end of the last day of the month of the Employee's termination. Terminated Employees are eligible to continue their Health Benefits (as defined below) through COBRA at their own expense.

135. Currently, five former Employees are receiving payments under the Severance Plan. Three such Employees are expected to receive aggregate Severance payments in excess of the Priority Cap. During the first six weeks of the Chapter 11 Cases the Debtors will be obligated to pay approximately $87,900 total Severance payments. The Debtors respectfully

request to pay Severance up to the Priority Cap under the "Interim Order" as defined in the Wages Motion (the "**Interim Wages Order**") (in an amount not to exceed $45,000), and all Severance in the ordinary course as they become due under the Final Wages Order.

136. The Debtors believe staying current on their Severance commitments provides important value to the Debtors' business and therefore to their estates, because they allow the Debtors' Employees a soft landing and provide assurance to current Employees, in the event of their own separation from the Debtors, the Company will similarly provide a soft landing. As such, the Debtors request authority, but not direction, under the Interim Wages Order and Final Wages Order to continue the Severance Plan in the ordinary course of business and in their sole discretion. Further, the Debtors request authority, but not direction, in their sole discretion, to pay any amounts due under the Severance Plan up to the Priority Cap pursuant to the Interim Wages Order and, pursuant to the Final Wages Order, to pay such claims in the ordinary course of business, including any amounts that were not paid during the Interim Period on account of the Priority Cap.

137. *Health and Insurance Benefit Programs.* In the ordinary course of business, and as set forth in more detail herein, the Debtors have established various standard and customary plans and policies to provide their Employees with (a) health benefits including medical, prescription drug, dental, and vision benefits (collectively the "**Health Benefits**"), and (b) Insurance Benefits (defined below and, together with the Health Benefits, the "**Health and Insurance Benefits**").

138. *Health Benefits.* The Company offers three medical plans backed by Anthem BCBS ("**Anthem**"): a Blue Access HSA Plan;[37] a Blue Access Mid Plan; and a Blue Access High Plan.[38] With respect to the medical plans, the Debtors pay an average of approximately $700,000 per month, inclusive of approximately $410,000 in employer contributions, $190,000 in Employee contributions and approximately $100,000 for administration fees. The Debtors also offer prescription drug coverage through Express Scripts Inc. ("**Express Scripts**"). The Debtors pay an average of approximately $100,000 per month to Express Scripts for premiums.[39] Dental Benefits to the Company's Employees are offered by the Debtors and provided by MetLife, Inc ("**Metlife**"), which the Debtors pay an average of $44,000 per month, inclusive of $25,000 of employer contributions and approximately $19,000 of Employee contributions. The Debtors also offer a vision plan administered by EyeMed Vision Care, LLC ("**EyeMed**"), which the Debtors pay an average of $6,800 per month for premiums.[40] Each of these Health Benefit plans is important to the maintenance of Employee welfare and morale and is therefore critical to the uninterrupted operation of the Debtors' business.

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[37] Employees choosing the HSA Plan are eligible to enroll in a Health Savings Account ("**HSA**") that allows Employees to contribute tax-free money into a segregated savings account. The Debtors do not make contributions into the HSA. The Employees may use the HSA funds for medical, dental and vision expenses. If funds are not used by the end of each year, they are rolled over to the next year. The HSA is administered by Discovery Benefits. The Debtors do not believe the HSAs are property of the estate.

[38] Employees choosing the "Mid" or "High" medical benefits plans have the option to enroll in a Healthcare Flexible Spending Account ("**FSA**") that also allows employees to contribute tax-free money into a segregated savings account. The Employee elects an amount to be funded in the account and it becomes available at the beginning of the year. The funding can be used for medical, dental, vision, copays, coinsurance, and deductibles. Only $500 may be rolled over from year to year and any unused funds are not returned to the Employee. The Debtors do not make contributions to the FSAs. The Debtors believe that the FSAs are not property of their estates. The Debtors also offer a Dependent Care Flexible Spending Account ("**DCA**") to Employees choosing the HSA, "Mid" or "High" medical benefit plan. The DCA funds can be used to support Employees' dependents' daycare, after-school, and summer camp costs. The Debtors do not contribute any funds to the DCAs.

[39] The Debtors do not pay an administration fee for Express Scripts.

