

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Debtors. <sup>1</sup>	:	(Joint Administration Requested)
	:	
	X	

**EMERGENCY MOTION OF DEBTORS FOR ENTRY  
OF AN ORDER (A) AUTHORIZING DEBTORS TO (I) PAY  
PREPETITION WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER  
COMPENSATION, AND (II) MAINTAIN EMPLOYEE BENEFITS PROGRAMS  
AND PAY RELATED OBLIGATIONS; AND (B) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 2:30 p.m. (prevailing Central Time) on August 21, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on August 21, 2025, at 2:30 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at (832) 917-1510. Once connected, you will be asked to enter the conference room number. Judge Pérez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Pérez's homepage. The meeting code is "JudgePérez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Pérez's homepage. Select the case name, complete the required fields and click "Submit" to complete your appearance.

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases (the "*Chapter 11 Cases*") and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.



ModivCare Inc. and its debtor affiliates in the above-captioned cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully state as follows in support of this motion (this “**Motion**”):

### **RELIEF REQUESTED**

1. By this Motion, the Debtors seek entry of an order (the “**Proposed Order**”), substantially in the form attached hereto: (a) authorizing, but not directing, the Debtors to (i) pay the Employee Obligations (as defined below) and related fees, costs, and expenses incident to the foregoing, including amounts owed to third-party service providers and administrators and taxing authorities; and (ii) maintain, and continue to honor and pay amounts with respect to, the Debtors’ business programs and policies for their employees as they were in effect as of the Petition Date, and as they may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) granting related relief. The Debtors further request that the Court authorize financial institutions to receive, process, honor, and pay any and all checks presented for payment and to honor all funds transfer requests related to such fees, costs, expenses and obligations.

### **JURISDICTION AND VENUE**

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363(b), and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**Bankruptcy Code**”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), rule 9013-1(b) of the Bankruptcy Local Rules for the Southern District of Texas (the

“**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas.

### **BACKGROUND**

4. On the date hereof (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee has been appointed in the Chapter 11 Cases.

5. Contemporaneously with the filing of this Motion, the Debtors filed a motion requesting joint administration of the Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b) and Bankruptcy Local Rule 1015-1.

6. The factual background regarding the Debtors, including their business, their capital structure, and the events leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Relief* (the “**First Day Declaration**”), filed contemporaneously herewith and incorporated herein by reference.<sup>2</sup>

7. ModivCare is a technology-based healthcare services company that helps people (especially those in vulnerable situations) get the care and support they need. The Company works with government and private health insurance plans, as well as individuals, to provide: (a) transportation to and from medical appointments (non-emergency medical transportation totaling over 36 million rides per year); (b) (e.g., in-home personal care, like helping with daily activities);

---

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

(c) remote monitoring of patients' health from home; and (d) community health kiosks and wellness programs. ModivCare employs approximately 23,675 people and operates across 48 states and the District of Columbia, including Texas, with corporate offices in Denver, Colorado. ModivCare's goal is to make it easier for patients to get care, remove barriers that keep people from staying healthy, and improve overall health outcomes.

8. As described in the First Day Declaration, the Debtors are party to that certain Restructuring Support Agreement (the "***RSA***") with certain creditors who collectively hold approximately 90% of the First Lien Claims and approximately 70% of the Second Lien Claims. Pursuant to the RSA, the consenting creditors have agreed to provide \$100 million in debtor-in-possession financing to fund the Chapter 11 Cases and support the comprehensive restructuring transactions set forth in the term sheet attached to the RSA (the "***RSA Term Sheet***"). The RSA Term Sheet contemplates, among other things: (a) the equitization of approximately \$871 million in First Lien Claims and approximately \$316 million in Second Lien Claims; (b) the commitment of the consenting creditors to provide exit financing through the Exit Term Loan Facility; (c) the reorganized Debtors' entry into an exit revolving credit facility to support ongoing operations; and (d) the discharge of the Unsecured Notes Claims and General Unsecured Claims; with holders of such claims entitled to participate in an equity rights offering of up to \$200 million, subject to the terms of the RSA. In total, the transactions contemplated by the RSA Term Sheet are expected to reduce the Debtors' funded debt obligations by approximately \$1.1 billion.

## **THE EMPLOYEE OBLIGATIONS**

### **I. THE DEBTORS' WORKFORCE**

9. As of the Petition Date, the Debtors directly employ approximately 20,160 people (collectively, the "***Employees***"). To supplement the services performed and duties executed by the Employees, the Debtors currently have approximately 1,620 engagements with contract

workers and temporary staff (collectively, “***Contracted Labor***” and together with the Employees, the “***Workforce***”). Contracted Labor, who complete discrete projects and fulfill duties similar to the job functions of Employees, are a critical and cost-effective supplement to the Employees. Certain members of the Workforce employed by Debtor All Metro Aids, Inc. are represented by United Healthcare Workers East and are party to a collective bargaining agreement (the “***Union Employees***”).

10. A numerical breakdown of the Workforce is summarized in the following chart.

<b>Employee Workforce</b>	
<b>Total Employees</b>	<b>20,160</b>
Salaried	870
Hourly	2,140
PCS Employees	17,150
<b>Contracted Labor</b>	<b>1,620</b>
<b>Total Workforce</b>	<b>21,780</b>

11. In the ordinary course of their operations, the Debtors incur a number of obligations to, or on account of, their Workforce, including the Employee Compensation Obligations<sup>3</sup> and the Employee Benefits Obligations<sup>4</sup> (together, the “***Employee Obligations***”). The Debtors estimate that approximately \$63,603,000 of Employee Obligations have accrued in the ordinary course of business but are unpaid as of the Petition Date.

12. The estimated outstanding prepetition amounts for Employee Obligations are summarized in the following chart and are described in further detail below:

---

<sup>3</sup> “***Employee Compensation Obligations***” is defined as the collective of the Employee Wages and Compensation Obligations, the Contracted Labor Obligations, Deductions, Payroll Taxes, Employee Expenses, Director Compensation, Employee Severance Obligations, and Bonus and Commission Obligations (each as defined below).

<sup>4</sup> “***Employee Benefits Obligations***” is defined as the collective of the Health and Welfare Obligations, Leave Obligations, 401(k) Plan Obligations, the Deferred Compensation Expenses, Other Benefit Obligations, and Administrative Fees (each as defined below).

<b>Employee Obligation</b>	<b>Approx. Amount Outstanding as of Petition Date</b>
<b>Employee Compensation Obligations</b>	<b>\$ 49,787,000</b>
<i>Employee Wages and Compensation Obligations</i>	\$ 24,480,000
<i>Contracted Labor Obligations</i>	\$9,390,000
<i>Deductions</i>	\$ 2,650,000
<i>Payroll Taxes</i>	\$ 6,750,000
<i>Employee Expenses</i>	\$125,000
<i>Employee COBRA Obligations</i>	\$30,000
<i>Director Compensation</i>	\$0
<i>Bonus and Commission Obligations</i>	\$6,362,000
<b>Employee Benefits Obligations</b>	<b>\$ 13,816,000</b>
<i>Health and Welfare Obligations</i>	\$ 4,021,000
<i>Leave Obligations</i>	\$5,750,000
<i>401(k) Plan Obligations</i>	\$1,120,000
<i>Deferred Compensation Expenses</i>	\$2,500,000
<i>Other Benefit Obligations</i>	\$215,000
<i>Administrative Fees</i>	\$210,000
<b>Total Estimated Prepetition Employee Obligations</b>	<b>\$ 63,603,000</b>

## II. EMPLOYEE COMPENSATION AND BENEFITS

### A. Employee Wages and Compensation Obligations

13. In the ordinary course of business, the Debtors incur and pay obligations relating to Employees' salaries, wages and other compensation (the "*Employee Wages and Compensation Obligations*"). Employee Wages and Compensation Obligations are paid on a weekly or bi-weekly basis by direct deposits through electronic transfers of funds to Employees' bank accounts or by issuing checks to Employees.

14. The Debtors' average monthly payroll for Employees is approximately \$65,620,000. As of the Petition Date, the Debtors estimate that there is approximately \$24,480,000 in accrued but unpaid Employee Wages and Compensation Obligations. For the avoidance of doubt, the Debtors do not request authority by this Motion to pay any accrued amounts owed to Employees in excess of the statutory cap set forth in section 507(a)(4) of the Bankruptcy Code.

**B. Contracted Labor Obligations**

15. The Debtors engage Contracted Labor in various capacities, such as independent contractors, temporary staff, and independent consultants, who provide accounting and financial services, project management services, IT services, business consulting services, procurement services, healthcare services, human resources services, and many of the professional and operational services also performed by employees. Contracted Labor fills the immediate business needs of the Debtors with a flexible workforce enabling the Debtors to meet their operational needs in a cost-effective manner. The terms of a given Contracted Labor engagement vary based on location: some are paid an hourly rate while others receive shift pay. Additionally, the Debtors pay for certain Contracted Labor directly and other Contract Labor via the use of staffing agencies (collectively, the “*Staffing Agencies*”). Depending on the terms of a given Contracted Labor engagement, payment for services rendered may take the form of conventional fee payments among other kinds of compensation described herein.

16. As of the Petition Date, the Debtors estimate they pay approximately \$6,140,000 per month on account of compensation to Contracted Labor (the “*Contracted Labor Obligations*”). The Debtors estimate that as of the Petition Date they owe approximately \$9,390,000 on account of accrued but unpaid Contracted Labor Obligations.

**C. Deductions and Payroll Taxes**

17. For each applicable pay period, the Debtors deduct certain amounts from each Employee’s gross pay, including without limitation, garnishments, child support, spousal support, service charges, and other similar deductions and other pre- and after-tax deductions payable pursuant to certain employee benefits plans discussed herein (such as an Employee’s share of healthcare benefits and insurance premiums, contributions under flexible spending plans, and retirement savings plan, legally ordered deductions, and other miscellaneous deductions)

(collectively, the “**Deductions**”). The Debtors make Deductions of approximately \$7,090,000 from Employees’ pay per month, which the Debtors remit to the appropriate third-party recipients. It is possible the Debtors may not have forwarded certain of the Deductions to the appropriate third party as of the Petition Date. As of the Petition Date, the Debtors estimate that Deductions of approximately \$2,650,000 are accrued but unpaid.

18. In addition to the Deductions, the Debtors are required by law to withhold from the Employee Wages and Compensation Obligations amounts related to federal, state, and local income taxes, as well as social security and Medicare taxes (collectively, the “**Withholding Taxes**”) and to remit the same to the appropriate taxing authority (collectively, the “**Payroll Taxing Authorities**”). Further, the Debtors are required to make matching payments from their own funds on account of social security and Medicare taxes and to pay, based on a percentage of gross payroll and subject to state-imposed limits, additional amounts to the Payroll Taxing Authorities for, among other things, state and federal unemployment insurance (collectively, the “**Employer Payroll Taxes**” and, together with the Withholding Taxes, the “**Payroll Taxes**”). As of the Petition Date, the Debtors estimate that Payroll Taxes of approximately \$6,750,000 are accrued but unpaid.

#### **D. Employee Expenses**

19. Employees are entitled to reimbursement of certain reasonable and necessary expenses incurred while performing their employment duties, including job-related travel and other business-related expenses (the “**Employee Expenses**”). Certain Employee Expenses are charged to Debtor-owned credit cards issued to select Employees. Additionally, the Debtors reimburse Employees for other Employee Expenses paid directly out-of-pocket by Employees upon submission of appropriate documentation to the Debtors. The administration of Employee Expense reimbursements is managed by Concur (“**Reimbursement Administrator**”). The majority of the Employee Expenses incurred are related to job-related travel, along with other related out-



of-pocket costs. Because of the irregular nature of requests for Employee Expense reimbursement, the Debtors cannot determine the exact amount of Employee Expense reimbursements outstanding at any given time. However, based on historical monthly averages, the Debtors estimate that there is approximately \$125,000 of outstanding Employee Expenses as of the Petition Date.

#### **E. Employee Severance Obligations**

20. In the ordinary course of business, the Debtors maintain two severance policies (the “**Severance Policies**”)<sup>5</sup> through which certain Employees, including both Insiders<sup>6</sup> and non-Insiders, are eligible to receive severance benefits upon a qualifying termination of employment. The amount of severance payable under the Severance Policies varies from a minimum of one week to a maximum of one year pay, depending on the Employee’s role and length of employment. In addition to severance pay, Employees may also be entitled to additional severance benefits.

21. Upon termination, former Employees are entitled to continue their coverage under the Medical Benefits, Insurance Plans, and Flexible Spending Accounts (each as defined below) under the Consolidated Omnibus Budget Reconciliation Act (“**COBRA**”), which allows covered Employees and their family members to continue their group coverage at a subsidized rate by the Debtors to allow the former Employees to pay the same rate they did as an Employee (the “**COBRA Obligations**,” and together with the obligations under the Severance Policies, the “**Employee Severance Obligations**”). As of the Petition Date, the Debtors believe that there are

---

<sup>5</sup> Certain Employees who are covered by the Severance Policies constitute Insiders of the Debtors. The Debtors seek authority to continue the Severance Policies in the ordinary course of business postpetition with respect to both Insider Employees and non-Insider Employees, subject to the limitations set forth in section 503(c) of the Bankruptcy Code. For the avoidance of doubt, however, the Debtors do not by this Motion seek authority to pay any amounts with respect to the Severance Policies to Insider Employees to the extent such payments are subject to or prohibited by section 503(c) of the Bankruptcy Code, and the Debtors reserve their rights to file a subsequent motion seeking approval from this Court to make any such payments to Insiders under the Severance Policies.

