Docket #1724 Date Filed: 08/11/2026

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)
Reorganized Debtors.[1]	:	(Jointly Administered)

OBJECTION TO DAVID MOUNTS GONZALES'S APPLICATION FOR PAYMENT OF ADMINISTRATIVE CLAIM UNDER 11 U.S.C. § 503(B)(1)

ModivCare Inc. ("***ModivCare***") and its affiliates in the above-captioned chapter 11 cases (collectively, the "***Reorganized Debtors***" and prior to the Effective Date,[2] the "***Debtors***") represent as follows in support of this objection (the "***Objection***") and request entry of an order, substantially in the form attached hereto (the "***Proposed Order***"), denying the *Application of David Mounts Gonzales for Payment of Administrative Claim Under U.S.C. § 503(b)(1)* [Docket No. 1660] (the "***Application***") filed by David Mounts Gonzales ("***Mr. Mounts Gonzales***").

PRELIMINARY STATEMENT

1. Mr. Mounts Gonzales—a former ModivCare director who is the controlling person of AI Catalyst Fund, LP ("***AI Catalyst Fund***"), who used his board seat to pursue side negotiations with the Debtors' lenders for his own benefit and without disclosure to ModivCare's Board, resigned from the Board mid-discovery, and whose fund then demanded

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

[2] Capitalized terms used, but not otherwise defined herein, have the meaning ascribed to them in the Plan or the Confirmation Order (each as defined below), as applicable.

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approximately $8 million for itself as the price of not obstructing these cases—asks this Court to elevate a garden-variety prepetition indemnity claim into a first-priority administrative expense claim, and to do so more than five months after the Administrative Claims Bar Date expired. The Application fails both procedurally and on the merits.

2. *First*, the Application is time barred. The Administrative Claims Bar Date was February 5, 2026. Mr. Mounts Gonzales, who received notice of the deadline, did not file the Application until July 21, 2026—one hundred sixty-six days late. His only prior filing was a Modified Official Form 410 proof of claim submitted to the Reorganized Debtors' claims agent on January 28, 2026, which identified the "Basis of Claim" as "Indemnification Agreement" and expressly disclaimed any entitlement to priority under section 507(a) or section 503(b)(9). That form states on its face that it may not be used to request payment of an administrative expense. The proof of claim thus in form and substance is not a valid assertion of an administrative claim. The Application offers no explanation for the delay and does not even attempt to plead excusable neglect.

3. *Second*, the Application rests on a legal premise that the Fifth Circuit has squarely rejected. Mr. Mounts Gonzales concedes that his claim arises "pursuant to ModivCare's obligations to Mr. Mounts Gonzales under the Indemnity Agreement"—a contract "dated May 20, 2025," months before the August 20, 2025 Petition Date. Application ¶¶ 4, 16. A right to payment predicated on an executed prepetition contract is not an administrative expense. That the contingency triggering this asserted prepetition right happened to mature after the Petition Date changes nothing.

4. *Third*, Mr. Mounts Gonzales cannot show any benefit to the estates. What the Application contends were benefits to the estates were just benefits to him. He asks the estates to pay $243,942.00 for fees his personal attorneys at Kasowitz LLP billed—including for time spent resisting the estates' discovery requests. Those are expenses of a third-party witness

protecting his own interests, not "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A).

5. *Fourth*, and independently, the Plan did not assume any indemnification obligation running to Mr. Mounts Gonzales. Section 8.4 of the Plan expressly carved out any obligation "to indemnify and hold harmless any Entity for any claim, cause of action, liability, judgment, settlement, cost or expense of the Non-Released Parties (as defined in the Plan Supplement)." The Plan Supplement's definition of "Non-Released Parties" includes AI Catalyst Fund and its affiliates, officers, members, managers, shareholders, controlling persons, and representatives, which includes Mr. Mounts Gonzales given his position as the controlling person of AI Catalyst Fund. The Application does not mention Section 8.4's carve-out, the Non-Released Parties definition, or AI Catalyst Fund at all.

6. At bottom, the Application asks this Court to prefer one former director over every other unsecured creditor of these estates, on the strength of a prepetition contract that the Plan did not assume, and months late. The Bankruptcy Code does not permit that result. Even if the Court were to reach the merits, Mr. Mounts Gonzales holds, at most, an unsecured claim. Accordingly, the Reorganized Debtors respectfully request that the Court deny the Application.

BACKGROUND

I. GENERAL BACKGROUND

7. On August 20, 2025 (the "***Petition Date***"), the Debtors each filed a voluntary petition for relief under title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "***Bankruptcy Code***") with the United States Bankruptcy Court for the Southern District of Texas (the "***Court***").

8. On August 21, 2025, the Court entered the *Order Establishing (A) Bar Dates and Related Procedures for Filing Proofs of Claim, (B) Approving the Form and Manner of Notice Thereof, and (C) Granting Related Relief* [Docket No. 66] (the "***Bar Date Order***").

9. On December 15, 2025, the Court entered the *Order (I) Confirming the Second Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates and (II) Denying Motions of Official Committee of Unsecured Creditors for Leave, Derivative Standing, and Authority to Commence and Prosecute Certain Causes of Action on Behalf of Debtors' Estates* [Docket No. 1055] (the "***Confirmation Order***"), which confirmed the *Second Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates* [Docket No. 959] (as amended, modified, or supplemented from time to time, the "***Plan***").

