Docket #0017 Date Filed: 08/20/2025

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

In re:	:	Chapter 11
MODIVCARE INC., *et al.*,	:	Case No. 25-90309 (ARP)
Debtors.[1]	:	(Joint Administration Requested)

EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER (A) AUTHORIZING DEBTORS TO (I) HONOR THEIR PREPETITION OBLIGATIONS TO CUSTOMERS, AND (II) CONTINUE THEIR CUSTOMER PROGRAMS; 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 home page. The meeting code is "JudgePerez". 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 Perez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

[1] 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.

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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) fulfill and honor (through payment, credit, setoff, or otherwise) all prepetition obligations related to the Customer Programs (as defined below) as they deem appropriate, and (ii) continue, enforce, renew, replace, terminate, and implement new Customer Programs, and any other customer practices as they deem appropriate, without further application to the Court; and (b) granting related relief. For the avoidance of doubt, nothing herein shall impair the Debtors' right to dispute the validity of any obligation that arises from a Customer Program.

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), 503(b)(9), and 1107(a) 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 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. 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) in-home personal care, (*e.g.,* help with daily activities); (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.

7. 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 Takeback 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 Other 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 and save approximately $107 million in interest annually.

DEBTORS' CUSTOMER PROGRAMS

8. Before the Petition Date and in the ordinary course of business, the Debtors established various programs with, and incurred certain obligations to, their customers and payors (such programs and obligations, collectively, the "***Customer Programs***"). The Customer Programs include, but are not limited to, the Refund Program, the Liquidated Damages Liability, and the Revenue Sharing Program (each as defined below). The Customer Programs may encompass other similar programs that the Debtors have implemented to manage customer relationships and transactions effectively. As of the Petition Date, the Debtors have approximately $11,410,000 in unpaid monetary obligations on account of the Customer Programs.

9. The Debtors' goodwill and ongoing business relationships may erode if any of the Debtors' customers perceive that the Debtors are unable or unwilling to fulfill the prepetition commitments on account of the Customer Programs. The erosion of such trust and goodwill would materially harm the Debtors' businesses and their estates. Accordingly, continuing the Customer

Programs is necessary for the Debtors to maintain key customer relationships during the Chapter 11 Cases.

I. REFUND PROGRAM

10. As described more fully in the First Day Declaration, under the Debtors' NEMT business segment, the Debtors provide non-emergency medical transportation to individuals in 48 states and the District of Columbia (such individuals, collectively, the "***NEMT Members***"). All NEMT services provided to NEMT Members are paid for by state agencies who administer Medicare and Medicaid programs and managed-care organizations (collectively, the "***NEMT Payors***"). The NEMT Payors pay for the NEMT Members' use of the Debtors' transportation services pursuant to various contractual arrangements.

11. In the ordinary course of accepting payment for NEMT services, the Debtors routinely issue refunds or, in lieu of issuing refunds, offset amounts ultimately owed to the NEMT Payors (such practice, the "***Refund Program***"). The Debtors maintain the Refund Program to comply with various contractual obligations as well as state and federal laws and administrative rules that regulate interactions with NEMT Payors.

12. Given the nature of the Refund Program and how refunds are calculated, it is difficult to determine the total amount that may be owed at any given time except for those refunds that have already been processed. For instance, there is typically a significant lag between when: (a) the NEMT services are provided; (b) the credit balance is identified, quantified, and validated; and (c) the refund is ultimately issued and processed to the appropriate NEMT Payor. Moreover, some refund checks issued to NEMT Payors before the Petition Date may not have been presented for payment or may not have cleared the Debtors' banking or accounting systems and, accordingly, have not been paid to the NEMT Payors as of the Petition Date. Nonetheless, the Debtors are required, under the relevant contracts and applicable law, to honor such refunds and reimburse the

NEMT Payors. Therefore, the Debtors seek authority, but not direction, to honor all prepetition obligations related to the Refund Program and to continue to do so, as necessary or appropriate, in the Debtors' sole discretion, on a postpetition basis in the ordinary course of business and consistent with past practices.