<sup>6</sup> “**Insiders**” are persons who meet the definition of “insider” provided in section 101(31) of the Bankruptcy Code.

no amounts owing on account of Employee Severance Obligations and approximately \$30,000 in unpaid amounts to providers of the Medical Benefits on account of COBRA Obligations.

**F. Director Compensation**

22. In the ordinary course of business, the Debtors pay fees (the “**Director Compensation**”) for the services of non-Employee directors (collectively, the “**Directors**”) of the board of Directors of Debtor ModivCare Inc. (the “**Board**”). As compensation, each Director receives an annual cash retainer of \$85,000, with additional retainers for roles such as Chairperson of the Board and various committee positions, ranging from \$7,500 to \$240,000 per year (collectively, the “**Retainers**”), which are payable monthly, in cash, subject to continued service. Each Director also receives an annual equity retainer with a target value of \$130,000, based on the closing stock price of the Debtor’s common stock as reported on the Nasdaq Stock Market on the grant date. For the period of June 17, 2025 to June 16, 2026, in lieu of the annual equity retainer, Directors will receive a retainer payment (the “**Replacement Retainer**”) each quarter, in cash instead of equity, subject to continued service, totaling \$130,000 annually. The Retainers and the Replacement Retainer are prorated for partial service periods, and Directors must repay any portion of the Replacement Retainer for periods after ceasing service. Directors are reimbursed for reasonable expenses incurred for Board and committee meetings. The Directors are paid on monthly, quarterly, and annual bases in advance for services conducted and therefore no amounts are owing on account of Director Compensation as of the Petition Date.

**G. Bonus and Commission Obligations**

23. In the ordinary course of business, eligible Employees may earn bonuses (“**Bonus and Commission Obligations**”) under various bonus and incentive programs, such as the Short-Term Incentive Plan, Non-Insider Retention Bonus Plan, Commission Program, and Other Bonus Programs (each as defined below, and collectively, the “**Bonus and Commission Programs**”).

Generally, payments under the Bonus and Commission Programs are only owed to an Employee if the Employee is still employed by the Debtors at the time such payment is due.<sup>7</sup> This Motion does not seek to continue any of the Bonus and Commission Programs with respect to Insiders.

### **1. *Short Term Incentive Plan***

24. The Debtors offer discretionary bonuses under a short term incentive plan (the “***Short-Term Incentive Plan***”) to certain eligible Insider and non-Insider Employees, paid in cash installments annually, with payment amounts contingent on the Debtors’ performance. The Debtors have recently finalized the annual bonus structure, with the compensation committee recommending, and the Board approving, a target bonus under the Short-Term Incentive Plan of approximately \$6,300,000, subject to increase if certain expectations are met. These bonuses are expected to be paid out in March 2026.

25. For the avoidance of doubt, the relief sought with respect to the Short-Term Incentive Plan does not include payment of any obligations to any Insider, and the Debtors will not make any bonus or incentive payments to any Insiders without further order of the Court.

### **2. *Non-Insider Retention Bonus Plan***<sup>8</sup>

26. Prior to the Petition Date, the Debtors implemented a discretionary retention bonus program to retain approximately 65 non-Insider Employees (the “***Non-Insider Retention Bonus Plan***”) to encourage key Employees to remain with the Debtors, prevent business interruption, and ensure key Employees remain motivated. The Non-Insider Retention Bonus Plan is crucial to

---

<sup>7</sup> The Debtors pay earned Commissions to former Employees on or as soon as possible after the time of termination of their employment.

<sup>8</sup> In the interest of full disclosure, the Debtors paid retention bonuses to certain Employees, including Insiders, on or about August 17, 2025. These bonuses must be repaid if the recipient does not continue working for the Debtors for the specified retention period. By this Motion, the Debtors do not seek approval or authorization from the Court or any other relief with respect to such payments to Insiders, which were made prior to the Petition Date.

retaining these Employees who are critical to the operation of the Debtors' business. Under the Non-Insider Retention Bonus Plan, bonuses will come due in December 2025 and July 2026 for most eligible Employees while bonuses to certain Employees are unknown and contingent on the sale and wind down of certain of the Debtors' businesses (the "***Retention Period***"), and typically, each participant must remain employed through the applicable Retention Period to be eligible. An otherwise eligible Employee who resigns voluntarily or is terminated by the Debtors for cause prior to any vesting date will not be eligible to receive any retention payments for such Retention Period.

27. As of the Petition Date, the Debtors have approved distributions of \$5,830,000 on account of the Non-Insider Retention Bonus Plan. The Debtors estimate that the total amount that will come due under the Non-Insider Retention Bonus Plan after the Petition Date and during the pendency of the Chapter 11 Cases is approximately \$2,208,000.

### **3. *Commission Program***

28. The Debtors maintain a commission program (the "***Commission Program***") under which they pay commissions (the "***Commissions***") to certain eligible Employees. The Employees earn commissions for meeting certain performance metrics for the sale of the Debtors' services to their clients. Specifically, the performance metrics are based on client revenue retention, customer satisfaction scores, annual contract value, contract renewals, requests for proposal quality, marketing, territory activation, client referral generation, new revenue, and business development, subject to change or modification of the underlying performance metrics. Payments and payout structures are made to Employees on account of Commissions on a weekly, monthly, quarterly or annual basis, depending on the particular incentive.

29. As of the Petition Date, the Debtors estimate that approximately \$109,000 of prepetition Commissions are accrued and unpaid to sales members under the Commission

Program. The postpetition amounts that will become due and owing under the Commission Program throughout the Chapter 11 Cases is difficult to estimate due to the highly variable nature of Commissions; however, as a reference point—year-to-date, the Debtors paid \$1,195,000, an average of approximately \$171,000 per month in Commissions.<sup>9</sup>

#### 4. *Other Bonus Programs*

30. The Debtors maintain other bonus and incentive programs including: (i) referral bonuses contingent on the referred Employee being hired by the Debtors, making the eligible Employee who referred them eligible for a two-tiered employment bonus at the 6-week and 6-month marks of the referred Employee's employment by the Debtors; (ii) relocation bonuses based on the management level, paid as a lump sum and typically paid within 30 days of the relocation offer with a 2-year claw back provision where the Employee must repay 100% of the relocation bonus if the Employee is no longer employed with the Debtors within one year of receiving payment and 50% of the relocation bonus if the Employee is no longer employed with the Debtors within two years of receiving payment; and (iii) ordinary course incentive payments, including those tied to payroll for PCS Employees (the "*Other Bonus Programs*").

31. As of the Petition Date, the Debtors estimate they owe approximately \$423,000 on account of the Other Bonus Programs. The Debtors estimate that the total amount that will come due under the Other Bonus Programs after the Petition Date and during the pendency of the Chapter 11 Cases is approximately \$685,000.

---

<sup>9</sup> The Debtors also offered certain Employees long term equity-based incentive awards (the "*LTI Plan*") in the form of stock options, stock appreciation rights, performance shares, and restricted stock units, based on individual award agreements with the applicable Employee. The Debtors have paused the LTI Plan and do not intend to issue any new awards under the LTI Plan during the pendency of the Chapter 11 Cases.

### III. EMPLOYEE BENEFIT OBLIGATIONS

32. In the ordinary course of business, the Debtors have established various benefit plans and policies for their Employees, which are described in more detail below. The Debtors' benefit options are made available to eligible Employees, but Contracted Labor does not receive Employee Benefits (as defined below). The Debtors deduct specified amounts from the Employees' wages in connection with certain of the Employee Benefits, such as medical insurance (depending on the plan chosen by the Employee) and 401(k) Plan contributions. Each of the various categories of Employee Benefits is described in further detail below.

#### A. Health and Welfare Obligations

33. The Debtors sponsor several health and welfare plans to provide benefits to the Employees, including, without limitation, the Medical Benefits, Flexible Spending Accounts, and Insurance Plans.<sup>10</sup> As of the Petition Date, the Debtors estimate that approximately \$4,021,000 is accrued and unpaid on account of obligations due under such health and welfare plans (such obligations, the "*Health and Welfare Obligations*").

##### 1. Medical Benefits

34. The Medical Benefits are administered by certain medical and healthcare vendors including: United Healthcare ("*United Healthcare*");<sup>11</sup> Partners Direct Health ("*PDH*"); MagnaCare ("*MagnaCare*"); Imagine Health ("*Imagine Health*"); Cigna ("*Cigna*"); Wellfleet

---

<sup>10</sup> "*Medical Benefits*" include all coverage under the Medical Plans (as defined below). The Debtors offer flexible spending ("*FSA*") and health savings accounts ("*HSA*") and together with the FSA, the "*Flexible Spending Accounts*"). The Debtors' "*Insurance Plans*" include the MetLife Insurance Plans and the Other Insurance Plans (each as defined below).

<sup>11</sup> The Debtors remit administrative fees in connection with the United Healthcare Medical Plans monthly, while claims are generally paid by the Debtors as incurred. The United Healthcare vision care plan (referenced below) and fees tied to CBIZ as the Debtors' medical broker are included in the administrative fees billed by United Healthcare.

Insurance Company (“*Wellfleet*”); TrueCardRx (“*TrueCardRX*”);<sup>12</sup> OptumRx (“*OptumRX*”); VeracityRX (“*VeracityRX*”); Mayo Clinic (“*Mayo Clinic*”); and Cleveland Clinic (“*Cleveland Clinic*” and together with United Healthcare, PDH, MagnaCare, Imagine Health, Cigna, Wellfleet, TrueCardRX, OptumRX, VeracityRX, and Mayo Clinic the “*Medical Providers*”).<sup>13</sup>

35. As part of the Medical Benefits, medical coverage is provided to Employees (excluding PCS Employees) through five medical plans and a vision care plan administered by United Healthcare, and medical coverage is provided to PCS Employees through eight medical plans provided by PDH, MagnaCare and Cigna, and administered by Imagine Health based on the domicile of each PCS Employee. Medical Provider Wellfleet also provides hospital extension benefits to PCS Employees. Prescription drug benefits are provided through TruCardRX, OptumRX and VeracityRX for Employees (collectively, the “*Medical Plans*”). The Debtors are self-insured with respect to certain of the Medical Plans, and the Debtors pay monthly stop-loss premiums totaling approximately \$110,000 per month to United Health. The Debtors pay the Medical Providers approximately \$6,724,000 per year (in the aggregate) to administer all of the Medical Plans. The Debtors estimate that approximately 3,300 Employees are covered under the Medical Plans as of the Petition Date. As of the Petition Date, the Debtors estimate that the Medical Providers are owed approximately \$3,037,000 in accrued but unpaid amounts on account of the Medical Plans.

---

<sup>12</sup> TruCardRX is the administrator of the prescription drug benefits plans under four of the Medical Plans and Ventegra is the pharmacy. The Debtors pay weekly invoices to Ventegra for claims and monthly invoices to TruCardRX for administrative costs.

<sup>13</sup> PDH, MagnaCare, Imagine Health, Cigna, Wellfleet, and VeracityRX are the Medical Providers exclusively for PCS Employees. PDH is the network option for PCS Employees residing outside New York and Massachusetts, while MagnaCare and Cigna are the network options for PCS Employees residing within New York and Massachusetts, respectively. Imagine Health is the administrator for the Medical Plans that are offered exclusively to PCS Employees.

## 2. *Flexible Spending Accounts*

36. ***Health Savings Accounts.*** Eligible Employees who enroll in HSA Medical Plans may qualify for an HSA administered by Optum Bank (“***HSA Administrator***”)<sup>14</sup> which allows eligible Employees to make pre-tax contributions into an HSA, which can be used to pay eligible medical, prescription, dental or vision expenses, as well as deductibles and co-payments. The Debtors make annual contributions to eligible Employees’ HSAs with a \$300 seed deposit. Additionally, the Debtors offer a 100% match on contributions, up to \$500 (including the seed deposit) for individual-only coverage, totaling \$750 for Employees with a spouse, and totaling \$1000 for Employees with family coverage. The Debtors estimate that approximately 700 Employees have an HSA as of the Petition Date.

37. ***Flexible Spending Accounts.*** The Debtors offer eligible Employees an FSA program (the “***FSA Program***”) administered by WEX Inc.<sup>15</sup> (“***FSA Administrator***”), which enables eligible Employees to set aside money on a pre-tax basis to be used to pay most out-of-pocket medical, prescription, vision and dental care expenses for Employees and their dependents, and day care expenses for dependent children. As of the Petition Date, the Debtors estimate that approximately 310 Employees have an FSA. During the last twelve months, the Debtors paid approximately \$25,000 in fees to FSA Administrator on account of the administration of the Flexible Spending Accounts. As of the Petition Date, approximately \$7,000 is owed on account of the Flexible Spending Accounts.

---

<sup>14</sup> The Debtors pay Optum Bank a monthly service fee tied to each Health Savings Account.

<sup>15</sup> The Debtors additionally remit payments to WEX, Inc. monthly for COBRA administration and commuter benefits.



### 3. *Insurance Plans*

38. ***MetLife Insurance Plans.*** MetLife (“***MetLife***”) administers a basic life insurance plan, an employee-paid and non-employee paid voluntary life and dependent life insurance plan, an AD&D insurance plan, an employee-paid and non-employee paid short-term disability plan, and an employee-paid and non-employee paid long-term disability plan, a dental plan, a vision plan, legal insurance, critical illness, and hospital indemnity (confinement) (collectively, the “***MetLife Insurance Plans***”) for all Employees.<sup>16</sup> The Debtors estimate that approximately 3,500 Employees participate in the MetLife Insurance Plans. As of the Petition Date, the Debtors estimate that they owe approximately \$883,000 in accrued but unpaid amounts to MetLife for the MetLife Insurance Plans.