[40] There are no administration fees or Employee contributions for the vision plan.

139. *Insurance Benefits*. In the ordinary course of business, the Debtors provide their Employees with employer supplemented insurance benefits, which include short and long-term disability, life insurance, and accidental and dismemberment insurance (the "**Employer Insurance Benefits**"). The Debtors additionally offer full time Employees a number of additional insurance benefits at no cost to Employees (the "**Additional Insurance Benefits**"). Additional Insurance Benefits include a counseling program, funeral programs, legal programs, short term disability programs, life insurance benefits, and accidental and dismemberment benefits. The Debtors also make available to Employees, at the Employee's expense, certain additional insurance coverage programs. Such optional coverage includes additional voluntary life insurance and accidental death and disability insurance, voluntary long term disability insurance, accident insurance, and critical illness coverage (collectively, the "**Optional Insurance Benefits**" and, together with the Employer Insurance Benefits, the Additional Insurance Benefits and the Optional Insurance Benefits, the "**Insurance Benefits**").

140. The Insurance Benefits are administered by Aetna and Guardian. The Debtors pay Aetna approximately $28,000 per month for the Insurance Benefits, inclusive of approximately $3,000 employer contributions and approximately $25,000 in Employee contributions. The Debtors pay Guardian approximately $14,800 per month, inclusive of approximately $2,000 employer contributions, $10,000 Employee contributions, and approximately $2,800 administration fees. Like the Health Benefits, the Insurance Benefits are critical to maintaining Employee morale and therefore, the Debtors seek authority to maintain the Insurance Benefits in the ordinary course of business.

141. *Other Benefit Fees.* The Debtors incur other costs related to overall employee benefits administration. These include fees paid to USI Insurance Services for insurance

brokerage, consulting and compliance services; Empyrean Benefits Solutions for administering employee benefit elections and communications with benefit providers related to those elections; and Discovery Benefits for facilitating COBRA noticing, enrollment and payments related to the continuation of a departing employee's enrollment in the Debtor's Health Benefits (collectively, the "**Other Benefit Fees**"). In the ordinary course of business, the Debtors pay on average $23,550 monthly in Other Benefit Fees and must continue to do so in order to avoid a disruption to their business or workforce.

142. In sum, the Debtors are respectfully requesting to continue to honor and pay all Prepetition Employee Obligations in an amount no greater than approximately $1,881,000 in the Interim Period. Pursuant to the Final Wages Order, the Debtors are respectfully requesting to continue to honor and pay all other Prepetition Employee Obligations, including amounts above the Priority Cap, in the ordinary course of business during the Chapter 11 Cases as such obligations become due and payable, as more specifically discussed above.

Customer Programs Motion[41]

143. As stated above in Part I, the Debtors' Customers include, among others, long-term care and skilled nursing facilities (the "**Facility Customers**"), hospice and other homecare agencies, and companies who distribute the Company's products to facilities in the post-acute care marketplace.

144. *Rebates*. In the ordinary course of business, the Debtors often provide Customers with discounts dispensed in the form of fixed or percentage rebates ("**Rebates**") generally based on the volume or percentage of commitment and fulfilment of sales (the "**Rebate Payments**"). Subject to a negotiation process, the terms of the Rebates vary by Customer and are

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41 *Motion of the Debtors for Entry of Interim and Final Orders Authorizing the Debtors to Honor Certain Prepetition Obligations to Customers and to Continue Customer Programs* (the "**Customer Programs Motion**").

memorialized in contractual agreements. Rebate Payments are made monthly or quarterly, depending on the individual Customer's arrangement with the Debtors. On average the Debtors pay $1.3 million in Rebate Payments quarterly.

145. As the Rebate Payments constitute revenue streams for qualifying Customers, making such payments is necessary and crucial to maintaining good relationships with the Debtors' existing Customers and attracting new Customers. The Debtors believe that there is a real threat that Customers entitled to or justifiably expecting Rebate Payments may take their business to competitors or initiate legal action if such Rebate Payments are not made. Accordingly, the Debtors request the authority, but not the direction, to make Rebate Payments that accrued prepetition during and after the Interim Period in the ordinary course of business in an amount that the Debtors estimate will not be greater than $750,000.

