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

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

MOTION OF SECURITIES LITIGATION PROPOSED LEAD PLAINTIFF FOR ENTRY OF AN ORDER (I) AUTHORIZING PROPOSED LEAD PLAINTIFF TO OPT OUT OF THIRD-PARTY RELEASE ON BEHALF OF THE PROPOSED CLASS OR CONFIRMING SUCH AUTHORITY OR, ALTERNATIVELY, (II) CERTIFYING THE PROPOSED CLASS FOR A LIMITED PURPOSE

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at https://ecf.txsb.uscourts.gov/ within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

Christopher Skrypski ("Proposed Lead Plaintiff"), proposed lead plaintiff in the securities class action captioned as *Kalera v. ModivCare, Inc. et al.,* Case No. 25-cv-00306 (D. Colo.) (the "Securities Litigation") pending in the United States District Court for the District of Colorado (the "District Court"), hereby submits this motion (the "Motion") for entry of an order, substantially in the form annexed hereto as **Exhibit A**, (a) confirming that Proposed Lead Plaintiff has authority, or authorizing Proposed Lead Plaintiff (to the extent such authorization is necessary), on behalf of the proposed class in the Securities Litigation (as described below, the

[1] A complete list of each of the Debtors in these 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' claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

"Proposed Class" and the members thereof, the "Class Members"), to opt out of the third-party release (as described below, the "Third-Party Release") contained in the *Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 119] (filed by the above-captioned debtors in possession (the "Debtors") or, in the alternative, (b) applying Bankruptcy Rule 7023 and certifying the Proposed Class for the sole and limited purpose of permitting Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class and all Class Members. In support of this Motion, Proposed Lead Plaintiff respectfully states as follows:

PRELIMINARY STATEMENT[2]

1. The Third-Party Release seeks to completely disenfranchise Class Members, stripping them of their claims against the Non-Debtor Defendants with no due process whatsoever. Even though Class Members are receiving nothing under the Plan, are not entitled to vote, and are deemed to reject the Plan, the Plan nevertheless seeks to foist upon them an affirmative duty to speak—where none otherwise exists—to avoid forfeiting their claims against the Non-Debtor Defendants, the only remaining source of recovery for their substantial losses on the Debtors' securities. To make matters even worse, the order approving the Debtors' proposed procedures for notifying holders of claims against and interests in the Debtors contain no mechanism for giving Class Members notice that the Plan requires them to affirmatively act to avoid being deemed to have "consented" to the Third-Party Release in exchange for no consideration at all.[3]

2. Upon court appointment as lead plaintiff and fiduciary for the Proposed Class, Proposed Lead Plaintiff will have inherent authority to opt out of the Third-Party Release on behalf

[2] Capitalized terms used but not defined in this Preliminary Statement or above have the meanings given below.

[3] Proposed Lead Plaintiff reserves all rights with respect to the Plan and the Third-Party Release, including but not limited to the right to object to confirmation of the Plan on any basis whatsoever. For the avoidance of doubt, this Motion is not, and may not be construed as, an objection to confirmation of the Plan or approval of the Third-

of the Proposed Class and thereby preserve the claims of the Proposed Class against the Non-Debtor Defendants in the Securities Litigation. Protecting the claims and causes of action of Class Members from being gratuitously released through the Third-Party Release—the functional equivalent of defending against a motion to dismiss—is squarely within the province and fiduciary duty of Proposed Lead Plaintiff and his counsel. Nonetheless, out of an abundance of caution, Proposed Lead Plaintiff seeks an order confirming (or, to the extent the Court deems appropriate, granting) such authority. Alternatively, to the extent necessary, Proposed Lead Plaintiff seeks certification of the Proposed Class pursuant to Bankruptcy Rules 7023 and 9014 and Federal Rule 23 for the sole and limited purpose of permitting Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the entire Proposed Class.

JURISDICTION AND VENUE

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is appropriate in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The statutory predicates for the relief requested herein are Rules 7023 and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and Rule 23 of the Federal Rules of Civil Procedure.

BACKGROUND

I. The Securities Litigation

5. The Securities Litigation is a federal securities class action commenced on January 29, 2025 in the District Court against ModivCare and certain of the Debtors' current and former

Party Release or an election by Proposed Lead Plaintiff to opt out of the Third-Party Release in their individual capacity in the absence of a Class-wide opt out.

directors and officers, Mr. L. Heath Sampson, Mr. Kenneth Shepard, and Ms. Barbara Gutierrez (together, the "Non-Debtor Defendants" and together with ModivCare, the "Defendants").

6. The complaint (the "Complaint") generally alleges that the Defendants made materially false and misleading statements and omissions related to ModivCare's business and operations relating to its non-emergency medical transportation segment, which artificially inflated the price of ModivCare's common stock between November 3, 2022 and September 15, 2024, inclusive (the "Class Period") in violation of Sections 10(b) and 20(a) of the Securities Exchange Act of 1934 and Rule 10b-5 promulgated thereunder. The Complaint also provides allegations of wrongdoing against the Defendants on behalf on behalf of a proposed class comprised of all investors (the "Proposed Class"), other than the Defendants, who purchased or otherwise acquired ModivCare common stock during the Class Period.

7. On March 31, 2025, Proposed Lead Plaintiff, Irving Firemen's Relief and Retirement Fund ("IFRRF"), and movants Dinesh Kalera and Matt Rose each filed competing motions for appointment as lead plaintiff and selection of their choice of counsel [Sec. Lit. Doc. Nos. 16, 18, 19, 21].

8. On April 21, 2025, movants Dinesh Kalera and Matt Rose filed notices withdrawing from the District Court's consideration and asserting that they did not oppose the remaining competing lead plaintiff motions of Proposed Lead Plaintiff and IFRRF [Sec. Lit. Doc. Nos. 32-33].

9. By May 5, 2025, Proposed Lead Plaintiff and IFRRF's lead plaintiff motions were fully briefed and were pending, *sub judice* [Sec. Lit. Doc. Nos. 16-17, 19-20, 34-40].

10. On September 5, 2025, ModivCare filed a *Notice of Suggestion of Bankruptcy* stating that ModivCare had filed a voluntary petition for relief under chapter 11 of the Bankruptcy

Code, triggering an automatic stay (the "Automatic Stay") of continued judicial proceedings against ModivCare under 11 U.S.C. § 362(a) [Sec. Lit. Doc. No. 41] (the "Suggestion of Bankruptcy").

11. On September 19, 2025, Proposed Lead Plaintiff filed a response opposing the Suggestion of Bankruptcy to the extent it suggests that the Automatic Stay stays proceedings in the Securities Litigation as to claims asserted against the Non-Debtor Defendants, and any other proceedings that do not implicate ModivCare, including, but not limited to, resolution of the competing motions for appointment of a lead plaintiff and for selection of lead counsel [Sec. Lit. Doc. 42] (the "Response").

12. The Response also requested that the District Court schedule a hearing to decide the pending lead plaintiff motions, as certain pending matters in the Chapter 11 Cases require immediate action by a lead plaintiff and lead counsel to prevent potential prejudice to the rights of the Proposed Class. Proposed Lead Plaintiff alerted the District Court that he had retained bankruptcy counsel to safeguard the rights of the Proposed Class in these Chapter 11 Cases.

13. On September 19, 2025, IFRRF submitted a joinder to the Response and proposed that the District Court appoint IFRRF and Proposed Lead Plaintiff as joint co-lead plaintiffs and approve their selections of counsel, respectively, along with their joint retention of bankruptcy counsel [Sec. Lit. Doc. No. 44].

14. On September 30, 2025, Proposed Lead Plaintiff timely filed proofs of claim against ModivCare individually and on behalf of the Proposed Class.

15. At the time this Objection was filed, the District Court has not yet ruled on the pending lead plaintiff motions of Proposed Lead Plaintiff or IFRRF.[4]

[4] While not formally appointed by the District Court, Proposed Lead Plaintiff is aware that the Proposed Class will suffer irreparable harm if no action is taken with respect to these Chapter 11 Cases. Accordingly, Proposed Lead

II. Relevant Bankruptcy Proceedings

16. On August 20, 2025, the Debtors commenced the Chapter 11 Cases in the United States Bankruptcy Court for the Southern District of Texas (the "Court").

17. On September 4, 2025, the Debtors filed the Plan, a proposed disclosure statement (the "Disclosure Statement") [D.I. 120], and an emergency motion (the "Emergency Motion") to approve the Disclosure Statement to establish the procedures ("Solicitation Procedures") that the Debtors have proposed for voting and confirmation of the Plan [D.I. 122]. Relevant to this Motion, the Solicitation Procedures contain include forms and directions (the "Opt-Out Procedures") for holders of claims against and interests in the Debtors to opt out of the Third-Party Release (defined below).

18. Pursuant to the Confirmation Procedures Order, the opt-out deadline is tentatively scheduled for November 7, 2025, at 4:00 p.m. Central Time (the "Opt-Out Deadline").

A. The Third-Party Release

19. Article X of the Plan contains a deemed release (the "Third-Party Release") of numerous non-Debtors' claims against the Debtors and myriad other non-Debtors, that states in pertinent part:

> [A]s of the Effective Date. . . each Releasing Party, in each case on behalf of itself and its respective successors, assigns, and Representatives, and any and all other Persons who may purport to assert any Claim or Cause of Action, directly or derivatively, by, through, for, or because of the foregoing Persons, has and is deemed to have, forever and unconditionally, released, and absolved each Released Party from any and all Claims, obligations, rights, suits, damages, and Causes of Action, remedies, and liabilities whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise, including any derivative claims asserted or assertable on behalf of the Debtors, the Estates, the Reorganized Parent, or the Reorganized Debtors that such Person would have been legally entitled to assert in its own right (whether individually or

Plaintiff has no other option but to seek the relief in this Motion while its lead plaintiff motion is considered by the District Court.

> collectively) or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Person, based on or relating to . . .(i) the governance, management, transactions, ownership, or operation of the Debtors or the Non-Debtor Affiliates, (ii) the purchase, acquisition, sale, merger, or rescission of any business line, Assets, or Security of the Debtors or the Non-Debtor Affiliates, . . . (iv) the business or contractual arrangements between any Debtor or Non-Debtor Affiliate and any other Person (including Consenting Creditors), . . . (xi) any other act or omission, transaction, agreement, event, or other occurrence related to any of the foregoing and taking place on or before the Effective Date; . . .
>
> Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and, further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) given and made after due notice and opportunity for hearing; and (3) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third-Party Release.

See Plan, Art. X, Sec. 10.6(b).

20. Through a Byzantine maze of definitions in the Plan, it appears that claims of the Debtors' creditors, likely including Class Members, against each Non-Debtor Defendant will be gratuitously released through the Third-Party Release.

21. First, the "Releasing Parties" deemed to grant the Third-Party Release include, among numerous others, "each Holder of a Claim or Interest in a Non-Voting Class that does not affirmatively elect to 'opt-out' of the Third-Party Release as provided on its respective Release Opt-Out Form." *See* Plan, Art. I.A.

22. The claims of Proposed Lead Plaintiff and Class Members against the Debtors arise from purchases or sales of securities of ModivCare, and thus are classified in Class 7, "Section 510(b) Claims." *See* Plan, Sec. 4.7. Holders of claims in Class 7, such as Proposed Lead Plaintiff and the Proposed Class, are receiving no distribution under the Plan, and thus are deemed to reject the Plan. *See* id. Based upon the definition of Releasing Parties, Proposed Lead Plaintiff and

Proposed Class would be deemed to grant the Third-Party Release unless they take affirmative steps to opt out. Accordingly, the Plan, as currently written, attempts to deprive Class Members of any remedy for the Non-Debtor Defendants' wrongdoing, even though Class Members will receive absolutely nothing under the Plan and even though they have been, and will be given, no notice of the Chapter 11 Cases, the Plan, the Third-Party Release, or the Opt-Out Procedures (and, even if given such notice, likely do not even realize they have securities claims against the Non-Debtor Defendants as the Securities Litigation is in its early stages).

23. The "Released Parties" under the Third-Party Release comprise a similarly broad universe including, among numerous others:

> (a) the Debtors; (b) the Reorganized Debtors; . . . (j) each Holder of a Claim or Interest in a Non-Voting Class that does affirmatively elect to "opt out" of the Third-Party Releases as provided on its respective Release Opt-Out Form; and (k) with respect to each of the foregoing persons in clauses (a) through (j), all Related Parties. . .