39. ***Other Insurance Plans.*** The Debtors also offer Employees access to purchase voluntary accident, critical illness, and hospital indemnity (confinement), life insurance, long-term disability, and general health coverage (collectively, the “***Other Insurance Plans***”) through numerous insurance providers (the “***Other Insurance Providers***”). As of the Petition Date, the Debtors estimate that they owe approximately \$94,000 in accrued but unpaid amounts to the Other Insurance Providers in connection with the Other Insurance Plans.

#### **B. Leave Obligations**

40. As described in more detail below, the Debtors provide eligible Employees with paid and unpaid leave benefits (the “***Leave Policies***”),<sup>17</sup> including paid time off, sick time, floating time, vacation time, family and medical leave, voting leave, bereavement days, military leave, jury duty, and other permitted purposes (the “***Leave Obligations***”).

---

<sup>16</sup> The critical illness, hospital indemnity (confinement), voluntary accident, and vision plan under the MetLife Insurance Plans are provided exclusively to PCS Employees.

<sup>17</sup> The Leave Policies covering PCS Employees and Union Employees substantially overlap with the Leave Policies for other eligible Employees but may differ in certain circumstances.

41. Certain eligible Employees accrue paid sick time (“***Paid Sick Time***”), which authorizes Employees to take leave for health and safety reasons, including personal or family illness, medical appointments, public health emergencies, exposure to communicable diseases, and situations involving domestic violence or other safety concerns. Paid Sick Time accrues at one hour per 30 hours worked, with a maximum of 120 hours, and can be carried over annually. Requests for Paid Sick Time require notice to supervisors, and verification may be needed for absences over four days. Specific provisions apply to jurisdictions including, Colorado, Minnesota, New York City, Philadelphia, Seattle, San Francisco, Illinois and Washington, addressing local laws and additional leave entitlements.

42. Certain eligible Employees receive up to five floating days annually, starting January 1<sup>st</sup>, to be used for any purpose, such as personal holidays or special occasions. Floating days are prorated based on hire date in the first year and must be approved by the Employee’s supervisor. Unused floating days are forfeited at year-end unless required by applicable law. Employees cannot use floating days during resignation notice periods, and unused days are not paid out upon employment termination, except in certain states where payment is required.

43. The Debtors provides paid vacation time to eligible Employees. Vacation accrues based on hours worked and length of service. Unused vacation can be carried over, with limits, and is forfeited at year-end. Vacation requests require supervisor approval, and Employees cannot use accrued vacation during resignation notice periods. Unused vacation is paid out upon termination in certain states, as required by law.

44. The Debtors offer certain eligible Employees flexible paid time off (“***Flexible Time Off***”) for vacation and personal time. Flexible Time Off is not accrued, has no carryover, and is not paid out upon employment termination. Employees must obtain manager approval for Flexible

Time Off, which is subject to business needs and performance standards. Specific provisions apply to jurisdictions including Illinois addressing local laws and additional requirements.

45. As of the Petition Date, the Debtors estimate that the value of accrued and unused or unpaid Leave Obligations is approximately \$5,750,000 in the aggregate.

**C. 401(k) Plan Obligations**

46. Eligible Employees may elect to participate in the Debtors' 401(k) savings plan, a qualified defined contribution plan for retirement savings for eligible Employees pursuant to section 401 of the Internal Revenue Code (the "**401(k) Plan**"). The 401(k) Plan is administered by ADP Retirement Services ("**ADP Retirement**"). Employees are eligible to participate in the 401(k) Plan on the first day of the month following 30 days of employment. The Debtors offer a company match that equals 100% of the first six percent of contributions made by Employees (collectively, the "**401(k) Plan Obligations**"). As part of the 401(k) Plan, the Debtors also offer a "Roth 401(k)" option to Employees. The Debtors do not pay ADP Retirement a direct fee for the administration of the 401(k) Plan. Rather, ADP Retirement collects a fee from individual participant accounts as payment for its services. As of the Petition Date, the Debtors estimate that they owe \$1,120,000 in 401(k) Plan Obligations.

**D. Deferred Compensation Plan**

47. The Debtors also sponsor a deferred compensation plan for certain current and former Employees, the Modivcare Inc. Executive Deferred Compensation Plan (the "**Deferred Compensation Plan**"). Eligible Employees may defer up to 80% of their annual base salary and 100% of their earned annual cash bonuses, pre-tax. Employee deferrals are 100% vested and the Debtors' contribution fully vests after three years of service. There are 4 current Employees (none of whom are Insiders) and 9 former Employees who have deferred compensation pursuant to the Deferred Compensation Plan. As of the Petition Date, there are approximately \$2,500,000 in total

deferred compensation obligations under the Deferred Compensation Plan (the “**Deferred Compensation Plan Obligations**”). However, not all of this amount is a current cash payment obligation as a participating Employee is only entitled to cash payment distributions in the event such Employee leaves the Debtors’ employment, otherwise has a pre-elected scheduled distribution, or hardship distributions requested by such Employee. The obligations under the Deferred Compensation Plan are backed by Debtor-owned life insurance policies (the “**COLI Policies**”), purchased on the lives of Deferred Compensation Plan participants from Brighthouse Life Insurance Company (“**Brighthouse**”). As of the Petition Date, the cash value of the COLI Policies is approximately \$4,700,000. The COLI Policies are held in a rabbi trust (the “**Rabbi Trust**”) for which Broadridge a Matrix Trust Company (“**Matrix**”) serves as trustee and PEN-CAL Administrators, Inc., a wholly owned subsidiary of Voya Financial (“**PEN-CAL**”) serves as the recordkeeper for the Deferred Compensation Plan. Additionally, Mullin Barens Sanford Financial & Insurance Services, LLC (“**MBS**”) is the plan consultant and CBIZ is the investment advisor for the Deferred Compensation Plan. By this Motion, the Debtors request the authority to maintain the Deferred Compensation Plans. The Debtors do not seek authority to make distributions under the Deferred Compensation Plans pursuant to this Motion.

48. The Debtors pay Matrix approximately \$35,000 annually for its services as trustee of the Rabbi Trust, PEN-CAL approximately \$10,000 annually for its services as recordkeeper, and CBIZ approximately \$15,000 annually for its services as investment advisor on account of the COLI Policies. MBS receives between approximately \$7,500 and \$15,000 through revenue generated on account of the COLI Policies. Brighthouse receives premium payments generated directly on account of the COLI Policies. As of the Petition Date, the Debtors do not believe they owe any amounts to Matrix, PEN-CAL, Brighthouse, MBS, or CBIZ on account of the Rabbi Trust

or the related COLI Policies (collectively, the “*Deferred Compensation Plan Fees*,” and together with the Deferred Compensation Plan Obligations, the “*Deferred Compensation Expenses*”). The Debtors request the authority to continue making payments to Matrix, PEN-CAL, Brighthouse, MBS and CBIZ on a postpetition basis to maintain the Rabbi Trust, Deferred Compensation Plan and COLI Policies, respectively.

#### **E. Other Benefit Obligations**

49. The Debtors provide eligible Employees with the opportunity to participate in a number of miscellaneous benefit programs (collectively, the “*Other Benefit Programs*” and, together with the Health and Welfare Plans, the Leave Policies, the 401(k) Plan, the Deferred Compensation Plan, and Other Benefit Programs, the “*Employee Benefits*”). The Debtors offer the Other Benefit Programs to Employees at no cost to the Employees, and the Debtors incur obligations related to the Other Benefit Programs in the ordinary course of business (the “*Other Benefit Obligations*”), such as described more fully below. The Other Benefit Programs currently include, but are not limited to, the following:

- i. Employee Assistance Program. The Debtors provide an Employee Assistance Program (the “*EAP*”) through a plan administered by ComPsych.<sup>18</sup> The EAP provides Employees with professional and confidential counseling services regarding a range of work and personal life issues.
- ii. CBIZ Fit Financial Wellbeing. The Debtors offer a financial wellness program administered by CBIZ FIT to provide Employees with confidential guidance on budgeting and managing debt, retirement planning and investing, college and financial planning, and insurance and taxes.
- iii. Employee Perks Program. The Debtors provide Employees with an employee perks program, which provide Employees access to rewards and perks on thousands of brands in a variety of categories including automobiles, electronics, events, food and dining, health and wellness, insurance, and travel.

---

<sup>18</sup> The Debtors remit payments quarterly based on eligible Employee headcount. Additionally, the Debtors pay ComPsych for FMLA, ADA, and additional leave management.

- iv. Gym Memberships. The Debtors provide Employees with gym memberships administered through service provider Active & Fit.
- v. Reimbursement Programs. The Debtors provide eligible Employees with tuition reimbursements in connection with secondary education and cell phone reimbursements.

50. As of the Petition Date, the Debtors estimate that, in the aggregate, approximately \$215,000 is owed in Other Benefit Obligations.

#### **F. Administrative Fees**

51. As noted herein, the Debtors rely on certain third-party providers or administrators to administer and deliver other payments and benefits to the Employees. The Debtors pay additional administrative fees (the “*Administrative Fees*”) to: (i) ADP, in connection with the administration of Debtors’ payroll; (ii) Concur, in connection with the administration of business expense reimbursement; (iii) the FSA Administrator and HSA Administrator in connection with the administration of the Flexible Spending Accounts; (iv) United Healthcare and Imagine Health in connection with certain of the Medical Plans; and (v) various other third parties, in connection with the administration of miscellaneous benefits (collectively, the “*Administrators*”). As of the Petition Date, the Debtors estimate that they owe approximately \$210,000 in accrued but unpaid Administrative Fees to the Administrators.

### **BASIS FOR RELIEF**

#### **I. PAYMENT OF EMPLOYEE OBLIGATIONS IS WARRANTED UNDER SECTIONS 363(B) AND 105(A) OF THE BANKRUPTCY CODE.**

52. The Court may grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . .” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy

Code upon a finding that such use is supported by sound business reasons. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 435 (5th Cir. 2016) (noting that section 363 “requires that a sale of the estate’s assets be supported by an articulated business justification, good business judgment, or sound business reasons”) (internal quotation and citation omitted); *Inst. Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (internal citation omitted); *see also In re Crutcher Res. Corp.*, 72 B.R. 628, 631 (Bankr. N.D. Tex. 1987) (“A Bankruptcy Judge has considerable discretion in approving a § 363(b) sale of property of the estate other than in the ordinary course of business, but the movant must articulate some business justification for the sale....”); *In re Terrace Gardens Park P'ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989) (“[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (internal citation omitted).

53. In addition, the Court has authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein because such relief is necessary for the Debtors to carry out their duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see CoServ*, 273 B.R. at 491-93 & n.6 (holding that

sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay prepetition claims); *see also In re Tusa-Expo Holdings, Inc.*, Case No. 08-45057-DML-11, 2008 WL 4857954, at \*1 (Bankr. N.D. Tex. Nov. 7, 2008); *CEI Roofing*, 315 B.R. at 56. Moreover, Bankruptcy Rule 6003 itself implies that the payment of prepetition obligations may be permissible within the first twenty-one (21) days of a case where doing so is “needed to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of the Debtors’ estates.

54. The relief requested by this Motion represents a sound exercise of the Debtors’ business judgment, is necessary to avoid immediate and irreparable harm to the Debtors’ estates, and is justified under sections 105(a) and 363(b) of the Bankruptcy Code. Authorizing the Debtors to pay the Employee Obligations to the Workforce will benefit the Debtors’ estates and their creditors by allowing the Debtors’ business operations to continue without interruption. Indeed, without the relief requested herein being granted, the Debtors are at risk of significant Employee attrition, as the Debtors’ Employees may seek alternative opportunities, potentially with the Debtors’ competitors. Employee attrition would cause the Debtors to incur additional expenses to find appropriate and experienced replacements, severely disrupting the Debtors’ operations. Additionally, the loss of valuable employees would deplete the Debtors’ workforce, thereby hindering the Debtors’ ability to service its customers and likely diminish the Debtors’ ability to carry out their chapter 11 strategy and successfully reorganize under the Plan.

55. In addition, failure to satisfy the prepetition Employee Obligations will likely jeopardize Employee morale and loyalty at a time when Employee support is critical to the Debtors’ business. The majority of the Debtors’ Employees rely exclusively on their



compensation, benefits, and reimbursement of expenses to satisfy their daily living expenses. These Employees will be exposed to significant financial difficulties and other hardships if the Debtors are not permitted to honor their obligations for unpaid compensation, benefits and reimbursable expenses. Similarly, if the Court does not authorize the Debtors to honor their various obligations under the Employee Benefits, many Employees will lose access to health coverage at a time when the Debtors need their Employees to perform their jobs at peak efficiency. The loss in morale and potential distraction of Employees worrying about paying their bills and their healthcare costs will harm the Debtors' ability to operate and serve customers at their standard high levels, causing an erosion in the Debtors' value.

56. The Contracted Labor performs key services for the Debtors, many of which the Employees do not otherwise provide. Accordingly, the Debtors submit that it is appropriate for the Court to authorize the Debtors to satisfy the Contracted Labor Obligations as set forth herein.

57. In addition, reimbursement of Employee Expenses is necessary because any other treatment of Employees would be highly inequitable. Employees who have incurred expenses should not be forced to bear the cost of such expenses personally, especially because the Employees incurred the expenses for the Debtors' benefit, in the course of their employment by the Debtors, and with the understanding that they would be reimbursed for doing so.

58. Payment of Administrative Fees to the Administrators is also necessary. Without the continued service of these Administrators, the Debtors will be unable to continue to honor their obligations to Employees under the Employee Benefits plans in an efficient and cost effective manner.

59. The Debtors do not seek to alter their compensation, time off, or other benefits policies at this time. The Motion is intended only to permit the Debtors, in their discretion, to:

(i) make payments consistent with the Debtors' existing policies to the extent that, without the benefit of an order approving the Motion, such payments may be inconsistent with the relevant provisions of the Bankruptcy Code; and (ii) honor their practices, programs, and policies with respect to their Employees, as such practices, programs, and policies were in effect as of the Petition Date. By this Motion, the Debtors are not seeking relief to pay amounts to Insider Employees on account of any Employee Severance Obligations or any Bonus and Commission Programs in excess of the limitations set forth in section 503(c) of the Bankruptcy Code.

## **II. PAYMENT OF EMPLOYEE OBLIGATIONS WOULD NOT PREJUDICE PARTIES IN INTEREST.**

60. The Debtors believe that many (if not the vast majority) of the prepetition Employee Obligations constitute priority claims under sections 507(a)(4) and (5) of the Bankruptcy Code. Under section 507(a)(4)(A) of the Bankruptcy Code, claims of employees against a debtor for "wages, salaries, or commissions, including vacation, severance, and sick leave pay," that are "earned within 180 days before" the petition date are afforded priority unsecured status up to \$17,150 per individual. 11 U.S.C. § 507(a)(4)(A). Similarly, under section 507(a)(5) of the Bankruptcy Code, employees' claims for contributions to certain employee benefit plans are also afforded priority unsecured status to the extent of \$17,150 per employee covered by such plans, less any amount paid pursuant to section 507(a)(4) of the Bankruptcy Code. 11 U.S.C. § 507(a)(5). As priority claims, such Employee Obligations are entitled to payment in full before any general unsecured claims asserted against the Debtors can be satisfied. Thus, the relief requested largely affects only the timing of payment of the priority prepetition Employee Obligations and should not prejudice the rights of general unsecured creditors and other parties in interest.

### III. PAYMENT OF CERTAIN EMPLOYEE OBLIGATIONS IS REQUIRED BY LAW.

61. The Debtors also seek authority to remit certain Deductions and Payroll Taxes to the appropriate entities. These amounts principally represent Employee earnings that governments, Employees, and judicial authorities have designated for deduction from Employees' paychecks. Indeed, certain Deductions, including contributions to the Employee Benefit Obligations and child support and alimony payments, are not property of the Debtors' estates because they have been withheld from Employees' paychecks on another party's behalf. *See* 11 U.S.C. § 541(b).

62. Further, federal and state laws require the Debtors and their officers to make certain tax payments that have been withheld from their Employees' paychecks. *See* 26 U.S.C. §§ 6672 and 7501(a); *see also City of Farrell v. Sharon Steel Corp.*, 41 F.3d 92, 95-97 (3d Cir. 1994) (finding that state law requiring a corporate debtor to withhold city income tax from its employees' wages created a trust relationship between debtor and the city for payment of withheld income taxes); *DuCharnes & Co. v. Michigan (In re DuCharmes & Co.)*, 852 F.2d 194, 196 (6th Cir. 1988) (noting that individual officers of a company may be held personally liable for failure to pay trust fund taxes). Because certain Deductions and Payroll Taxes are not property of the Debtors' estates, the Debtors request that the Court authorize them to transmit the Deductions and Payroll Taxes to the proper parties in the ordinary course of business.

63. For the foregoing reasons, payment of the Employee Obligations, as requested herein and in accordance with the Debtors' prepetition business practices, is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the relief requested by the Debtors.

**CAUSE EXISTS TO AUTHORIZE THE BANKS TO HONOR CHECKS AND  
ELECTRONIC FUND TRANSFERS**

64. The Debtors further request that the Court authorize applicable banks and other financial institutions (collectively, the “*Banks*”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to the Employee Obligations (whether such checks or fund transfers were presented before or after the Petition Date), to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payment. The Debtors also seek authority to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or fund transfer requests on account of prepetition Employee Obligations dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

**EMERGENCY CONSIDERATION**

65. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1 and Bankruptcy Rule 6003, which authorize the Court to grant relief within the first 21 days after the commencement of a chapter 11 case to the extent that relief is necessary to avoid immediate and irreparable harm. As described in detail above and in the First Day Declaration, immediate and irreparable harm would result if the relief requested herein is not granted. Accordingly, the Debtors submit that the requirements of Bankruptcy Rule 6003 are satisfied.

**DEBTORS’ COMPLIANCE WITH BANKRUPTCY RULE  
6004(a) AND WAIVER OF BANKRUPTCY RULE 6004(a) AND (h)**

66. With respect to any aspect of the relief sought herein that constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors request that the Court find that notice of this Motion is adequate under Bankruptcy Rule 6004(a) and waive the 14-day stay under Bankruptcy Rule 6004(h). As described above, the relief that the Debtors seek in this Motion is

necessary to avoid immediate and irreparable harm to the Debtors. Thus, cause exists for the Court to find that notice of this Motion satisfies Bankruptcy Rule 6004(a) and waive the 14-day stay under Bankruptcy Rule 6004(h).

### **RESERVATION OF RIGHTS**

67. Nothing in this Motion is intended to be nor shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors; (b) a waiver or limitation of the Debtors' or any other party in interest's right to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) a waiver of the obligation of any party in interest to file a proof of claim; (e) a promise or requirement to pay any particular claim; (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any other applicable law; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (h) an admission that any lien satisfied pursuant to this Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved); or (i) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' or any other party in interest's rights to dispute such claim subsequently.

### **NOTICE**

68. Notice of this Motion will be served on: (a) the Office of the United States Trustee for the Southern District of Texas; (b) Paul Hastings LLP, as counsel to the First Lien Agent and the Consenting Creditors; (c) counsel to the DIP Lenders; (d) the Administrators; (e) the Banks (f)

the creditors listed on the Debtors' consolidated list of 30 creditors holding the largest unsecured claims; (g) the United States Attorney for the Southern District of Texas; (h) the Internal Revenue Service; (i) the Securities and Exchange Commission; (j) the state attorneys general for states in which the Debtors conduct business; and (k) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, under the circumstances, no other or further notice is required.

69. A copy of this Motion is available on (a) the Court's website, at [www.txs.uscourts.gov](http://www.txs.uscourts.gov) and (b) the website maintained by the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants, LLC d/b/a Verita Global, at <https://www.veritaglobal.net/ModivCare>.

*[Remainder of page intentionally left blank.]*

**WHEREFORE**, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: August 20, 2025

Respectfully submitted,

/s/ Timothy A. ("Tad") Davidson II

**HUNTON ANDREWS KURTH LLP**

Timothy A. ("Tad") Davidson II (Texas Bar No. 24012503)

Catherine A. Rankin (Texas Bar No. 24109810)

Brandon Bell (Texas Bar No. 24127019)

600 Travis Street, Suite 4200

Houston, TX 77002

Telephone: (713) 220-4200

Email: taddavidson@hunton.com

catherinerankin@hunton.com

bbell@hunton.com

-and-

**LATHAM & WATKINS LLP**

Ray C. Schrock (NY Bar No. 4860631)

Keith A. Simon (NY Bar No. 4636007)

George Klidonas (NY Bar No. 4549432)

Jonathan J. Weichselbaum (NY Bar No. 5676143)

1271 Avenue of the Americas

New York, NY 10020

Telephone: (212) 906-1200

Email: ray.schrock@lw.com

keith.simon@lw.com

george.klidonas@lw.com

jon.weichselbaum@lw.com

*Proposed Attorneys for the Debtors  
and Debtors in Possession*

**CERTIFICATE OF SERVICE**

I certify that on August 20, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

/s/ Timothy A. ("Tad") Davidson II  
Timothy A. ("Tad") Davidson II



**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

	X	
	:	
In re:	:	Chapter 11
	:	
MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Debtors. <sup>1</sup>	:	(Jointly Administered)
	:	
	X	

**ORDER (A) AUTHORIZING  
DEBTORS TO (I) PAY PREPETITION  
WAGES, SALARIES, EMPLOYEE BENEFITS, AND OTHER  
COMPENSATION, AND (II) MAINTAIN EMPLOYEE BENEFITS PROGRAMS  
AND PAY RELATED OBLIGATIONS; AND (B) GRANTING RELATED RELIEF**  
**[Relates to Docket No. ]**

Upon the emergency motion (the “*Motion*”)<sup>2</sup> of the Debtors for entry of an order (this “*Order*”) pursuant to sections 105(a), 363(b), and 507 of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, (a) authorizing, but not directing, the Debtors to (i) pay the Employee Obligations and related fees, costs, and expenses incident to the foregoing, including amounts owed to third-party service providers and administrators and taxing authorities; and (ii) maintain, and continue to honor and pay amounts with respect to, the Debtors’ business programs and policies for their employees as they were in effect as of the Petition Date, and as they may be modified, amended, or supplemented from time to time in the ordinary course of business; and (b) granting related relief, all as more fully set forth in the Motion; and the Court

---

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases (the “*Chapter 11 Cases*”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

having reviewed the Motion and the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

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

1. The Debtors are authorized, but not directed, in their discretion and business judgment, and in the ordinary course consistent with the Debtors' prepetition practices and the terms of this Order, to (i) pay the Employee Obligations owed to the Workforce and related fees, costs, and expenses incident to the foregoing, including amounts owed to the Administrators, the Staffing Agencies, and taxing authorities, in each case in the ordinary course of business (whether arising before or after the Petition Date); (ii) maintain, and continue to honor and pay amounts with respect to, the Debtors' business programs and policies for their Employees (including the Employee Benefits) as in effect as of the Petition Date and as they may be modified, amended, or supplemented from time to time in the ordinary course of business; and (iii) continue to deduct and to transmit the Deductions from payroll checks as authorized by Employees, as required under

any employee-related plan, program, or policy, or as required by applicable law; *provided that*, Debtors shall not honor any prepetition Employee Compensation and Benefits to any individual that exceeds the priority amounts set forth in sections 507(a)(4) and 507(a)(5) of the Bankruptcy Code.

2. The Debtors are authorized, but not directed, to continue their business programs and policies for their Employees (including the Bonus and Commission Programs and Severance Program) on a postpetition basis, and in each case to pay any accrued amounts thereunder as they become due in the ordinary course of business; *provided that*, to the extent set forth in section 503(c) of the Bankruptcy Code, nothing in this Order shall be deemed to authorize the payment of any amounts to “insiders” (such persons who meet the definition of “insider” provided in section 101(31) of the Bankruptcy Code, collectively, “**Insiders**”) of the Debtors under either the Bonus and Commission Programs or the Severance Program during the Chapter 11 Cases. Notwithstanding the foregoing, the Debtors’ rights are reserved to seek authorization to pay insiders under the Bonus and Commission Programs and Severance Programs during the Chapter 11 Cases pursuant to separate motion.

3. The Debtors are authorized, but not directed, to transmit any Deductions previously withheld or deducted from the Employee payroll to the appropriate third-party recipient.

4. The Debtors are authorized, but not directed, in their discretion and business judgment, and in the ordinary course of business, to (a) modify, change, and discontinue any program, policy, or practice with respect to the Employee Obligations (including the Employee Benefits) and (b) implement new programs, policies, and practices with respect to the Employee Obligations during the Chapter 11 Cases without the need for further Court approval; *provided, however*, Debtors will provide seven (7) days’ advance written notice to the U.S. Trustee, the DIP

Lenders (via counsel thereto), and any statutory committee appointed in these chapter 11 cases of any material changes to its plans, practices, programs, and policies for Employees and any new Employee compensation or Employee Obligations; and, *provided, further*, nothing herein shall be deemed to authorize the Debtors to make any payment that violates section 503(c) of the Bankruptcy Code during the Chapter 11 Cases. For avoidance of doubt, the Debtors are required to seek Court approval, on notice, of any modification of the Employee Obligations or Employee compensation that would implicate any portion of section 503(c) of the Bankruptcy Code.

5. The Banks are authorized to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested, by the Debtors relating to such obligations, to the extent that sufficient funds are on deposit in available funds in the applicable bank accounts to cover such payments. The Banks are authorized to accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of this Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtors are authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of the Chapter 11 Cases with respect to any prepetition amounts that are authorized to be paid pursuant to this Order.

7. Nothing herein shall be deemed to authorize the Debtors to cash out or set off unpaid PTO Obligations, except upon termination of an Employee to the extent required by applicable non-bankruptcy law.

8. The Debtors shall maintain a matrix/schedule of amounts paid related to the Prepetition Employee Obligations, made pursuant to this Order, including the following information: (a) the names of the payee; (b) the date and the amount of the payment; (c) the category or type of payment, as further described and classified in the Motion; and (d) the Debtor or Debtors that made the payment. On the last business day of each month (beginning in September 2025) and ending upon entry of an order confirming a plan or dismissing or converting the Chapter 11 Cases, the Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, counsel to the First Lien Agent and the Consenting Creditors, counsel to the DIP Lenders, and any statutory committee appointed in the Chapter 11 Cases covering all payments made pursuant to this Order during the prior month.

9. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "***DIP Order***"). To the extent there is any inconsistency between the terms of the DIP Order and any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

10. Nothing in the Motion or this Order, or any payment made pursuant to this Order, is intended to be or shall be deemed as (a) an implication or admission as to the amount of, basis for, or validity of any claim against the Debtors; (b) a waiver or limitation of the Debtors' or any other party in interest's right to dispute the amount of, basis for, or validity of any claim; (c) a waiver of the Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable non-bankruptcy law; (d) a waiver of the obligation of any party in interest to file a proof of claim; (e) a promise or requirement to pay any particular claim; (f) a waiver of any claims or causes of action which may exist against any entity under the Bankruptcy Code or any

other applicable law; (g) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; or (h) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code. Any payment made pursuant to this Order is not intended to be and should not be construed as an admission to the validity of any claim or waiver of the Debtors' or any other party in interest's rights to dispute such claim subsequently.

11. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

12. Notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules.

13. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

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

15. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: \_\_\_\_\_, 2025  
Houston, Texas

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE