

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SECURE HOME HOLDINGS LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10745 (xxx)

*(Joint Administration Pending)*

**DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING THE DEBTORS TO HONOR CERTAIN PREPETITION  
OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN CUSTOMER  
PROGRAMS IN THE ORDINARY COURSE OF BUSINESS,  
AND (II) GRANTING RELATED RELIEF**

Secure Home Holdings LLC and certain of its affiliates, the debtors and debtors in possession in the above-captioned cases (collectively, the “**Debtors**,” or the “**Company**”), hereby move (this “**Motion**”) this Court for entry of interim and final orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B** (the “**Interim Order**” and the “**Final Order**,” respectively), granting the relief described below. In support of this Motion, the Debtors rely upon the *Declaration of Amy V. Kothari in Support of Chapter 11 Petitions and First Day Papers* (the “**First Day Declaration**”),<sup>2</sup> and respectfully represent as follows:

**RELIEF REQUESTED**

1. By this Motion, the Debtors respectfully request entry of an Interim Order and a Final Order (i) authorizing, but not directing, the Debtors (a) to honor certain prepetition Customer Programs Obligations (*as defined below*) in an aggregate amount not to exceed \$2,173,402.73 on

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Secure Home Holdings LLC (1583); ACA Security Systems GP, LLC (5674); ACA Security Systems LP (3613); Hawk Creation, LLC (3525); and My Alarm Center, LLC (0273). The address of the Debtors' corporate headquarters is 3803 West Chester Pike, Suite 100, Newtown Square, Pennsylvania 19073.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

an interim basis and not to exceed \$2,766,307.67 on a final basis, and (b) to otherwise continue customer programs and practices (as described in greater detail below, the “**Customer Programs**”) in the ordinary course of business, and (ii) granting related relief.

2. The Debtors further request that the Interim Order and the Final Order (a) authorize all applicable banks and other financial institutions (collectively, the “**Banks**”), when requested by the Debtors in their sole discretion, to receive, process, honor, and pay any and all checks, drafts, and other forms of payment, including fund transfers, on account of the Customer Programs, whether such checks or other requests were submitted before, on, or after the Petition Date; (b) authorize the Banks to rely on the representations of the Debtors as to which checks and fund transfers are subject to this Motion, provided that no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors; (c) provide that the Banks shall, at the direction of the Debtors, receive, process, honor, and pay all prepetition and postpetition checks and fund transfers on account of the Customer Programs that had not been honored and paid as of the Petition Date, provided that sufficient funds are on deposit in the applicable accounts to cover such payments and that no such Bank shall have any liability to any party for relying on such direction by the Debtors; and (d) authorize the Debtors to issue new postpetition checks or effect new postpetition fund transfers to replace any checks, drafts, and other forms of payment which may be inadvertently dishonored or rejected.

### **JURISDICTION AND VENUE**

3. This Court has jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding under 28 U.S.C. §

157(b). Venue of these cases and this Motion in this district is proper under 28 U.S.C. §§ 1408 and 1409.

4. The legal predicates for the relief requested herein are sections 105(a), 363, 1107 and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

5. Pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Bankruptcy Rules**”), the Debtors consent to the entry of a final judgment or order with respect to this Motion if it is determined that this Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

### **BACKGROUND**

#### **I. THE CHAPTER 11 CASES.**

6. On the date hereof (the “**Petition Date**”), each Debtor commenced a case by filing a petition for relief under chapter 11 of the Bankruptcy Code (collectively, the “**Chapter 11 Cases**”). The Debtors have requested that the Chapter 11 Cases be jointly administered.

7. The Debtors continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. To date, the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”) has not appointed a creditors’ committee in the Chapter 11 Cases, nor has any trustee or examiner been appointed therein.

9. The Debtors are a national provider of technologically advanced security solutions, including residential and commercial security systems, home automation systems, smoke and carbon monoxide detectors, and other security solutions in communities throughout the United

States. The Debtors' security solutions include, among others, home security equipment installation, monitoring and support services, "smart" home applications, alarm equipment and support services (smoke, fire, carbon monoxide, flood and intrusion), monitoring services, and premier home security, guard patrols and guard response services. The Debtors' family of security solution brands include such well-known national and regional brands as My Alarm Center™, Alarm Monitoring Service of Atlanta, Hawk Security Services, ACS Security and LivSecure™.

10. Additional factual background regarding the Company's business operations, corporate and capital structures, and restructuring efforts are described in greater detail in the First Day Declaration, filed contemporaneously with this Motion and incorporated herein by reference.