10. On December 29, 2025, the Debtors filed the *Notice of (I) Entry of Order Confirming Second Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates, (II) Occurrence of Such Plan's Effective Date, and (III) Related Deadlines with Respect to Administrative Expense and Rejection Damage Claims* [Docket No. 1134] (the "***Notice of Effective Date***"). The Plan became effective on December 29, 2025 (the "***Effective Date***"). The Notice of Effective Date set the deadline for the filing of Administrative Claims as February 5, 2026 (the "***Administrative Claims Bar Date***"). On January 6, 2026, the Notice of Effective Date was served via first-class mail on all parties on the Creditor Matrix, including Mr. Mounts Gonzales. *See* Certificate of Service [Docket No. 1182], Ex. D.

11. Mr. Mounts Gonzales had actual notice of these Chapter 11 Cases and their material deadlines. He was represented by two law firms during the Chapter 11 Cases—Kasowitz LLP (representing him personally) and Olshan Frome Wolosky LLP (representing AI Catalyst Fund)—and his counsel were in near-continuous contact with the Debtors' counsel from at least July 2025 through January 2026. Indeed, the Application's own exhibits attach the Debtors' October 15, 2025 transmission to Mr. Mounts Gonzales and his counsel of the agreed chapter 11 case schedule. *See* Application, Ex. C.

II. MR. MOUNTS GONZALES, AI CATALYST FUND, AND HIS ROLE IN THESE CHAPTER 11 CASES

12. Prior to the Petition Date, Mr. Mounts Gonzales was appointed as a member of ModivCare's Board of Directors. Application ¶ 4. He came to the Board as an equityholder and controlling person of AI Catalyst Fund, executing the Indemnification Agreement on which the Application rests from the address dmg@**aicatfund**.com. Application, Ex. A (emphasis added). Those two roles did not remain separate. While still a director, and just days before the chapter 11 filing, his fund advanced a financing proposal to certain Second Lien Noteholders—without informing the Debtors or their advisors—that would have preserved his own equity stake. *See* Debtors' Omnibus Brief Supporting Plan Confirmation [Docket No. 943] ¶¶ 6, 80 & Ex. 1.

13. Two related inquiries shaped Mr. Mounts Gonzales's remaining tenure on the Board. An independent director, Daniel Silvers, represented by Quinn Emanuel and what the Application describes as the "special committee," was empowered to investigate "potential claims and causes of action" the Debtors might hold against "current and former . . . directors"—including "claims against officers and directors for breach of fiduciary duties of care or loyalty"—and Mr. Mounts Gonzales was himself a target. Debtors' Omnibus Brief Supporting Plan Confirmation [Docket No. 943] ¶¶ 63, 65, 99. At the same time, the Creditors Committee was pursuing confirmation discovery directed in part at those same potential estate causes of action. It is against that backdrop that the Application asserts that, "[f]ollowing the Petition Date, Mr. Mounts Gonzales continued to serve as a director of ModivCare and, at ModivCare's request, voluntarily (a) agreed to be interviewed by the special committee . . . ., (b) voluntarily produced documents relating to his service as director and (c) after resigning as a member of the board of directors in November 2025 voluntarily agreed to sit for a deposition by the Creditors Committee, ModivCare and other parties in interest in relation to ModivCare's

plan of reorganization." Application ¶ 6. The Reorganized Debtors do not dispute the chronology. They do dispute, however, its voluntary framing and legal significance.

14. As to the document production, the Application states that Mr. Mounts Gonzales "agreed to produce voluntarily, in response to discovery of ModivCare requested by the creditors' committee, emails he sent in his capacity as director," and that "[a]s stated in the exchange of emails, it was agreed that 'Mr. Mounts Gonzales has his own counsel who will be reviewing the emails first and them providing to Latham & Watkins for production.'" Application ¶ 7. The production was of prepetition emails concerning prepetition director service. What the Application omits is that Mr. Mounts Gonzales—represented as to his fund by separate counsel, Olshan Frome Wolosky LLP, alongside Kasowitz LLP—drew an express line between his two roles. He would produce his "Modivcare emails sent or received in his capacity as a director," but "AI Catalyst Fund does not agree to produce its emails or Mr. Mounts-Gonzales's emails as an equityholder voluntarily for chapter 11 discovery, as they believe they are not relevant. To the extent the Committee seeks these documents, it should serve a subpoena on AI Catalyst Fund." Application, Ex. B.

15. As to the interview conducted by Quinn Emanuel, the Application states that on October 17, 2025, ModivCare's counsel advised that "the special committee of the Board of Directors, represented by Quinn Emanuel was investigating potential estate causes of action and that as part of its investigation requested to interview Mr. Mounts Gonzales," and that the interview "took place on October 30, 2025." Application ¶ 8. What the Application does not say is that Mr. Mounts Gonzales was himself among the targets of that investigation.

16. As to the deposition, the Application states that Mr. Mounts Gonzales agreed to a four-hour remote deposition on November 14, extended it to six hours, "resigned from the ModivCare board on November 9, 2025," and then "was deposed, by agreement of all of the parties, including ModivCare, for two further hours on November 26, 2025." Application ¶ 9.

He thus left the Board in the midst of confirmation discovery, days before sitting for the first session of his own deposition.

17. Mr. Mounts Gonzales's departure from the Board, likewise, was not without incident. Two days after he resigned, on November 11, 2025, his fund threatened to cause delay, increase professional fee burn, and file an examiner motion unless the lenders made a "settlement" payment of approximately $8 million—half his equity investment—to his fund (and no other equityholders). Given his obvious conflicts of interest and potential breach of the duty of loyalty, counsel to the Debtors notified the office of the United States Trustee. *See* Debtors' Omnibus Brief Supporting Plan Confirmation [Docket No. 943] ¶¶ 6, 80 & Ex. 1.

18. Nor was Mr. Mounts Gonzales's cooperation unqualified. As the Application's own Exhibit E demonstrates, when the Debtors and the Consenting Creditors requested additional deposition time, Mr. Mounts Gonzales's counsel responded that the request was "unreasonable, unduly burdensome and oppressive for Mr. Mounts Gonzales - ***a third party***," accused the Debtors of "bad faith acceptance and use of the time Mr. Mounts Gonzalez [sic] voluntarily offered," advised that "Mr. Mounts Gonzalez [sic] will seek an order in Nevada federal court seeking to quash any subpoena that is personally served on him," or alternatively a protective order, emphasized that "no 'notice of deposition,' much less a subpoena, was ever served on Mr. Mounts Gonzales," and invoked Rule 45(d)(1)'s protections for "a person subject to the subpoena," including the prospect of "lost earnings and reasonable attorney's fees" against the estates. (emphasis added). Substantial portions of the fees now sought were incurred in that adversarial posture.

III. THE INDEMNIFICATION AGREEMENT

19. The Application concedes the prepetition genesis of the claim: Mr. Mounts Gonzales "entered into the Indemnification Agreement, dated May 20, 2025, with ModivCare." Application ¶ 4. He executed the agreement on May 30, 2025. Application, Ex. A at 18.

20. The Indemnification Agreement recites that the Company entered into it "in order to induce Indemnitee to serve as a director or officer." Application, Ex. A, Recitals § 18(a). The consideration for the agreement was thus Mr. Mounts Gonzales's service as a director—service that occurred entirely before the Petition Date.

21. The Application relies exclusively on Section 6 of the Indemnification Agreement, which it quotes in full:

> Notwithstanding any other provision of this Agreement, to the fullest extent permitted by applicable law and to the extent that Indemnitee is, by reason of Indemnitee's Corporate Status, a witness, is or was made (or asked) to respond to discovery requests in any Proceeding, or otherwise asked to participate in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Application ¶ 5 (quoting Indemnification Agreement § 6).

22. The Application then asserts, without citation to the agreement, that "'Proceeding' is defined broadly and includes this Chapter 11 case." *Id*.

23. Section 6 is triggered only "by reason of Indemnitee's Corporate Status," defined as "the status of a person who is or was a director, trustee, partner, managing member, officer, employee, agent or fiduciary of the Company." Indemnification Agreement § 2(c). Mr. Mounts Gonzales's Corporate Status was conferred prepetition, and the documents he produced were limited to emails "date[d] from the date of appointment as a director up until the Petition Date." Application, Ex. B at 2.

IV. THE PLAN'S TREATMENT OF INDEMNIFICATION OBLIGATIONS

24. Section 8.4 of the Plan treats Indemnification Obligations as assumed "[e]xcept as otherwise provided in this Plan, all such Indemnification Obligations shall be deemed and treated as Executory Contracts that are assumed by the Debtors under this Plan" but then expressly excludes from that assumption any obligation "to indemnify and hold harmless any

Entity for any claim, cause of action, liability, judgment, settlement, cost or expense of the Non-Released Parties (as defined in the Plan Supplement)."

25. The Plan Supplement defines "Non-Released Parties" to include "AI Catalyst Fund, LP and each of their respective Affiliates and any current and former employee, officer, director, manager, member, shareholder, controlling person, affiliate, subsidiary, or other representative or advisor of any of the foregoing Persons, and any of their subsidiaries." Plan Supplement [Docket No. 802], Ex. A. Mr. Mounts Gonzales falls squarely within that definition as the controlling person of AI Catalyst Fund, as the Application's own exhibits confirm. Application, Exs. A, B.

26. Section 8.1(a) of the Plan provides for assumption of the Debtors' Executory Contracts and Unexpired Leases on the Effective Date, except for those that, in each case, "are rejected or terminated pursuant to the terms of this Plan." Because Section 8.4 expressly declined to assume indemnification obligations owing to Non-Released Parties, any associated agreement was not assumed under Section 8.1(a).

V. THE DEMAND, THE REORGANIZED DEBTORS' RESPONSE, AND THE UNTIMELY APPLICATION

27. On December 29, 2025—the Effective Date—Kasowitz LLP transmitted a letter to ModivCare's General Counsel enclosing "a statement for services provided by Kasowitz LLP to Mr. Gonzales through November 2025 in connection with Mr. Gonzales's services as a director of ModivCare and as a witness in ModivCare's chapter 11 proceeding." Application, Ex. F. The enclosed Kasowitz LLP invoice number 2512468, dated December 29, 2025, seeks $243,615.00 in fees and $327.00 in disbursements, for a total of $243,942.00, for 141.30 hours of professional services "Rendered Through November 30, 2025." *Id*.

28. The invoice reflects two timekeepers: Daniel Fetterman, described as "PARTNER," billing 61.50 hours at $1,950.00 per hour for $119,925.00; and David Mark, described as "COUNSEL," billing 79.80 hours at $1,550.00 per hour for $123,690.00. *Id.* The

invoice's earliest time entry is dated July 31, 2025—three weeks before the Petition Date. *Id.* The Application does not identify what portion of the $243,942.00 was incurred prepetition, what portion was incurred between the Petition Date and the Effective Date, or what portion was incurred after the Effective Date. It does not allocate a single dollar.

29. The invoice further includes numerous entries that bear no relationship to the three categories of postpetition "services" on which the Application relies, including, among others: a September 29, 2025 entry to "Review DIP replies"; a November 11, 2025 entry to "review special committee report"; a November 17, 2025 entry for work on the "response to Ms Wine's email regarding 4 additional hours of deposition"; "review recent filings and email correspondence; review motions; research regarding bankruptcy judge; research regarding Rule 45"; a November 17, 2025 entry to "review Committee's standing motions"; and a November 9, 2025 entry for "Calls and emails re resignation from board." *See* Application, Ex. F.