146. *Product Warranties*. In the ordinary course of business, the Debtors provide product warranties for each of the Debtors' products (the "**Product Warranties**"). Product Warranties may be expressly or impliedly included in the Customer's contract or purchase order, set forth in a warranty statement delivered with the product, or found in marketing brochures. In addition, the Debtors repair or replace damaged, defective, or faulty products as a matter of quality control during the normal warranty period regardless of whether an express warranty provision is set forth in a purchase order or contract. If it is not an option to repair or replace an item, the Debtors provide a refund to the Customer ("**Warranty Refund**"), which is processed as a credit memorandum against customer invoices. Warranty Refunds typically amount to an average of approximately $2,000 per month. The Debtors believe that maintaining their Product Warranties and honoring Warranty Refunds is essential to maintaining their relationships with their Customers. The Debtors do not believe any Warranty Refunds are outstanding as of the

Petition Date, but out of an abundance of caution, request that this Court authorize the Debtors to continue the Product Warranties program and honor Warranty Refunds during and after the Interim Period without interruption in the ordinary course of business.

147. *GPOs*: In the ordinary course of business, the Debtors contract with group purchasing organizations ("**GPOs**"). GPOs are entities created to leverage the purchasing power of a group of businesses to obtain discounts or discounted pricing from vendors (like the Debtors) based on the collective buying power of the GPO members. GPOs are unique to specific industries, like the healthcare industry and especially in the acute care market. GPOs typically receive fees on an annual, quarterly, and monthly basis ("**GPO Fees**," and collectively with the Rebate Payments and the Warranty Refunds, and any other payments due under the Customer Programs (as described below), the "**Customer Program Payments**").[42] The GPO Fees average $1,657,000 per year. Accordingly, the Debtors request the authority to pay GPO Fees that accrued prepetition during and after the Interim Period in the ordinary course of business in an amount that the Debtors estimate will not be greater than $250,000. The Debtors submit that maintaining their relationships with GPOs is essential for a successful reorganization of the Company.

148. *RTO Programs*. In the ordinary course of business, the Debtors provide a rent-to-own long term rental opportunity with the option to purchase the rented equipment at the end of the lease term (the "**RTO Program**"). This program is offered for an increased rental rate. The Company offers this program to the majority of its Facility Customers, and most of the

[42] In the ordinary course of business, the Debtors also occasionally issue refunds or become subject to offsets for reimbursement of overpayments made by or on behalf of Customers resulting from the interaction between the Debtors' billing procedures and the Customers' payment procedures ("**Overpayments**"). The Debtors are required, under the laws of various states, to reimburse Customers as Overpayments are identified. The Debtors do not believe that any of such payments are due and owing as of the Petition Date, but out of an abundance of caution, request the Court to allow the Debtors to continue honoring such Overpayments during the ordinary course of business.

participating Facility Customers opt to purchase the equipment at the end of the lease term. The Debtors do not believe they have any financial obligations under the RTO Program as of the Petition Date but, out of an abundance of caution, request that this Court allow the Debtors to continue the RTO Program and pay any obligations due under it during the Interim Period in the ordinary course of business.

149. *Other Programs*. In the ordinary course of business, the Debtors provide their Customers with a quick shipping service ("**JoernsNow**"), which is geared to give Facility Customers access to small quantity purchases on a speedy basis. Through the JoernsNow program, the Company guarantees next-day shipping on certain qualifying equipment. If the equipment is not shipped on the next day, the Company covers the shipping cost. The Debtors also offer a prevent assist program ("**Prevent Assist Program**," and together with Joerns Now, the "**Other Programs**," and collectively with the Rebates, Product Warranties, GPOs, and the RTO Program, the "**Customer Programs**"), which is a program designed to assist the Facility Customers with maintenance and upkeep of the DME products. Under the Prevent Assist Program, Joerns' employees evaluate the condition of the Facility Customers' DME equipment and recommend replacement or repair as necessary. This allows the Facility Customers' resources to be focused on their patients rather than on the functionality and grade of the Company's equipment. The Debtors do not typically owe any obligations or make any payments under the Other Programs but, out of an abundance of caution, request that this Court allow the Debtors to continue the Other Programs (to the extent they arise) during and after the Interim Period and pay any obligations due under the Other Programs in the ordinary course of business.