## **II. THE DEBTORS' CUSTOMERS**

11. The Debtors primarily generate revenue from the installation, monitoring, maintenance and servicing fees charged to both their residential and commercial clients (collectively, the "Customers") on account of the various security alarm, home and business automation solutions that they provide to their Customers. The Debtors' residential Customers include individual homeowners and families, apartment complexes, homeowners' associations, and condominium associations.<sup>3</sup> The Debtors' commercial Customers include, but are not limited to, small businesses, shopping centers, business plazas, religious organizations, community centers, and other organizations. The Debtors' Customers include both accounts generated organically by the Debtors' existing sales force, employees, and Customer referrals, as well as Customer accounts purchased from unaffiliated third-party security services dealers (the

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<sup>3</sup> By separate motion, the Debtors have requested that the names and addresses of the Security Customers be redacted from public filings in these Chapter 11 Cases pursuant to the Debtors' Motion for Order (I) Authorizing Debtors to (A) File a Consolidated Creditor Matrix in Lieu of Submitting a Separate Creditor Matrix for Each Debtor; (B) File a Consolidated List of Top 30 Largest Unsecured Creditors; (C) Redact Certain Personal Identification Information for Individual Creditors, and (II) Granting Related Relief.

“Dealers”), which allow the Debtors to maximize the use of their existing security networks and related infrastructure. Regardless of the originating source, the Debtors provide the same cutting edge, technologically advanced security products and high quality, professional and courteous services to all of their Customers nationwide.

### III. THE CUSTOMER PROGRAMS.

12. Prior to the Petition Date, and in the ordinary course of their businesses, the Debtors provided their Customers with various discounts, warranties, rebates, refunds, billing adjustments and other make-whole services, access to the Debtors’ network of third-party service partners, and customer service programs. The Customer Programs and related practices are designed to (a) attract and retain Customers, (b) develop and sustain a positive reputation in the marketplace for the Debtors’ varied residential and commercial security products and services, (c) ensure customer satisfaction, (d) engender customer loyalty, and (e) meet competitive market pressures. As set forth in more detail below, the Customer Programs are critical to the Debtors’ ongoing operations and the preservation and maximization of stakeholder value. Therefore, the Debtors seek authority to continue to maintain and administer their Customer Programs and the cash and performance-based obligations thereunder (the “Customer Programs Obligations”), including certain prepetition Customer Programs Obligations.<sup>4</sup>

13. The Debtors generate goodwill through the Customer Programs and the satisfaction of their Customer Programs Obligations, thereby allowing the Debtors to not only retain their current Customers, but also to attract new ones. The revenue generated by the Customer Programs

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<sup>4</sup> Throughout this Motion, the Debtors have attempted to identify which liabilities on account of the various Customer Programs are settled via cash and which are settled via invoice or other credits to Customer accounts. It should be noted that, from time to time, in the interest of administrative convenience or to comply with the requests of a specific Customer, the Debtors will settle certain liabilities that would typically be settled in cash via invoice or other account credits, or vice versa.

exceeds the operational and administrative cost to implement and maintain them. In addition, several of the Debtors' prepetition Customer Programs Obligations do not require the expenditure of cash. For these, and the other reasons set forth herein, it is essential and in the best interests of the Debtors, their estates, and their creditors that the Debtors be permitted to honor their prepetition Customer Programs Obligations and to continue the Customer Programs in the ordinary course of their businesses.

14. As described in greater detail below, the Debtors' Customer Programs are common in the security service and alarm monitoring industry. Indeed, the Debtors believe that most major security service and alarm monitoring companies, including many of the Debtors' competitors, employ similar or identical customer programs. Therefore, if the Debtors are to stay competitive, it is critical that the Debtors be authorized, in their business judgment, to continue the Customer Programs and to honor the prepetition Customer Programs Obligations associated therewith. The following are general descriptions and examples of the Debtors' principal Customer Programs.

**A. Custom Package Program**

15. The Debtors provide their Customers with a number of full-service, customizable security and monitoring packages (the "**Custom Package Program**"), through which Customers request or require the provision of additional products and services that the Debtors procure from various third-party product and service suppliers (the "**Third-Party Providers**"). The Debtors contract with the Third-Party Providers to supply certain products and services, which the Debtors themselves do not manufacture or provide, to the Debtors' Customers (the "**Customized Services**"). The Customized Services include, among other things, software and networks that enable the Debtors to (i) monitor security systems, detect fires, carbon monoxide leaks, and flooding, (ii) monitor and control thermostats, lights, live streaming video, and motion-triggered

video recording, (iii) provide premier home security, guard patrols and guard response services, (iv) store video recordings and provide searchable video libraries, (v) send event text alerts, (vi) remotely disarm and arm security systems and lock and unlock and physical entry points, (vii) analyze various data, and (viii) communicate with their Customers, including enabling certain software and providing access to the Debtors' networks, in connection with the foregoing. Accordingly, upon the sale of a security and monitoring system under the Custom Package Program, the Debtors generally incur both an obligation to their Customers as well as an obligation to one or more Third-Party Providers (the "**Third-Party Obligations**"), the costs of which are indirectly passed on to Customers through the Debtors' sale of security and monitoring packages. As of the Petition Date, the Debtors estimate that they have accrued approximately \$1,036,241.64 of unsatisfied Third-Party Obligations in connection with the sale of security and monitoring systems under the Custom Package Program which, by comparison, generates a monthly revenue of approximately \$129,530.20 per Custom Package Program, plus an effective one-time revenue of approximately \$270,660.13 per Custom Package Program for the Debtors. The Debtors, in their business judgment, estimate that approximately \$806,884.36 of the Third-Party Obligations will need to be paid prior to the entry of the Final Order. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay outstanding Third-Party Obligations in an aggregate amount not to exceed \$1,036,241.64 on a final basis, and \$806,884.36 on an interim basis.

16. The Third-Party Providers supply the products and services that the Debtors' Customers would otherwise need to procure directly from the Third-Party Providers. By acting as an intermediary, the Debtors provide a valued service for their Customers, acting a "one-stop-shop" for existing Customers and enabling the Debtors to attract new customers, while also generating revenue and remaining competitive in the marketplace. Therefore, without the ability

to compensate the Third-Party Providers, the Debtors' ability to generate revenue from their Customers would be limited. The Debtors' ability to continue serving their Customers and meeting their performance expectations depends upon the Debtors' ability to offer and effectively operate the Custom Package Program in the ordinary course of their businesses. Therefore, it is of paramount importance that the Debtors be authorized to continue to maintain and administer the Custom Package Program, including partnering with and outsourcing essential products and services from the Third-Party Providers, and to honor all prepetition obligations related thereto.

**B. Incentive Program**

17. In the ordinary course of business, the Debtors provide certain promotional discounts, service credits and adjustments, rebates, allowances, and other incentives in order to solicit and retain Customers (the "**Incentive Program**"), from whom (*as noted above*) the Debtors derive nearly all of their revenue. The Incentive Program is designed primarily to encourage either (a) new Customers to purchase security and monitoring services from the Debtors, or (b) existing Customers to increase their monthly "spend" with the Debtors.

18. For example, through the Incentive Program, the Debtors provide existing Customers with opportunities to receive certain benefits for referring new customers, upgrading their existing home security products, and transferring their existing accounts when moving to new locations. In addition, the Debtors offer certain discounts through the Incentive Program to veterans, military personnel, first responders, hospital personnel, and teachers who become Customers.<sup>5</sup> These benefits include, among other things, \$100.00 gift cards, \$100.00 or \$150.00

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<sup>5</sup> The Debtors also sponsor a scholarship to support students studying law enforcement, law, criminal justice, or a related field (the "**Scholarship Program**"). Under the Scholarship Program, students have the opportunity to submit a security-focused essay to the Debtors for consideration. Scholarship Program applicants must be unrelated to any employees, staff, or extended family of the Debtors' employees or staff. The Debtors generally select five Scholarship Program winners each year, awarding \$3,500.00 in the aggregate amount. The Debtors

account credits, and/or a credit equal to the Customer's first month monitoring bill on upgraded smart home security systems (collectively, the "**Referral and Upgrade Credits**"). As of the Petition Date, the Debtors estimate that approximately \$33,777.70 in Referral and Upgrade Credits have accrued and remain outstanding.

19. The Incentive Program also includes various buy-one-get-one-free promotions and promotional pricing on various products and services, such as flood monitoring and protection (collectively, the "**Promotional Discounts**"). In light of the fact that nearly all of the Promotional Discounts are incurred in the form of custom, built-in price adjustments offered to the Debtors' Customers, the Debtors do not incur a separate cash obligation on account of the Promotional Discounts. By this Motion, the Debtors request the authority, but not the direction, to continue offering Customers the Promotional Discounts and to honor any prepetition obligations outstanding in connection therewith.

20. In order to maintain the Incentive Program, the Debtors both generate their own promotional material and contract with certain marketing consultants and, thereby, incur certain marketing and advertising costs (the "**Incentive Program Costs**"). The Debtors incur approximately \$48,399.73 in monthly Incentive Program Costs, whereas the additional revenue generated from new and upgraded Customer accounts on account of the Incentive Program is approximately double, generating approximately \$16,322.86 in monthly revenue per Incentive Program, plus an effective one-time revenue of \$48,399.73 per Incentive Program. The Debtors estimate that approximately \$50,778.39 in accrued and unsatisfied Incentive Program Costs exist as of the Petition Date, of which \$21,738.55 is expected to become due during the interim period.

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announced the 2020 Scholarship Program winners on August 1 and have already distributed the 2020 Scholarship Program funds to the winners. Accordingly, the Debtors do not believe that any prepetition obligations are outstanding in connection with the Scholarship Program.

21. The Incentive Program has been employed by the Debtors for several years and is consistent with customary industry practice and allows the Debtors to provide their products and services at competitive prices. Refusing to honor the Incentive Program would engender significant ill will among the Debtors' Customers and ultimately would erode the Debtors' Customer base. Therefore, the Debtors hereby request the authority, but not the direction, to maintain and administer the Incentive Program in the ordinary course in order to preserve the value of the Debtors' businesses, and ultimately their estates and to honor any prepetition obligations, including any Referral and Upgrade Credits, Promotional Discounts, and Incentive Program Costs that remain outstanding in connection with the Incentive Program as of the Petition Date.

**C. Dealer Programs**

22. As stated above, the Debtors obtain Customers directly through their existing sales force, employees, and Customer referrals (the "**Direct to Consumer Channel**") as well as indirectly by purchasing Customer accounts through Dealers (the "**Dealer Channel**"). The Debtors obtain a significant portion of their Customers through the Dealer Channel.

23. In the ordinary course of business, the Debtors enter into Alarm Monitoring Purchase Agreements ("**Dealer Agreements**") with unaffiliated Dealers, under which the Dealers agree to sell, on an on-going or one-time basis, and the Company agrees to buy, customer alarm monitoring and maintenance contracts ("**Customer Contracts**"). Typically, the purchase price (the "**Purchase Price**") under the Dealer Agreements is equal to the recurring monthly revenue ("**RMR**") billable under the initial subscriber agreements multiplied by a pre-determined fixed or variable RMR multiple. Following the Debtors' purchase of the Customer Contracts, the Customer Contracts are assigned to the Debtors, at which point the Debtors provide alarm monitoring services to the customers in exchange for direct payment.

24. The Debtors perform most customer service activities in-house, including billing, technical services, customer care and retention, and service support. One exception<sup>6</sup> is for customer accounts that are procured through third parties Alarm.com Incorporated (“**Alarm.com**”), FrontPoint Security Solutions, LLC (“**FrontPoint**”) and Rapid Response Monitoring Services, Inc. (“**Rapid**”), and by the Debtors’ other ancillary cellular and central station monitoring providers outside of Alarm.com and Rapid (the “**Other Cellular and Monitoring Providers**” and collectively, the “**Third-Party Servicers**”). For those customer accounts, the Third-Party Servicers provide customer service to those customer accounts, with Alarm.com servicing approximately 51% of the Debtors total customer accounts (and 69% of accounts with cellular service), FrontPoint servicing approximately 12% of the Debtors’ total customer accounts, Rapid servicing 98% of the central station monitored accounts, and the Other Cellular and Monitoring Providers servicing approximately 23% of the cellular service accounts. The Debtors are required to utilize the Third-Party Servicers as the customer service provider under the services agreements for all accounts that were originated by the Third-Party Servicers. As of the Petition Date, the Debtors owe (a) Alarm.com approximately \$178,050.56 for prepetition services, of which approximately \$148,375.47 will become due during the interim period, (b) FrontPoint approximately \$233,942.85 for prepetition services, of which approximately \$194,952.38 will become due during the interim period, (c) Rapid approximately \$499,239.70 for prepetition services, of which approximately \$416,033.08 will become due during the interim period, and the Other Cellular and Monitoring Providers approximately \$97,395.94 for prepetition services, of which approximately \$73,046.96 will become due during the interim period. Absent

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<sup>6</sup> Another exception is customer installation technicians that are subcontracted by the Debtors. These are described in the Debtors’ motion for authority to pay employee wages and benefits and are noted here for purposes of completeness.

payment to the Third-Party Servicers, the Debtors' ability to provide customer services and support to the customer accounts serviced by the Third-Party Servicers could be jeopardized. The Debtors must maintain customer support services in order to preserve their customer account base. Accordingly, the Debtors seek authorization to pay the prepetition amount owed to the Third-Party Servicers.

25. Additionally, under certain of the Dealer Agreements, the Debtors are required to pay fees, including, without limitation, deferred fees (the "**Deferred Fees**") and holdback fees (the "**Holdback Fees**," together with the Deferred Fees and all other fees under the Dealer Agreements, the "**Dealer Agreement Claims**"). The aggregate amount of Dealer Agreement Claims outstanding as of the Petition Date is approximately \$161,427.43, approximately \$112,999.20 of which is expected to come due during the interim period. If the Debtors fail to pay the Dealer Agreement Claims owed to the Dealers, the Dealers may refuse to provide the Debtors with Customer Contracts and the Debtors' relationships with the Dealers may be irreparably damaged. Because the Debtors' Dealer Channel is a significant source of the Debtors' Customers, loss of those relationships would have a severe negative impact on the Debtors ability to obtain Customers and sustain their business operations and may ultimately cause a deterioration in Customer confidence and resulting Customer loss.

26. Accordingly, by this Motion, the Debtors request authorization, but not direction, to pay outstanding Dealer Agreement Claims, to honor existing Dealer Agreements, and to continue to enter into Dealer Agreements in accordance with prepetition practices and in the ordinary course of business.

**D. Third-Party Managed Fleet**

27. In connection with the Debtors' guard operations and technician operations, in the ordinary course of business the Debtors lease certain vehicles through programs managed by

Automotive Rental Inc. (the “**ARI Programs**”). As of the Petition Date, there are approximately 95 vehicles currently being leased through the ARI Programs, of which approximately 60 are patrol vehicles and 35 are used by company employed technicians. Each vehicle is decal with the Debtors’ local brand. Technicians are assigned specific vehicles and the approximately 60 patrol vehicles obtained through the ARI Program are shared amongst the over 120 patrol guards. As of the Petition Date, approximately \$155,832.14 is outstanding on account of the ARI Programs, of which \$129,860.12 is expected to become due during the interim period.

**E. Billing Adjustments and Infrastructure**

28. In the ordinary course of business, the Debtors bill their Customers for services provided; however, the case-by-case nature of the myriad services that the Debtors provide to their Customers makes the process complex. Thus, in certain circumstances, the Debtors may receive excess funds on account of a particular bill, resulting in an overpayment. Alternatively, in the event that a Customer terminates its contract with the Debtors, a refund may be due (such refunds, the “**Refund Practices**”). As of the Petition Date, approximately \$129,621.31 is outstanding on account of Refund Practices, \$90,734.92 of which is expected to become due during the interim period.

29. In connection with processing the Customer billing and in-house Customer services that the Debtors provide to their Customers, the Debtors utilize certain vendors to manage and maintain their infrastructure. The vendors provide critical services that allow the Debtors to continue to operate 24-hours a day, including customer service and billing platforms, integration services, data management security and help desk support. The Debtors estimate that approximately \$75,000.00 may be owed on account of infrastructure maintenance, of which \$30,000.00 is expected to become due during the interim period.

**F. Credit Card Processing**

30. The Debtors are parties to certain agreements with credit card companies and processors pursuant to which the Debtors are able to accept credit card and debit card payments, subject to certain adjustments, promotional fees and refunds. The Debtors have an agreement with Forte Payment Systems governing the processing and payment authorization of Visa, MasterCard, ACH and Discover transactions, and are parties to an agreement with American Express Company for the transactions under the American Express card.

31. Approximately 40% of the Debtors' Customers are set up to autopay their monthly services on credit card, and approximately 20% of the Debtors' Customers are set up to autopay their monthly services on ACH. Of the remaining 40% that do not autopay for services, 10% have used their credit card to make a one-time payment, and 3% have used ACH to make a one-time payment. The Debtors' continued ability to honor and process credit card and ACH transactions is essential to the Debtors' business operations. Without this ability the Debtors would lose a major method for conducting sales transactions during these Chapter 11 Cases.

32. Under the terms of their agreements, the Debtors are required to pay the credit card companies and processors fees for their services (the "**Credit Card Processing Fees**"). The Debtors request authority to continue to pay the Credit Card Processing Fees in order to avoid interruption of vital credit card processing services and programs. As of the Petition Date, the Debtors estimate that approximately \$115,000.00 is owed in prepetition Credit Card Processing Fees.

**BASIS FOR RELIEF REQUESTED AND APPLICABLE AUTHORITY**

**I. CONTINUATION OF THE CUSTOMER PROGRAMS IS APPROPRIATE UNDER THE DOCTRINE OF NECESSITY.**

33. The Debtors submit that an order authorizing them to (a) continue their Customer Programs in the ordinary course of business as they determine, in their business judgment, to be appropriate; (b) renew, modify, terminate or replace such Customer Programs or agreements that, in their discretion, are necessary and in the best interests of the Debtors' estates, creditors, and other parties in interest; and (c) make payments owing on account of prepetition Customer Programs Obligations, regardless of when the obligations were incurred, is critical to the preservation and successful reorganization of their business and should be authorized under sections 105(a) and 363 of the Bankruptcy Code and the "doctrine of necessity."

34. The bankruptcy court's power to authorize the pre-plan satisfaction of prepetition claims whose payment is critical to the debtor's business is firmly established under the "doctrine of necessity," which "recognizes the existence of the judicial power to authorize a debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the debtor." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989).<sup>7</sup> Although the "doctrine of necessity" pre-dates the Bankruptcy Code, *see Miltenberger v. Logansport C & S W R Co. U.S.*, 106 U.S. 286 (1882), the modern application of the doctrine of

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<sup>7</sup> *Accord In re Pers. Commc'ns Devices, LLC*, 588 B.R. 661, 666 (Bankr. E.D.N.Y. 2018); *see also In re Friedman's Inc.*, No. 09-10161 (CSS), 2011 WL 5975283, at \*3 (Bankr. D. Del. Nov. 30, 2011) ("Normally, a debtor only pays pre-petition, unsecured claims through a confirmed plan of reorganization . . . [h]owever, most courts will allow such payments under the 'doctrine of necessity,' if the debtor establishes that in its business judgment making such payments is critical to the survival of the debtor's business."); *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("The Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11."); *In re C.A.F. Bindery, Inc.*, 199 B.R. 828, 835 (Bankr. S.D.N.Y. 1996), *corrected* (Sept. 4, 1996); *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) ("[T]he court can permit the pre-plan payment of a prepetition obligation when essential to the continued operation of the debtor."); *In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) ("[T]o justify payment of a prepetition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the chapter 11 process.").

necessity is grounded in specific provisions of the Bankruptcy Code, including sections 105(a), 1107(a), and 1108. *See In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (fiduciary duties implicit in section 1107(a) of the Bankruptcy Code to justify the “preplan satisfaction of a prepetition claim” where necessary to preserve going concern value). Courts have located additional support for the pre-confirmation satisfaction of critical claims in section 363(b) of the Bankruptcy Code, under which a court may authorize the use of property outside the ordinary course of business where a debtor “articulate[s] some business justification, other than mere appeasement of major creditors” for such relief. *See Ionosphere*, 98 B.R. at 175.

35. Maintaining the Customer Programs in the ordinary course of business is critically important to the Debtors’ ongoing business. The Debtors must continue to honor the Customer Programs to maximize the value of their business and their revenues. The Debtors believe that, should they fail to honor their obligations under the Customer Programs, their Customers will stop using the Debtors’ services, and may withhold payments otherwise due for services performed. If the Customers perceive that the Debtors are unable or unwilling to honor their Customer Programs obligations, including continuing to provide agreed upon discounts, rebates, refunding or offsetting overpayments or underperformance and making related billing adjustments, honoring existing, and engaging in new, service agreements, providing access to the Debtors’ network of third-party service partners, and providing customer service, the Debtors’ goodwill and business relationships may erode. As such, any delay in honoring the Debtors’ obligations could severely disrupt the Debtors’ efforts to maximize value in the Chapter 11 Cases. Thus, even if the Debtors could avoid payment of or otherwise honoring certain accrued obligations to Customers, the collateral consequences on the Debtors’ go-forward business would vastly exceed whatever modest short-run cost savings the Debtors might achieve. Accordingly, the Debtors seek authorization, but not

direction, to continue the Customer Programs in the ordinary course of business, including making payments with respect to the Customer Programs regardless of whether the claims arise prepetition or postpetition.

36. The relief requested is commonly granted in this and other districts. *See, e.g., In re Melinta Therapeutics, Inc.*, No. 19-12748 (LSS) (Bankr. D. Del. Jan. 30, 2020) (granting debtor authority to continue administering customer programs and paying prepetition amounts owed thereunder); *In re Insys Therapeutics, Inc.*, No. 19-11292 (KG) (Bankr. D. Del. July 3, 2019) (same); *In re Monitronics Int'l, Inc.*, No. 19-33650 (DRJ) (Bankr. N.D. Tex. Jul. 1, 2019) (authorizing debtors to continue to participate in and perform obligations under dealer programs in the ordinary course, including authority to pay prepetition dealer claims); *In re Achaogen, Inc.*, No. 19-10844 (BLS) (Bankr. D. Del. May 3, 2019) (granting debtor authority to continue administering customer programs and paying prepetition amounts owed thereunder); *In re Pernix Sleep, Inc.*, No. 19-10323 (CSS) (Bankr. D. Del. Mar. 22, 2019) (same); *In re Orexigen Therapeutics, Inc.*, No. 18-10518 (KG) (Bankr. D. Del. Apr. 11, 2018) (same); *In re Synergy Pharms., Inc.*, No. 18-14010 (JLG) (Bankr. S.D.N.Y. Jan. 23, 2019).

## **II. THE PROPOSED PAYMENT-PROCESSING PROCEDURES ARE APPROPRIATE.**

37. As set forth above, the Debtors request that all Banks be authorized and directed to honor and process payments on account of certain prepetition obligations to Customers and Dealers in connection with the Customer Programs as directed by the Debtors. The Debtors have sufficient liquidity to pay the amounts delineated in this Motion in the ordinary course of business and have implemented controls to ensure that prepetition claims will not be paid except as authorized by this Court. The Debtors therefore submit that the payment processing procedures described in this Motion are appropriate.

**IMMEDIATE AND UNSTAYED RELIEF IS NECESSARY**

38. The Court may grant the relief requested in this Motion immediately if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; see also *In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549 (Bankr. S.D. Fla. 2008) (holding that Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). In the context of preliminary injunctions, the Third Circuit has interpreted the language “immediate and irreparable harm” to refer to a continuing harm which cannot be adequately redressed by final relief on the merits and for which money damages are inadequate. See, e.g., *Norfolk S. Ry. Co. v. City of Pittsburgh*, 235 F. App’x 907, 910 (3d Cir. 2007) (citing *Glasco v. Hills*, 558 F.2d 179, 181 (3d Cir. 1977)). The harm also must be actual and imminent, not speculative or unsubstantiated. See, e.g., *Acierno v. New Castle Cty.*, 40 F.3d 645, 653-55 (3d Cir. 1994). The Debtors submit that, for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

39. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve value for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**RESERVATION OF RIGHTS**

40. Nothing in this Motion should be construed as (a) authority to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party beneficiary status or bestowing any additional rights on any third-party; or (e) being otherwise enforceable by any third-party. Furthermore, the Debtors reserve the right to contest the amount claimed to be due by any person or entity, including the Customers. The Debtors also reserve the right, in their business judgment, to renew, replace, implement, modify or terminate any Customer Program.

**NOTICE**

41. Notice of this Motion will be given to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Internal Revenue Service; (c) the Securities and Exchange Commission; (d) the parties included on the Debtors' consolidated list of their thirty (30) largest unsecured creditors; (e) the Office of the United States Attorney for the District of Delaware; (f) counsel to the First Lien Agents and the DIP Agents; and (g) the Banks (collectively, the "**Notice Parties**"). As this Motion is seeking "first day" relief, notice of this Motion and any order entered in connection with the Motion will be served on all parties as required by Local Rule 9013-1(m). Due to the urgency of the circumstances surrounding this Motion and the nature of the relief in it, the Debtors respectfully submit that no further notice of this Motion is required.

**NO PRIOR REQUEST**

42. No previous request for the relief sought therein has been made to this Court or any other court.

**CONCLUSION**

**WHEREFORE**, the Debtors respectfully request that this Court enter the Interim Order and the Final Order, each substantially in the form annexed hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Dated: April 25, 2021  
Wilmington, Delaware

**CHIPMAN BROWN CICERO & COLE, LLP**

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—and—

**SKADDEN, ARPS, SLATE, MEAGHER & FLOM LLP**  
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*Proposed Counsel for the Debtors and  
Debtors-in-Possession*

# **EXHIBIT A**

*Proposed Interim Order*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SECURE HOME HOLDINGS LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10745 (xxx)

*(Joint Administration Pending)*

**Related Docket No.** \_\_\_\_\_

***INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO HONOR CERTAIN  
PREPETITION OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN  
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS, AND  
(II) GRANTING RELATED RELIEF***

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an interim order (this “**Interim Order**”) and a Final Order under sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors (a) to continue to honor certain prepetition Customer Programs Obligations, and (b) otherwise continue their customer programs and practices in the ordinary course of business, and (ii) granting related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Secure Home Holdings LLC (1583); ACA Security Systems GP, LLC (5674); ACA Security Systems LP (3613); Hawk Creation, LLC (3525); and My Alarm Center, LLC (0273). The address of the Debtors’ corporate headquarters is 3803 West Chester Pike, Suite 100, Newtown Square, Pennsylvania 19073.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby;

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on an interim basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of businesses, in an amount not to exceed \$2,173,402.73, and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date; *provided, however*, that any Third-Party Provider or Third-Party Servicer that accepts payment pursuant to the authority granted in this Interim Order agrees to supply goods and services to the Debtors postpetition on customary trade terms or on such other favorable terms as are acceptable to the Debtors.
3. The Debtors are authorized, but not direct, to continue to receive, process and honor credit card transactions and debit transactions and continue to pay Credit Card Processing Fees related to such services.
4. Any payment made by the Debtors pursuant to the authority granted herein shall be subject to any orders entered by the Court approving the Debtors' use of cash collateral and entry into the DIP Facility including any budget in connection therewith (collectively, the "**DIP Order**"). If there is any inconsistency between the DIP Order, the Motion, or this Order, the terms of the DIP Order shall control.

5. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors on account of the Customer Programs, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of the Customer Programs; *provided that* the Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition fund transfers, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check. The Banks shall rely on the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Interim Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Interim Order.

6. To the extent the Debtors have not yet sought to remit payment on account of the Customer Programs, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment on account of the Customer Programs.

7. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.

8. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Interim Order.

9. Nothing in the Motion or this Interim Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority

to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party-beneficiary status or bestowing any additional rights on any third-party; or (e) being otherwise enforceable by any third-party.

10. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied, and that the relief requested is necessary to avoid immediate and irreparable harm.

11. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

12. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be effective and enforceable immediately upon entry hereof.

13. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

14. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Interim Order.

15. A final hearing (the "**Final Hearing**") on the full relief requested in the Motion shall be held on \_\_\_\_\_, 2021 at \_\_\_:\_\_\_ a.m./p.m. (**prevailing Eastern Time**). Any objections or responses to the entry of a Final Order on the Motion (each, an "**Objection**") shall be filed on or before **4:00 p.m. (prevailing Eastern Time)** on \_\_\_\_\_, 2021, and shall be served on the following parties: (a) the Debtors, 3803 West Chester Pike, Suite 100, Newtown Square, Pennsylvania 19073 (*Attn: Amy Kothari and Evan Flamm*) (*Email:*

[avk@alarmcapital.com](mailto:avk@alarmcapital.com) and [evan.flamm@myalarmcenter.com](mailto:evan.flamm@myalarmcenter.com)); (b) *proposed* counsel for the Debtors, (i) *Skadden, Arps, Slate, Meagher & Flom LLP*, 300 South Grand Avenue, Suite 3400, Los Angeles, California 90071-3144 (*Attn*: Van C. Durrer, Esquire and Destiny N. Almogue, Esquire) (*Email*: [Van.Durrer@skadden.com](mailto:Van.Durrer@skadden.com) and [Destiny.Almogue@skadden.com](mailto:Destiny.Almogue@skadden.com)); and (ii) *Chipman Brown Cicero & Cole, LLP*, Hercules Plaza, 1313 North Market Street, Suite 5400, Wilmington, Delaware 19801 (*Attn*: William E. Chipman, Jr., Esquire, Robert A. Weber, Esquire and Mark D. Olivere, Esquire) (*Email*: [chipman@chipmanbrown.com](mailto:chipman@chipmanbrown.com); [weber@chipmanbrown.com](mailto:weber@chipmanbrown.com); and [olivere@chipmanbrown.com](mailto:olivere@chipmanbrown.com)); (c) the Office of the United States Trustee for the District of Delaware the Office of the United States Trustee for the District of Delaware (*Attn*: Timothy J. Fox, Jr., Esquire) (*Email*: [timothy.fox@usdoj.gov](mailto:timothy.fox@usdoj.gov)); and (d) counsel to the First Lien Agents and the DIP Agents, *Ropes & Gray LLP*, 1211 Avenue of the Americas, New York, New York 10036-8704 (*Attn*: Gregg M. Galardi, Esquire) (*Email*: [Gregg.galardi@ropesgray.com](mailto:Gregg.galardi@ropesgray.com)). If no objections or responses are filed and served, this Court may enter a final order without further notice or hearing.

16. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Interim Order.

# **EXHIBIT B**

*Proposed Final Order*

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SECURE HOME HOLDINGS LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 21-10745 (xxx)

(Jointly Administered)

Related Docket Nos. \_\_\_\_\_

***FINAL ORDER (I) AUTHORIZING THE DEBTORS TO HONOR CERTAIN  
PREPETITION OBLIGATIONS TO CUSTOMERS AND CONTINUE CERTAIN  
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS, AND  
(II) GRANTING RELATED RELIEF***

Upon the motion (the “**Motion**”)<sup>2</sup> of the Debtors for an Interim Order and a final order (this “**Final Order**”) under sections 105(a), 363, 1107 and 1108 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (i) authorizing the Debtors (a) to continue to honor certain prepetition Customer Programs Obligations, and (b) otherwise continue their customer programs and practices in the ordinary course of business, and (ii) granting related relief; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of their respective tax identification numbers, are as follows: Secure Home Holdings LLC (1583); ACA Security Systems GP, LLC (5674); ACA Security Systems LP (3613); Hawk Creation, LLC (3525); and My Alarm Center, LLC (0273). The address of the Debtors’ corporate headquarters is 3803 West Chester Pike, Suite 100, Newtown Square, Pennsylvania 19073.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion.

U.S.C. §§ 1408 and 1409; and due and sufficient notice of the Motion having been given under the particular circumstances; and it appearing that no other or further notice is necessary; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and after due deliberation thereon; and good and sufficient cause appearing therefor; it is hereby;

**ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is GRANTED on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to continue the Customer Programs in the ordinary course of business and without further order of this Court, and to perform and honor all prepetition obligations thereunder in the ordinary course of businesses, in an amount not to exceed \$2,766,307.67, and in the same manner and on the same basis as if the Debtors performed and honored such obligations prior to the Petition Date; *provided, however*, that any Third-Party Provider or Third-Party Servicer that accepts payment pursuant to the authority granted in this Final Order agrees to supply goods and services to the Debtors postpetition on customary trade terms or on such other favorable terms as are acceptable to the Debtors.
3. The Debtors are authorized, but not direct, to continue to receive, process and honor credit card transactions and debit transactions and continue to pay Credit Card Processing Fees related to such services.
4. Any payment made by the Debtors pursuant to the authority granted herein shall be subject to any orders entered by the Court approving the Debtors' use of cash collateral and entry into the DIP Facility including any budget in connection therewith (collectively, the "**DIP Order**"). If there is any inconsistency between the DIP Order, the Motion, or this Order, the terms of the DIP Order shall control.

5. All Banks are (a) authorized and directed to receive, process, honor and pay any and all prepetition and postpetition checks, drafts, electronic transfers and other forms of payment used by the Debtors on account of the Customer Programs, whether presented before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such payments, and (b) prohibited from placing any holds on, or attempting to reverse, any automatic transfers on account of the Customer Programs; *provided that* the Debtors are authorized to issue new postpetition checks to replace any checks, drafts and other forms of payment, or effect new postpetition fund transfers, which may be inadvertently dishonored or rejected and to reimburse any expenses that may be incurred as a result of any bank's failure to honor a prepetition check. The Banks shall rely on the direction and representations of the Debtors as to which checks and fund transfers should be honored and paid pursuant to this Final Order, and no such Bank shall have any liability to any party for relying on such direction and representations by the Debtors as provided for in this Final Order.

6. To the extent the Debtors have not yet sought to remit payment on account of the Customer Programs, the Debtors are authorized, but not directed, to issue checks or provide for other means of payment of the Customer Programs.

7. The Debtors are authorized, but not directed, to continue, renew, replace, modify, and/or terminate such of their Customer Programs as they deem appropriate, in their discretion, and in the ordinary course of business, without further application to the Court.

8. Any party receiving payment from the Debtors is authorized to rely upon the representations of the Debtors as to which payments are authorized by this Final Order.

9. Nothing in the Motion or this Final Order or the relief granted (including any actions taken or payments made by the Debtors pursuant thereto) shall be construed as (a) authority

to assume or reject any executory contract or unexpired lease of real property, or as a request for the same; (b) an admission as to the validity, priority, or character of any claim or other asserted right or obligation, or a waiver or other limitation on the Debtors' or any other party in interest's ability to contest the same on any ground permitted by bankruptcy or applicable non-bankruptcy law; (c) a promise to pay any claim or other obligation; (d) granting third-party-beneficiary status or bestowing any additional rights on any third-party; or (e) being otherwise enforceable by any third-party.

10. Notice of the Motion satisfies the requirements set forth in Bankruptcy Rule 6004(a).

11. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be effective and enforceable immediately upon entry hereof.

12. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

13. The Debtors are authorized and empowered to take all actions necessary to implement the relief granted in this Final Order.

14. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Final Order.