30. On January 2, 2026, ModivCare's General Counsel responded in writing: "Pursuant to the terms of the plan, the Reorganized Debtors did not assume any obligation to indemnify or otherwise reimburse Mr. Mounts Gonzales or his fund for expenses he may have incurred in connection with the chapter 11 cases or otherwise. Accordingly, the reorganized company does not have any obligation to reimburse Mr. Mounts Gonzales and will not be making a payment on the invoice you shared." Application, Ex. G. The Application acknowledges this response. *See* Application ¶ 11 ("In response, ModivCare rejected the claim on the ground that it did not assume its obligation to indemnify Mr. Mounts Gonzales in its chapter 11 plan.").

31. On January 6, 2026, Mr. Mounts Gonzales's counsel replied by email, asserting three positions: that "we read the plan as providing for the survival of the Debtors' indemnification obligations as provided in section 8.4 of the Plan"; that "whether or not the

Debtors assumed Mr. Mounts Gonzalez's [sic] indemnification agreement, Mr. Mount [sic] Gonzales has an administrative claim because the claim arose post-petition based on services provided to the Debtors"; and that "the services for which indemnification are sought are clearly covered by Mr. Mounts Gonzalez's [sic] indemnification agreement." *See* Application, Ex. G. The Application advances the same three positions and no others.

32. On January 28, 2026, Mr. Mounts Gonzales filed with the Reorganized Debtors' claims agent a Modified Official Form 410 proof of claim in the amount of $243,942.00. *See* Application, Ex. H. The Application describes this as "an administrative claim." Application ¶ 12. It was not. The form identifies the "Basis of Claim" as "Indemnification Agreement." In response to question 12—"Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?"—the filing summary records "Has Priority Claim: No." In response to question 13—whether any part of the claim is "entitled to administrative priority pursuant to 11 U.S.C. § 503(b)(9)"—the filing summary records "Amount of 503(b)(9): No." *See* Application, Ex. H. The form itself states in bold on its first page: "**This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503**." *Id*.

33. Mr. Mounts Gonzales filed nothing else until July 21, 2026, when he filed the Application—one hundred sixty-six days after the Administrative Claims Bar Date and two hundred four days after the Effective Date. The Application does not acknowledge the Administrative Claims Bar Date, does not request leave to file late, and does not attempt to establish excusable neglect.

ARGUMENT

I. THE APPLICATION IS PROCEDURALLY BARRED

A. Mr. Mounts Gonzales Failed to File the Application Before the Administrative Claims Bar Date

34. Irrespective of the merits, Mr. Mounts Gonzales is procedurally barred from asserting this claim. Mr. Mounts Gonzales filed the Application on July 21, 2026—one hundred sixty-six days after the February 5, 2026 Administrative Claims Bar Date. Filing an administrative expense claim is an essential requirement of the administration of a chapter 11 case. *See, e.g.*, *RDNJ Trowbridge v. Chesapeake Energy Corp. (In re Chesapeake Energy Corp.)*, 70 F.4th 273, 282 (5th Cir. 2023) ("The requirement to file proofs of claim is more than a technicality in Chapter 11. Proofs of claim are the touchstone for plan approval and proper distribution of the debtor's assets allotted to each creditor class."). Creditors who failed to timely file an administrative expense claim are barred from asserting such claim if they received adequate notice. *See Greyhound Lines, Inc. v. Rogers (In re Eagle Bus Mfg., Inc.)*, 62 F.3d 730, 735 (5th Cir. 1995) ("A creditor's claim can be barred for untimeliness only upon a showing that it received reasonable notice.") (internal citations omitted).

35. Mr. Mounts Gonzales had more than reasonable notice. He was an actual director of ModivCare through November 9, 2025, was represented by two law firms in these Chapter 11 Cases, received the chapter 11 case schedule directly from the Debtors' counsel, participated in confirmation discovery, and—through counsel—corresponded with ModivCare's General Counsel and Latham & Watkins LLP about this precise claim on December 29, 2025, January 2, 2026, and January 6, 2026. He also received the Notice of Effective Date—which set forth the Administrative Claims Bar Date—via first-class mail on January 6, 2026. *See* Certificate of Service [Docket No. 1182], Ex. D. He then filed a proof of claim with the Reorganized Debtors' claims agent on January 28, 2026, just over a week before the Administrative Claims Bar Date. The Confirmation Order provided, in bold, that

"failure to file and serve such proof of administrative claim timely and properly shall result in such claim being forever barred and discharged." Confirmation Order ¶ 19. He cannot plausibly claim ignorance of the deadline.

B. The Proof of Claim Did Not Satisfy Section 503(a)

36. The Application characterizes the January 28, 2026 filing as "an administrative claim." Application ¶ 12. It was not, as a matter of both form and substance. As a matter of form, the filing was a Modified Official Form 410 proof of claim, which states on its face: "Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503." Application, Ex. H. As a matter of substance, the form affirmatively disclaimed priority: the filing summary records "Has Priority Claim: No" in response to question 12 regarding priority under section 507(a), and "Amount of 503(b)(9): No" in response to question 13 regarding administrative priority under section 503(b)(9), and the "Basis of Claim" is stated simply as "Indemnification Agreement."

37. The law is clear that a general proof of claim does not preserve an administrative claim. *See Condrey v. Endeavor Highrise, L.P. (In re Endeavour Highrise L.P.)*, 425 B.R. 402, 418 n.8 (Bankr. S.D. Tex. 2010) ("Claims arising post-petition should not be included in the proof of claim. Rather, a party asserting a post-petition claim should file an application with the court and request an order establishing the claim as an allowed administrative claim . . . .") (internal citation omitted). Indeed, even filing a proof of claim that indicates a creditor is entitled to an administrative expense alone (which he did not) does not satisfy the obligation under section 503(a) to timely file and serve a request for payment of an administrative claim. *See In re Taco Bueno Rests., Inc.*, 606 B.R. 289, 298, 303 (Bankr. N.D. Tex. 2019) (holding that creditor who timely filed a general proof of claim that stated a portion of the claim constituted an administrative expense did not satisfy the section 503(a) requirement to file and serve an administrative claim request, nor did the prior filing show cause to permit an untimely

filing of an administrative claim request). The purpose of requiring a creditor to file an application for an administrative claim is to put a debtor on notice about a claim and to put forward why the claimant believes he/she is entitled to administrative priority. Mr. Mounts Gonzales's proof of claim filing did not assert administrative status, it disclaimed priority altogether and cannot form a basis for asserting an administrative claim.

38. His sophisticated bankruptcy counsel plainly knew the difference. Section 503 is the very provision under which the Application is styled. The choice to file a Form 410 proof of claim, disclaiming priority, and to then wait nearly six months before filing a section 503 application, was his to make—and its consequences are his to bear.

C. Mr. Mounts Gonzales Failed to Demonstrate Excusable Neglect to Support the Late Filing of His Administrative Claim

39. A creditor seeking to file a late claim bears the burden of demonstrating excusable neglect. *See W. Wilmington Oil Field Claimants v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.)*, 27 F.4th 1105, 1112 (5th Cir. 2022) ("The burden to show excusable neglect is on the movant[.]"). To determine whether excusable neglect exists, courts consider "the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith." *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Courts rarely find excusable neglect "when the reason for the delay was within the movant's reasonable control." *CJ Holding Co.*, 27 F.4th at 1116. As the Fifth Circuit has recognized, the purpose of the bankruptcy laws is to quickly and effectively settle bankrupt estates, and "it is the other diligent creditors who will be harmed by permitting late claims, not the debtor whose actions may have been a factor in the late filing." *Oppenheim v. Bullock (In re Robintech, Inc.)*, 863 F.2d 393, 398 (5th Cir. 1989).

40. The Application does not mention the Administrative Claims Bar Date, does not seek leave to file late, and does not address a single *Pioneer* factor. That omission alone is fatal. But each factor also weighs decisively against Mr. Mounts Gonzales. The delay was long—one hundred sixty-six days—and it followed a period during which he was actively corresponding with the Reorganized Debtors about this claim and had already been told, in writing on January 2, 2026, that the claim would not be paid. *See* Application, Ex. G. The reason for the delay was entirely within his control. And permitting the claim now would prejudice the Reorganized Debtors and, more importantly, the diligent creditors who complied with the Court's deadlines.

41. To the extent Mr. Mounts Gonzales suggests that his January 28, 2026 proof of claim or his prior correspondence excuses the delay, the case law is against him. *See, e.g.*, *In re 50-Off Stores, Inc.*, 220 B.R. 897, 904 (Bankr. W.D. Tex. 1998) (focusing on the creditor's failure to timely file a claim despite receiving adequate notice of the bar date when determining that the *Pioneer* factors weighed against finding excusable neglect); *CJ Holding Co.*, 27 F.4th at 1117 (holding that excusable neglect did not exist where creditors filed untimely claims regardless of the debtor's agreement to mediate the claims).

II. MR. MOUNTS GONZALES'S INDEMNIFICATION CLAIM IS NOT ENTITLED TO PRIORITY UNDER THE BANKRUPTCY CODE

A. Mr. Mounts Gonzales Bears the Burden of Proof and Has Not Come Close to Meeting It

42. Even if the Application were not procedurally barred, it fails on the merits. Section 503(b)(1)(A) of the Bankruptcy Code affords administrative priority only to claims that constitute the "actual, necessary costs and expenses of preserving the estate." 11 U.S.C. § 503(b)(1)(A). A claimant must demonstrate that: (a) the claim arose postpetition as a result of actions taken by the estate representative and (b) the expenses claimed benefited the estate. *See Nabors Offshore Corp. v. Whistler Energy II, L.L.C. (In re Whistler Energy II, L.L.C.)*, 931

F.3d 432, 441–42 (5th Cir. 2019) ("[T]o qualify as an 'actual and necessary cost' under section 503(b)(1)(A), a claim against the estate must have arisen post-petition and as a result of actions taken by the trustee [or debtor-in-possession] that benefitted the estate.") (citing *Jack/Wade*, 258 F.3d at 387).

43. The party asserting an administrative claim bears the burden of proving the validity of such claim. *See Toma Steel Supply, Inc. v. TransAm. Nat. Gas Corp. (In re TransAm. Nat. Gas Corp.)*, 978 F.2d 1409, 1413 (5th Cir. 1992); *see also In re Buttes Gas & Oil Co.*, 112 B.R. 191, 194 (Bankr. S.D. Tex. 1989) (noting that a claimant's failure to present a *prima facie* case precludes any burden from shifting to an objecting party). An application for administrative expense status does not constitute *prima facie* evidence thereof; the claimant must affirmatively demonstrate entitlement to such priority status by a preponderance of the evidence. *See, e.g.*, *In re Cardinal Indus., Inc.*, 151 B.R. 833, 836 (Bankr. S.D. Ohio 1992); *see also TransAm.*, 978 F.2d at 1416 (requiring the applicant to present evidence establishing a *prima facie* case).

44. The Application makes no attempt to satisfy this burden simply asserting that "ModivCare sought the actions and services requiring indemnification from Mr. Mounts Gonzales and his counsel postpetition." Application ¶ 14. There is no declaration. There is no evidence of benefit. There is no allocation of the $243,942.00 counsel fees among prepetition, postpetition, and post-Effective Date periods. There is no showing that the rates or hours were reasonable. Conclusory assertions of postpetition service and estate benefit are not evidence, and they do not carry a claimant's burden under section 503(b).

B. The Claim Arises from a Prepetition Contract and Prepetition Director Service, Not from a Postpetition Transaction with the Estate

45. The Bankruptcy Code defines "claim" broadly as a "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." 11 U.S.C. §

101(5)(A). A claim is contingent "if the debt is one which the debtor will be called upon to pay only upon the occurrence or happening of an extrinsic event which will trigger the liability of the debtor to the alleged creditor." *In re AMPAM Power Plumbing, L.P.*, 520 B.R. 553, 557 (Bankr. W.D. Tex. 2014) (quoting *First City Beaumont v. Durkay (In re Ford)*, 967 F.2d 1047, 1051 (5th Cir. 1992)).

46. To determine when a claim arises under the Bankruptcy Code, the Fifth Circuit has adopted the "pre-petition relationship" test. *In re Trevino*, 535 B.R. 110, 148 (Bankr. S.D. Tex. 2015). Under this test, for a claim to arise prepetition, "there must be some prepetition relationship such as contact, exposure, impact, or privity, between the debtor's prepetition conduct and the claimant." *Id.* (quoting *Lemelle v. Universal Mfg. Corp.*, 18 F.3d 1268, 1277 (5th Cir. 1994)). The test focuses on "the contacts that would have fairly put the creditor on notice that it had a claim against a debtor, such that the creditor could take actions to protect its rights." *Christian v. Pacific Western Bank*, 581 B.R. 797, 808 (Bankr. W.D. Tex. 2017) (citing *Cantu v. Schmidt (In re Cantu)*, 784 F.3d 253, 259 (5th Cir. 2015)).

47. Courts in the Fifth Circuit applying the prepetition relationship test to indemnification claims have uniformly held that such claims arise when the indemnification agreement is executed, not when the facts giving rise to actual liability occur. *See In re Superior Air Parts, Inc.*, 486 B.R. 728, 739 (Bankr. N.D. Tex. 2012) ("This Court aligns itself with those courts that have held that a right to indemnification is a pre-petition 'claim' under the Bankruptcy Code where the indemnification agreement is executed pre-petition, even if the facts giving rise to actual liability did not occur until after the discharge."); *In re Trevino*, 535 B.R. at 148 ("Courts applying pre-petition relationship test to an indemnification claim have found operative date for a bankruptcy claim is when the agreement was executed, not when the facts giving rise to actual liability occurred.").

48. Consistent with Fifth Circuit authority, courts applying section 503(b)(1)(A) to indemnification claims of former directors and officers uniformly have denied priority where the underlying service and conduct were prepetition. *See In re Consolidated Oil & Gas, Inc.*, 110 B.R. 535, 537–39 (Bankr. D. Colo. 1990) (denying priority to eleven former officers' and directors' indemnification claims for fees incurred defending a postpetition adversary proceeding alleging "mismanagement, fraud, breach of fiduciary duty, and negligence," because "[u]nder Section 503(b), administrative costs are expressly authorized only 'for services rendered after the commencement of the case,'" and "[t]he Claimants here provided services to the Debtor pre-petition, exclusively and entirely"; claimants "neither contracted with, served on behalf of, nor benefited, in any manner, the Debtor-in-Possession"); *In re Mid-Am. Waste Sys., Inc.*, 228 B.R. 816, 821–22 (Bankr. D. Del. 1999) (holding that "[a]n indemnification claim by an officer or director based on that officer's or director's prepetition services is not a claim on account of 'services rendered after the commencement of a case' that is entitled to administrative expense priority," but is "merely [a] claim[] for prepetition compensation for services rendered, not unlike salary or other benefits").[3]

49. Here, the Indemnification Agreement was executed on May 20, 2025—three months before the Petition Date. Application ¶ 4. Under *Superior Air Parts* and *Trevino*, Mr. Mounts Gonzales's claim therefore arose when the agreement was signed, not when the

[3] *See also In re Hemingway Transp., Inc.*, 954 F.2d 1, 4, 9 n.4 (1st Cir. 1992) (affirming denial of priority and allowance "as an unsecured prepetition claim" where the request "was based entirely on its prepetition lease indemnification agreement," since "[a] right to payment predicated on an executed prepetition contract is not entitled to priority payment as an administrative expense"); *In re Christian Life Ctr.*, 821 F.2d 1370, 1373–74 (9th Cir. 1987) (denying priority; "the critical fact is that the claim for indemnity arose from pre-petition services [the officer] provided the corporation"); *In re Amfesco Indus., Inc.*, 81 B.R. 777, 784 (Bankr. E.D.N.Y. 1988) ("Any duty of the Debtors to indemnify the Applicants arises from services provided to the pre-petition Corporation not for services rendered post-petition to the Debtors-in-Possession."); *In re Philadelphia Mortg. Tr.*, 117 B.R. 820, 828 (Bankr. E.D. Pa. 1990) ("[C]laims of corporate officers for indemnification and compensation for pre-petition actions based upon corporate by-laws or resolutions . . . have consistently been denied administrative status due to findings by courts that such claims are pre-petition claims because the acts or services which gave rise to them were performed pre-petition."); *In re Baldwin-United Corp.*, 43 B.R. 443, 454–56 (S.D. Ohio 1984) (directors' and officers' bylaw-based indemnity claims for costs of defending alleged misconduct during prepetition board tenure not compensable as administrative claims).

postpetition events triggering his indemnification right occurred. His right to payment "is a pre-petition 'claim' under the Bankruptcy Code" regardless of when "the facts giving rise to actual liability" materialized. 486 B.R. at 739. That the contingency triggering the claim happened to mature postpetition "does not find that this fortuity of timing, standing alone, creates a principled basis on which to make an exception to the rule of equal distribution among creditors." *In re Jack/Wade Drilling, Inc.*, 258 F.3d 385, 390 (5th Cir. 2001).[4]

C. The Expenditure of Mr. Mounts Gonzales's Personal Legal Fees Conferred No Benefit on the Estates

50. Even if Mr. Mounts Gonzales could establish a postpetition transaction, he cannot establish the second, independent element: that the consideration was "both supplied to and beneficial to the debtor-in-possession in the operation of the business." *Cramer v. Mammoth Mart, Inc. (In re Mammoth Mart, Inc.)*, 536 F.2d 950, 954 (1st Cir. 1976), quoted in *Consolidated Oil*, 110 B.R. at 537, and *Mid-Am.*, 228 B.R. at 821. The claimed expenses must have "directly and substantially benefitted the estate." *Mid-Am.*, 228 B.R. at 821.

51. Mr. Mounts Gonzales's participation as a fact witness did not benefit the estates; if anything, the record reflects the opposite. The interview was part of an investigation of potential estate causes of action—including potential causes of action against Mr. Mounts Gonzales. Application ¶ 8. A substantial share of the fees now sought was incurred in resisting the estates' requests: Kasowitz's own invoice records time for work on the "response to Ms Wine's email regarding 4 additional hours of deposition," and for "research regarding bankruptcy judge; research regarding Rule 45." Application, Ex. F. Fees incurred fighting the estate are not fees that benefit the estate.

[4] *Jack/Wade*, 258 F.3d at 391 n.6 ("The Court is concerned, therefore, with the possibility that, by prioritizing TMC's attorney fee award in this case, we would effectively be creating a way for parties to contract around the provisions of the bankruptcy code.").

52. Indeed, Mr. Mounts Gonzales's own counsel positioned him as "***a third party***" entitled to Rule 45 protection against the estate, disputing the estates' requests and threatening to seek an order in Nevada federal court seeking to quash any subpoena. Application, Ex. E (emphasis added). A party invoking non-party witness protections against the estate cannot simultaneously claim the estate's own fiduciary indemnity as a first-priority administrative expense.[5] That posture also defeats Mr. Mounts Gonzales's claim under Section 6 of the Indemnification Agreement, which indemnifies Expenses only when incurred "by reason of Indemnitee's Corporate Status." *See* Background § III, *supra*. Fees incurred by a departed director, through counsel for his fund, to resist the estates' investigation of that fund and its principal, are not incurred by reason of Corporate Status.

53. At the same time Mr. Mounts Gonzales was rendering the "services" for which he now seeks payment, his fund was pursuing an undisclosed financing proposal that would have preserved his own equity stake and then, following his departure from the Board, his fund demanding approximately $8 million from the Debtors' lenders for itself alone, on threat of delay, increased fee burn, and an examiner motion—conduct that prompted counsel to the Debtors to notify the office of the United States Trustee. *See* Debtors' Omnibus Brief Supporting Plan Confirmation [Docket No. 943] ¶¶ 6, 80 & Ex. 1. A claimant whose simultaneous objective was to extract value from the estates for himself cannot be heard to say that his participation preserved them. This Court "must determine if the services of these Claimants benefited this Debtor or if indemnification of these Claimants would benefit this Chapter 11 Debtor-in-Possession. The answers to the questions are no." *Consolidated Oil*, 110 B.R. at 539. So too here.

[5] *Keene*, 208 B.R. at 116 (fiduciaries "may recover their legal fees and expenses on an administrative basis, at least to the extent they arise from defending postpetition conduct ***as an officer or director***.") (emphasis added).

54. Even if Mr. Mounts Gonzales could establish that he was acting in his capacity as a fiduciary, the Application still would fail. *Keene Corp*. is directly on point and should control the analysis of Mr. Mounts Gonzales's fees. There, the debtor's "former president and chairman of the board" sought "to recover, as an administrative expense under 11 U.S.C. § 503(b)(1)(A), the legal fees he paid to his personal attorneys for services rendered to him during this case." 208 B.R. at 113. Like Mr. Mounts Gonzales, Bailey continued to serve postpetition—as president and chairman until March 1996 and "[t]hereafter . . . as a director." *Id*. Like Mr. Mounts Gonzales, "[t]he debtor never retained these attorneys." *Id*. And like Mr. Mounts Gonzales, "Bailey does not contend that he (or they) made a substantial contribution to the case." *Id*. The court "conclude[d] that Bailey's legal fees were unnecessary to the preservation of the estate, and are not entitled to an administrative priority under Section 503(b)(1)(A)." *Id*.

55. *Keene* articulated the policy consequence of the rule Mr. Mounts Gonzales urges, holding "[Bailey] is not entitled to charge the estate for the personal legal fees he incurred in the performance of his fiduciary duties as an officer and director of the debtor," reasoning that "Bailey's theory would open the floodgates to costly administrative expenses for legal fees. Every director could insist that the estate pay for a personal lawyer to enable him to perform his fiduciary duties. In the same vein, each director could insist on his own accountant and financial advisor, especially in a mega case involving the sale of assets or the ongoing business of the debtor." 208 B.R. at 116–17. The court further held that "permitting recovery for these types of services under Section 503(b)(1)(A) would eviscerate the 'substantial contribution' requirement, excising it from the Bankruptcy Code." *Id*. at 116.

56. The floodgates concern is acute here. The Debtors' November 3, 2025 correspondence attached to the Application lists eight individuals for whom the Committee requested deposition dates: "Barbara Guiterrez, Zul Jamal, Scott Kern, David Mounts-

Gonzalez [sic], Heath Sampson, Chad Shandler, Ken Shepard, [and] Daniel Silvers." Application, Ex. D. None of these individuals—other than Mr. Mounts Gonzales—retained personal counsel. The sole exception, Mr. Silvers, had counsel only because, as Investigating Director, the Company retained Quinn Emanuel to assist him in conducting the formal investigation into potential estate causes of action.[6] If Mr. Mounts Gonzales's theory were correct, each of them could have retained personal counsel and presented the estates with a first-priority invoice. That is neither a benefit to the estates nor a sustainable rule of administration.

III. THE PLAN EXPRESSLY EXCLUDES INDEMNIFICATION OBLIGATIONS OF NON-RELEASED PARTIES

57. Mr. Mounts Gonzales's stated position is that "we read the plan as providing for the survival of the Debtors' indemnification obligations as provided in section 8.4 of the Plan." Application, Ex. G. That reading stops halfway through the sentence. Section 8.4 assumes Indemnification Obligations only "[e]xcept as otherwise provided in this Plan." Plan, Art. VIII. § 8.4. Section 8.4 excludes any obligation "to indemnify and hold harmless any Entity for any claim, cause of action, liability, judgment, settlement, cost or expense of the Non-Released Parties (as defined in the Plan Supplement)." *Id.*

58. The Plan Supplement's definition of "Non-Released Parties" expressly names Mr. Mounts Gonzales's fund: "AI Catalyst Fund, LP and each of their respective Affiliates and any current and former employee, officer, director, manager, member, shareholder, controlling person, affiliate, subsidiary, or other representative or advisor of any of the foregoing Persons." Mr. Mounts Gonzales falls squarely within that definition as the controlling person of AI Catalyst Fund. Application, Exs. A, B.

[6] *See* Declaration of Daniel B. Silvers [Docket No. 687] ¶ 8, ("On September 15, 2025, at my direction, the Company retained Quinn Emanuel Urquhart & Sullivan, LLP ('Quinn Emanuel') for that purpose.").

59. The Application never addresses Section 8.4's carve-out nor mentions AI Catalyst Fund—even though ModivCare's January 2, 2026 response stated the Reorganized Debtors "did not assume any obligation to indemnify or otherwise reimburse Mr. Mounts Gonzales or his fund." Application, Ex. G.

CONCLUSION

60. Mr. Mounts Gonzales's asserted administrative expense claim is procedurally barred and substantively deficient. It rests on a prepetition contract for prepetition director service that the Plan did not assume, seeks personal fees that did not benefit the estates, and was filed one hundred sixty-six days late without any showing of excusable neglect. For all the foregoing reasons, the Reorganized Debtors respectfully request that this Court enter the Proposed Order denying the relief sought in the Application.

RESERVATION OF RIGHTS

61. The Reorganized Debtors reserve their rights to amend, modify, or supplement this Objection to the extent that additional issues currently believed to be resolved are raised in connection with the Application, including any supplement or response thereto.

[*Remainder of page intentionally left blank.*]

Dated: August 11, 2026
Houston, Texas

Respectfully submitted,

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

HUNTON ANDREWS KURTH LLP
Timothy A. ("Tad") Davidson II (Texas Bar No. 24012503)
Jason W. Harbour (Virginia Bar No. 68220)
Catherine A. Rankin (Texas Bar No. 24109810)
Brandon Bell (Texas Bar No. 24127019)
600 Travis Street, Suite 4200
Houston, TX 77002
Telephone: (713) 220-4200
Email: taddavidson@hunton.com
jharbour@hunton.com
catherinerankin@hunton.com
bbell@hunton.com

-and-

LATHAM & WATKINS LLP
Ray C. Schrock (NY Bar No. 4860631)
Keith A. Simon (NY Bar No. 4636007)
George Klidonas (NY Bar No. 4549432)
Jonathan J. Weichselbaum (NY Bar No. 5676143)
1271 Avenue of the Americas
New York, NY 10020
Telephone: (212) 906-1200
Email: ray.schrock@lw.com
keith.simon@lw.com
george.klidonas@lw.com
jon.weichselbaum@lw.com

Co-Counsel for the Reorganized Debtors

CERTIFICATE OF SERVICE

I certify that on August 11, 2026, I caused a true and correct copy of the foregoing document to be 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)
Reorganized Debtors.[1]	:	(Jointly Administered)

ORDER SUSTAINING REORGANIZED DEBTORS' OBJECTION TO DAVID MOUNTS GONZALES'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE CLAIM
[Relates to Docket Nos. 1660,]

Upon consideration of the Application of David Mounts Gonzales for Payment of Administrative Claim Under U.S.C. § 503 (b)(1) [Docket No. 1660] (the "***Application***") filed by David Mounts Gonzales ("***Mr. Mounts Gonzales***") and the Reorganized Debtors' objection (the "***Objection***") to the Application, and upon all the proceedings had before this Court, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Objection is sustained and the Application is denied.

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

Signed: _____

Alfredo R. Pérez
United States Bankruptcy Judge

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