150. I believe that continuing the Customer Programs throughout their Chapter 11 Cases is essential to (a) preserve customer relationships and goodwill for the benefit of their

estates and (b) maximize the revenue and the value of the Debtors' estates for the benefit of all stakeholders as the Debtors. I believe that if the Debtors are prohibited from honoring and maintaining the Customer Programs and making Customer Program Payments in the manner consistent with their past business practices, Customers will lose confidence in the Debtors and may begin to patronize the Debtors' competitors that do provide such programs, thereby damaging the Debtors' businesses to an extent that, in the Debtors' business judgment, far exceeds the cost associated with honoring and continuing such practices. Moreover, I believe that failure to maintain the Customer Programs and honor the Customer Program Payments will cause irreparable damage to the Debtors' reputation in the healthcare products industry.

Pay All Motion

151. The Debtors believe it to be in the best interests of all of the Debtors' stakeholders to pay in full in their discretion and in the ordinary course of business, all allowed prepetition claims of creditors (the "**Trade Creditors**") that provide goods or services related to the Debtors' operations (collectively, the "**Trade Claims**"). To this end, concurrently with the filing of the Declaration, the Debtors have filed the Pay All Motion.

152. *Debtors' Business and Trade Creditors*. In the ordinary course, the Trade Creditors provide critical services for the Debtors' businesses, including but not limited to: (i) providing finished goods and materials to use in the production process to manufacture products; (ii) providing the systems and processes for tracking and managing inventory through the Debtors' supply chain; (iii) renting and selling trucks to assist in the delivery and pick-up of equipment from the Debtors' customers; and (iv) providing services to assist in staffing, managing and processing various critical operational tasks, including accounting, operations, communications, services, and software needed for transmission of electronic records.

153. Given the highly regulated industry in which the Debtors operate, it is essential that the Debtors maintain and develop relationships with their vendors, who supply them with essential resources and services. Authority to pay the Trade Claims in the ordinary course of business is necessary to minimize disruption to the Debtors' operations and to allow for a seamless transition through these Chapter 11 Cases, for the benefit of all parties in interest.

154. *Trade Claims*. The Debtors estimate that, as of the Petition Date, they owe a total of approximately $19.3 million on account of undisputed Trade Claims. The Debtors estimate that approximately $13.9 million of that amount will become due within the Interim Period. The following table summarizes the types of Trade Claims held by the Trade Creditors, and provides the Debtors' estimate of the total amount of each type of Trade Claims outstanding as of the Petition Date, including estimates for the portion of such total coming due within the Interim Period:

Category	Description of Claims	Estimated Total Amount Outstanding as of Petition Date	Estimated Amount Due Within Interim Period
Lien Claimants' Charges	Claims that may give rise to shippers, warehouseman, mechanics, or other liens against the Debtors' property if unpaid.	$600,000.00	$300,000.00
503(b)(9) Claims	Claims entitled to statutory priority under section 503(b)(9) of the Bankruptcy Code.	$1.25 million	$900,000.00
Critical Vendor Claims	Claims of certain Trade Creditors that are essential to maintaining the going concern value of the Debtors' enterprise.	$1.65 million	$1.1 million
Non-Priority Trade Claims	All other Trade Claims incurred in the ordinary course of business.	$15.8 million	$11.6 million
Total Trade Claims:		**$19.3 million**	**$13.9 million**

155. The Debtors are not seeking to pay these amounts immediately or in one lump sum; rather, the Debtors intend to pay these amounts as they become due and payable in the ordinary course of the Debtors' business. Concurrently with the filing of the Pay All Motion, the Debtors have filed the *Motion of Debtors for Interim and Final Orders: (I) Authorizing the Debtors to Obtain Senior Secured Postpetition Financing; (II) Granting Liens and Superpriority Administrative Expense Status; (III) Authorizing the Use of Cash Collateral; (IV) Granting Adequate Protection to Prepetition Secured Parties; (V) Scheduling a Final Hearing*; *and (VI) Granting Related Relief* (the "**DIP Motion**"), which, in addition to the cash generated by the Debtors' business, will provide the necessary additional liquidity for the Debtors to continue operations in the ordinary course of business. As set forth in the budget (the "**Budget**") annexed to the DIP Motion, the Debtors' proposed expenditures set forth in the Budget include payment of the Trade Claims. Accordingly, I believe the Debtors will have ample liquidity to pay the Trade Claims in the ordinary course during the administration of these Chapter 11 Cases.

156. *Treatment of Trade Claims under the Prepackaged Plan*. The goal of the Debtors' prepackaged Chapter 11 Cases is to de-lever the Debtors' balance sheet with minimal interruption of their business operations. Disruption to the Debtors' timely receipt of necessary goods and services could negatively impact the Debtors' operations, which would harm their businesses, damage their market reputation, and possibly result in a loss of customers. Accordingly, it is imperative that the Debtors maintain positive relationships with the providers of the goods and services essential to their business operations throughout these Chapter 11 Cases. The Debtors negotiated the terms of the Prepackaged Plan with the goal of avoiding, among others, disruption to the normal operations of the business by keeping the legal, equitable, and contractual rights of Trade Creditors unimpaired.

157. Furthermore, with the exception of any rejected executory contracts or unexpired leases set forth in the Prepackaged Plan (or any supplement thereto), if any, all executory contracts and unexpired leases to which any of the Debtors are parties, and which have not expired by their own terms on or before the Effective Date, shall be assumed without further notice or order of the Court. Any outstanding amounts owed under any executory contract or unexpired lease to be assumed under the Prepackaged Plan shall be paid or otherwise "cured" pursuant to section 365(b)(1) of the Bankruptcy Code.

158. I believe that the materials, products, and services provided by the Trade Creditors are vital to the Debtors' continuing business operations, and that the failure to pay the Trade Claims would have a material adverse impact on the day-to-day operations of the business and would very likely disrupt the Debtors' manufacturing, distribution, rental, and sales processes by inhibiting the Debtors' access to the goods and services they need most. If certain Trade Creditors are unwilling to provide the goods or services postpetition because of their outstanding prepetition claims, then the Debtors' operations will materially suffer, compromising the value of the Debtors' estates to the detriment of all creditors. The negative impact would likely be almost immediate as certain of the Trade Creditors, on whom the Debtors depend, could immediately withdraw services and cease to provide necessary resources. Such an occurrence would impair a successful reorganization and hamper viability following the Debtors' emergence from these Chapter 11 Cases.

159. Particularly as to the Trade Creditors that agree to continue to provide goods or services on the trade terms existing 180 days prior to the Petition Date, the Debtors will avoid unnecessary expense during the Chapter 11 Cases, thereby preserving liquidity, and ensuring that they are better-positioned to sustain operations while reorganizing. Such terms also allow the

Debtors to avoid the inherent operational inefficiencies of paying cash on demand and managing billing processes for numerous vendors that might require cash in advance or shorten their trade terms to less than a week. Given the prepackaged nature of these Chapter 11 Cases, the relief requested in the Pay All Motion will enable the Debtors to move towards expeditious confirmation of the widely-supported Prepackaged Plan with the least possible disruption or harm to their business. The Debtors submit that no parties in interest will be prejudiced by the relief requested as the Trade Claims are limited to those that are unimpaired under the Prepackaged Plan. The relief requested merely expedites the treatment and distribution that is afforded to Trade Claims under the Prepackaged Plan and protects the Debtors' business and preserves the value of the Debtors' estates.

160. *Administrative Expenses.* I believe that Trade Claims in an aggregate amount of approximately $1.25 million, with approximately $900,000.00 coming due and payable during the Interim Period, are claims entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code for goods delivered to the Debtors in the ordinary course of business within 20 days before the Petition Date. Instead of paying such Trade Claims on the Effective Date, the Debtors seek authority to pay the Trade Claims during the pendency of these Chapter 11 Cases as they become due.

161. *Lien Claimants*. In operating their businesses, the Debtors use shippers, delivery servicers, and distributors (collectively, the "**Supply Chain Vendors**") to ship, transport, track, manage, and otherwise facilitate the movement of finished goods and equipment (collectively, the "**Goods**") to the Debtors' customers. In addition, the Debtors rely on specialized suppliers to ship the Debtors' finished Goods to their customers and international affiliates (the "**Freight**

Providers," and together with the Supply Chain Vendors, the "**Lien Claimants**") to ensure the Debtors are able to meet the requisite standards of the industry for Goods.

162. The services provided by the Lien Claimants are critical to the Debtors' day-to-day operations for a number of reasons: (i) the Supply Chain Vendors provide customization and design to specifications; (ii) the Supply Chain Vendors provide integral components of a product; (iii) the Supply Chain Vendors are convenient suppliers due to location or geography and provide Goods at a low cost; (iv) the delivery of product provided by the Freight Providers are necessary to complete the sale; and (v) the ability to meet promised delivery times to the Debtors' customers requires an availability and specific type of truck that a single provider cannot reliably provide. Interruption to any of these services could result in material harm to the Debtors' business and estate value.

163. At any given time the Debtors may owe the Lien Claimants payments related to a number of different shipments or Goods. In turn, the Supply Chain Vendors may have multiple vehicles in transit carrying Goods on behalf of the Debtors. Because of the commencement of these Chapter 11 Cases, certain Lien Claimants that hold Goods for delivery to or from the Debtors may refuse to release the Goods pending receipt of payment for their prepetition services. Under certain state law, these Lien Claimants may have liens on the Goods in their possession to secure the charges or expenses incurred for the transportation of Goods. The refusal of any Lien Claimant to perform its services could negatively impact the Debtors' ability to maintain their day-to-day operations and harm the Debtors' reorganization efforts.

164. Accordingly, it is imperative that the Debtors be authorized in their discretion, to pay the Lien Claimants' for their services to the Debtors (the "**Lien Claimants' Charges**"), whether they arose before or after the Petition Date. Of the Trade Claims, an amount of

approximately $600,000.00 relates to the Lien Claimants' Charges, with approximately $300,000.00 coming due and payable during the Interim Period.

165. *Critical Vendors*. The Debtors have determined that certain of the Trade Creditors are essential to maintaining the going concern value of the Debtors' enterprise (the "**Critical Vendors**" and their prepetition Trade Claims, the "**Critical Vendor Claims**"). These Critical Vendors include a network of suppliers, domestic and vendors, and shippers that are critical to meet the needs of the business. Of the Trade Claims, an amount of approximately $1.65 million relates to the Critical Vendor Claims, with approximately $1.1 million coming due and payable during the Interim Period.

166. Payment of the Critical Vendors is necessary for the Debtors to maintain operations, preserve the value of the Debtors' business, and enable the Debtors to function in the ordinary course. Many of the Critical Vendors are providers of supplies for finished Goods; specialized engineering, design, and quality control services with respect to the production process; and critical technology and software services for the transmission of electronic records.

167. The Debtors believe that failure to timely pay the Critical Vendor Claims would cause disproportionate harm and economic damage to the Debtors' business and their ability to serve their customers with a minor, but ultimately fleeting benefit for other stakeholders. This harm and disruption would far outweigh the cost of payment of the Critical Vendor Claims. The Debtors are ill-equipped to switch to other vendors or suppliers on short notice and therefore face significant risk if certain prepetition amounts cannot be paid. Accordingly, the Debtors have concluded that if they do not make Critical Vendor payments, their value will be reduced by amounts well in excess of amounts that the Debtors seek authorization to pay. In addition, the

Debtors believe that maintaining favorable trade terms with the Critical Vendors is in the best interests of all parties in interest in these Chapter 11 Cases.

168. *Prepetition Purchase Orders*. As of the Petition Date, the Debtors have certain prepetition purchase orders (the "**Prepetition Purchase Orders**") outstanding with various third party vendors and suppliers (the "**Prepetition Purchase Order Vendors**") for goods or services ordered by the Debtors that have not yet been delivered or provided to the Debtors. These Prepetition Purchase Order Vendors may be concerned that, because the Debtors' obligations under the Prepetition Purchase Orders arose before the Petition Date, such obligations will be treated as general unsecured claims in these Chapter 11 Cases. Accordingly, certain Prepetition Purchase Order Vendors may refuse to provide goods or services to the Debtors purchased pursuant to the Prepetition Purchase Orders unless the Debtors issue substitute purchase orders postpetition or obtain an order of the Court (i) confirming that all undisputed obligations of the Debtors arising from the postpetition delivery of goods or services subject to Prepetition Purchase Orders are afforded administrative expense priority status under section 503(b) of the Bankruptcy Code and (ii) authorizing the Debtors to satisfy such obligations in the ordinary course of business. I believe it to be necessary to the uninterrupted operation of the Debtors' business that obligations owed under the Prepetition Purchase Orders for goods or services delivered or provided postpetition be explicitly granted administrative expense status.

C. Financing and Plan

DIP Motion

169. As set forth above in Part I, prior to the filing of the Chapter 11 Cases, the Debtors engaged in arm's-length negotiations with the DIP Lenders for a facility to fund the Chapter 11 Cases, provide working capital, and fund interest, fees and certain other payments

thereunder. These negotiations culminated in the DIP Facility, by which certain holders of the First Lien Obligations have agreed to backstop an $80 million senior secured superpriority DIP Financing agented by Ankura, including providing for a an initial draw of up to $20 million during the Interim Period. In particular, the DIP Financing is comprised of: (a) the New Money DIP Loans in an aggregate principal amount of $40 million; and (b) the Roll-Up DIP Facility in an aggregate principal amount not to exceed $40 million, pursuant to which DIP Lenders shall be deemed to make loans under the Roll-Up DIP Facility on a dollar-for-dollar basis for every dollar of New Money DIP Loans disbursed by such DIP Lenders from and after the entry of the Interim DIP Order, in satisfaction and discharge of such DIP Lenders' (or their designated affiliates') First Lien Obligations in an amount equal to the aggregate principal amount of the New Money DIP Loans funded. The DIP Financing will automatically convert into the Exit Facility upon the Effective Date.

170. In exchange for providing the DIP Financing, the DIP Lenders will receive (i) a commitment fee (the "**Commitment Fee**") equal to 3.00% on the entire commitments for the New Money DIP Loans (the "**DIP Commitments**") to be earned upon entry of the Interim DIP Order, and (ii) an exit fee (the "**Exit Fee**") equal to 2.0% of the aggregate outstanding DIP Loans payable in-kind on the Effective Date, which shall be subject to, and earned as of, the entry of the order confirming the Prepackaged Plan (the "**Confirmation Order**").

171. In addition, certain of the First Lien Lenders who agreed to backstop the DIP Commitments (the "**Backstop Lenders**") will be entitled to a fee equal to either (a) upon confirmation of the Prepackaged Plan, 5% of the New Common Stock in the Reorganized Debtors, subject to dilution on account of any New Common Stock issued pursuant to the management incentive plan, or (b) upon consummation of an alternative transaction,

\$2,500,000.00 payable in cash upon the closing of such alternative transaction (the "**Backstop Fee**").

172. The terms of the DIP Facility are documented in that certain Superpriority Secured Debtor-in-Possession Credit Facility Credit Agreement (as amended, restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**DIP Credit Agreement**," and together with the schedules and exhibits attached thereto, and all agreements, documents, instruments and amendments executed and delivered in connection therewith, the "**DIP Documents**") by and among the Debtors, Ankura, as administrative agent and collateral agent (in such capacities, the "**DIP Agent**"), for and on behalf of itself and the DIP Lenders, and the DIP Lenders. The DIP Credit Agreement will permit the Debtors to obtain funding for expenditures in accordance with an approved Budget. The Budget is attached as **Exhibit C** to the DIP Motion.

173. The Debtors believe that approval of the DIP Financing is critical to (i) the continued, uninterrupted operation of the Debtors' business in the Chapter 11 Cases while they seek to implement the restructuring, (ii) providing a strong message to their customers, employees, suppliers, counterparties, and business partners that the Debtors are well-capitalized and well positioned for a successful reorganization, and (iii) the payment of necessary expenses associated with administering the Chapter 11 Cases. Further, as the Debtors filed these Chapter 11 Cases with only a few million dollars on hand, the immediate funding provided by the initial \$20,000,000 draw is necessary to avoid immediate and irreparable harm that would otherwise result if the Debtors are denied incremental liquidity. Without immediate access to postpetition financing and the ability to use cash collateral, the Debtors would not be able to finance their operations, maintain their business relationships, pay their employees, protect the value of their

assets, or pursue the Restructuring Transaction. Finally, the agreement for the indebtedness under the DIP Financing to automatically convert into the five-year term Exit Facility will provide funding for the Debtors' go-forward business, positioning the Company for success after exiting chapter 11.

174. The DIP Lenders are willing to provide liquidity solely on the terms provided in the DIP Documents and the proposed interim order attached to the DIP Motion, which I believe are competitive and reasonable. The DIP Financing was evaluated by the Debtors and their professionals, was thoroughly negotiated at arm's length between the Debtors and the First Lien Steering Committee, whose members hold more than 76% of the First Lien Obligations. I believe that the liquidity to be provided by the DIP Financing, together with the use of cash collateral, will enable the Debtors to fund their operations during the course of these Chapter 11 Cases and preserve value while they seek approval of the Prepackaged Plan and effectuate the Restructuring Transaction.

175. The Debtors have been unable to obtain any alternative source of financing. Accordingly, under the circumstances, I believe that the DIP Financing is the most favorable form of financing available.

Scheduling Motion

176. As I discussed in Part I, the Company, the First Lien Steering Committee and the Second Lien Lenders entered into the RSA to restructure the Debtors through the Prepackaged Plan. Under the Prepackaged Plan, the only impaired classes of creditors entitled to vote on the Prepackaged Plan are the First Lien Lenders and Second Lien Lenders. The terms of the RSA require the Debtor to commence prepetition solicitation of the Prepackaged Plan by June 21, 2019 and obtain confirmation of the Prepackaged Plan on an expedited basis. Accordingly, on

June 21, 2019, the Debtors began soliciting acceptance or rejection of the Prepackaged Plan from the First Lien Lenders and the Second Lien Lenders.

177. In order to meet the requirements in the RSA, the Debtors are requesting must comport with the following schedule:

Event	Date
Voting Record Date	June 18, 2019
Distribution of Solicitation Packages	June 21, 2019
Combined Notice Mailing Date	Three (3) business days after entry of the Scheduling Order or as soon as practicable thereafter
Plan Supplement Filing Date	July 8, 2019
Voting Deadline	July 15, 2019, at 5:00 p.m. (prevailing Eastern Time)
Plan / Disclosure Statement Objection Deadline	July 18, 2019, seven (7) days prior to the Combined Hearing, at 5:00 p.m. (prevailing Eastern Time)
Reply Deadline	July 22, 2019, three (3) days prior to the Combined Hearing
Combined Hearing	July 25, 2019
Section 341(a) Meeting	If Prepackaged Plan is not confirmed, promptly following Combined Hearing and on no less than 21 days' notice; if Prepackaged Plan is confirmed, there will be no Section 341(a) Meeting
Schedules and Statements Deadline	If Prepackaged Plan is not confirmed at Combined Hearing, 45 days after Combined Hearing (without prejudice to request further extension); if Prepackaged Plan is confirmed, requirement is excused

178. I have also been advised that the Debtors seek to serve a Combined Notice of the commencement of the Chapter 11 Cases and the Combined Hearing to all parties listed in the Creditor List. Additionally, the Debtors seek approval to publish a form of notice of commencement of the Chapter 11 Cases and Combined Hearing via a nationally-published newspaper (the "**Publication Notice**"). I believe the mailing of the Combined Notice and

publication of the Published Notice is sufficient to provide notice to both known and unknown creditors.

179. I believe that a rapid confirmation of the Prepackaged Plan is in the best interests of all parties in interest, insofar as it will result in full payment of the Debtors' trade and general unsecured creditors while providing the Secured Creditors with the treatment for which they have bargained. Furthermore, I believe that needlessly prolonging the Chapter 11 Cases risks creating unnecessary harm to the Debtors' businesses. Minimizing disruption to the Debtors' customers, suppliers, vendors, and employees will be crucial to optimizing the financial and operating performance of the Debtors and Reorganized Debtors. Moreover, although not Debtors in these Chapter 11 Cases, the Foreign Affiliates (which are significant sources of value to the Debtors) may also be harmed by any delay and resulting uncertainty.

180. I believe that the relief requested in the Scheduling Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to operate in chapter 11 with minimal disruption to their business.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: June 24, 2019

By: *<u>/s/ John Regan</u>*
Name: John Regan
Title: Senior Vice President, Chief Financial Officer