Docket #1744 Date Filed: 08/21/2026

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)

REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 1560

THIS IS AN OBJECTION TO YOUR CLAIM. THIS OBJECTION ASKS THE COURT TO DISALLOW THE CLAIM THAT YOU FILED IN THE BANKRUPTCY CASE. IF YOU DO NOT FILE A RESPONSE WITHIN 30 DAYS AFTER THE OBJECTION WAS SERVED ON YOU, YOUR CLAIM MAY BE DISALLOWED WITHOUT A HEARING.

TO THE CLAIMANT WHOSE CLAIM IS SUBJECT TO THIS OBJECTION:

YOUR SUBSTANTIVE RIGHTS MAY BE AFFECTED BY THIS OBJECTION AND ANY FURTHER OBJECTIONS THAT MAY BE FILED IN THE CHAPTER 11 CASES.

THE RELIEF SOUGHT IN THIS OBJECTION IS WITHOUT PREJUDICE TO THE RIGHTS OF THE REORGANIZED DEBTORS AND THEIR ESTATES OR OTHER PARTIES IN INTEREST TO PURSUE FURTHER OBJECTIONS AGAINST THE CLAIM LISTED HEREIN AND OTHER CLAIMS FILED IN THE CHAPTER 11 CASES.

[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.

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The above-captioned reorganized debtors (prior to the Effective Date,[2] collectively, the "***Debtors***" and after the Effective Date, collectively, the "***Reorganized Debtors***") respectfully state the following in support of this claim objection (this "***Objection***").

RELIEF REQUESTED

1. By this Objection, the Reorganized Debtors seek entry of an order, substantially in the form attached hereto (the "***Proposed Order***"), disallowing and expunging proof of claim number 1560 (the "***Disputed Claim***") filed by Butler Curwood, PLC (the "***Claimant***") because the Claimant does not have a claim (as such term is defined in section 101(5) of the Bankruptcy Code) against either the Reorganized Debtors or the Estates, and, accordingly, Claimant is not a "creditor" (as such term is defined in section 101(10) of the Bankruptcy Code) of the Reorganized Debtors or the Estates.

2. In support hereof, the Reorganized Debtors submit the declaration of Kenneth Shepard, a senior vice president of finance for the Reorganized Debtors (the "***Shepard Declaration***"), attached hereto as **Exhibit A**.

JURISDICTION AND VENUE

3. The United States Bankruptcy Court for the Southern District of Texas (the "***Court***") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Court may enter a final order consistent with Article III of the United States Constitution.

4. The Disputed Claim that is the subject of this Objection was asserted on a proof of claim form (a "***Proof of Claim***") filed with the Claims and Noticing Agent (as defined below). By

[2] Capitalized terms used but not defined herein shall have the meanings ascribed to them in the *Second Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 1055, Ex. A] (together with all supplemental or supporting documentation related thereto, the "***Plan***"), as applicable.

seeking recovery from the Reorganized Debtors' estates based on the filing of a Proof of Claim, the Claimant has submitted to the Court's jurisdiction over this matter.

5. Venue of the Chapter 11 Cases and this Objection in this district is proper under 28 U.S.C. §§ 1408 and 1409.

6. The statutory and legal predicates for the relief requested herein are sections 105(a) and 502 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "***Bankruptcy Code***"), Rule 3007 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***"), Rule 3007-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "***Bankruptcy Local Rules***"), and the Procedures for Complex Cases in the Southern District of Texas (the "***Complex Case Procedures***").

BACKGROUND

7. On August 20, 2025, the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Chapter 11 Cases are being jointly administered, for procedural purposes only, pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Bankruptcy Local Rules. The factual background regarding the Debtors, including their business, their capital structure, and the events leading to the commencement of the Chapter 11 Cases is set forth in the *Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First-Day Relief* [Docket No. 14].

8. On December 15, 2025, the Court entered the Confirmation Order[3] which, among other things, confirmed the Plan. The Effective Date occurred on December 29, 2025. The Plan was deemed "substantially consummated under sections 1101 and 1127 of the Bankruptcy Code" upon the Effective Date. Plan, § 12.3.

[3] Docket No. 1055.

CLAIMS RECONCILIATION PROCESS

9. 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***") setting, *inter alia*, (i) October 1, 2025, as the deadline for non-governmental creditors and interest holders to file claims in the Chapter 11 Cases (the "***General Bar Date***"); and (ii) February 16, 2026, at 5:00 p.m. (prevailing Central Time) as the deadline for all governmental units (as defined in section 101(27) of the Bankruptcy Code) to assert a claim (as defined in section 101(5) of the Bankruptcy Code) that arose on or prior to the Petition Date (the "***Governmental Bar Date***" and together with the General Bar Date, as applicable, depending on whether the claimant is a governmental unit or non-governmental unit, the "***Claims Bar Date***").

10. The Bar Date Order establishes certain requirements that a filed claim must satisfy to be considered valid. A filed claim must, among other things, "set forth with specificity the legal and factual basis for the alleged claim," and "include supporting documentation or an explanation as to why such documentation is not available." Bar Date Order, ¶ 7. If such filed claims are not properly submitted prior to the Claims Bar Date, the Bar Date Order provides that the relevant claimant "shall not be treated as a creditor with respect to such claim for purposes of voting and ***distribution***." *Id.* at ¶ 20 (emphasis added).

11. On August 23, 2025, the Reorganized Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC d/b/a Verita Global (the "***Claims and Noticing Agent***"), served notice of the Claims Bar Date (the "***Bar Date Notice***") to potential claimants in accordance with the procedures set forth in the Bar Date Order, and, as necessary, supplemented such service.

See Bar Date Affidavits of Service.[4] Also, as certified at Docket No. 142, in accordance with the Bar Date Order, the Reorganized Debtors published the Bar Date Notice in *The New York Times* on August 26, 2025. *See Affidavit of Publication of the Notice of Deadline for the Filing of Proofs of Claim, Including for Claims Asserted Under Section 503(b)(9) of the Bankruptcy Code in the New York Times* [Docket No. 142] ("***Affidavit of Publication***").

12. The Reorganized Debtors also listed numerous claims in their Schedules[5] (such claims, along with the claims asserted in each proof of claim filed in the Chapter 11 Cases, collectively, the "***Claims***"),[6] some of which have been satisfied under the authority granted to the Reorganized Debtors pursuant to certain "first day" orders and other orders entered in the Chapter 11 Cases. A database of all Claims is being maintained by the Reorganized Debtors' Claims and Noticing Agent (the "***Claims Register***").

13. On February 19, 2026, the Court entered the *Order Approving Procedures for Reorganized Debtors' Filing of Omnibus Claims Objections and Granting Related Relief* [Docket No. 1313] (the "***Omnibus Objection Procedures Order***") approving the procedures for filing and resolving omnibus objections to Claims asserted against the Reorganized Debtors in the Chapter 11 Cases appended to the Omnibus Objection Procedures Order as Exhibit 1 (the "***Objection***

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[4] "***Bar Date Affidavits of Service***" means, collectively, (i) *Certificate of Service* [Docket No. 113]; (ii) *Certificate of Service* [Docket No. 353]; (iii) *Supplemental Certificate of Service* [Docket No. 400]; (iv) *Supplemental Certificate of Service* [Docket No. 442]; (v) *Supplemental Certificate of Service* [Docket No. 492]; (vi) *Supplemental Certificate of Service* [Docket No. 602]; (vii) *Supplemental Certificate of Service* [Docket No. 603]; (viii) *Supplemental Certificate of Service* [Docket No. 700]; (viii) *Supplemental Certificate of Service* [Docket No. 727]; (ix) *Supplemental Certificate of Service* [Docket No. 1067]; (x) *Supplemental Certificate of Service* [Docket No. 1127]; (xi) *Supplemental Certificate of Service* [Docket No. 1143]; (xii) *Supplemental Certificate of Service* [Docket No. 1148]; (xiii) *Supplemental Certificate of Service* [Docket No. 1184]; (xiv) *Supplemental Certificate of Service* [Docket No. 1285]; and (xv) *Supplemental Certificate of Service* [Docket No. 1320].

[5] On September 7, 2025, the Reorganized Debtors filed their respective schedules of assets and liabilities (the "***Schedules***") and statements of financial affairs [Docket Nos. 177–322], pursuant to Bankruptcy Rule 1007.

[6] Under section 1111(a) of the Bankruptcy Code, scheduled claims are treated as proofs of claim. *See* 11 U.S.C. § 1111(a) ("A proof of claim . . . is deemed filed under section 501 of this title for any claim . . . that appears in the schedules . . . except a claim . . . that is scheduled as disputed, contingent, or unliquidated.").

Procedures"). The Objection Notice (as defined in the Objection Procedures) and the Objection Procedures will be served on the holders of the Disputed Claims along with this Objection.

14. Pursuant to the Plan, the Claims Objection Deadline was initially March 29, 2026 (*i.e.*, the date that was ninety (90) days after the occurrence of the Effective Date), subject to the Reorganized Debtors' right to seek a further extension of such deadline in accordance with the Plan.[7]

15. On April 13, 2026, the Court entered the *Order Granting Reorganized Debtors' Second Motion for Entry of an Order Extending the Time to File and Serve Objections to Claims* [Docket No. 1649], which extended the Claims Objection Deadline by an additional ninety (90) days through and including September 27, 2026, subject to the Reorganized Debtors' right to seek a further extension of such deadline in accordance with the Plan.

THE DISPUTED CLAIM

16. Prior to the Petition Date, Marquis Hines and Ronald Hines (together, the "***Hines Plaintiffs***") filed a complaint, ECF No. 1[8] (the "***Hines Complaint***")[9] against Debtor ModivCare Solutions, LLC ("***ModivCare Solutions***") in the United States District Court for the Eastern District of Virginia (the "***District Court***"), which action is styled *Hines v. ModivCare Sols., LLC*, Civ. A. No. 3:23-cv-273-HEH (E.D. Va. 2025) (the "***Hines Action***"). Claimant represents the Hines Plaintiffs in the Hines Action.

17. The Hines Plaintiffs previously acted as transportation providers for ModivCare Solutions in the state of Virginia.[10] Through the Hines Complaint, the Hines Plaintiffs alleged that

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[7] *See* Plan, p. 3 (defining "Claims Objection Deadline" as "ninety (90) days after the Effective Date … which dates may be extended pursuant to an order of the Bankruptcy Court upon a motion Filed by the Reorganized Debtors.").

[8] References to "ECF No." are to filings in the Hines Action.

[9] *See* ECF No. 1. A true and correct copy of which is attached hereto as **Exhibit B**.

[10] Hines Complaint, ¶ 1.

ModivCare Solutions misclassified them and other purportedly similarly-situated individuals as independent contractors, when, according to the Hines Plaintiffs, they were in fact employees of ModivCare Solutions.[11] As a result of such alleged misclassification, the Hines Plaintiffs alleged that they were not paid minimum and overtime wages in violation of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (the "***FLSA***"); Virginia's Misclassification Law, Va. Code § 40.1-28.7:7; the Virginia Overtime Wage Act, Va. Code § 40.1-29.2 (the "***VOWA***"); and the Virginia Wage Payment Act, Va. Code § 40.1-29 (the "***VWPA***").[12] Additionally, the Hines Plaintiffs asserted individual causes of action under the FLSA, alleging that they were improperly terminated in retaliation for complaining about alleged wage violations.[13]

18. On July 11, 2023, ModivCare Solutions filed an answer, ECF No. 12 ("***ModivCare Solutions Answer***"),[14] to the Hines Complaint, disputing the material allegations, both as to fact and law, and denying any liability to the Hines Plaintiffs (along with any other current or former independent contractors of ModivCare Solutions who had allegedly been misclassified).

19. On October 12, 2023, the Hines Plaintiffs filed *Plaintiffs' Motion for Conditional Certification and Notice to Putative Class Members* [ECF No. 23] (the "***FLSA Collective Conditional Certification Motion***") through which the Hines Plaintiffs sought entry of an order conditionally certifying an FLSA collective.

20. On December 15, 2023, the District Court entered the *Memorandum Order (Granting Plaintiffs' Motion for Conditional Certification and Notice to Putative Class Members)* [ECF No. 36] (the "***FLSA Collective Conditional Certification Order***") granting the relief sought

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[11] *See, e.g.*, *id.* at ¶ 2.

[12] *Id.* at ¶¶ 65-90.

[13] *Id.* at ¶¶ 91-94.

[14] A true and correct copy of ModivCare Solution's Answer is attached hereto as **Exhibit C**.

in the FLSA Collective Conditional Certification Motion and conditionally certifying an FLSA collective consisting of "All current and former employees who were employed as Volunteer Drivers by [ModivCare Solutions] … providing non-emergency medical transport, anywhere, in Virginia at any time on or after December 15, 2020."[15] Following notice to the putative FLSA collective members, twenty-nine (29) individuals were determined to have properly opted in to the FLSA collective, including the Hines Plaintiffs.[16]

21. Following a judicial settlement conference before Magistrate Judge Mark Colombell, on April 15, 2025, the Hines Plaintiffs and ModivCare Solutions executed a settlement agreement (the "***Hines Settlement***"), and on April 16, 2025, the Hines Plaintiffs filed an unopposed motion for preliminary approval of the Hines Settlement. *See* ECF No. 90.

22. On June 10, 2025, the District Court entered an order preliminarily approving the Hines Settlement, and set a hearing for September 18, 2025, to consider final approval of the Hines Settlement (the "***Final Fairness Hearing***"). *See* ECF No. 97.

23. On August 27, 2025, ModivCare Solutions, through its counsel in the Hines Action, filed a *Suggestion of Bankruptcy* [ECF No. 100], which resulted in the District Court issuing an *Order (Granting Suggestion of Bankruptcy and Staying Case)* [ECF No. 102] (the "***Stay Order***") which stayed the Hines Action and cancelled the Final Fairness Hearing. The Hines Action remains stayed, the Final Fairness Hearing has never been re-set and the Hines Settlement, accordingly, has never been approved on a final basis.

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[15] *See Joint Notice Regarding Notice to Putative Collective* [ECF No. 37].

[16] Critically, this ruling was ***not*** a determination on the merits of the Hines Plaintiffs' claims. *See Mendoza v. Baird Drywall & Acoustic, Inc.*, No. 7:19-cv-882, 2021 WL 2435873, at *3 (W.D. Va. June 15, 2021) ("The merits of plaintiff's claims are not relevant at [the conditional certification] stage.").

24. As attested to in the Shepard Declaration, based on their review of the Claims Register, the Reorganized Debtors and their advisors have identified the Disputed Claim as a claim for which the Reorganized Debtors are not liable. To identify the Disputed Claim, the Reorganized Debtors:

(a) reviewed the Claims Register and the Reorganized Debtors' books and records to identify instances in which the Reorganized Debtors and the Estates are not, based on the Reorganized Debtors' books and records and consultation with counsel, liable; and

(b) determined that, based on the advice of counsel, neither the Reorganized Debtors nor the Estates are liable for the Disputed Claim.

25. Accordingly, the Reorganized Debtors hereby request that the Disputed Claim be disallowed and expunged in its entirety.

BASIS FOR RELIEF

26. Section 502 of the Bankruptcy Code provides, in pertinent part, that: "[a] claim or interest, proof of which is filed under section 501 of [the Bankruptcy Code], is deemed allowed, unless a party in interest… objects." 11 U.S.C. § 502. Moreover, section 502(b)(1) of the Bankruptcy Code provides, in relevant part, that a claim may not be allowed if "such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law . . . ." 11 U.S.C. § 502(b)(1).

27. As set forth in Bankruptcy Rule 3001(f), a properly executed and filed proof of claim constitutes *prima facie* evidence of the validity and the amount of the claim under section 502(a) of the Bankruptcy Code. *See, e.g.*, *In re Jack Kline Co., Inc.*, 440 B.R. 712, 742 (Bankr. S.D. Tex. 2010). A proof of claim loses the presumption of *prima facie* validity under Bankruptcy Rule 3001(f) if an objecting party refutes at least one of the allegations that are essential to the claim's legal sufficiency. *See In re Fidelity Holding Co., Ltd.*, 837 F.2d 696, 698 (5th Cir. 1988). Once such an allegation is refuted, the burden reverts to the claimant to prove the validity of its

claim by a preponderance of the evidence. *Id*. Despite this shifting burden during the claim objection process, "the ultimate burden of proof always lies with the claimant." *In re Armstrong*, 347 B.R. 581, 583 (Bankr. N.D. Tex. 2006) (citing *Raleigh v. Ill. Dep't of Rev.*, 530 U.S. 15 (2000)).

28. Here, the Disputed Claim should be disallowed and expunged in its entirety because Claimant does not have a "claim" (as such term is defined in section 101(5) of the Bankruptcy Code) against either the Reorganized Debtors or the Estates, and, thus, Claimant is not a "creditor" (as such term is defined in section 101(10) of the Bankruptcy Code) of the Reorganized Debtors or the Estates.

I. Claimant is Not a Creditor of the Reorganized Debtors Because the Claimant Does Not Have a Valid Claim Against the Reorganized Debtors or the Estates.

29. Claimant is not a "creditor" (as such term is defined in section 101(10) of the Bankruptcy Code) of the Reorganized Debtors because Claimant does not have a Claim against the Reorganized Debtors or the Estates.

30. While the District Court ***conditionally*** certified both a putative FLSA collective and, for settlement purposes only, an opt-out settlement class, and, for purposes of settlement only, conditionally appointed Claimant as class counsel, Claimant, nonetheless does not have a claim against the Reorganized Debtors or the Estates. Claimant is simply counsel to the Hines Plaintiffs and the putative class that was conditionally certified for settlement purposes. This status affords Claimant no basis for an Allowed Claim against the Reorganized Debtors as "[u]nder the bedrock principle known as the 'American Rule,' each litigant pays his own attorney's fees, win or lose, unless a statute or contract provides otherwise." *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 382 (2013) (internal citation and quotation marks omitted).

31. While the Federal Rules of Civil Procedure do authorize the District Court, in connection with final approval of the Hines Settlement, to award Claimant, as conditionally-certified class counsel, an award of attorneys' fees, any such award of attorneys' fees would result in Claimant having a claim against the common fund created by an award of attorneys' fees on account of class action claims. Any award of attorneys' fees (which have not been awarded nor is there a basis to award them at this juncture), would ***not*** result in Claimant, as counsel to the Hines Plaintiffs and conditionally-appointed class counsel, having a Claim against the Reorganized Debtors or the Estates. Instead, at most, Claimant would have a claim against the common fund created by any ***as of yet non-existent*** award to the conditionally-certified, for settlement purposes only, class. *See Teta v. Chow (In re TWL Corp.)*, 712 F.3d 886, 892 (5th Cir. 2013) (Graves, J., concurring) ("With respect to class counsel's fee in an adversary proceeding, the fee does not deplete the assets in the bankruptcy estate."); *Id.* at 897 n.11 ("In contrast, counsel's fees in a class adversary proceeding ***is derived from the class members' recovery***. Thus, although Judge Graves is correct that counsel's fee does not deplete the bankrupt's estate, it nevertheless reduces ***a claimant's ultimate recovery***.") (emphases added); *see also In re Livaditis*, 122 B.R. 330, (Bankr. N.D. Ill. 1990) (rejecting the argument that class counsel and class plaintiffs were competing creditors of the debtor based on an award of attorneys' fees to class counsel by the district court where the class-action suit was filed because "it was Class Plaintiffs, ***not their counsel***, who were awarded attorneys' fees by the District Court. Because [class counsel] ***is not a direct creditor of Debtor, any claim for attorneys' fees derives from the fee award to Class Plaintiffs'***.") (emphases added).

32. As a result, Claimant is not a not a "creditor" (as such term is defined in section 101(10) of the Bankruptcy Code) of the Reorganized Debtors or the Estates because Claimant does

not hold a valid Claim against either the Reorganized Debtors or the Estates, and, as a result, the Disputed Claim should be disallowed and expunged in its entirety.

RESERVATION OF RIGHTS

33. The Reorganized Debtors reserve the right to amend, modify, or supplement this Objection, and to file additional objections to any other Claims (filed or not) that may be asserted against the Reorganized Debtors and their estates (including, without limitation, the Disputed Claim). Should one or more of the grounds of objection stated in the Objection be dismissed or overruled, the Reorganized Debtors reserve the right to object to the Disputed Claim or any other Claims on any other grounds that the Reorganized Debtors discover or elect to pursue.

34. Nothing contained herein shall be deemed: (a) an admission as to the amount of, basis for, or validity of any Claim against the Reorganized Debtors under the Bankruptcy Code or other applicable non-bankruptcy law; (b) an impairment or waiver of the Reorganized Debtors' or any other party in interest's right to dispute any Claim against, or interest in, the Reorganized Debtors, or their property or estates; (c) a promise or requirement to pay any prepetition Claim; (d) an implication or admission that any particular Claim is of a type specified or defined in this Objection, or any order granting the relief requested by this Objection; (e) an implication, admission, or finding as to (i) the validity, enforceability, or perfection of any interest or encumbrance on the property of the Reorganized Debtors or their estates or (ii) the applicability of any exception or exclusion from property of the estate under section 541 of the Bankruptcy Code or other applicable law; (f) an impairment or waiver of any claims or causes of action which may exist against any entity; or (g) a waiver of the Reorganized Debtors' or any other party in interest's rights under the Bankruptcy Code or any other applicable law.

NOTICE

35. Notice of this Objection will be given to the Claimant, the parties on the Reorganized Debtors' Master Service List, and all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. The Reorganized Debtors submit that, under the circumstances, no other or further notice is required.

36. A copy of this Objection is available on (a) the Court's website, at www.txs.uscourts.gov and (b) the website maintained by the Claims and Noticing Agent at https://www.veritaglobal.net/ModivCare.

WHEREFORE, the Reorganized Debtors respectfully request that the Court enter the Proposed Order sustaining the Objection and granting such other and further relief as may be just and proper.

Dated: August 21, 2026

Respectfully submitted,

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

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Co-Counsel for the Reorganized Debtors

CERTIFICATE OF SERVICE

I certify that on August 21, 2026, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

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

Exhibit A

Shepard Declaration

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)

AFFIDAVIT OF KENNETH SHEPARD IN SUPPORT OF
REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 1560

I, Kenneth Shepard, hereby declare as follows:

1. I submit this affidavit (this "***Affidavit***") in support of the *Reorganized Debtors' Objection to Proof of Claim Number 1560* (the "***Objection***")[2] pursuant to Rule 3007-1 of the Bankruptcy Local Rules.

2. I am an executive vice president and group chief financial officer for the Reorganized Debtors a role that I have served in for approximately two months. I have worked for the Reorganized Debtors for over ten years and in finance for approximately 20 years.

3. I am knowledgeable about, and familiar with, the Reorganized Debtors' day-to-day operations, business and financial affairs, books and records, and the circumstances that led to the commencement of the Chapter 11 Cases. The facts set forth in this Declaration are based upon my personal knowledge, my review of relevant documents, information provided to me by

[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 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. 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 meanings ascribed to them in the Objection.

employees working under my supervision, my own reasonable inquiry, and/or my discussions with the Reorganized Debtors' other officers, directors, and restructuring advisors, including professionals at Latham & Watkins LLP, Hunton Andrews Kurth LLP, FTI Consulting, Inc., Moelis & Company, and Kurtzman Carson Consultants, LLC d/b/a Verita Global. If called upon to testify, I would testify to the facts set forth in this Affidavit. I am authorized to submit this Affidavit.

OBJECTION TO DISPUTED CLAIM

4. Article VII of the Plan empowers the Reorganized Debtors to undertake a claims allowance process. Thus, pursuant to the Plan, the Reorganized Debtors and their advisors have identified the Disputed Claim which they seek the disallowance and expungement of so that it may be removed from the Claims Register.

5. The Disputed Claim was identified after the Reorganized Debtors:

(a) reviewed the Claims Register and the Reorganized Debtors' books and records to identify instances in which the Reorganized Debtors and the Estates are not, based on the Reorganized Debtors' books and records and consultation with counsel, liable; and

(b) determined, based on the advice of counsel, that neither the Reorganized Debtors nor the Estates are liable for the Disputed Claim.

[*Remainder of page intentionally left blank.*]

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Dated: August 21, 2026

/s/ Kenneth Shepard
Name: Kenneth Shepard
Title: Senior Vice President – Finance
ModivCare Solutions, LLC and its
Reorganized Debtor Affiliates

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MARQUIS HINES and RONALD HINES on behalf of themselves and others similarly situated,

Plaintiffs,

v.

MODIVCARE SOLUTIONS, LLC formerly known as LogistiCare Solutions, LLC,

Serve:
Registered Agent Solutions, Inc.
7288 Hanover Green Drive
Mechanicsville, VA 23111

Defendant.

Civil Action No. 3:23-cv-273

CLASS AND COLLECTIVE ACTION COMPLAINT

Marquis Hines and Ronald Hines ("Plaintiffs"), on behalf of themselves and all others similarly situated, file this Class and Collective Action Complaint ("Complaint") against ModivCare Solutions, LLC formerly known as LogistiCare Solutions, LLC ("Defendant" or "ModivCare"), and in support state the following:

1. The named Plaintiffs and putative Plaintiffs are current and former ModivCare transportation providers who worked in Virginia within the three years preceding the filing of this Complaint. Plaintiffs were classified and compensated as Independent Contractors by ModivCare.

2. Plaintiffs, and those similarly situated, are employees of ModivCare and have been misclassified. Through this proceeding they seek to recover unpaid overtime wages, unpaid minimum wages, unpaid regular wages, and all other allowable damages and recoveries pursuant to the Fair Labor Standards Act as well as Virginia State law. They also seek to recover damages

associated with their misclassification pursuant to Va. Code § 40.1-28.7:7.

Jurisdiction and Venue

3. This Court has jurisdiction over this matter pursuant to 29 U.S.C. § 216(b), 28 U.S.C. §§ 1331, 2201, 2202 and supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

4. Venue is proper in this District under 28 U.S.C. § 1391 because Defendant maintains its principal place of business in Mechanicsville, Virginia, which falls within this District.

5. Defendant is subject to personal jurisdiction in the Commonwealth of Virginia.

Nature of this Lawsuit

6. Defendant is a large provider of patient transportation, remote patient monitoring, meal delivery, and personal in-home care throughout the U.S.

7. Though referred to as Independent Contractors, Defendant employed/employs the Plaintiffs to transport patients to and from medical facilities and elsewhere in Virginia.

8. Defendant employed Plaintiffs and other individuals who performed identical job duties within Virginia.

9. As was the case with Plaintiffs, Defendant labeled/labels all such individuals as Independent Contractors through the use of a uniform boilerplate contract.

10. Defendant paid Plaintiffs, and those similarly situated, a set rate per mile driven, namely $0.50 per mile driven.

11. Plaintiffs, and, upon information and belief, many of Defendant's other Transportation Drivers, regularly worked over 40 hours per week and were not paid overtime for those hours over 40.

12. Plaintiffs Hines both typically worked between 8 to 12 hours per day, depending

on the assignment. While Plaintiffs Hines had standing orders that typically required 5 days of work, some weeks Plaintiffs Hines worked 6-7 days, and worked days as long as 5:30am to 5:00pm.

13. Plaintiffs Hines typically were only paid $350 to $1,000 per week gross, before taking expenses into account.

14. For example, on Plaintiff Ronald Hines' paycheck dated December 23, 2022, which was for a two-week period, Plaintiff Ronald Hines completed 22 trips, totaling at least 1,401 miles, and was only paid $700.50, before taking into account expenses, such as fuel. 1,401 miles typically requires approximately 4 tanks of gas (averaging 350 miles per tank). The average gas price in December 2022 was $3.10 (https://gasprices.aaa.com/national-average-keeps-falling-as-new-year-approaches/, last visited April 25, 2023). Thus, assuming a 20-gallon tank, at $3.10 per gallon, each fill up cost approximately $62. Therefore, the gas for the two-week period was approximately $248. Thus, Mr. Hines, on average, made $226.25 per week ($700.50 gross pay for 2 weeks - $248 in fuel = $452.50 net pay for 2 weeks) ($452.50 net pay for 2 weeks / 2 weeks = $226.25 per week). Thus, unless Mr. Hines worked 31.2 hours ($226.25 pay per week / $7.25 minimum wage = 31.2 hours) or less hours per week, he did not receive minimum wage. Mr. Hines, though, as set forth above in Paragraph 12, typically worked in excess of 31.2 hours per week, and, upon information and belief, worked in excess of 31.2 hours per week during this pay period. Therefore, Mr. Hines was not paid minimum wage.

The Parties

15. Marquis Hines is a resident of Pittsylvania County, Virginia and worked for Defendant as a Transportation Driver in Virginia since at least 2016.

16. Ronald Hines is a resident of Pittsylvania County, Virginia and worked for

Defendant as a Transportation Driver in Virginia since at least 2021.

17. Defendant is a limited liability company that is licensed to do business in Virginia and maintains its principal office at 7443 Lee Davis Road, Suite 200, Mechanicsville, VA 23111.

18. Defendant's parent company, ModivCare, Inc., is a public company with stock trading on Nasdaq under the ticker "MODV."

Factual Allegations

19. Defendant is a large provider of patient transportation, remote patient monitoring, meal delivery, and personal in-home care throughout the U.S.

20. Defendant provides its services through Transportation Drivers like Plaintiffs and those similarly situated.

21. In order to provide Transportation Drivers on behalf of Defendant, Transportation Drivers are required to contract with Defendant through a boilerplate agreement, the Subcontractor Business Associate Agreement. A copy of the Subcontractor Business Associate Agreement is attached hereto as **Exhibit A**.

22. The Subcontractor Business Associate Agreement purports to set forth the aspects of the relationship between Transportation Drivers and Defendant and declares that Transportation Drivers are "Subcontractor Business Associate[s]" or "Subcontractor[s]" and states that "Subcontractor and MODV agree that they are independent parties and not employees, partners, or a party to a joint venture of any kind."

23. Under the terms of the Subcontractor Business Associate Agreement, Transportation Drivers are made to pay for their own vehicles and expenses to transport Defendant's clients, but all actual control over the routes, rates charged, availability of work, assignment and procurement of clients, and ability for profit belongs to Defendant. Moreover,

Transportation Drivers are expressly prohibited from working for competitors and are required to put a ModivCare decal on their vehicle.

24. Defendant maintains discretion to terminate the Transportation Drivers at any time without cause with 30 days' notice. Moreover, Defendant can disable access to the platforms that are required for Transportation Drivers to perform their job duties during that 30-day period, thus effectively ending their employment immediately.

25. After Plaintiffs complained about a failure by ModivCare to pay them owed wages, ModivCare terminated their contracts on or about February 7, 2023. While the termination letters purported to provide 30 days' notice, Plaintiffs were immediately prevented from accessing ModivCare's assignment system and were not permitted to perform any work after February 7, 2023 for ModivCare.

26. Plaintiff Marquis Hines applied for a different type of job working from home for ModivCare in February 2023. Plaintiff Marquis Hines, despite being qualified for the job, was rejected.

27. An individual's employee status is determined by "economic realities of the relationship between the worker and the putative employer," *Schultz v. Capital International Security, Inc.*, 466 F.3d 298, 304 (4th Cir. 2006).

28. The economic reality of the relationship between Defendant and Plaintiffs, and those similarly situated, is that of an employment relationship. Plaintiffs, and those similarly situated, are, and have been, misclassified as Independent Contractors. Indeed, very little separates their employment from that of a standard delivery driver. For example:

a. Defendant closely monitors and directs the day-to-day operation of Transportation Drivers. Transportation Drivers have little to no discretion over

their clients and routes.

b. Defendant prohibits Transportation Drivers from driving for competitors.

c. Defendant retains the right to not assign clients to Transportation Drivers.

d. Defendant determines the rates charged to clients.

e. Defendant determines the amounts paid to Transportation Drivers.

f. Defendant controls all aspects of the availability for profit.

g. Defendant has massive oversight as to actual conduct of the work to be performed such as requiring Transportation Drivers to place a ModivCare decal on their vehicles and setting a dress code.

29. Transportation Drivers use a variety of personal vehicles for the purpose of driving Defendant's clients, with most, on information and belief, weighing significantly less than 10,000 pounds.

30. Plaintiffs used their personal vehicles to transport Defendant's clients.

31. Transportation Drivers typically work 30-70 hours per week.

32. Defendant pays Transportation Drivers $0.50 per mile driven. Transportation Drivers were not paid a salary and received no minimum payment from Defendant.

33. Transportation Drivers were misclassified as Independent Contractors, and as such:

a. They received no overtime premium when they worked more than 40 hours in a week.

b. Often did not receive minimum wage due to the rates paid and expenses incurred.

c. Received no employee benefits.

34. Transportation Drivers are subject to close oversight by Defendant's managerial

employees. Such employees regularly evaluate the performance of Transportation Drivers.

35. Defendant also failed to timely pay Plaintiffs, and others similarly situated, for all miles driven, withholding monies owed to Plaintiffs for extended periods of time and on occasion never paying Plaintiffs, and others similarly situated, for miles driven.

36. Defendant is an "enterprise" as defined by the FLSA in 29 U.S.C. § 203(r)(1).

37. Defendant is an enterprise engaged in commerce or in the production of goods for commerce as defined by the FLSA in 29 U.S.C. § 203(s)(1)(A).

38. Defendant has made more than $500,000 in sales made or business done in each of the last three calendar years.

39. During their employment, Plaintiffs were each an "employee" of Defendant as defined by the FLSA in 29 U.S.C. § 203(e).

40. During their employment, Defendant was Plaintiffs' "employer" as defined by the FLSA in 29 U.S.C. § 203(d).

Collective Action Allegations

41. Plaintiffs bring their FLSA claims as a collective action and their consent to join this collective action as representative Plaintiffs are attached hereto as **Exhibit B**.

42. The collective action is defined as follows:

> All Transportation Drivers who were classified as independent contractors and worked for Defendant within the borders of the Commonwealth of Virginia, and who worked within three years from the date he/she files a consent form to participate in this lawsuit ("Collective Action Members").

43. Plaintiffs are similarly situated to the potential Collective Action Members because they were paid in the same manner, performed the same primary job duties, and were subject to identical and/or near identical Subcontractor Business Associate Agreements and other attendant contracts with Defendant.

44. In the last three years, Defendant employed individuals who performed the same primary job duties as Plaintiffs.

45. Plaintiffs, and those similarly situated, performed the same primary job duties, were classified as independent contractors exempt from the overtime and/or minimum wage provisions of the FLSA, and were paid only on a per mile basis.

46. Of Transportation Drivers classified as independent contractors who performed the same primary job duties as Plaintiffs in the last three years, some or many worked over 40 hours in individual workweeks.

47. Of Transportation Drivers classified as independent contractors who performed the same primary job duties as Plaintiffs in the last three years, some or all worked during weeks where they were made to expend out-of-pocket costs that were for Defendant's benefit and were not paid for all miles driven. Taken together, these expenditures and failure to pay all monies owed meant that in certain weeks, Plaintiffs, and others similarly situated, earned less than the minimum wage.

48. Defendant has names, addresses, phone numbers, and email addresses for potential Collective Action Members in its payroll or personnel or Transportation Driver records.

49. Defendant is aware or should have been aware that the FLSA required it to pay potential Collective Action Members overtime if they are employees rather than independent contractors.

50. Based on the miles submitted as well as the jobs performed, Defendant had actual or constructive knowledge that some of the Collective Action Members spent more than 40 hours per week working for Defendant.

51. Defendant, who was formerly named Logisticare Solutions, LLC, was sued on July 22, 2020 for misclassification of transportation drivers in the Western District of Missouri, Kansas

City, in the matter of *Farah v. Logisticare Solutions, LLC*, Case No. 4:20-cv-00578-RK.

Class Action Allegations

A. Class Definition

52. Plaintiffs, the Rule 23 Class Representatives, seek to maintain claims pursuant to Va. Code §§ 40.1-28.7:7, 40.1-29, and 40.1-29.2, individually, and on behalf of classes of current and former Transportation Drivers who:

a) During any time since July 1, 2020, were misclassified as independent contractors and were assigned and/or worked routes primarily or exclusively within Virginia;

b) During any time since July 1, 2020, were misclassified as independent contractors and were assigned and/or worked routes primarily or exclusively within Virginia and who were not paid the minimum wage after taking into account expenses and wages not paid by Defendant; or

c) During any time since July 1, 2021, were misclassified as independent contractors and were assigned and/or worked routes primarily or exclusively within Virginia and who worked more than 40 hours in a workweek without receiving overtime compensation.

53. On information and belief, there is substantial overlap in the classes referenced above, as Plaintiffs and all others similarly situated all were made to assent to the same Subcontractor Business Associate Agreement, the same [mis]classification as an independent contractor, and the same work requirements.

B. Efficiency of Class Prosecution of Common Claims

54. Certification of subclasses of current and former Transportation Drivers is the most

efficient and economical means of resolving the questions of law and fact which are common to the claims of the Class Representatives and the proposed subclasses. Conversely, proceeding on an individual basis will require the filing of potentially scores of duplicative individual suits which will waste judicial time and resources and create the risk of inconsistent or varying adjudications of common issues.

C. Numerosity and Impracticality of Joinder

55. The subclasses which the Class Representatives seek to represent are so numerous that joinder is impracticable. On information and belief, the putative subclasses during the liability periods number over 1,000 current and former Transportation Drivers in Virginia who have been misclassified and paid/treated as independent contractors by Defendant, and who were subject to underpayment of regular and overtime wages.

D. Common Questions of Law and Fact

56. Defendant's use of Transportation Drivers and the propriety of its classification of Transportation Drivers present common issues of fact in this matter. Moreover, because Transportation Drivers are all made to sign the same boilerplate contracts and agreements, the challenged pay and classification practices apply uniformly and present identical questions of law and fact with respect to the Class Representatives and those whom they seek to represent.

E. Typicality of Claims and Relief Sought

57. The claims of the Class Representatives are typical of those of the class members as a whole in that their claims are based on the same contract and business and compensation practices. The relief sought by the Class Representatives for unpaid wages and misclassification compensation is also typical of the relief which is sought on behalf of the proposed subclasses.

F. Adequacy of Representation

58. Plaintiffs are adequate class representatives for all subclasses. Their interests are co-extensive with those of the members of the proposed subclasses they seek to represent. Additionally, there is substantial overlap amongst the membership of the subclasses. Plaintiffs have knowledge of the Subcontractor Business Associate Agreement as well as an intimate knowledge of the Transportation Driver position. They are committed to being representatives of the subclasses and have retained counsel experienced in prosecuting class action employment cases to protect the interests of the class.

G. Rule 23(B)(3) Requirements

59. Common questions of law and fact predominate over any questions affecting only individual members because the basis of the claims herein is the common application of the Subcontractor Business Associate Agreement, as well as Defendant's practice of treating its Transportation Drivers as independent contractors. Such policies and practices are applicable to all putative subclass members.

60. A class action is superior to other available methods for adjudicating the controversy because other methods would involve the filing of numerous individual claims that are based on the same centralized scheduling and compensation facts and the same legal issues regarding same. Numerous individual cases similar to Plaintiffs' case would clog the court's docket and waste judicial time and resources. Moreover, multiple individual cases based on the same legal issue(s) could lead to inconsistent or varying adjudications of the same issue(s).

61. The putative subclass members do not have a substantial interest in individually controlling a separate action because any such claim would be based on the same centralized contractual compensation practices and their recovery in either an individual or class action will

be based on the amount of wages, overtime compensation, or other damages that each Plaintiff has been denied by Defendant.

62. The Class Representatives and counsel are not aware of any other litigation concerning the controversy that has already begun by proposed subclass members within the Commonwealth of Virginia.

63. It is desirable to concentrate the claims in this forum because the employment practices complained with respect to the Class Representatives occurred in this forum.

64. Class Representatives and counsel do not foresee any substantial difficulties in managing a class action and counsel is experienced in managing class action litigation in this forum.

COUNT I
Violation of the Fair Labor Standards Act Failure to Pay Overtime Compensation
(Collective Action)

65. This count arises from Defendant's violation of the FLSA by failing to pay overtime to Plaintiffs and the Collective Action Members when they worked over 40 hours in individual workweeks.

66. The Collective Action Members were not exempt from the overtime provisions of the FLSA.

67. Plaintiffs, and others similarly situated, are/were directed by Defendant to perform work, and did work, over 40 hours in one or more individual workweeks.

68. Defendant paid Plaintiffs, and others similarly situated, for miles driven only and did not pay them overtime compensation.

69. Defendant violated the FLSA by failing to pay overtime to Plaintiffs, and others similarly situated, at one-and-one-half times their regular rate of pay when they worked over 40

hours in one or more individual workweeks.

70. Defendant's failure to pay Plaintiffs and other similarly situated persons one-and-one-half times their regular rate for all time worked over 40 hours in a workweek was willful.

COUNT II
Violation of the Fair Labor Standards Act Failure to Minimum Wage
(Collective Action)

71. The FLSA requires that employees be paid no less than $7.25 an hour on an unconditional and free and clear basis.

72. Because Plaintiffs, and those similarly situated, were misclassified as independent contractors, they were made to expend out-of-pocket costs that were for Defendant's benefit and failed to receive monies owed for miles driven. Taken together, these expenditures and failure to pay monies owed meant that in some weeks, Plaintiffs, and others similarly situated, earned less than the minimum wage.

73. Defendant's failure to pay Plaintiffs and other similarly situated persons a minimum wage was willful.

COUNT III
Violation of Va. Code § 40.1-28.7:7
(State Law Misclassification Class Action)

74. Va. Code § 40.1-28.7:7 permits misclassified workers to bring an action for damages against violating employers.

75. Plaintiffs, and others similarly situated, performed services for Defendant for renumeration.

76. Plaintiffs, and others similarly situated, were misclassified as independent contractors despite not meeting the "Internal Revenue Service guidelines" for evaluating independent contractor status.

77. Plaintiffs, and others similarly situated, are entitled to damages caused by such misclassification, including wages, salary, employment benefits, including expenses incurred by the employee that would otherwise have been covered by insurance, and impermissible chargebacks or deductions or other compensation lost, plus reasonable attorneys' fees and costs incurred in bringing this action.

COUNT IV
Violation of Va. Code § 40.1-29.2
(Virginia Overtime Wage Act Class Action)

78. Defendant has knowingly violated the Virginia Overtime Wage Act, Va. Code § 40.1-29.2, by failing to pay overtime to Plaintiffs and the Collective Action Members when they worked over 40 hours in individual workweeks.

79. Plaintiffs, and all others similarly situated, were not exempt from the overtime provisions of Va. Code § 40.1-29.2.

80. Plaintiffs, and others similarly situated, are/were directed by Defendant to perform work, and did work, over 40 hours in one or more individual workweeks.

81. Defendant paid Plaintiffs, and others similarly situated, for miles driven only and did not pay them overtime compensation.

82. Defendant violated Va. Code § 40.1-29.2 by failing to pay overtime to Plaintiffs, and others similarly situated, at one-and-one-half times their regular rate of pay when they worked over 40 hours in one or more individual workweeks.

83. Defendant's failure to pay Plaintiffs and other similarly situated persons one-and-one-half times their regular rate for all time worked over 40 hours in a workweek was willful or knowing.

84. Pursuant to Va. Code §§ 40.1-29(J) and 40.1-29.2, Plaintiffs and others similarly

situated are entitled to recover payment of their unpaid overtime wages, an equal amount of liquidated damages, prejudgment interest, and attorney's fees. Further, Defendant's violation was a "knowing" one thus entitling Plaintiffs and others similarly situated to recovery of triple damages (triple damages are applicable July 1, 2021-June 30, 2022).

85. Plaintiffs bring this action for all violations alleged herein commencing July 1, 2021, and ongoing.

COUNT V
Violation of Va. Code § 40.1-29
(Unpaid Wages Class Action)

86. Defendant has knowingly violated Va. Code § 40.1-29 by failing to pay Plaintiffs the regular wages for necessary and compensable time spent working for Defendant.

87. Because Plaintiffs, and those similarly situated, were misclassified as independent contractors, they were made to expend out-of-pocket costs that were for Defendant's benefit and failed to receive monies owed for miles driven. Taken together, these expenditures and failure to pay monies owed meant that in some weeks, Plaintiffs, and others similarly situated, earned less than the minimum wage.

88. These expenditures and failure to pay monies owed represent improper reductions in the wages of Plaintiffs, and others similarly situated.

89. Pursuant to Va. Code § 40.1-29(J), Plaintiffs are entitled to recover their unpaid and/or deducted wages, an equal amount of liquidated damages, prejudgment interest, and attorney's fees. Further, Defendant's violation was a "knowing" one thus entitling Plaintiffs to recovery of triple damages.

90. Plaintiffs bring this action for all violations alleged herein commencing July 1, 2020, and ongoing.

COUNT VI
Violation of the Fair Labor Standards Act
Retaliation

91. This count arises from Defendant's violation of the FLSA by retaliating against Plaintiffs Marquis Hines and Ronald Hines by terminating their employment and refusing to rehire Plaintiff Marquis Hines.

92. Defendant's retaliatory conduct violates 29 U.S.C. § 215(a)(3), and Defendant is liable to Plaintiffs for such legal or equitable relief as may be appropriate to effectuate the purposes of 29 U.S.C. § 215(a)(3), including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional equal amount as liquidated damages.

93. As a result of Defendant's willful and reckless actions, Plaintiffs are entitled to recover liquidated damages pursuant to 29 U.S.C. § 216(b).

94. Plaintiffs are entitled to recover attorney's fees pursuant to 29 U.S.C. § 216(b).

WHEREFORE, Plaintiffs, on behalf of themselves and the Collective and/or Class Action Members, request the following relief against Defendant as follows:

A. That the Court conditionally certify this action as Collective Action under the FLSA and order that Court approved notice be issue to putative collective members;

B. All unpaid overtime and minimum wages due to Plaintiffs and the Collective Action Members;

C. Liquidated damages equal to the unpaid overtime and minimum wage compensation due to Plaintiffs and the Collective Action Members;

D. That the Court certify this action as Class Action Pursuant to Rule 23 of the Federal Rules of Civil Procedure;

E. All unpaid wages and overtime or other damages due to Plaintiffs and members of

the State Law Class Action claims;

F. All unpaid wages, salary, or benefits due as result of Defendant's misclassification scheme;

G. Liquidated damages equal to the unpaid overtime and/or unpaid wage compensation due under Va. Code § 40.1-29(J) and 40.1-29.2;

H. Treble damages under Va. Code § 40.1-29(J) for all claims where such relief is available;

I. An award of Plaintiffs' actual compensatory damages for lost wages, plus an equivalent amount of liquidated damages, along with pre-judgment interest, and attorneys' fees (associated with retaliation) against the Defendant;

J. An award of Plaintiffs' compensatory damages for said retaliation in an amount to be determined by the jury;

K. An award of Plaintiffs' punitive damages for said retaliation in an amount to be determined by the jury;

L. Reasonable attorneys' fees and costs incurred in filing and prosecuting this lawsuit pursuant to the FLSA and/or Virginia law; and

M. Such other relief as the Court deems appropriate.

Jury Demand

Plaintiffs demand a trial by jury.

Respectfully Submitted,

MARQUIS HINES and RONALD HINES individually and on behalf of all others similarly situated,

By:____/s/_____

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EXHIBIT C

SUBCONTRACTOR BUSINESS ASSOCIATE AGREEMENT

Provider Name: Ronald Hines

This Subcontractor Business Associate Agreement ("Agreement") is entered into as of _____ 201___, by and between MODV and Ronald Hines ("**Subcontractor Business Associate**" or "**Subcontractor**") to comply with the Privacy Rule and the Security Rule promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), 45 CFR Parts 160 through 164, and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

Whereas, MODV and Subcontractor Business Associate are parties to a pre-existing agreement (the "Prior Agreement"), pursuant to which Subcontractor Business Associate provides services to MODV;
Whereas, in connection with services provided under the Prior Agreement, MODV makes available to Subcontractor Business Associate certain Protected Health Information that is confidential and must be afforded special treatment and protection;
Whereas, MODV has entered into Business Associate Agreements with certain Covered Entity Clients and, pursuant to such Business Associate Agreements, MODV has agreed to maintain an agreement with each agent or subcontractor that has or will have access to the Protected Health Information which MODV creates or receives in the course of performing services for its Covered Entity Clients; and
Whereas, the parties are entering into this Agreement, the terms of which shall be part of and subject to the Prior Agreement, in order for MODV to satisfy its obligations under HIPAA and one or more Business Associate Agreements to which MODV is a party.

Now therefore, the Parties agree as follows:

1. **Definitions**. The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear.

a. **Covered Entity Client** shall mean an entity with whom MODV contracts for transport services which qualifies as a "Covered Entity" under 45 C.F.R. § 160.103, as amended.

b. **Designated Record Set** shall have the same meaning given such term under 45 C.F.R. § 164.501, as amended.

c. **HIPAA** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

d. **HIPAA Regulations** shall mean the regulations promulgated under HIPAA by the United States Department of Health and Human Services at 45 C.F.R. Parts 160-164.

e. **HITECH Act** shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Investment Act of 2009, Public Law 111-5, enacted on February 17, 2009.

f. **Individual** shall mean the person who is the subject of the Protected Health Information, and shall include a person who qualifies as a personal representative of that person.

g. **Protected Health Information** ("PHI") means individually identifiable health information (as defined in 45 C.F.R. § 160.103, as amended), limited to the information created or received by Subcontractor from or on behalf of MODV or MODV's Covered Entity Clients. It includes information that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that (a) identifies the individual; or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

h. **Secretary** shall mean the Secretary of the Department of Health and Human Services ("HHS") and any other officer or employee of HHS to whom the authority involved has been delegated.

i. **Unsecured Protected Health Information** ("Unsecured PHI") shall mean PHI that is not secured through the use of technology or methodology specified by the Secretary in applicable guidance.

j. **Breach** shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information, except where an unauthorized person to whom

such information is disclosed would not reasonably have been able to retain such information. Exceptions to this definition exist for cases in which: (1) the unauthorized acquisition, access, or use of PHI is unintentional and made by an employee or individual acting under authority of Subcontractor if such acquisition, access, or use was made in good faith and within the course and scope of the employment or other professional relationship with Subcontractor, and such information is not further acquired, accessed, used, or disclosed; (2) an inadvertent disclosure occurs by an individual who is authorized to access PHI at Subcontractor to another similarly situated individual at Subcontractor, as long as the PHI is not further acquired, accessed, used, or disclosed without authorization; or (3) a disclosure of PHI occurs and Subcontractor has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

k. **Security Incident** shall have the meaning set forth in 45 C.F.R. § 164.304 and related Guidance promulgated by the Secretary.

l. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the HIPAA Regulations, and the HITECH Act.

2. **Limits on use and Disclosure of PHI.** Subcontractor agrees that it will not use or disclose PHI for any purpose other than as expressly permitted or required by this Agreement. Subcontractor may use or disclose PHI for the following purposes:

a. As reasonably necessary to perform the services described in, and to effectuate the purposes of, the Prior Agreement, or as otherwise permitted or required under this Agreement or as Required By Law;

b. For the proper management and administration of Subcontractor's business and to carry out its legal responsibilities provided that: (i) such disclosures are Required by Law; or (ii) Subcontractor obtains in writing prior to making any disclosure to a third party (a) reasonable assurances from the third party that the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the third party; and (b) an agreement from the third party to notify Subcontractor immediately of any instance of which it is aware in which the confidentiality of the PHI has been breached; and

c. To perform Data Aggregation Services, as that term is defined by 45 C.F.R. § 164.501, on behalf of MODV.

3. **Additional Obligations:**

a. **Limits on use and Further Disclosure.** Subcontractor agrees that the Protected Health Information shall not be further used or disclosed other than as permitted or required by the Prior Agreement, as amended by this Agreement or as Required by Law.

b. **Safeguards.** Subcontractor will establish and maintain appropriate safeguards and warrants that it has established reasonable safeguards to prevent any use or disclosure of the PHI, other than as provided for by the Prior Agreement, as amended by this Agreement, or as required by Law. Without limiting the foregoing, Subcontractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI. Subcontractor further warrants that it will not use or disclose any PHI in any manner that will violate HIPAA Regulations if MODV engaged in such activity. Subcontractor shall specifically comply with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 of the Security Rule as such regulations are amended from time to time, as required by the HITECH Act. Subcontractor agrees to periodically complete a privacy and security survey, audit, and/or attestation if requested by MODV to assist MODV in auditing Subcontractor's compliance with the HIPAA Regulations.

c. **Minimum Necessary.** Subcontractor shall only request, use, and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.

d. **Reports of Improper use or Disclosure.** Subcontractor shall report to MODV, within one business day, any use or disclosure of PHI not provided for or allowed by this Agreement of which Subcontractor becomes aware. Without limiting the foregoing, Subcontractor agrees to report to MODV, within one business day, any Security Incident with respect to Electronic PHI of which it becomes aware. Such reports should be made to the designated MODV HIPAA Compliance Officer at any of the following:

ModivCare Solutions, LLC
Attn: HIPAA Compliance Officer
1275 Peachtree St., 6th Floor
Atlanta, GA 30309

Or

Telephone:
1- 800-486-7647

Or

Fax:
1-877-352-5640

c. **Breach Notification.** In the event of a Breach of Unsecured PHI, Subcontractor shall provide written notification to MODV of such Breach without unreasonable delay and no more than one business day from discovery of the Breach so that MODV can notify its Covered Entity Clients, if required. A Breach is treated as discovered as of the first day on which the Breach is known to Subcontractor or, by exercising reasonable diligence, would have been known to the Subcontractor. Knowledge of a Breach by a member of the workforce or other agent of the Subcontractor (other than the person committing the Breach) is imputed to Subcontractor. Consequently, Subcontractor shall implement reasonable policies and systems for discovery of Breaches and train its workforce members and agents to recognize and promptly report a Breach. Subcontractor understands and agrees that it bears the burden to prove why a Breach Notification is not required. Consequently, Subcontractor shall carefully document risk assessments and how any applicable exceptions are met.

f. **Contents of Breach Notification**. Subcontractor's notification to MODV of a Breach of Unsecured PHI must be written in plain language and describe: (1) what happened, including the date of the Breach and date of discovery; (2) the types of Unsecured PHI that were involved; (3) any steps individuals should take to protect themselves from potential harm resulting from the Breach; (4) what the Subcontractor is doing to investigate the Breach, to mitigate harm, and to protect against further Breaches; and (5) contact procedures for individuals to ask questions or learn additional information. The notice must also include the identification of each individual whose Unsecured PHI has been or is reasonably believed to have been Breached, if known. Subcontractor shall provide any additional information concerning the Breach as reasonably requested by MODV. Notification must be provided in writing to the designated MODV HIPAA Compliance Officer at the address and fax number above. If the Subcontractor believes that the Breach poses an imminent threat of misuse of Unsecured PHI, the Subcontractor shall also provide immediate notice to the designated MODV HIPAA Compliance Officer via telephone, email or other appropriate means. Subcontractor will make itself, and any subcontractors, agents, or employees available to MODV at no cost to MODV to testify as witnesses or otherwise in the event of litigation or administrative proceedings based upon claimed violation of HIPAA, except where Subcontractor is named an adverse party to MODV.

g. **Subcontractors and Agents.** Subcontractor agrees that anytime PHI is provided or made available to any subcontractors or agents, Subcontractor must enter into a Business Associate Agreement with the subcontractor or agent that contains the same terms, conditions and restrictions on the use and disclosure of PHI as contained in this Agreement. This includes without limitation any contracts with billing companies, factoring companies, or other entities to whom Subcontractor may provide its trip logs, trip manifests, or MODV billing documents.

h. **Right of Access to Information.** To the extent that MODV is obligated by contract or by law to provide Individuals access to Protected Health Information in a Designated Record Set, Subcontractor will provide such access to MODV within five business days of MODV's request. This right of access shall conform with and meet all of the requirements of 45 C.F.R. § 164.524.

i. **Amendment and Incorporation of Amendments.** Subcontractor agrees to make PHI contained in a Designated Record Set available to MODV for amendment within five business days of MODV's request and to incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526.

j. **Provide Accounting.** Subcontractor will document disclosures of PHI and information related to such disclosures as would be required for MODV or MODV's Covered Entity Clients to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Subcontractor will provide such information to MODV upon request.

k. **Access to Books and Records.** Subcontractor agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received on behalf of MODV, available to MODV and to the Secretary for purposes of determining MODV Covered Entity Client's compliance with HIPAA, HIPAA Regulations, and the HITECH Act.

l. **Return or Destruction of Information.** Upon request or at termination of this Agreement, Subcontractor agrees to return or destroy all PHI received from MODV or MODV's Covered Entity Clients, or created or received by Subcontractor on MODV's behalf. If return or destruction of the PHI is not feasible, Subcontractor agrees to extend the protections of this Agreement for as long as necessary to protect the PHI and to limit any further use or disclosure. If Subcontractor elects to destroy the PHI, it shall certify to MODV that the Protected Health Information has been destroyed.

m. **Mitigation Procedures.** Subcontractor agrees to mitigate, to the maximum extent practicable and at Subcontractor's expense, any harmful effect of the use or disclosure of PHI in a manner contrary to this Agreement or applicable law.

n. **Sanction Procedures.** Subcontractor will develop and implement a system of sanctions for any employee, subcontractor or agent who violates the terms of this Agreement or applicable law.

o. **Training.** Subcontractor will train its employees, agents, and subcontractors on the requirements of this Agreement, HIPAA, the HITECH Act, and the HIPAA Regulations, and will provide proof of such training to MODV upon request.

p. **Property Rights**. Subcontractor agrees that it acquires no title or rights to the PHI, including any de-identified information, as a result of this Agreement.

4. **Term and Termination.** The Term of this Agreement shall commence as of the date executed by the parties, and shall terminate when all of the PHI provided to Subcontractor by MODV, or created or received by Subcontractor on behalf of MODV, is destroyed or returned to MODV, or, if it is not feasible to return or destroy, protections are extended to such information.

5. **Termination for Cause**. Upon MODV's knowledge of a material breach by Subcontractor of the terms of this Agreement, MODV shall either:

a. Provide an opportunity for Subcontractor to cure the breach or to end the violation within a time specified by MODV. Should the Subcontractor not cure the breach nor end the violation within the time specified by MODV, MODV may terminate the Prior Agreement immediately without penalty;

b. Immediately terminate the Prior Agreement if Subcontractor has breached a material term of this Agreement and cure is not possible; or

c. If neither termination nor cure is feasible, MODV shall report the violation to the Secretary.

6. **Indemnification.** Subcontractor shall indemnify and hold MODV and its Covered Entity Clients harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses of any kind whatsoever, including, without limitation attorney's fees, witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement, HIPAA, the HITECH ACT, or the HIPAA Regulations by Subcontractor, its employees, agents, or subcontractors.

7. **Miscellaneous:**

a. **Binding Nature.** This Agreement shall be binding on the Parties hereto and their successors and assigns.

b. **Article Headings.** The article headings used are for reference and convenience only, and shall not enter into the interpretation of this Agreement.

c. **State Law.** To the extent any applicable state law confidentiality requirements are not pre-empted by HIPAA, Subcontractor agrees to comply with such state law requirements.

d. **Third Party Participants.** Subcontractor agrees that any of MODV's Covered Entity Clients to whom Subcontractor provides services and with whom MODV has entered into a Business Associate agreement are third party Participants of this Agreement. Notwithstanding the foregoing, no other individual or entity shall be considered a third party beneficiary of this Agreement.

e. **Amendment**. The Parties mutually agree to amend this Agreement from time to time as necessary for either party to comply with the requirements of HIPAA, the HITECH Act, and/or the HIPAA Regulations as they may be amended or revised from time to time, and any judicial, legislative, or administrative interpretation which alters or conflicts with any provisions contained herein. If the parties are unable to agree on an amendment within ten business days thereafter, MODV may terminate the Agreement immediately with written notice to Subcontractor.

f. **Conflict**. In the event of any conflict between this Agreement and the Prior Agreement as to the subject matter referenced herein, this Agreement shall control.

g. **Interpretation.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA, the HITECH Act, and/or the HIPAA Regulations issued by the HHS or the Office for Civil Rights from time to time. This Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA Regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA Regulations.

h. **Independent Contractors**. Subcontractor and MODV agree that they are independent parties and not employees, partners, or party to a joint venture of any kind. Neither party shall hold itself out as the other's agent for any purpose, and shall have no authority to bind the other to any obligation.

i. **Assignment**. Subcontractor shall not assign its rights or obligations under this Agreement without the prior written consent of MODV.

IN WITNESS WHEREOF, MODV and Subcontractor have caused this Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth above.

MODIVCARE SOLUTIONS, LLC	**SUBCONTRACTOR**
	Ronald Hines
	(Print or Type Provider Name)
Date: _____	Date: July 26, 2021
Signature: _____	Signature: Ronald Hines
Printed Name: _____	Printed Name: Ronald Hines
Title: _____	Title: Volunteer Driver

Case 2:23-cv-00225 Document 1-1 Filed 07/28/23 Page 23 of 25 PageID # 23

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MARQUIS HINES and RONALD HINES on behalf of themselves and others similarly situated,

Plaintiffs,

v.

MODIVCARE SOLUTIONS, LLC formerly known as LogistiCare Solutions, LLC,

Defendant.

Civil Action No.

I hereby consent to opt-in to become a plaintiff in this collective Fair Labor Standards Act ("FLSA") action pursuant to 29 U.S.C. § 216(b) and this class Virginia Wage Payment Act ("VWPA") and Virginia Overtime Wage Act ("VOWA") and Virginia Misclassification action pursuant to Federal Rule of Civil Procedure 23.

Signature: Marquis Hines

Printed Name: Marquis Hines

Address: [redacted]

Email Address:

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MARQUIS HINES and RONALD HINES on behalf of themselves and others similarly situated,

Plaintiffs,

v.

MODIVCARE SOLUTIONS, LLC formerly known as LogistiCare Solutions, LLC,

Defendant.

Civil Action No.

I hereby consent to opt-in to become a plaintiff in this collective Fair Labor Standards Act ("FLSA") action pursuant to 29 U.S.C. § 216(b) and this class Virginia Wage Payment Act ("VWPA") and Virginia Overtime Wage Act ("VOWA") and Virginia Misclassification action pursuant to Federal Rule of Civil Procedure 23.

Signature: Ronald Hines

Printed Name: Ronald Hines

Address: [redacted]

Email Address:

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

MARQUIS HINES and RONALD HINES on behalf of themselves and others similarly situated

(b) County of Residence of First Listed Plaintiff Pittsylvania
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

Brittany Haddox/Thomas Strelka, Strelka Employment Law, 4227 Colonial Ave., Roanoke, VA 24018, 540-283-0802; Zev Antell/Craig Curwood, 140 Virginia St Ste 302, Richmond, VA 23219, 804-648-4848

DEFENDANTS

MODIVCARE SOLUTIONS, LLC formerly known as LogistiCare Solutions, LLC

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ❒ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question *(U.S. Government Not a Party)*
- ❒ 2 U.S. Government Defendant
- ❒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

(For Diversity Cases Only)

	PTF	DEF		PTF	DEF
Citizen of This State	❒ 1	❒ 1	Incorporated *or* Principal Place of Business In This State	❒ 4	❒ 4
Citizen of Another State	❒ 2	❒ 2	Incorporated *and* Principal Place of Business In Another State	❒ 5	❒ 5
Citizen or Subject of a Foreign Country	❒ 3	❒ 3	Foreign Nation	❒ 6	❒ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ❒ 110 Insurance
- ❒ 120 Marine
- ❒ 130 Miller Act
- ❒ 140 Negotiable Instrument
- ❒ 150 Recovery of Overpayment & Enforcement of Judgment
- ❒ 151 Medicare Act
- ❒ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
- ❒ 153 Recovery of Overpayment of Veteran's Benefits
- ❒ 160 Stockholders' Suits
- ❒ 190 Other Contract
- ❒ 195 Contract Product Liability
- ❒ 196 Franchise

REAL PROPERTY
- ❒ 210 Land Condemnation
- ❒ 220 Foreclosure
- ❒ 230 Rent Lease & Ejectment
- ❒ 240 Torts to Land
- ❒ 245 Tort Product Liability
- ❒ 290 All Other Real Property

TORTS

PERSONAL INJURY
- ❒ 310 Airplane
- ❒ 315 Airplane Product Liability
- ❒ 320 Assault, Libel & Slander
- ❒ 330 Federal Employers' Liability
- ❒ 340 Marine
- ❒ 345 Marine Product Liability
- ❒ 350 Motor Vehicle
- ❒ 355 Motor Vehicle Product Liability
- ❒ 360 Other Personal Injury
- ❒ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
- ❒ 365 Personal Injury - Product Liability
- ❒ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ❒ 368 Asbestos Personal Injury Product Liability

PERSONAL PROPERTY
- ❒ 370 Other Fraud
- ❒ 371 Truth in Lending
- ❒ 380 Other Personal Property Damage
- ❒ 385 Property Damage Product Liability

CIVIL RIGHTS
- ❒ 440 Other Civil Rights
- ❒ 441 Voting
- ❒ 442 Employment
- ❒ 443 Housing/ Accommodations
- ❒ 445 Amer. w/Disabilities - Employment
- ❒ 446 Amer. w/Disabilities - Other
- ❒ 448 Education

PRISONER PETITIONS

Habeas Corpus:
- ❒ 463 Alien Detainee
- ❒ 510 Motions to Vacate Sentence
- ❒ 530 General
- ❒ 535 Death Penalty

Other:
- ❒ 540 Mandamus & Other
- ❒ 550 Civil Rights
- ❒ 555 Prison Condition
- ❒ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ❒ 625 Drug Related Seizure of Property 21 USC 881
- ❒ 690 Other

LABOR
- ☒ 710 Fair Labor Standards Act
- ❒ 720 Labor/Management Relations
- ❒ 740 Railway Labor Act
- ❒ 751 Family and Medical Leave Act
- ❒ 790 Other Labor Litigation
- ❒ 791 Employee Retirement Income Security Act

IMMIGRATION
- ❒ 462 Naturalization Application
- ❒ 465 Other Immigration Actions

BANKRUPTCY
- ❒ 422 Appeal 28 USC 158
- ❒ 423 Withdrawal 28 USC 157

PROPERTY RIGHTS
- ❒ 820 Copyrights
- ❒ 830 Patent
- ❒ 835 Patent - Abbreviated New Drug Application
- ❒ 840 Trademark

SOCIAL SECURITY
- ❒ 861 HIA (1395ff)
- ❒ 862 Black Lung (923)
- ❒ 863 DIWC/DIWW (405(g))
- ❒ 864 SSID Title XVI
- ❒ 865 RSI (405(g))

FEDERAL TAX SUITS
- ❒ 870 Taxes (U.S. Plaintiff or Defendant)
- ❒ 871 IRS—Third Party 26 USC 7609

OTHER STATUTES
- ❒ 375 False Claims Act
- ❒ 376 Qui Tam (31 USC 3729(a))
- ❒ 400 State Reapportionment
- ❒ 410 Antitrust
- ❒ 430 Banks and Banking
- ❒ 450 Commerce
- ❒ 460 Deportation
- ❒ 470 Racketeer Influenced and Corrupt Organizations
- ❒ 480 Consumer Credit
- ❒ 490 Cable/Sat TV
- ❒ 850 Securities/Commodities/ Exchange
- ❒ 890 Other Statutory Actions
- ❒ 891 Agricultural Acts
- ❒ 893 Environmental Matters
- ❒ 895 Freedom of Information Act
- ❒ 896 Arbitration
- ❒ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ❒ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

☒ 1 Original Proceeding ❒ 2 Removed from State Court ❒ 3 Remanded from Appellate Court ❒ 4 Reinstated or Reopened ❒ 5 Transferred from Another District *(specify)* ❒ 6 Multidistrict Litigation - Transfer ❒ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing ***(Do not cite jurisdictional statutes unless diversity)***:
29 U.S.C. Secs. 201 et seq.

Brief description of cause:
Hybrid Collective/Class Action for Unpaid Overtime and Regular Wages and Misclassification

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A **CLASS ACTION** UNDER RULE 23, F.R.Cv.P.

DEMAND $ TBD

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ Yes ❒ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE _____ DOCKET NUMBER _____

DATE 04/25/2023

SIGNATURE OF ATTORNEY OF RECORD /s/ Brittany M. Haddox

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION

MARQUIS HINES and RONALD HINES on Behalf of themselves and others similarly situated	)	
Plaintiffs,	)	
v.	)	Case No. 3:23-cv-273
MODIVCARE SOLUTIONS, LLC formerly known as LogistiCare Solutions, LLC,	)	
Defendant.	)	

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW, ModivCare Solutions, LLC ("ModivCare" or "Defendant") by and through its undersigned counsel, and files its Answer and Affirmative Defenses to Plaintiffs' Marquis Hines ("M. Hines") and Ronald Hines ("R. Hines") (collectively "Plaintiffs") Complaint on behalf of themselves and others similarly situated (the "Complaint"), and states as follows:

1. Defendant admits that Plaintiffs Marquis Hines and Ronald Hines contracted with ModivCare to provide non-emergency medical transportation services to medical Plan members in Virginia. Defendant denies the remainder of the allegations in Paragraph 1.
2. Defendant admits that Plaintiffs seek the damages stated in Paragraph 2; however, Defendant denies that Plaintiffs are entitled to recover the damages stated or any other damages or relief. Defendant denies the remainder of Paragraph 2.

Jurisdiction and Venue

3. Defendant admits that this Court has jurisdiction over the Complaint. Defendant denies the remainder of Paragraph 3.

4. Defendant admits that venue is proper. Defendant denies the remainder of Paragraph 4.
5. Admit.

Nature of this Lawsuit

6. Deny.
7. Deny.
8. Deny.
9. Defendant admits that it entered into contracts with certain Independent Contractors in Virginia not including Plaintiffs. Defendant denies the remainder of the allegations in Paragraph 9.
10. Defendant admits that it reimbursed Plaintiffs' mileage at a rate of 0.50 per mile driven. Defendant denies the remainder of the allegations in Paragraph 10.
11. Deny.
12. Deny.
13. Defendant admits that Plaintiffs were reimbursed varying amounts based on mileage driven. Defendant denies the remainder of the allegations in Paragraph 13.
14. Defendant admits that Plaintiff Ronald Hines was reimbursed for mileage driven. Defendant states that the Complaint cites a website which speaks for itself, but Defendant denies all calculations, characterizations, and allegations of fact concerning or referencing the website. Defendant denies the remainder of the allegations in Paragraph 14.

The Parties

15. Defendant is without sufficient knowledge or information to admit or deny where Marquis Hines resides, and therefore, denies those allegations. Defendant denies the remainder of the allegations in Paragraph 15.

16. Defendant is without sufficient knowledge or information to admit or deny where Ronald Hines resides, and therefore, denies those allegations. Defendant denies the remainder of the allegations in paragraph 16.

17. Defendant admits that it is licensed to do business in Virginia. Defendant denies the remainder of the allegations in Paragraph 17.

18. Defendant admits that ModivCare, Inc. is a publicly traded company with stock trading on Nasdaq under the ticker MODV. Defendant denies the remainder of the allegations in Paragraph 18.

Factual Allegations

19. Deny.

20. Deny.

21. Defendant neither admits nor denies the allegations set forth in paragraph 21 of the Complaint as they refer to the Subcontractor Business Associate Agreement which is a document that speaks for itself. To the extent that the allegations contained in Paragraph 21 are inconsistent with the Subcontractor Business Associate Agreement, they are denied.

22. Defendant neither admits nor denies the allegations set forth in paragraph 22 of the Complaint as they refer to the Subcontractor Business Associate Agreement which is a document that speaks for itself. To the extent that the allegations contained in Paragraph 22 are inconsistent with the Subcontractor Business Associate Agreement, they are denied.

23. Defendant neither admits nor denies the allegations set forth in paragraph 23 of the Complaint as they refer to the Subcontractor Business Associate Agreement which is a document that speaks for itself. To the extent that the allegations contained in Paragraph 23 are inconsistent with the Subcontractor Business Associate Agreement, they are denied.
24. Defendant neither admits nor denies the allegations set forth in paragraph 24 of the Complaint as they reference terms that are reflected in a written document that speaks for itself. To the extent that the allegations contained in Paragraph 24 are inconsistent with the written document, they are denied.
25. Defendant admits that Plaintiffs claimed that they were not reimbursed for the full value of trip mileage and that on February 7, 2023, Defendant terminated the Transportation Agreements between Defendant and Plaintiffs, effective March 7, 2023. Defendant denies the remainder of the allegations in Paragraph 25.
26. Defendant admits that Plaintiff Marquis Hines applied for a remote position with Defendant and was not selected. Defendant denies the remainder of the allegations in Paragraph 26.
27. Defendant states that Paragraph 27 contains legal conclusions to which no response is required.
28. Deny.
    a. Deny.
    b. Deny.
    c. Defendant admits that it connects members in need of non-emergency transportation with drivers who have contracted to provide those trips. Defendant denies the remainder of the allegations in Paragraph 28(c).

d. Deny.

e. Deny.

f. Deny.

g. Defendant admits that ModivCare inspection stickers are placed on vehicles that are used to provide non-emergency transportation to ModivCare members. Defendant denies the remainder of the allegations in Paragraph 28(g).

29. Defendant admits that it does not maintain a fleet of vehicles. Defendant is without sufficient knowledge and information to admit or deny the remainder of the allegations in Paragraph 29, and therefore denies them.

30. Admit.

31. Defendant is without sufficient knowledge or information to admit or deny the allegations in Paragraph 31, and therefore denies them.

32. Defendant admits that it reimbursed Plaintiffs at the rate of of $0.50 per mile driven. Defendant denies the remaining allegations of this paragraph.

33. Deny.

a. Defendant denies that it employed any drivers and therefore denies that it had an obligation to pay them overtime.

b. Defendant denies that it employed any drivers and therefore denies that it had an obligation to pay them minimum wage.

c. Defendant denies that it employed any drivers and therefore denies that it had an obligation to pay them employee benefits.

34. Deny.

35. Deny.

36. Defendant states that Paragraph 36 contains a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 36.

37. Defendant states that Paragraph 37 contains a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 37.

38. Admit.

39. Defendant states that Paragraph 39 contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 39.

40. Defendant states that Paragraph 39 contains a legal conclusion to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 40.

Collective Action Allegations

41. Defendant admits that Plaintiffs purport to bring their claims as a collective action. Defendant denies that treatment of a collective action is proper and denies Plaintiffs and/or other individuals they purport to represent are entitled to any relief whatsoever. Defendant further states that Paragraph 41 references a document which speaks for itself. Defendant denies any remaining allegations in Paragraph 41.

42. Defendant states that Paragraph 42 contains a legal definition to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 42.

43. Defendant states that Paragraph 43 contains a legal conclusion to which no response is required. To the extent that a response is required, Defendant denies the allegations in Paragraph 43, and specifically denies that there is any legal basis for collective treatment of the claims in the Complaint.

44. Deny.

45. Defendant admits that Plaintiffs were reimbursed for mileage driven. Defendant states that the allegation in Paragraph 45 that independent contractors are exempt from overtime and/or minimum wage provisions of the FLSA is a legal conclusion to which no response is required. Defendant denies the remainder of the allegations in Paragraph 45 and specifically denies that there is any legal basis for collective treatment of the claims in the Complaint.

46. Defendant is without sufficient knowledge and information to admit or deny the allegations contained in Paragraph 46 regarding the hours Transportation Drivers worked, and therefore denies them. Defendant further denies the remaining allegations in Paragraph 46 and specifically denies that there is any legal basis for collective treatment of the claims in the Complaint.

47. Defendant is without sufficient knowledge or information to admit or deny the allegations contained in Paragraph 47 regarding out-of-pocket costs, and therefore denies them. Defendant further denies that it employed Plaintiffs and therefore that it owed them any money or minimum wage. Defendant further denies the remaining allegations in Paragraph 47 and specifically denies that there is any legal basis for collective treatment of the claims in the Complaint.

48. Defendant admits that it possesses contact information for some of its current and former Contractors. Defendant denies the remainder of paragraph 48.

49. Defendant admits that it is aware of the Fair Labor Standards Act. Defendant denies the remainder of the allegations of Paragraph 49, and specifically denies that it employed any drivers and that it is required to pay overtime to independent contractors or that there is any legal basis for collective treatment of the claims in the Complaint.

50. Deny.

51. Defendant admits that on July 22, 2020, a Complaint was filed against Logisticare Solutions, LLC in the Western District of Missouri, Kansas City, styled as *Farah v. Logisticare Solutions, LLC*, Case No. 4:20-cv-00578-RK, alleging worker misclassification. Defendant denies the remainder of the allegations in Paragraph 51.

Class Action Allegations

A. Class Definition

52. Defendant states that Paragraph 52 and its subparts constitute a characterization of Plaintiffs' lawsuit to which no response is required. Defendant further denies the remaining allegations in Paragraph 52, including subparts (a) through (c) and specifically denies that there is any legal basis for class or collective treatment of the claims in the Complaint.

53. Defendant states that Paragraph 53 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 53, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

B. Efficiency of Class Prosecution of Common Claims

54. Defendant states that Paragraph 54 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 54, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

C. Numerosity and Impracticality of Joinder

55. Defendant states that Paragraph 55 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 55, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

D. Common Questions of Law and Fact

56. Defendant states that Paragraph 56 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 56, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

E. Typicality of Claims and Relief Sought

57. Defendant states that Paragraph 57 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 57, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

F. Adequacy of Representation

58. Defendant states that Paragraph 58 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in

Paragraph 58, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

G. Rule 23(B)(3) Requirements

59. Defendant states that Paragraph 59 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 59, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

60. Defendant states that Paragraph 60 contains generalized legal conclusions and statements regarding the nature of class action complaints to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 60, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

61. Defendant states that Paragraph 61 contains legal conclusions to which no response is required. To the extent a response is required, Defendant denies the allegations in Paragraph 61, and expressly denies there is any legal basis for class or collective treatment of the claims in the Complaint.

62. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 62 regarding knowledge possessed by Plaintiffs and their counsel, and therefore denies the allegations in Paragraph 62.

63. Defendant admits that Plaintiffs provided non-emergency transport services in the Commonwealth of Virginia. Defendant denies the remainder of the allegations in Paragraph 63.

64. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 64, and therefore denies them.

COUNT I
Violation of the Fair Labor Standards Act Failure to Pay Overtime Compensation (Collective Action)

65. Defendant admits that Plaintiffs allege violations of the FLSA's requirements regarding overtime compensation. Defendant denies the remainder of the allegations in Paragraph 65, and specifically denies that it violated the FLSA and that there is any legal basis for collective treatment of the claims in the Complaint.

66. Deny.

67. Defendant lacks sufficient knowledge or information to admit or deny the allegations in Paragraph 67 regarding the number of hours Plaintiffs worked in a week, and therefore, denies them. Defendant denies the remainder of the allegations in Paragraph 67.

68. Defendant admits that it reimbursed Plaintiffs for miles driven. Defendant denies that it employed Plaintiff or any other driver, and therefore, denies that it was obligated to pay overtime compensation to them.

69. Deny.

70. Deny.

COUNT II
Violation of the Fair Labor Standards Act Failure to [sic] Minimum Wage

71. Defendant states that Paragraph 71 contains legal conclusions to which no response is required.

72. Deny.

73. Deny.

COUNT III
Violation of Va. Code § 40.1-28.7:7
(State Law Misclassification Class Action)

74. Defendant states that Paragraph 74 contains legal conclusions to which no response is required.

75. Deny.

76. Deny.

77. Deny.

COUNT IV
Violation of Va. Code § 40.1-29.2
(Virginia Overtime Wage Act Class Action)

78. Deny.

79. Deny.

80. Deny.

81. Defendant admits that it reimbursed Plaintiffs for miles driven. Defendant denies that it employed Plaintiff or any other driver, and therefore, denies that it was obligated to pay overtime compensation.

82. Deny.

83. Deny.

84. Deny.

85. Defendant admits that Plaintiffs allege violations commencing on July 1, 2021 and that they allege violations are ongoing. Defendant denies any such violations.

COUNT V
Violation of Va. Code § 40.1-29
(Unpaid Wages Class Action)

86. Deny.

87. Deny.

88. Deny.

89. Defendant admits that Va Code § 40.1-29(J) provides for the award of liquidated damages, prejudgment interest, and attorneys' fees. Defendant denies that Plaintiffs are entitled to the relief stated in Paragraph 89 or any other relief and further denies the remainder of the allegations in Paragraph 89.

90. Defendant admits that Plaintiffs allege violations commencing on July 1, 2020 and that they allege are ongoing. Defendant denies any such violations.

COUNT VI
Violation of the Fair Labor Standards Act
Retaliation

91. Defendant admits that Plaintiffs Complaint alleges retaliation under the FLSA. Defendant denies violating the FLSA and further denies the remainder of the allegations in Paragraph 91.

92. Deny.

93. Deny.

94. Deny.

95. In response to the "WHEREFORE" clause in the Complaint and its subparts A–M, Defendant denies that Plaintiffs are entitled to the relief requested or any other relief.

GENERAL DENIAL

Defendant denies each and every allegation and claim set forth in Plaintiffs' Complaint that otherwise is not specifically admitted in this Answer, including, but not limited to each and every allegation and claim for relief set forth in Plaintiff's captions, titles, allegations, wherefore clause, and prayers for relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Plaintiffs' Complaint fails in whole or in part to state a claim upon which relief can be granted.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members are barred in whole or in part to the extent that they are not brought within the applicable statutes of limitation.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members are barred in whole or in party by exemptions, exclusions, and credits in Sections 7 and 13 of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 USC §§ 207 and 213.

FOURTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members for treble damages under Va. Code § 40.1-29(J) is barred because Defendant did not knowingly violate Va. Code § 40.1-29.

FIFTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members for liquidated damages is barred because Defendant acted in good faith and had reasonable grounds for believing that it was not in violation of FLSA or Virginia law.

SIXTH AFFIRMATIVE DEFENSE

Defendant did not recklessly disregard or willfully violate FLSA or Virginia law.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members are barred by estoppel, waiver, laches, and/or unclean hands.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members are barred to the extent that they have failed to mitigate their claims for damages.

NINTH AFFIRMATIVE DEFENSE

Defendant was not Plaintiffs' employer and therefore had no duty to pay Plaintiffs' wages including minimum wage and overtime compensation.

TENTH AFFIRMATIVE DEFENSE

All of Defendant's actions were taken for legitimate, non-retaliatory reasons.

ELEVENTH AFFIRMATIVE DEFENSE

Plaintiffs' attempt to bring Counts IV and V of their Complaint as a class action is improper.

TWELFTH AFFIRMATIVE DEFENSE

Defendant did not misclassify Plaintiff or any members of the purported class or collective action.

THIRTEENTH AFFIRMATIVE DEFENSE

Plaintiffs have not satisfied the prerequisites to class certification pursuant to Rule 23 of the Federal Rules of Civil Procedure.

FOURTEENTH AFFIRMATIVE DEFENSE

Without assuming the burden of proof, Plaintiffs and members of the purported class or collective action are not similarly situated.

FIFTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' claims and the claims of some or all of the putative class and collective members are barred, in whole or in part, because they knowingly submitted to and acquiesced in the obligations

and relationship set forth in their Subcontractor Business Associate Agreements and any other Agreements into which they entered with Defendant, from which they have received and accepted financial benefits.

SIXTEENTH AFFIRMATIVE DEFENSE

Plaintiffs are not entitled to recover any damages for their claims brought under state law to the extent such state law is preempted by federal law.

SEVENTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is barred as to Plaintiff and/or the alleged putative class insofar as Plaintiff and/or alleged putative class members signed agreements to arbitrate each and all of the causes of action alleged in the Complaint and the agreements contained a waiver of any and all class action claims. In the case of said signing, Plaintiffs' Complaint, and each and every cause of action therein, is barred as to that Plaintiff and/or alleged putative class member.

EIGHTEENTH AFFIRMATIVE DEFENSE

Plaintiffs' class allegations are barred as a matter of law because the named Plaintiffs lack standing and thus cannot represent the interests of the putative class members as to each alleged cause of action in Plaintiffs' Complaint.

NINETEENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint is barred as to Plaintiffs and/or the alleged putative class by res judicata and collateral estoppel.

TWENTIETH AFFIRMATIVE DEFENSE

Plaintiffs' Complaint is barred as to Plaintiffs and/or the alleged putative class to the extent any such causes of action have been settled, released, and/or are subject to an accord and satisfaction.

TWENTY-FIRST AFFIRMATIVE DEFENSE

Defendant reserves the right to amend this Answer and/or plead additional defenses as additional information is obtained through further investigation and discovery.

WHEREFORE, Defendant respectfully requests this Court

1. Dismiss Plaintiffs' Complaint with prejudice;
2. Award Defendant its reasonable attorney's fees, costs, and expenses; and
3. Award any and all other relief to Defendant that this Court may deem necessary and proper.

Dated: July 11, 2023,

Respectfully submitted,

/s/ Eleanor F. Miller

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Counsel for Defendant
ModivCare Solutions, LLC

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that, on the 11th day of July 2023, she caused a true and correct copy of the foregoing to be filed with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following individuals:

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Attorney for Defendant
ModivCare Solutions, LLC

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 GRANTING REORGANIZED DEBTORS' OBJECTION TO PROOF OF CLAIM NUMBER 1560
[Relates to Docket No.]

Upon the objection (the "***Objection***")[2] of the Reorganized Debtors seeking entry of an order (this "***Order***") disallowing and expunging the Disputed Claim, all as more fully set forth in the Objection; and the Court having reviewed the Objection; and the Court having jurisdiction to consider the Objection and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Objection in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate notice of the Objection and opportunity for a hearing on the Objection were appropriate under the circumstances and that no other or further notice is necessary, except as set forth in this Order; and all responses, if any, to the Objection having been withdrawn, resolved, or overruled; and upon the record herein;

[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 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. 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 1100, Denver, Colorado 80237.

[2] Capitalized terms used but not defined herein have the meanings ascribed to them in the Objection.

and upon the record herein; and after due deliberation thereon; and the Court having determined that the legal and factual bases set forth in the Objection establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Objection is in the best interests of the Reorganized Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. The Objection is GRANTED, as set forth herein.

2. The Disputed Claim is disallowed and expunged in its entirety.

3. The Claims and Noticing Agent is authorized to update the Claims Register maintained in the Chapter 11 Cases to reflect the relief granted in this Order.

4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in the Objection or this Order shall be deemed a waiver of the rights of the Reorganized Debtors to object to any Claim, and shall not constitute an admission of liability by the Reorganized Debtors with respect to any Proof of Claim or application for administrative expenses.

5. Nothing in the Objection or this Order shall be deemed or construed: (a) as an admission as to the validity of any Claim against the Reorganized Debtors; (b) as a waiver of the Reorganized Debtors' rights to dispute or otherwise object to any Claim on any grounds or basis; or (c) to waive or release any right, claim, defense, or counterclaim of the Reorganized Debtors, or to estop the Reorganized Debtors from asserting any right, claim, defense, or counterclaim (including setoff).

6. Notice of the Objection as provided therein shall be deemed good and sufficient and the requirements of the Bankruptcy Rules and the Bankruptcy Local Rules are satisfied by such notice.

7. Notwithstanding any applicable Bankruptcy Rule to the contrary, the terms and conditions of this Order are immediately effective and enforceable upon its entry.

8. The Reorganized Debtors are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Objection.

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

Signed: _____, 2026

_____
UNITED STATES BANKRUPTCY JUDGE