A. Prepayment Refunds

13. A large portion of the Debtors' contractual arrangements with the NEMT Payors are shared risk agreements (collectively, the "***Shared Risk Contracts***"). Under the Shared Risk Contracts, the NEMT Payors prepay for certain transportation services based on compensation modeling. These compensation models are cost-based models, pursuant to which the Debtors and the NEMT Payors make initial projections regarding the amount of the services that the NEMT Members will use and then reconcile differences based on the actual total costs and collections during the relevant period. After a predetermined contract period, typically between six and twelve months, the true and actual cost of transportation services utilized is calculated, and there is a "true-up" in the amount owed by, or to, the NEMT Payors.[2]

14. When the prepayment provided by the NEMT Payors exceed the amounts the Debtors are contractually entitled to retain, the Debtors become obligated to issue a refund to the NEMT Payors (a "***Prepayment Refund***"). Once the NEMT Payor confirms the amount the Debtors propose to pay as a Prepayment Refund, the NEMT Payor can elect to have the Prepayment Refund processed as a refund check or offset against a future balance owed to the Debtors. As of the Petition Date, the Debtors estimate that approximately $9,750,000 is currently

[2] Occasionally, the NEMT Payors will make prepayments under a contractual arrangement other than a Shared Risk Contract such as a fee-for-service payment model. NEMT Payors may be entitled to refunds attributable to excessive prepayments regardless of the underlying contractual arrangement.

due and owing to the NEMT Payors on account of Prepayment Refunds.[3] The Debtors hereby request authority, but not direction, to pay or permit the offset of this outstanding amount along with all other Prepayment Refunds that may become due and payable to the NEMT Payors during the Chapter 11 Cases.

B. Overpayment Refunds

15. In the ordinary course of operating the NEMT Business Segment, the Debtors issue refunds on account of overpayments made by the NEMT Payors (such refunds, collectively, the "***Overpayment Refunds***"). Overpayments that give rise to Overpayment Refunds are caused by: (a) duplicate payments made for the same service; (b) miscalculation by an NEMT Payor; (c) invoice correction which reduces the amount owed for the service; and/or (d) payments made by a NEMT Payor for services rendered after termination of coverage.

16. The Debtors notify the NEMT Payors of overpayments every month. Once the NEMT Payor confirms the amount the Debtors propose to pay as an Overpayment Refund, the NEMT Payor may elect to have the Overpayment Refund processed as a refund check or offset against an existing or future balance it owes to the Debtors. As of the Petition Date, the Debtors estimate that approximately $1,250,000 is currently due and owing to the NEMT Payors on account of Overpayment Refunds. The Debtors hereby request authority, but not direction, to pay or permit the future offset of this amount along with all other Overpayment Refunds that may become due and payable to the NEMT Payors during the Chapter 11 Cases.

[3] The Debtors estimate that, in addition to the $9,750,000 currently due and owing, over $2,000,000 is attributable to prepayments and/or deposits made by certain of the NEMT Payors, which is not currently due and owing but may need to be reconciled during the Chapter 11 Cases.

II. LIQUIDATED DAMAGES LIABILITY

17. The Debtors are required by applicable law to enter into service level agreements with the NEMT Payors to receive payment (collectively, the "***Service Level Agreements***"). The Service Level Agreements establish minimum performance standards that the Debtors must meet and include call center metrics, claims processing deliverables, and other reporting metrics (collectively, the "***Performance Standards***"). If the Debtors' performance falls below the Performance Standards, then the Debtors may become liable for liquidated damages under the Service Level Agreements (such liability, the "***Liquidated Damages Liability***").

18. The Debtors routinely estimate their level of potential Liquidated Damages Liability. The Debtors make these estimates based on: (a) the number of Service Level Agreements; (b) the liquidated damages provided for in such Service Level Agreements; and (c) the Debtors' quarterly performance data. As of the Petition Date, the Debtors estimate the current level of Liquidated Damages Liability to be approximately $4,200,000. Of that amount, however, only $380,000 is currently due and owing as validly asserted liquidated damages under the Service Level Agreements as of the Petition Date. By this Motion, the Debtors seek authority, but not direction, to pay this outstanding amount and to continue to honor the Liquidated Damages Liability in the ordinary course of business to satisfy their obligations under the Service Level Agreements and remain qualified to receive payments from the NEMT Payors.

III. REVENUE SHARING PROGRAM

19. As part of their Higi business, the Debtors maintain revenue sharing arrangements (collectively, the "***Revenue Sharing Arrangements***") with certain retailers and businesses who place Higi monitoring stations in their stores (collectively, the "***Revenue Sharing Parties***"). The Revenue Sharing Parties are entitled to a percentage of advertising revenue generated by

advertisements displayed on these Higi monitoring stations. In 2024, the Debtors paid approximately $107,000 to the Revenue Sharing Parties under the Revenue Sharing Arrangements.

20. Certain of the Revenue Sharing Parties receive a minimum revenue guarantee from the Debtors (the "***Minimum Revenue Guarantee***" and together with the Revenue Sharing Arrangements, the "***Revenue Sharing Program***"). Pursuant to the Minimum Revenue Guarantee, if the relevant Revenue Sharing Party does not receive the minimum revenue (as measured at the end of each calendar year, the "***Minimum Value***"), a true-up is conducted whereby the Debtors must remit payment equivalent to the Minimum Value to such Revenue Sharing Party.

21. As of the Petition Date, the Debtors estimate that approximately $30,000 is owed on account of the Minimum Revenue Guarantee (the "***Outstanding Revenue Guarantee***"). Maintaining the Revenue Sharing Program and honoring its corresponding obligations is important to the continued success of the Debtors' Higi business, which relies on maintaining relationships with the Revenue Sharing Parties. By this Motion, the Debtors seek authority, but not direction, to pay the Outstanding Revenue Guarantee and maintain and honor amounts outstanding on account of the Revenue Sharing Program in the ordinary course of business.

BASIS FOR RELIEF

22. The Debtors seek authority to continue the Customer Programs in the ordinary course consistent with past practice and to honor certain prepetition obligations that may arise thereunder. Failure to do so could materially harm the trust and confidence of the NEMT Payors, the Revenue Sharing Parties, and the Debtors' other customers at the outset of the Chapter 11 Cases to the detriment of the Debtors' estates and all of the Debtors' stakeholders. The Debtors' customers, NEMT Members, patients, and payors (including the NEMT Payors) are pivotal to the success of the Debtors' enterprise, and any loss of goodwill among them or termination of insurer agreements/enrollments, Shared Risk Contracts, or other customer contracts could cause

significant harm to the Debtors' business to the detriment of the Debtors' estates and all stakeholders. Additionally, the Debtors would suffer reputational damage and possibly a reduction in the value of their assets and business enterprises, if they fail to honor their obligations under the Customer Programs in the ordinary course. Lastly, the Debtors could face potential legal challenges if they fail to honor contractual obligations under their Customer Programs. This would be a harmful drain on the Debtors' time and resources during the pendency of the Chapter 11 Cases when it is imperative that the Debtors, their management and advisors are, and can be, focused on successfully emerging from bankruptcy.

I. PREPAYMENT AND OVERPAYMENT REFUNDS MAY NOT BE PROPERTY OF THE DEBTORS' ESTATES.

23. Section 541 of the Bankruptcy Code generally provides that all property in which a debtor has a legal or equitable interest, including any interest in property that a debtor acquires postpetition, becomes property of the estate upon the commencement of a chapter 11 case. 11 U.S.C. § 541(a)(1), (a)(7). Importantly, section 541 of the Bankruptcy Code does not, by itself, create new legal or equitable interests in property; instead, "[p]roperty interests are created and defined by state law." *Butner v. United States*, 440 U.S. 48, 54–55 (1979) (noting that "Congress has generally left the determination of property rights in the assets of a bankrupt's estate to state law"). Indeed, Congress was clear that section 541(a)(1) of the Bankruptcy Code "is not intended to expand the debtor's rights against others more than they existed at the commencement of the case." H.R. Rep. No. 95–595, 95th Cong., 1st Sess. 367–68 (1977); *see also Moody v. Amoco Oil Co.*, 734 F.2d 1200, 1213 (7th Cir. 1984) (holding that the "rights a debtor has in property at the commencement of the case continue in bankruptcy—no more, no less"). Thus, if a debtor holds no legal or equitable interest in property as of the commencement of the case, such property does not become property of the debtor's estate under section 541 of the

Bankruptcy Code, and the debtor is prohibited from distributing such property to its creditors. *Pearlman v. Reliance Ins. Co.*, 371 U.S. 132, 135–36 (1962) ("The Bankruptcy Act simply does not authorize a [debtor] to distribute other people's property among a bankrupt's creditors . . . [S]uch property rights existing before bankruptcy in persons other than the bankrupt must be recognized and respected in bankruptcy.").

24. Further, courts have interpreted section 541(d) of the Bankruptcy Code to provide "expressly" that "property in which a debtor holds only bare legal title is not property of the estate." *Golden v. Guardian (In re Lenox Healthcare, Inc.)*, 343 B.R. 96, 100 (Bankr. D. Del. 2006); *see also Jenkins v. Chase Home Mortg. Corp. (Matter of Maple Mortg., Inc.)*, 81 F.3d 592, (5th Cir. 1996) ("Section 541(d) further explains that where the debtor holds only legal title and not an equitable interest, the interest becomes property of the estate only to the extent of the debtor's legal title."). When a debtor holds legal title to, but does not have equitable interest in, certain property, the debtor must turn such property over to the holders with such equitable interest in the property. *See MCZ, Inc. v. Andrus Res., Inc. (In re MCZ, Inc.)*, 82 B.R. 40, 42 (Bankr. S.D. Tex. 1987) ("Where Debtor merely holds bare legal title to property as agent or bailee for another, Debtor's bare legal title is of no value to the estate, and Debtor should convey the property to its rightful owner.").

25. The Debtors may not have equitable title to the Prepayment Refunds and Overpayment Refunds held for the benefit of the NEMT Payors. Instead, holding such refunds may be described as the Debtors holding funds in trust. The Supreme Court has held that property held by debtors for a third party (such as funds held on account of a resulting trust) is not property of the estate. *Begier v. Internal Rev. Serv.,* 496 U.S. 53, 59 (1990) ("Because the debtor does not own an equitable interest in property he holds in trust for another, that interest is not 'property of

the estate.'"); *United States v. Whiting Pools, Inc.*, 462 U.S. 198, 205 n.10 (1983) (noting that "Congress plainly excluded property of others held by the debtor in trust at the time of the filing of the petition" from the bankruptcy estate). Thus, any property held by the Debtors on account of the Prepayment Refunds or the Overpayment Refunds may not be property of the Debtors' estates, and accordingly, the relief requested in this Motion will not prejudice creditors or other parties in interest.

II. SECTION 363 OF THE BANKRUPTCY CODE AUTHORIZES THE CONTINUATION OF THE CUSTOMER PROGRAMS.

26. To the extent that the continuation of the Customer Programs would be deemed to constitute a use of property outside the ordinary course of business, section 363(b) of the Bankruptcy Code authorizes such use of property of the estate. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to "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 of property of the estate outside of the ordinary course of business where the debtor in possession has articulated a good business reason for such use. *See, e.g., Institutional 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) (holding that section 363(b) of the Bankruptcy Code requires that "there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business"); *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) (applying *Continental* to require "articulated business justification" for section 363 transaction).

27. Where a debtor has articulated a valid business justification for a proposed transaction, courts generally apply the business judgment rule in evaluating such transaction. *See, e.g.*, *ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) ("Section 363 of the Bankruptcy Code addresses the debtor's use of property of the estate and incorporates a business judgment standard. . . . The business judgment standard in section 363 is flexible and encourages discretion."). Courts emphasize that the business judgment rule is not an onerous standard. Indeed, "[g]reat judicial deference is given to the [debtor's] exercise of business judgment." *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (N.D. Tex. 2005). As long as a transaction "appears to enhance a debtor's estate, court approval of a debtor-in-possession's decision to [enter into the transaction] should only be withheld if the debtor's judgment is clearly erroneous, too speculative, or contrary to the Bankruptcy Code." *Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation and internal quotation marks omitted).

28. Finally, section 363(c) of the Bankruptcy Code authorizes a debtor in possession operating its business pursuant to section 1108 of the Bankruptcy Code to "enter into transactions … in the ordinary course of business without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." 11 U.S.C. § 363(c)(1). Section 363 of the Bankruptcy Code is designed to allow a debtor "to continue its daily operations without excessive court or creditor oversight and [to] protect[] secured creditors and others from dissipation of the estate's assets." *United States ex rel. Harrison v. Est. of Deutscher*, 115 B.R. 592, 599 (M.D. Tenn. 1990) (citations omitted); *see also Phelps v. U.S. Bank Nat. Ass'n.*, Case No. 2:13-CV-361, 2014 WL 991803, at *3 (S.D. Tex. Mar. 13, 2014) (citing section 363 of the Bankruptcy Code and holding that "[a]n assignment that is made in the ordinary course of

business does not require the pre-approval of the Bankruptcy Court of the lifting of the automatic stay"); *In re Cook & Sons Mining, Inc.*, No. Civ. A. 05-19, 2005 WL 2386238, at *3 (E.D. Ky. Sept. 28, 2005) ("Code § 363 is designed to allow a Chapter 11 debtor the flexibility to engage in ordinary transactions without unnecessary creditor and bankruptcy court oversight while protecting creditors by giving them an opportunity to be heard when transactions are not ordinary.") (quoting *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992)). Moreover, the "'ordinary course of business' standard is intended to allow a debtor the flexibility it needs to run its business and respond quickly to changes in the business climate." *Harrison*, 115 B.R. at 598 (quoting *In re Johns-Manville Corp.*, 60 B.R. 612, 617 (Bankr. S.D.N.Y. 1986)).

29. The Bankruptcy Code does not define "ordinary course of business." However, "through a synthesis of case law, courts have developed a workable analytical framework for determining whether an activity is within the debtor's 'ordinary course of business.'" *In re Husting Land & Dev., Inc.*, 255 B.R. 772, 778 (Bankr. D. Utah 2000), *aff'd*, 274 B.R. 906 (D. Utah 2002). "Typically courts examine the 'horizontal' and 'vertical' dimensions of a debtor's business to address these policies reflected in the Code and to determine whether a transaction is outside the ordinary course of business." *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at *4 (quoting *In re Crystal Apparel, Inc.*, 220 B.R. 816, 831 (Bankr. S.D.N.Y. 1998)).

30. The horizontal test is "an objective test asking whether, from an industry-wide perspective, the transaction is of the sort commonly undertaken by companies in that industry." *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at *4 (quoting *In re Roth Am., Inc.*, 975 F.2d at 953); *see also Peltz v. Gulfcoast Workstation Grp. (In re Bridge Info. Sys., Inc.)*, 293 B.R. 479, 486 (Bankr. E.D. Mo. 2003) (a transaction qualifies as "ordinary course" if it "is of the type that is commonly undertaken within the debtor's industry."). The vertical dimension examines "the

reasonable expectations of interested parties as to this particular debtor-in-possession." *In re Cook & Sons Mining, Inc.*, 2005 WL 2386238, at *4 ("Thus, the issue is whether the transaction 'is the type of transaction which creditors would expect to have advance notice of and have a chance to object to.'") (quoting *In re Waterfront Cos., Inc. v. Johnston*, 56 B.R. 31, 35 (Bankr. D. Minn. 1985)); *see also In re James A. Phillips, Inc.*, 29 B.R. 391, 394 (Bankr. S.D.N.Y. 1983) ("The touchstone of 'ordinariness' is … the interested parties' reasonable expectations of what transactions the debtor in possession is likely to enter in the course of its business. So long as the transactions conducted are consistent with these expectations, creditors have no right to notice and hearing, because their objections to such transactions are likely to relate to the bankrupt's chapter 11 status, not the particular transactions themselves.").

31. An important characteristic of an "ordinary" postpetition business transaction is its similarity to a prepetition business practice. *Marshack v. Orange Com. Credit (In re Nat'l Lumber & Supply, Inc.)*, 184 B.R. 74, 79 (B.A.P. 9th Cir. 1995) (to qualify as ordinary course, payment must be consistent with the past practices and industry standards), (abrogated on other grounds by *Office of the U.S. Tr. v. Hayes (In re Bishop, Baldwin, Rewald, Dillingham & Wong, Inc.)*, 104 F.3d 1147, 1148 (9th Cir. 1997)). Relevant factors in determining whether a transaction is ordinary include the type of business a debtor is engaged in as well as the size and nature of the business and transaction in question. *Harrison*, 115 B.R. at 598. While the Debtors do not believe that Court approval is required to continue honoring and maintaining the Customer Programs in the ordinary course of business, out of an abundance of caution, the Debtors request entry of the Proposed Order authorizing them to continue to honor and maintain such programs postpetition.

32. The Debtors submit that the requested relief represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm, and is justified

under sections 363(b) and 363(c) of the Bankruptcy Code. If the Debtors are prohibited from honoring and maintaining their Customer Programs consistent with their past business practices, customers will likely lose confidence in the Debtors' ability provide goods and services on competitive terms. In addition, the damage from refusing to honor these commitments far exceeds the costs associated with honoring such prepetition commitments and continuing these practices. The relief requested herein will protect the Debtors' goodwill during this critical time and enhance the Debtors' ability to generate revenue. Consequently, all of the Debtors' creditors will benefit if the requested relief is granted.

33. Accordingly, the Debtors request that they be authorized, in their discretion, to continue, renew, replace, enforce, implement new and/or terminate the Customer Programs and any other customer practices as they deem appropriate, without further need for entry of a further order by, or action from, the Court. Any delay in the relief sought—indeed, even being forced to advise customers that further judicial relief is necessary—could result in the Debtors losing a portion of their customer base and, as a result, severe harm to their estates. Accordingly, the requested relief is necessary to avoid immediate and irreparable harm to the Debtors and to their estates, which would far outweigh the cost of the Customer Programs.

III. SECTION 105 OF THE BANKRUPTCY CODE AND THE "DOCTRINE OF NECESSITY" SUPPORT THE CONTINUATION OF THE CUSTOMER PROGRAMS.

34. In addition, the Debtors submit that the Court may grant the relief requested herein pursuant to section 105(a) of the Bankruptcy Code by virtue of the "doctrine of necessity." *In re Scotia Dev., LLC*, Case No. 07-20027, 2007 WL 2788840, at *1 (Bankr. S.D. Tex. Sept. 21, 2007) (acknowledging the existence of the doctrine of necessity). Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to "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). Section 1107(a) of the

Bankruptcy Code "contains an implied duty of the debtor-in-possession" to "protect and preserve the estate, including operation business' going-concern value," on behalf of the debtors' creditors and other parties in interest. *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)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) ("[U]pon filing its petition, the Debtor became debtor in possession and, through its management was burdened with the duties and responsibilities of a bankruptcy trustee.").

35. 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 a debtor's estates.

36. For the reasons set forth above, and in light of the need for the Debtors to preserve the going-concern value of their businesses, the relief requested herein is proper and should be granted.

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

37. 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 Customer Programs (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 Customer Programs dishonored or rejected as a result of the commencement of the Chapter 11 Cases.

EMERGENCY CONSIDERATION

38. 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)

39. 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

40. 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

41. 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 Banks; (e) the creditors listed on the Debtors' consolidated list of 30 creditors holding the largest unsecured claims; (f) the United States Attorney for the Southern District of Texas; (g) the Internal Revenue Service; (h) the Securities and Exchange Commission; (i) the state attorneys general for states in which the Debtors conduct business; and (j) 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.

42. A copy of this Motion is available on (a) the Court's website, at 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

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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

In re:	:	Chapter 11
MODIVCARE INC., *et al.*,	:	Case No. 25-90309 (ARP)
Debtors.[1]	:	(Jointly Administered)

ORDER (A) AUTHORIZING DEBTORS TO (I) HONOR THEIR PREPETITION OBLIGATIONS TO CUSTOMERS, AND (II) CONTINUE THEIR CUSTOMER PROGRAMS; AND (B) GRANTING RELATED RELIEF
[Relates to Docket No. ___]

Upon the emergency motion (the "***Motion***")[2] of the Debtors for entry of an order (this "***Order***") (a) authorizing, but not directing, the Debtors to (i) fulfill and honor (through payment, credit, setoff, or otherwise) the Customer Programs as they deem appropriate and (ii) continue, enforce, renew, replace, terminate, and implement new Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, and (b) granting related relief, all as more fully set forth in the Motion; and the Court 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

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[1] 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.

[2] Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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, to (a) fulfill and honor (through payment, credit, setoff, or otherwise) all prepetition obligations related to the Customer Programs as they deem appropriate, and (b) continue, enforce, renew, replace, terminate, and implement new Customer Programs and any other customer practices as they deem appropriate, without further application to the Court, including making all payments, honoring all discounts and credits, satisfying all obligations, and permitting and effecting all setoffs in connection therewith, in each case whether related to the prepetition period or the postpetition period.

2. 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 set forth herein, 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.

3. 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.

4. Any party that accepts payment from the Debtors pursuant to this Order is deemed to have voluntarily submitted themselves to the jurisdiction of this Court.

5. The Debtors shall maintain a matrix/schedule of payments, offsets, or credits (collectively, the "***Authorized Payments***") paid, undertaken, or otherwise effectuated pursuant to this Order, including the following information: (i) the nature, date, and amount of the Authorized Payments; (ii) the Customer Programs to which the Authorized Payments relate; and (iii) the Debtor or Debtors that incurred the Authorized Payments. 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, the Consenting Creditors, and the DIP Lender, and counsel to any statutory committee appointed in the Chapter 11 Cases that discloses the Authorized Payments paid during the prior month.

6. 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.

7. 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; (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. 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. Further, nothing contained in the Motion or this Order is intended or should be construed to convert a prepetition claim into an administrative expense priority claim on account of any claims arising under or relating to the Customer Programs.

8. Nothing in the Motion or this Order shall be construed as: (i) prejudicing any rights the Debtors or any other party in interest may have to dispute or contest the amount of or basis for any claims asserted against the Debtors in connection with any Customer Programs; (ii) creating or perfecting, in favor of any person or entity, any interest in cash belonging to any of the Debtors that did not exist as of the Petition Date; (iii) altering or impairing any security interest or perfection thereof, in favor of any person or entity, that existed as of the Petition Date; nor (iv) authorizing or directing the acceleration of any payment not otherwise due.

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

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

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

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

13. 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