See Plan, Art. I.A.

24. Connecting the dots further, the Plan defines "Related Party" to include:

> current and former affiliates, and such Person's and its current and former affiliates' current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, and assigns, subsidiaries, and each of their respective current and former equity holders, officers, directors, managers, principals, members, employees, agents, fiduciaries, trustees, advisory board members, financial advisors, limited partners, general partners, attorneys, accountants, managed accounts or funds, management companies, fund advisors, investment bankers, consultants, investment managers, investment advisors, representatives, and other professionals, and such Person's respective heirs, executors, estates, and nominees, each in their capacity as such.. . . .

Plan, Art. I.A.

25. To ascertain whether claims against the Non-Debtor Defendants in the Securities Litigation are released by the Third-Party Release, absent Class Members would have to (a) first

be aware of the Debtors' bankruptcy filing and the Securities Litigation, (b) understand that they have claims against ModivCare and the Non-Debtor Defendants in the Securities Litigation, (c) locate and review the lengthy and complex Plan, (d) interpret a maze of interconnected defined terms, (e) locate, review, and comprehend the Opt-Out Procedures and ascertain therefrom that creditors may be required to affirmatively opt out of the Third-Party Release *even if they are receiving nothing under the Plan*, and finally, (f) opt out of the Third-Party Release on or before the Opt-Out Deadline, all in the context of a confirmation process being conducted on a compressed timeline.

26. This complicated, convoluted process for engineering "consent"—particularly where Class Members are receiving no actual notice of the Chapter 11 Cases, the Plan, the Third-Party Release, or the Opt-Out Procedures, and likely are not yet aware of the Securities Litigation or the claims asserted therein—is the very reason why Proposed Lead Plaintiff must confirm his authorization, in furtherance of any order of the District Court appointing him as lead plaintiff, to opt out of the Third-Party Release on behalf of the Proposed Class and ensure that the rights and claims of Class Members are preserved.

RELIEF REQUESTED

27. By this Motion, Proposed Lead Plaintiff respectfully requests that the Court enter an order (a) confirming Proposed Lead Plaintiff's authority, or providing authority (to the extent authorization is necessary), to opt out of the Third-Party Release on behalf of the Proposed Class or, in the event the Court declines to grant such relief in the absence of certification of the Proposed Class in this Court, (b) certifying the Proposed Class for the sole and limited purpose of permitting Securities Plaintiffs, on behalf of the Proposed Class, to opt out of the Third-Party Release.

BASIS FOR RELIEF REQUESTED

I. PROPOSED LEAD PLAINTIFF HAS AUTHORITY, OR SHOULD BE AUTHORIZED, TO OPT OUT OF THE THIRD-PARTY RELEASE ON BEHALF OF THE PROPOSED CLASS.

28. Proposed Lead Plaintiff, like all class representatives in federal class-action litigation, is or soon likely will be a fiduciary for all absent Class Members. *See, e.g.*, *Eubank v. Pella Corp.*, 753 F.3d 718, 723 (7th Cir. 2014) ("Class representatives are . . . fiduciaries of the class members. . . ."); *Schick v. Berg*, No. 03 Civ. 5513 (LBS), 2004 WL 856298, *4 (S.D.N.Y. Apr. 20, 2004), *aff'd,* 430 F.3d 112 (2d Cir. 2005) ("The general rule is that the named plaintiff and counsel bringing the action stand as fiduciaries for the entire class, commencing with the filing of a class complaint.") (citation omitted); *cf. In re Gen. Motors Corp. Pick-Up Truck Fuel Prod. Liab. Litig.*, 55 F.3d 768, 801 (3d Cir. 1995) ("Beyond their ethical obligations to their clients, class attorneys, purporting to represent a class, also owe the entire class a fiduciary duty once the class complaint is filed."). That duty indisputably applies where, as here, a plaintiff has been appointed as lead plaintiff. *See, e.g.*, *Addison Automatics, Inc. v. Hartford Cas. Ins. Co.*, 731 F.3d 740, 742 (7th Cir. 2013) (finding that a class representative "owes continuing fiduciary obligations to the class it represents" even in separate proceedings); *Sondel v. Nw. Airlines*, 56 F.3d 934, 938–39 (8th Cir. 1995) ("Thus, the certified representatives and the class counsel had fiduciary responsibilities to the Class when prosecuting the state court action. . . . We do not believe that these duties are confined to the four corners of the federal lawsuit.").

29. As a fiduciary, Proposed Lead Plaintiff has not only the *ability* to take necessary actions to protect the rights of absent Class Members, but an affirmative *obligation* to do so. The same duty applies to his counsel, which "must fairly and adequately represent the interests of the [Certified C]lass." Fed. R. Civ. P. 23(g)(4). Nowhere are these duties more essential than in connection with the Third-Party Release, which threatens to eviscerate Class Members' claims

against the Non-Debtor Defendants. The relief that Proposed Lead Plaintiff seeks through this Motion is no different from opposing a motion to dismiss—an action it unquestionably has the power to take.

30. To enable Proposed Lead Plaintiff to fulfill his statutory obligations and fiduciary duties to the Proposed Class and prevent the Debtors from unilaterally eliminating Class Members' claims against the Non-Debtor Defendants, the Court should authorize Proposed Lead Plaintiff (or confirm his authority)[5] to opt out of the Third-Party Release on behalf of the entire Proposed Class.

31. The relief Proposed Lead Plaintiff seeks is also within his inherent powers, once officially appointed, and does not expand on the authority typically granted under a lead plaintiff order. This relief does not prejudice the Debtors—it simply enables Proposed Lead Plaintiff to do what it is obligated to do to take the necessary steps to preserve Class Members' rights and claims from being released through the Plan.

32. Proposed Lead Plaintiff solely intends to preserve rights that Class Members, under the circumstances, are in no position to protect by themselves. Proposed Lead Plaintiff is not seeking from this Court a determination on the merits of Class Members' claims against the Debtors or the Non-Debtor Defendants, nor to bind Class Members to any result in the Securities Litigation. Rather, Proposed Lead Plaintiff seeks only the ability to safeguard Class Members' rights so they can decide for themselves whether to participate in the Securities Litigation when the appropriate time comes.

33.

[5] Bankruptcy Rule 9010(c), which requires a power of attorney as evidence of the authority of an agent "to represent a creditor for any purpose *other than* the execution and filing of a proof of claim *or the acceptance or rejection of a plan*[,]" also implies, if not indicates, that Proposed Lead Plaintiff has the authority to opt out of the Third-Party Release on behalf of the Proposed Class because the opt-out process is integrated with confirmation of the Plan.

II. ALTERNATIVELY, THE COURT SHOULD CERTIFY THE PROPOSED CLASS TO PERMIT PROPOSED LEAD PLAINTIFF TO OPT OUT ON BEHALF OF THE PROPOSED CLASS.

A. Class Certification is Appropriate in a Bankruptcy Proceeding.

34. Bankruptcy Rule 7023 makes Federal Rule of Civil Procedure 23 applicable in certain bankruptcy proceedings. Bankruptcy Rule 9014(c) provides this Court with discretion to decide whether to invoke Bankruptcy Rule 7023 in a contested matter, such as this Motion. *In re Kaiser Group Int'l, Inc.*, 278 B.R. 58, 62 (Bankr. D. Del. 2002); *In re United Co. Fin. Corp.*, 276 B.R. 368, 372 (Bankr. D. Del. 2002); *In re Musicland Holdings Corp.*, 362 B.R. 644, 650 (Bankr. S.D.N.Y. 2007); *Iles v. LTV Aerospace & Defense Co. (In re Chateaugay Corp.)*, 104 B.R. at 626, 633 (S.D.N.Y. 1989).

35. A broad majority of courts have concluded that class proofs of claim, the context in which class certification under Bankruptcy Rule 7023 most commonly arises, are permissible in bankruptcy proceedings. *See, e.g.*, *Reid v. White Motor Corp.*, 886 F.2d 1462, 1469 (6th Cir. 1989); *In re Charter Cos.*, 876 F.2d 866, 873 (11th Cir. 1989); *In re Am. Reserve Corp.*, 840 F.2d 487, 493 (7th Cir. 1988); *In re Zenith Lab'ys, Inc.*, 104 B.R. 659, 662 n.2 (D.N.J. 1989); *Chateaugay*, 104 B.R. at 629; *In re First Interregional Equity Corp.*, 227 B.R. 358, 366 (Bankr. D.N.J. 1998); *In re Woodward*, 205 B.R. 365, 370 (Bankr. S.D.N.Y. 1997); *In re Sacred Heart Hosp. of Norristown*, 177 B.R. 16, 22 (Bankr. E.D. Pa. 1995). The relief Proposed Lead Plaintiff seeks here is even more limited than the class certification customarily sought in connection with the allowance of a class proof of claim, which would be meaningless here because Class 7 is receiving nothing under the Plan.

36. A proponent of class certification in the context of a contested matter must first establish that Bankruptcy Rule 7023 should apply. *In re Musicland*, 362 B.R. at 651; *In re Ephedra Prods. Liab. Litig.*, 329 B.R. 1, 4–5 (S.D.N.Y. 2005). The rules in Part VII of the Bankruptcy

Rules, including Bankruptcy Rule 7023, apply automatically in adversary proceedings, and may also be applied in contested matters under Bankruptcy Rule 9014. *Woodward*, 205 B.R. at 369. A contested matter is a dispute between parties, typically brought by way of a motion. Bankruptcy Rule 9014(c) provides that the "court may *at any stage* in a particular matter direct that one or more of the *other rules in Part VII shall apply*." (Emphasis added). Thus, the Court can invoke Bankruptcy Rule 7023 in connection with a contested matter. *See Charter Cos.*, 876 F.2d at 874; *see generally Am. Reserve*, 840 F. 2d at 488; *Chateaugay*, 104 B.R. at 633–34.

37. A party may move for class certification at any time after the petition has been filed, thereby creating the requisite contested matter to apply Rule 23 and Bankruptcy Rule 7023, through Bankruptcy Rule 9014. *See, e.g.*, *Woodward*, 205 B.R. at 370 (citing *Dura-Bilt Corp. v. Chase Manhattan Corp.*, 89 F.R.D. 87, 101 (S.D.N.Y. 1981)); *Sanders v. Faraday Lab'ys., Inc.*, 82 F.R.D. 99, 102 (E.D.N.Y. 1979). This Motion creates the requisite contested matter sufficient to apply Bankruptcy Rule 7023, and thus Rule 23.[6]

A. The *Musicland* Factors Are Satisfied.

38. Courts apply a two-step analysis to determine whether to certify a class in the context of a bankruptcy case. *In re Chaparral Energy, Inc.*, 571 B.R. 642, 646 (Bankr. D. Del. 2017). First, the Court must make the threshold decision of whether it is beneficial to apply Rule 7023, via Bankruptcy Rule 9014(c), to a contested matter. *Id.* Second, if the Court determines in the first step that applying Bankruptcy Rule 7023 is appropriate, the Court then must determine

[6] Absent a favorable and timely resolution of this Motion, Proposed Lead Plaintiff also reserves the right to object to confirmation of the Plan, which would create another contested matter. If the Court finds that this Motion does not create the requisite contested matter to invoke Bankruptcy Rule 7023, Proposed Lead Plaintiff respectfully requests that the Court extend the Opt-Out Deadline with respect to the opt-out election for Proposed Lead Plaintiff and the Proposed Class at least through confirmation of the Plan.

whether the class certification requirements of FRCP 23 have been satisfied. *Id.*; *see also Gentry v. Siegel*, 668 F.3d 83, 93 (4th Cir. 2012).

39. The first step of the Bankruptcy Rule 7023 analysis is a discretionary decision to be made by a Bankruptcy Court. *Chaparral Energy*, 571 B.R. at 646. This Court's discretionary analysis focuses on "whether the benefits of applying Rule 7023 (and Civil Rule 23) are superior to the benefits of the standard bankruptcy claims procedures." *Gentry*, 688 F.3d at 93. In making that determination, courts generally balance three factors (the "*Musicland* Factors"): (1) whether the class was certified pre-petition, (2) whether members of the putative class received notice of the relevant proceeding (typically a bar date), and (3) whether class certification will adversely affect the administration of the estate. *In re Musicland*, 362 B.R. at 654.

40. Although the Proposed Class has not yet been certified by the District Court, the second and third *Musicland* factors are easily satisfied here.

41. The second factor, whether the members of the Proposed Class received actual notice of a proceeding that threatens their rights (typically a claims bar date; here, the Opt-Out Deadline), is of critical importance here because the Debtors have failed to provide constitutionally mandated actual notice of the Opt-Out Deadline to members of the Proposed Class. *See, e.g.*, *Chaparral Energy*, 571 B.R. at 646 ("The second *Musicland* factor weighs in favor of applying Bankruptcy Rule 7023 to the Class Claims as not all putative class members were served with notice of the Bar Date.").

42. Class Members are known creditors entitled to actual notice of the Opt-Out Deadline. *See Richmond v. United States*, 172 F.3d 1099, 1103 (9th Cir. 1999) ("***Actual notice is a minimum constitutional precondition*** to a proceeding which will adversely affect the liberty or property interests' of a creditor in bankruptcy.") (citation omitted); *In re Drexel Burnham Lambert*

Group, Inc., 151 B.R. 674, 680 (Bankr. S.D.N.Y. 1993) (known creditors are entitled to actual notice of proceedings threatening their rights in bankruptcy cases); *Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 166–67, 166 n.5 (1974) (describing a customary procedure for providing actual notice to over two million stock purchasers by obtaining their names and addresses from their intermediary brokers); *Destefano v. Zynga, Inc.*, 2016 U.S. Dist. LEXIS, at *19–*20 (N.D. Cal. Dec. 11, 2016) (describing court-ordered process for providing actual notice to absent members of class of securities purchasers based on issuer's transfer records and through "street name" nominee brokers); *In re Am. Apparel S'holder Litig.*, 2014 U.S. Dist. LEXIS 184548, *19–*20 (C.D. Cal. July 28, 2014) (same).

43. As evidenced by the notice list and affidavits of service filed in the Chapter 11 Cases to date, the Debtors have made no effort whatsoever to provide actual notice of the Opt-Out Deadline to members of the Proposed Class. Accordingly, the second *Musicland* factor is easily satisfied.

44. The third *Musicland* factor, the impact of class certification on the administration of the estate, also supports invoking Bankruptcy Rule 7023. Pursuant to this factor, courts may decline to apply Rule 23 to a contested matter if doing so would "'gum up the works' of distributing the estate." *In re MF Global Inc.*, 512 B.R. 757, 763 (Bankr. S.D.N.Y. 2014). Here, certification of the Proposed Class solely to enable Proposed Lead Plaintiff to opt out on behalf of the Proposed Class will not affect the plan process or administration of the estate at all, much less "gum up the works." Proposed Lead Plaintiff is not seeking class certification for any purpose other than to ensure Proposed Lead Plaintiff can opt out of the Third-Party Release on behalf of the Proposed Class. Simply put, certification of the Proposed Class as requested in this Motion will have no impact whatsoever on the estate. Accordingly, the third *Musicland* factor is easily satisfied.

B. The Requirements for Class Certification Are Satisfied.

45. Having established grounds for the Court to apply Bankruptcy Rule 7023, Proposed Lead Plaintiff must next satisfy the requirements for class certification under Rule 23. *Johnston v. HBO Film Mgmt*., 265 F.3d 178, 183 (3d Cir. 2001); *Georgine v. Amchem Prod., Inc.,* 83 F.3d 610 (3d Cir. 1996), *aff'd sub nom. Amchem Prod., Inc. v. Windsor*, 521 U.S. 591, 117 S. Ct. 2231, 138 L. Ed. 2d 689 (1997); *Wetzel v. Liberty Mut. Ins. Co.*, 508 F.2d 239, 248 (3d Cir. 1975), *cert. denied,* 421 U.S. 1011 (1975). That burden is easily satisfied here.

46. A party seeking class certification must demonstrate that each of the four requirements of Rule 23(a) and at least one of the requirements of Rule 23(b) are met. Rule 23(a) provides that a class member may maintain a class action as a representative of a class if the member establishes that:

(i) the class members are so numerous that joinder of all members is impracticable (numerosity);

(ii) the action addresses questions of law or fact common to the class (commonality);

(iii) the claims or defenses of the class representatives are typical of the claims or defenses of the class (typicality); and

(iv) the class representative parties will fairly and adequately protect the interests of the class (adequacy).

Fed. R. Civ. P. 23(a).

47. Proposed Lead Plaintiff is seeking certification of the Proposed Class for an extremely limited purpose, solely to enable Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class. This purely protective act will ensure that absent Class Members are not improperly and unjustly stripped of their rights and will have no impact whatsoever on the Debtors' estates. Accordingly, Proposed Lead Plaintiff's burden with respect to the requirements for certification of the Proposed Class for the limited purpose sought herein is

significantly lower than the burden necessary to certify a class for the purposes of asserting a class claim. As described below, the circumstances here satisfy all four requirements under Rule 23(a).

(i) Numerosity is Satisfied.

48. The numerosity requirement is met when "the class is so numerous that joinder of all members is impracticable." Rule 23(a)(1). Numerosity does not require that joinder be impossible but instead dictates that joinder of all the parties is impracticable when the procedure would be "inefficient, costly, time-consuming, and probably confusing." *Ardrey v. Fed. Kemper Ins. Co.*, 142 F.R.D. 105, 111 (E.D. Pa. 1992) (citation omitted). A court may make "common sense assumptions" to support a finding of numerosity. *Snider v. Upjohn Co.*, 115 F.R.D. 536, 539 (E.D. Pa. 1987) (quoting *Wolgin v. Magic Marker Corp.*, 82 F.R.D. 168, 171 (E.D. Pa. 1979)).

49. This matter readily meets the numerosity requirement. As stated in the Complaint, "[t]he members of the Class are so numerous that joinder of all members is impracticable. . . . While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are at least hundreds or thousands of members in the proposed Class." *See* Complaint ¶ 40.

50. In addition, attempting to join all Class Members solely for the purpose of opting out of the Third-Party Release at this stage would be extremely inefficient, costly, and time-consuming. Even if the opt-out mechanism were appropriate with respect to the Proposed Class, the effort and cost necessary to belatedly contact all Class Members and solicit their opt-out elections would be substantial—and, because the Debtors failed to do so in connection with the solicitation of votes on the Plan, would take far more time than presently exists before the Opt-Out Deadline. Common sense dictates that the most efficient and cost-effective means of enabling members of the Proposed Class to opt out of the Third-Party Release is for Proposed Lead Plaintiff,

in the exercise of his statutory and fiduciary duties as a class representative, to do so on their behalf.

(ii) Commonality is Satisfied

51. The threshold inquiry for commonality is whether there are any questions of fact or law that are common to the class. Fed. R. Civ. P. 23(a)(2). This "threshold of commonality is not high." *In re Sch. Asbestos Litig.*, 789 F.2d 996, 1010 (3d Cir. 1986) (citation omitted). Not all class members need share identical claims; "factual differences among the claims of the putative class members do not defeat certification." *Baby Neal v. Casey*, 43 F.3d 48, 56 (3d Cir. 1994). "The commonality requirement will be satisfied if the named plaintiffs share at least one question of fact or law with the grievances of the prospective class." *Id*. at 56; *Krell v. Prudential Ins. Co. of Am. (In re Prudential Ins. Co. Am. Sales Prac. Litig. Agent Actions)*, 148 F.3d 283, 310 (3d Cir. 1998) (citation omitted). The commonality requirement is satisfied with respect to the singular issue of opting out of the Third-Party Release for several reasons.

52. First, the potential impact of the Third-Party Release is identical for all members of the Proposed Class. Absent a carve-out of the claims of the Proposed Class from the impact of the Third-Party Release, a class-wide opt-out will be the only means of preserving absent Class Members' claims against the Non-Debtor Defendants.

53. Second, all Class Members are identically situated from a factual standpoint in the Chapter 11 Cases. All Class Members (including Proposed Lead Plaintiff) hold claims against the Non-Debtor Defendants, who are potential beneficiaries of the Third-Party Release. All members of the Proposed Class are receiving nothing under the Plan and are receiving nothing whatsoever for the threatened release of their valuable claims against the Non-Debtor Defendants—claims that the District Court has not dismissed. Thus, the key questions of fact related to the Third-Party

Release are indisputably common to Proposed Lead Plaintiff and all members of the Proposed Class, satisfying the commonality requirement.

(iii) Typicality is Satisfied.

54. The typicality and adequacy requirements in Rules 23(a)(3) and (4) are designed to ensure that the named class members, such as Proposed Lead Plaintiff, will adequately protect the interests of absent class members. *See, e.g.*, *Gen. Tel. Co. of Sw. v. Falcon*, 457 U.S. 147, 157 (1982). Rule 23(a)(3) requires that "the claims or defenses of the class representative parties be typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). Typicality entails an inquiry into whether "the named plaintiff's individual circumstances are markedly different or . . . the legal theory upon which the claims are based differs from that upon which the claims of other class members will perforce be based." *Weiss v. York Hosp.*, 745 F.2d 786, 809 n. 36 (3d Cir. 1984). "The typicality requirement is designed to align the interests of the class and the class representatives so that the latter will work to benefit the entire class through the pursuit of their own goals." *In re Prudential*, 148 F.3d at 311; *see also Baby Neal*, 43 F.3d at 57. Similar to commonality, the typicality requirement does not mandate that all class members share identical claims. *See Baby Neal*, 43 F.3d at 56.

55. As discussed above, Proposed Lead Plaintiff's circumstances vis-à-vis the Third-Party Release are not just typical, but are completely *identical* to those of all absent Class Members. Proposed Lead Plaintiff, like all other members of the Proposed Class, is faced with a Third-Party Release that threatens to eviscerate his claims against the Non-Debtor Defendants in the Securities Litigation. Thus, Proposed Lead Plaintiff's claims, both in the Securities Litigation and in the narrow context of opting out of the Third-Party Release, are typical of the claims of the Class Members, and it is indisputable that the position of Proposed Lead Plaintiff with respect to

the Third-Party Release is fully aligned with and typical of—indeed, identical to—that of Class Members. Here, "the disputed issue of law or fact occupies essentially the same degree of centrality to the named plaintiff's claim as to that of the other members of the proposed class." *Mazzei v. Money Store*, 829 F.3d 260 (2d Cir. 2016) (citation omitted). Accordingly, the typicality requirement is satisfied.

(iv) Adequacy is Satisfied.

56. Rule 23(a)(4) requires that "the representative party will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). A class has adequate representation if (1) counsel for the named plaintiff is qualified, experienced, and generally able to conduct the action, and (2) the class representative's interests are not antagonistic to those of the unnamed members of the class. *See, e.g.*, *Prudential*, 148 F.3d at 312; *First Interregional*, 227 B.R. at 368–69. The adequacy requirement is satisfied here.

57. First, Proposed Lead Plaintiff's interests in connection with the Third-Party Release are completely aligned with those of all members of the Proposed Class. Just as Proposed Lead Plaintiff stands to lose valuable claims against Non-Debtor Defendants if it does not opt out of the Third-Party Release, so will members of the Proposed Class—most or all of whom were never served with any notice of the Plan and Disclosure Statement, the Third-Party Release, the Emergency Motion, or the Opt-Out Procedures—if Proposed Lead Plaintiff is not permitted to opt out on their behalf. Proposed Lead Plaintiff's representation in this regard is not merely adequate, it is the *only* manner in which absent Class Members' valuable rights can be protected and preserved under the circumstances.

58. Second, Proposed Lead Plaintiff is represented by – and has moved for the District Court's authorization of -- Levi & Korsinsky LLP as Lead Counsel, a firm with substantial

experience in the prosecution and successful resolution of securities class action matters. Likewise, Lowenstein Sandler LLP, bankruptcy counsel retained by Lead Counsel on behalf of Proposed Lead Plaintiff and the Proposed Class, has substantial experience in complex chapter 11 bankruptcy matters and related class action proceedings. Therefore, the adequacy requirement is satisfied.

(v) The Requirements of Rule 23(b)(3) are Satisfied.

59. In addition to the requirements of Rule 23(a), a party seeking certification of a class must also satisfy one of the prongs of Rule 23(b). The additional requirements of Rule 23(b) overlap considerably with those of Rule 23(a), and with each other. *See generally* 2 Alba Conte & Herbert Newberg, NEWBERG ON CLASS ACTIONS § 4:22 (4th ed. 2002). Here, such an analysis should be limited to the very narrow purpose for which Proposed Lead Plaintiff is seeking certification of the Proposed Class.

60. Proposed Lead Plaintiff satisfies Rule 23(b)(3) by demonstrating that

> [q]uestions of law or fact common to members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

Fed. R. Civ. P. 23(b)(3). The first requirement of Rule 23(b)(3) can be characterized as the "predominance requirement," and the second, the "superiority requirement." "The inquiry is mainly a pragmatic one: do the common issues justify a common adjudication?" *In re Telectronics Pacing Sys. Accutrial Atrial "J" Leads Prods. Liab. Litig.*, 172 F.R.D. 271, 287 (S.D. Ohio 1997). The Rule 23(b)(3) requirements are satisfied here because the Third-Party Release threatens the continuing viability of the Securities Litigation on a Class-wide basis, not on an individual basis. Moreover, the rights and claims Proposed Lead Plaintiff seeks to preserve on behalf of absent

Class Members—direct securities fraud claims against Non-Debtor Defendants in the Securities Litigation—depend upon common issues of fact and law.[7]

(1) The Predominance Requirement is Satisfied.

61. The purpose of the predominance requirement is to ensure that a class is sufficiently cohesive to warrant adjudication by representation. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 623 (1997); *In re LifeUSA Holding Inc.*, 242 F.3d 136, 144 (3d Cir. 2001). "In order to predominate, the common issues must constitute a 'significant part' of the individual cases." *Meyer v. CUNA Mut. Grp.*, No. CIV.A. 03-602, 2006 WL 197122, at *22 (W.D. Pa. Jan. 25, 2006) (citation omitted). Rule 23(b)(3) requires that common issues "predominate," not that they be dispositive of the litigation, and not that individual issues be entirely absent. *See also* Wright, Miller & Kane, § 1778.

62. Importantly, in determining whether common issues predominate, the court's inquiry typically is directed primarily toward the issue of liability. *In re Kaiser*, 278 B.R. at 67 (finding that "common questions of fact and law arising from the securities fraud claims predominate over the individual issues"); *accord Morangelli v. Chemed Corp.*, 275 F.R.D. 99, 105 (E.D.N.Y. 2011). However, this requirement should be relaxed somewhat in the present context, as Proposed Lead Plaintiff is not moving for certification of the Proposed Class for purposes of establishing liability.

63. The predominance requirement is satisfied here. The Third-Party Release is potentially an existential threat to the claims of every Class Member. There are no individualized concerns that may differ for individual Class Members with respect to the Third-Party Release;

[7] The implied "ascertainability" requirement of Rule 23(b)(3), *see Marcus v. BMW of N. Am., LLC*, 687 F.3d 583, 593 (3d Cir. 2012), is satisfied here because the members of the Proposed Class can be identified through procedures routinely used in securities class actions.

the threat of being subject to a completely gratuitous release of valuable claims predominates Class-wide. *See In re Data Access Sys. Sec. Litig*., 103 F.R.D. 130, 142 (D.N.J. 1984) (common issues predominated where class members were united in their desire to establish the defendants' complicity and liability in the formulation and public dissemination of false and misleading information regarding its financial condition during the class period); *Lerch v. Citizens First Bancorp, Inc.*, 144 F.R.D. 247, 252 (D.N.J. 1992) (predominance may be found in securities fraud cases if defendant's challenged activities stem from single, class-wide course of conduct, so that issue of statutory liability is common to the class). Certification of the Proposed Class resolves this predominant, class-wide issue in an extremely efficient manner by permitting Proposed Lead Plaintiff to utilize the opt-out mechanism already contained in the Plan on behalf of all Class Members, without any modifications whatsoever to the Plan.

(2) The Superiority Requirement is Met.

64. A court must also find that "a class action is superior to other available methods for the fair and efficient adjudication of the controversy." Fed. R. Civ. P. 23(b). Courts consider four primary factors in determining whether a class action is superior pursuant to Fed. R. Civ. P. 23(b)(3): (1) the interests of class members in individually controlling the prosecution of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by members of the class; (3) the desirability of concentrating the litigation of the claims in the particular forum in which the class action is pending; and (4) difficulties likely to be encountered in the management of the class action. See Fed. R. Civ. P. 23(b)(3). Certification of the Proposed Class for the limited purpose set forth herein is superior to any other method—and, indeed, is likely the *only* method—of preserving the rights of the members of the Proposed Class.

65. Courts have consistently embraced the class action device as a superior method of adjudicating violations of the federal securities laws. *Data Access*, 103 F.R.D. at 137 ("The nature of the securities laws is complex. . . . the interests of justice require . . . allowing the class action.") (citations omitted). Courts have also recognized the necessity of the class action device in the bankruptcy context. *See, e.g.*, *Mortg. & Realty Tr.*, 125 B.R. 575, 580–82 (C.D. Cal. 1991). Rule 23(b)(3) requires that class actions be superior to other methods for the fair and efficient adjudication of the controversy. *Data Access*, 103 F.R.D. at 142. This determination necessarily involves a comparison of alternative mechanisms of dispute resolution.

66. That analysis is simple here: The Debtors failed to provide Class Members notice of the Opt-Out Deadline, and the opt-out mechanism is grossly inequitable in any event. Thus, certification of the Proposed Class is not only superior, but the *only* means of preserving the rights the Debtors seek to gratuitously strip away. Even if the Court were to determine that the opt-out mechanism is appropriate as applied to an impaired, non-voting class receiving nothing under the Plan, providing an opt-out notice at this stage would be expensive and complex and, paradoxically, would delay implementation of the Plan far more than simply certifying the Proposed Class for the limited purpose sought.

67. A Class-wide opt-out by Proposed Lead Plaintiff on behalf of the Proposed Class is by far the superior approach. Class Members have a compelling interest in not being required to individually locate, read, analyze, understand, and then affirmatively opt out of the Third-Party Release just to avoid unwittingly forfeiting rights for nothing. Most, if not all, Class Members have not been given any notice by the Debtors of the pendency of Plan confirmation, the potential impact of the Third-Party Release on the Securities Litigation, or of the mechanism for opting out of the Third-Party Release.

68. To preserve their rights individually, Class Members would need to independently (a) know of the existence of the Chapter 11 Cases, that the Plan is on file, and that confirmation is pending, (b) interpret a maze of Plan provisions and defined terms to ascertain that their claims against Non-Debtor Defendants in the Securities Litigation are potentially being released by virtue of their ostensible status as holders of "Claims," a bankruptcy-specific term that is subject to interpretation even among courts and sophisticated chapter 11 practitioners, (c) locate the opt-out election form, (d) complete the release opt-out form, and (e) return the release opt-out form to the Debtors' noticing agent by the Opt-Out Deadline—all in a case where Class Members are not slated to receive a distribution and have no reason to believe their involvement in the Plan process is necessary. On the other hand, a Proposed Class-wide opt-out simply (and properly) excludes all Class Members from the impact of the Third-Party Release. The class device is not just a superior means of protecting Class Members' rights. It is the only reasonable means of ensuring that their rights are protected.

(3) This Matter is Well-Suited for Class Treatment.

69. Proposed Lead Plaintiff seeks certification of the Proposed Class for the sole and limited purpose of authorizing him to opt out of the Third-Party Release on behalf of the Proposed Class (to the extent he does not have such authority already). There is no better example of a proceeding where the class device is appropriate. Certification of the Proposed Class for the limited purpose sought herein would provide a fair and efficient manner of preserving the rights of potentially thousands of injured Class Members whose rights against the Non-Debtor Defendants otherwise stand to be forfeited without any consideration whatsoever. *Gen. Tel. Co. of the Sw.*, 457 U.S. at 155 ("'[T]he class-action device saves the resources of both the courts and

the parties by permitting an issue potentially affecting every [class member] to be litigated in an economical fashion under Rule 23.'" (citation omitted)).

70. The burden of reaching even a cursory understanding of the operation and impact of the Third-Party Release is a daunting exercise that is all but impossible without the advice of counsel. Therefore, Class Members are exceedingly unlikely even to recognize the need to do so where they are receiving absolutely nothing under the Plan. It is not just impracticable for individual Class Members to individually assert their rights, it is nearly impossible because Class Members cannot even know what their rights are without a material investment of time, effort, and legal fees.

71. Accordingly, this case meets the standards for superiority and is well suited for the limited class treatment sought. Permitting Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class is a superior method, and likely the only plausible method, to preserve Class Members' rights outside of a successful objection to the Third-Party Release that would altogether threaten confirmation.

RESERVATION OF RIGHTS

72. Proposed Lead Plaintiff (individually and on behalf of the Proposed Class) reserves all rights, arguments, and objections in connection with confirmation of the Plan. For the avoidance of doubt, this Objection is not, and may not be construed to be, an objection to confirmation of the Plan or any other plan.

CONCLUSION

73. For the reasons set forth above, Proposed Lead Plaintiff submits that it is essential that he be authorized (to the extent it does not have the authority already) to opt out of the Third-Party Release on behalf of the Proposed Class and thereby preserve Class Members' claims against the Non-Debtor Defendants in the Securities Litigation.

[*signature page follows*]

WHEREFORE, Proposed Lead Plaintiff respectfully request that the Court enter an order (a) authorizing Proposed Lead Plaintiff (or finding that it has such authority) to opt out of the Third-Party Release on behalf of the Proposed Class or, in the alternative, (b) certifying the Proposed Class for the limited purpose of permitting Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class.

Dated: October 1, 2025

LOWENSTEIN SANDLER LLP

/s/ Andrew Behlmann

Andrew Behlmann (S.D. Tex. Bar No. 3145648)
Michael Papandrea (*pro hac vice*)
One Lowenstein Drive
Roseland, New Jersey 07068
Tel: (973) 597-2500
Email: abehlmann@lowenstein.com
Email: mpapandrea@lowenstein.com
-and-
Lindsay H. Sklar (*pro hac vice*)
1251 Avenue of the Americas, 17th Floor
New York, New York 10020
Email: lsklar@lowenstein.com
Bankruptcy Counsel to Proposed Lead Plaintiff

LEVI & KORSINSKY LLP

Gregory M. Potrepka
Shannon Hopkins
1111 Summer Street, Suite 403
Stamford, CT, 06905
Tel: 203-992-4523
E-mail: gpotrepka@zlk.com
E-mail: shopkins@zlk.com

Lead Counsel to Proposed Lead Plaintiff

CERTIFICATION OF SERVICE

I certify that on October 1, 2025, a true and correct copy of the foregoing document was served through the Electronic Case Filing system of the United States Bankruptcy Court for the Southern District of Texas.

/s/ Andrew Behlmann
Andrew Behlmann

EXHIBIT A

PROPOSED ORDER

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

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

ORDER GRANTING MOTION OF SECURITIES LITIGATION PROPOSED LEAD PLAINTIFF FOR ENTRY OF AN ORDER (I) AUTHORIZING THE PROPOSED LEAD PLAINTIFF TO OPT OUT OF THIRD-PARTY RELEASE ON BEHALF OF THE PROPOSED CLASS OR CONFIRMING SUCH AUTHORITY OR, ALTERNATIVELY, (II) CERTIFYING THE PROPOSED CLASS FOR A LIMITED PURPOSE

Upon the motion (the "Motion")[2] of Christopher Skrypski ("Proposed Lead Plaintiff") for an order authorizing or confirming the authority of Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class, or certifying the Proposed Class for the limited purpose of enabling Proposed Lead Plaintiff to opt out of the Third-Party Release on behalf of the Proposed Class; and the Court having found that it has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); 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 the Court having found that the relief requested in the Motion is necessary and appropriate under the circumstances; and Proposed

[1] A complete list of each of the Debtors in these 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' claims and noticing agent at https://www.veritaglobal.net/ModivCare. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

[2] Capitalized terms used but not defined herein have the meanings ascribed thereto in the Motion.

Lead Plaintiff having provided appropriate notice of the Motion; and the Court having reviewed the Motion; 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 upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.
2. Proposed Lead Plaintiff is authorized to opt out of the Third-Party Release on behalf of the Proposed Class.
3. Any Opt-Out Form previously or hereafter submitted to the Debtors' noticing agent by Proposed Lead Plaintiff on behalf of the Proposed Class is hereby deemed valid notwithstanding any noncompliance with or modifications to the form of the Opt-Out Form attached to the solicitation materials.
4. The Court retains jurisdiction with respect to all matters arising from or related to the interpretation or implementation of this Order.

Date: _____, 2025

HONORABLE ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE