Docket #1740 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 1570

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 1570 (the "***Disputed Claim***") filed by SOMMERS SCHWARTZ, P.C. ("***Claimant***") because: (i) 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; and (ii) the Disputed Claim is not entitled to a *prima facie* presumption of validity because it was filed without *any* supporting documentation in contravention of Bankruptcy Rule 3001 and the Bar Date Order (as defined below).

2. In support hereof, the Reorganized Debtors submit the declaration of Kenneth Shepard, an executive vice president and group chief financial officer 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.

[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.

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 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

[3] Docket No. 1055.

was deemed "substantially consummated under sections 1101 and 1127 of the Bankruptcy Code" upon the Effective Date. Plan, § 12.3.

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. 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

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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.").

Reorganized Debtors' right to seek a further extension of such deadline in accordance with the Plan.[7]

14. 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

15. Prior to the Petition Date, Diana Guinyard and Diana Claudio (together, the "***Guinyard Plaintiffs***") filed a nationwide wage and hour collective and class action against Debtor ModivCare Solutions, LLC ("***ModivCare Solutions***") on behalf of themselves and other similarly situated individuals in the United States District Court for the District of Colorado (the "***District Court***"), which action is styled *Guinyard v. ModivCare Solutions, LLC*, Case No. 1:25-cv-01864-DDD-CYC (D. Colo. June 6, 2025) (the "***Guinyard Action***").[8] Claimant represents the Guinyard Plaintiffs in the Guinyard Action.

16. The Guinyard Plaintiffs formerly worked as remote, call-center workers for Debtor ModivCare Solutions, LLC.[9] Through the Guinyard Action the Guinyard Plaintiffs alleged that they were not paid for all working time, including but not limited to time spent working before the start of their shifts.[10] As a result of such allegations, the Guinyard Plaintiffs asserted claims for

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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] *See First Amended Collective and Class Action Complaint and Jury Demand*, Guinyard Action [ECF No. 19] (the "***Guinyard Complaint***") a true and correct copy of which is attached hereto as **Exhibit B**.

[9] *See* Guinyard Complaint, ¶¶ 3-5, 18-19.

[10] *See, e.g.*, Guinyard Complaint, ¶¶ 32-56.

(i) violations of the Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.* (the "***FLSA***");[11] (ii) violations of the New Jersey Wage & Hour Regulations, N.J.S.A. 34:11-56a *et seq.*, and the New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 *et seq.* (together, collectively, the "***New Jersey Wage Acts***");[12] (iii) violations of the South Carolina Payment of Wages Act, S.C. Code Ann. §§ 31-10-10, *et seq.* (the "***South Carolina Wage Act***");[13] and (iv) nationwide common law breach of contract and unjust enrichment.[14]

17. Following the Petition Date, on August 27, 2025, ModivCare Solutions filed a Suggestion of Bankruptcy in the Guinyard Action. *See* Guinyard Action [ECF No. 20].[15] That same day, the District Court entered an order staying the Guinyard Action as a result of ModivCare Solutions filing for bankruptcy. *See* Guinyard Action [ECF No. 21].

18. 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: (i) for which the Reorganized Debtors are not liable; and (ii) that was filed without any supporting documentation, in contravention of the Bar Date Order, and thus is not entitled to *prima facie* validity. 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;

(b) reviewed the Claims Register to identify instances in which a Claim was submitted without supporting documentation or an explanation as to why such supporting documentation was, otherwise, unavailable; and

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[11] Guinyard Complaint, ¶¶ 117-133 (Count I, asserting claim for violation of the FLSA).

[12] *Id.* at ¶¶ 134-143 (Count II, asserting claim for violation of New Jersey Wages Acts).

[13] *Id.* at ¶¶ 144-152 (Count III, asserting claim for violation of South Carolina Wages Act).

[14] *Id.* at ¶¶ 153-164 (Count IV, asserting nationwide class action breach of contract claim); ¶¶ 165-175 (Count V, asserting nationwide class action unjust enrichment claim).

[15] References to "ECF No." are to filings in the Guinyard Action.

(c) determined that (i) neither the Reorganized Debtors nor the Estates are liable for the Disputed Claim; and (ii) the Disputed Claim failed to attach any supporting documentation or to, otherwise, provide an explanation as to the unavailability of such supporting documentation.

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

BASIS FOR RELIEF

20. 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).

21. 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)).

22. Here, the Disputed Claim should be disallowed and expunged in its entirety because: (i) 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; and (ii) the Disputed Claim is not entitled to a *prima facie* presumption of validity because it was filed without *any* supporting documentation in contravention of Bankruptcy Rule 3001 and the Bar Date Order.

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.

23. 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.

24. Prior to the Petition Date, the District Court did not certify a Rule 23 class or an FLSA collective in the Guinyard Action, and the Guinyard Plaintiffs have not—despite the General Bar Date passing over ten months ago and the Plan being substantially consummated over seven months ago—requested that the Court, pursuant to Bankruptcy Rule 9014, apply Bankruptcy Rule 7023 to seek certification of the putative Rule 23 class and putative FLSA collective (and, critically, to authorize the filing of the class and/or collective proof of claim to which the Reorganized Debtors have, substantially contemporaneously with the filing of this Objection, objected). Accordingly, Claimant is, at present, simply counsel to the Guinyard Plaintiffs and proposed counsel to the putative Rule 23 class and putative FLSA collective that have not been certified. 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).

25. While Federal Rule of Civil Procedure 23(h) authorizes the Court—if and to the extent the putative class is ever certified—to award attorneys' fees to class counsel, Claimant would have to clear several hurdles before Federal Rule of Civil Procedure 23(h) is even available. Such hurdles include, at a minimum:[16]

(a) First, even if the putative class is certified, Claimant would still have to be appointed as class counsel. *See* Fed. R. Civ. P. 23(g);

(b) Second, even if the putative class is certified *and* Claimant is appointed as class counsel, Claimant would still have to apply for an award of attorneys' fees. *See* Fed. R. Civ. P. 23(h)(1) (requiring "[a] claim for an award [of attorneys' fees] be made by motion under Rule 54(d)(2) …."); and

(c) Third, the Court would have to approve such application. *See* Fed. R. Civ. P. 23(h).

26. Even if Claimant were able to satisfy all three of the above-referenced hurdles[17], Claimant would still neither have an Allowed Claim against the Reorganized Debtors nor the Estates. Instead, at most, Claimant would have a claim against its clients or the common fund created by any ***as of yet non-existent*** award to the putative Rule 23 class or putative FLSA collective. *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***

[16] The FLSA has similar provisions for attorney fee awards. *See* 29 U.S.C. § 216(b).

[17] Critically, as noted above, before Claimant could even ***attempt*** to satisfy these hurdles, Claimant would ***first*** need the Court to certify the putative Rule 23 class and/or putative FLSA collective, and permit the Guinyard Plaintiffs' purported class proof of claim to serve as a Claim on behalf of the putative Rule 23 class and/or putative FLSA collective.

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).

27. 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.

II. The Disputed Claim Is Entirely Unsupported, Therefore, It Is Not Entitled to a *Prima Facie* Presumption of Validity and Should be Disallowed and Expunged.

28. The Disputed Claim also should be disallowed and expunged because the Claimant failed to satisfy the fundamental documentation and specificity requirement imposed by the Bar Date Order, the Proof of Claim Form (as defined in the Bar Date Order), and Bankruptcy Rule 3001.

29. The Bar Date Order sets forth various requirements that a filed Proof of Claim must satisfy to be considered properly and timely failed. Among other requirements, the Bar Date Order requires that a Proof of Claim must "include supporting documentation or an explanation as to why such documentation is not available." Bar Date Order, ¶ 7(h). Similarly, the Proof of Claim Form instructed Claimants to "***attach*** redacted copies of ***any documents that support the claim***, such as promissory notes, purchase orders, invoices, itemized statements of running accounts,

contracts, judgments, mortgages, and security agreements." Proof of Claim Form (emphases added).

30. These requirements mirror the obligations imposed by Bankruptcy Rule 3001, which conditions the *prima facie* validity to which a claim is entitled on the claimant providing sufficient information and documentation to substantiate the claim. Claims that are filed without the requisite factual detail and documentary support fail to comply with the Bar Date Order, and are not entitled to a *prima facie* presumption of validity under the Bankruptcy Rules. Indeed, the Bar Date Order expressly provides that a Claim that fails to satisfy all of the requirements set forth in the Bar Date Order—including the requirement to "include supporting documentation or an explanation as to why such documentation is not available"—will not be considered properly and timely filed in the Chapter 11 Cases. *See* Bar Date Order, ¶ 7 (providing that "[a] Proof of Claim ***must*** satisfy all of the following requirements ***to be considered properly and timely filed in the Chapter 11 Cases*** ….") (emphases added).

31. Here, the Disputed Claim neither attaches any supporting documentation nor offers any explanation as to why such documentation is not available. In fact, despite the Disputed Claim identifying the basis of the claim as "[p]ending litigation, U.S. Dist. Ct. Colo. 25-CV-1864," the Disputed Claim fails to even attach a copy of the Guinyard Complaint. Accordingly, the Disputed Claim is not entitled to a *prima facie* presumption of validity pursuant to Bankruptcy Rule 3001(f), and fails to comply with the requirements of the Bar Date Order thus the Disputed Claim should be disallowed and expunged in its entirety.

RESERVATION OF RIGHTS

32. 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 Claims or any other Claims on any other grounds that the Reorganized Debtors discover or elect to pursue.

33. 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

34. 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.

35. 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 1570

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 1570* (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 Claims were 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;

(b) reviewed the Claims Register to identify instances in which a Claim was submitted without supporting documentation or an explanation as to why such supporting documentation was, otherwise, unavailable; and

(c) determined that (i) neither the Reorganized Debtors nor the Estates are liable for the Disputed Claim; and (ii) the Disputed Claim failed to attach any supporting documentation or to, otherwise, provide an explanation as to the unavailability of such supporting documentation.

[*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: EVP and Group Chief Financial Officer
ModivCare Solutions, LLC and its
Reorganized Debtor Affiliates

UNITED STATES DISTRICT COURT
DISTRICT OF COLORADO

DIANNA GUINYARD and **DIANA CLAUDIO,** on behalf of themselves and all others similarly situated, Plaintiffs, v. **MODIVCARE SOLUTIONS, LLC,** a Colorado limited liability company, Defendant.	Case No: 1:25-cv-01864-DDD Hon. Daniel D. Domenico **FIRST AMENDED COLLECTIVE AND CLASS ACTION COMPLAINT AND JURY DEMAND**

Now comes Plaintiffs Dianna Guinyard and Diana Claudio ("Plaintiffs"), individually and on behalf of all others similarly situated, by and through their attorneys, hereby bring this First Amended Collective and Class Action Complaint against Defendant ModivCare Solutions, LLC ("Defendant"), and states the following:

INTRODUCTION

1. This is a collective and class action brought pursuant to 29 U.S.C. § 216(b) and Fed. R. Civ. P. 23 by Plaintiffs, individually and on behalf of all similarly situated persons employed by Defendant, arising from Defendant's willful violations of the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, *et seq.*, New Jersey Wage and Hour Regulations, N.J.S.A. 34:11-56a *et seq*., New Jersey Wage Payment Law, N.J.S.A. 34:11-4.1 *et seq*. ("New Jersey Wage Acts"), South Carolina Payment of Wages Act, S.C. Code Ann. §§ 31-10-10, *et seq*. (South Carolina Wage Act"), and common law.

2. According to Defendant's website, Defendant "is leading the transformation to better connect people with care, wherever they are. We serve the most underserved by

facilitating non-emergency medical transportation, remote patient monitoring, meal delivery, and personal and home care to enable greater access to care, reduce costs and improve outcomes."[1]

3. In providing the aforementioned services, Defendant employed hourly customer service representatives with job titles that include, but are not limited to, Device Support Specialist and Care Center Representative (collectively referred to herein as "CSRs"), in brick-and-mortar call centers and in remote call center settings across the United States. Defendant heavily relied on CSRs to, among other things, answer incoming and outgoing calls arranging non-emergency transportation for medical recipients, provide compassionate customer support, monitor high volume medical alerts and alarms, record call details, verify and update customer information, manage access to highly sensitive materials and maintain strict confidentiality. (ECF No. 1-1, ModivCare Job Postings).

4. Defendant classified its CSRs as non-exempt and tasked them with the primary job duty of providing over-the-phone, email and electronic customer service.

5. The United States Department of Labor ("DOL") recognizes that call center jobs, like those held by Defendant's CSRs, are homogenous; in July 2008, the DOL issued Fact Sheet #64 to alert call center employees to some of the abuses that are prevalent in the industry.[2]

6. One of those abuses, which is at issue in this case, is the employer's refusal to pay for work from the beginning of the first principal activity of the workday to the end of the last principal activity of the workday." *Id*. at p. 2.

7. More specifically, DOL Fact Sheet #64 condemns an employer's non-payment of an employee's necessary pre-shift activities: "An example of the first principal activity of the day

[1] *See* https://www.modivcare.com/company/about-modivcare/ (last visited February 22, 2025).
[2] *See* DOL Fact Sheet #64: Call Centers under the Fair Labor Standards Act (FLSA), *https://www.dol.gov/whd/regs/compliance/whdfs64.pdf* (last visited February 22, 2025).

for agents/specialists/representatives working in call centers includes starting the computer to download work instructions, computer applications and work-related emails." *Id.* Additionally, the FLSA requires that "[a] daily or weekly record of all hours worked, including time spent in pre-shift and post-shift job-related activities, must be kept." *Id.*

8. Defendant violated the FLSA and common law by systematically failing to compensate its CSRs for work tasks completed before their scheduled shifts when they are not logged into Defendant's timekeeping system. This timekeeping procedure resulted in CSRs not being paid for all overtime hours worked and in workweeks in which CSRs worked overtime, for straight time.

9. In addition to this pre-shift work, Defendant also required its CSRs to perform mid-shift work during their unpaid meal periods. The CSRs' duties performed during their unpaid meal periods included similar login procedures. 29 C.F.R. § 785.19(a).

10. More specifically, Defendant failed to compensate CSRs for the substantial time they spent turning on and booting up their computer and computer systems prior to clocking into Defendant's timekeeping system, and before and after their unpaid meal periods.

11. Plaintiffs seek a declaration that their rights, and the rights of the putative Collective and Class members, were violated, a judgment awarding them unpaid back wages, liquidated damages, attorneys' fees and costs to make them and the putative Collective and Class whole for damages they suffered, and any other remedies to which they may be entitled, and to help ensure Defendant will not subject future workers to the same illegal conduct in the future.

12. At the earliest time possible, Plaintiffs will request a Court-authorized notice of this action pursuant to 29 U.S.C. § 216(b) to all similarly situated employee who worked for Defendant at any time in the past three years.

JURISDICTION AND VENUE

13. This Court has subject-matter jurisdiction over Plaintiffs' FLSA claim, pursuant to 28 U.S.C. § 1331, because Plaintiffs' claim raises a federal question under 29 U.S.C. § 201, *et seq.*

14. Additionally, this Court has jurisdiction over Plaintiffs' FLSA claim pursuant to 29 U.S.C. § 216(b), which provides that suit under the FLSA "may be maintained against any employer… in any Federal or State court of competent jurisdiction."

15. Defendant's annual sales exceed $500,000, and Defendant employs more than two individuals; thus, the FLSA applies in this case on an enterprise basis. Defendant's CSRs engage in interstate commerce and, therefore, they are also covered by the FLSA on an individual basis.

16. This Court has personal jurisdiction over Defendant because Defendant conducts business within the state of Colorado, employs individuals within the state of Colorado, is registered with the Colorado Office of the Secretary of State, and maintains its principal place of business in the state of Colorado.

17. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because Defendant conducts business in this district, and a substantial portion of the events that give rise to Plaintiffs' claims occurred in this district.

PARTIES

18. Plaintiff Dianna Guinyard is a resident of Columbia, South Carolina and worked for Defendant as a remote non-exempt CSR from approximately September 2023 through March 2024. Defendant compensated Plaintiff Guinyard through the payment of an hourly rate, most recently $15.00 per hour. Plaintiff Guinyard filed a consent to join this collective action. (ECF No. 1-2).

19. Plaintiff Diana Claudio is a resident of Haledon, New Jersey and worked for

Defendant as a remote non-exempt CSR from approximately January 2023 through May 2024. Defendant compensated Plaintiff Claudio through the payment of an hourly rate, most recently $18.00 per hour. Plaintiff Claudio filed a consent to join this collective action. (ECF No. 1-3).

20. Additional Opt-in Plaintiffs were or are employed by Defendant as CSRs during the past three years and their consent forms will also be filed in this case.

21. Defendant ModivCare Solutions, LLC, is a Colorado limited liability company headquartered in Denver, Colorado. In the state of Colorado, Defendant has a registered agent for service of process listed as Registered Agent Solutions, Inc., 36 South 18th Ave., Ste. D, Brighton, Colorado 80601.

GENERAL ALLEGATIONS

22. Prior to hiring prospective CSRs, Defendant provided them with a written offer setting forth the job title, the offered rate of pay, and the conditions of their employment.

23. Defendant maintained documents demonstrating the promised hourly wage for each CSR, including, but not limited to: offer letters, paystubs, and/or payroll records.

24. Plaintiffs received an offer from Defendant to work as a CSR and they accepted Defendant's offer with the understanding that their base hourly rate would be paid for all hours worked.

25. Plaintiffs performed under their agreement with Defendant by carrying out their job duties and responsibilities. More specifically, Plaintiffs fielded incoming calls from and made outbound calls to Defendant's customers regarding non-emergency medical transportation for medical recipients; handled and resolved escalated customer inquiries, issues, and complaints; provided appropriate customer solutions; and maintained records of customer interactions. Plaintiffs utilized Defendant's applications and systems to track all events and customer service

information. Plaintiffs additionally performed the required unpaid off-the-clock work explained below.

26. Defendant paid its CSRs at varying hourly rates.

27. Defendant's CSRs typically worked five (5) days each week and up to, and on occasion more than, forty (40) hours per week. There were one or more instances during Plaintiffs' employment when they worked forty (40) hours or more in a workweek.

28. Upon information and belief, Defendant utilized a centralized payroll system which calculated overtime pay for all similarly situated employees in the same or similar manner.

29. Defendant provided training to CSRs, on, *inter alia*, how to carry out their day-to-day job duties; how to track their time; how to load and log into their computer programs at the beginning of the day and how to log out at the end of the day; attendance, schedule, and call quality expectations; and Defendant's policies. The training that all of Defendant's CSRs received was substantially, if not entirely, the same, and Defendant's CSRs, including Plaintiffs, were subject to the same relevant policies and procedures.

30. At all relevant times, Defendant controlled Plaintiffs' and all other CSRs' work schedules, duties, protocols, applications, assignment, and employment conditions.

31. To the extent that Defendant may have had written policies that required its employees to be paid for all hours worked, including overtime, the reality is that Defendant did not follow these policies, which resulted in CSRs, like Plaintiffs, not being paid for all hours worked, including the off-the-clock work described herein.

32. Defendant required Plaintiffs and all other CSRs to use a computer and a variety of essential and indispensable computer programs, applications, and servers in order to perform their job duties.

33. Defendant instructed Plaintiffs and other similarly situated CSRs to be "call ready" the moment their scheduled shift started. This required Defendant's CSRs to load and log into essential work-related computer programs ***before*** the start of their shifts and ***before*** they were allowed to clock in so they could be prepared to field calls the moment their shifts began.

34. Defendant enforced its "call ready' policy and required its CSRs to perform off-the-clock through its uniform attendance, compensation, timekeeping, and schedule adherence procedures; and the call quality assurance system it used.

35. Defendant additionally maintained schedule adherence and attendance metrics pursuant to which it monitored the CSRs' clock in times in relation to their start of shift time, as well as the time the CSRs went into a "ready" status. Defendant enforced these policies and procedures by routinely evaluating, and at times disciplining, CSRs. This discipline included, but was not limited to, supervisor coaching, verbal warnings and termination.

36. All of Defendant's CSRs used the same or similar computer networks, software programs, and applications in the course of performing their job responsibilities. These programs and applications were an integral and an indispensable part of the CSRs' work and they could not perform their jobs without them.

37. Defendant's CSRs also performed off-the-clock work during their unpaid 30-minute meal period, for example undergoing some or all of the computer boot-up process mentioned above.

38. At all relevant times, Defendant used its attendance and adherence policies against Plaintiffs and its CSRs in order to pressure them into performing pre- and mid- shift work off-the-clock.

39. The pre- and mid-shift off-the-clock time Plaintiffs and all other CSRs spent

booting-up/logging into and shutting down their computers and applications and programs directly benefited Defendant and was integral and indispensable to the CSRs' job responsibilities.

40. As a result of the pre- and mid-shift off-the-clock work described herein, Plaintiffs and other CSRs were unlawfully deprived of approximately fifteen (15) to thirty (30) minutes of compensation every day.

41. At all relevant times, Defendant was able to track the amount of time Plaintiffs and other CSRs spent in connection with the pre- and mid- shift activities; however, Defendant failed to do so and failed to compensate Plaintiffs and all other CSRs for the off-the-clock work they performed, thus breaching its contracts with their CSRs.

42. Further, in light of the explicit long-standing DOL guidance cited above, there is no conceivable way for Defendant to establish that it acted in good faith.

43. Despite knowing Plaintiffs and all other CSRs performed this pre- and mid- shift work, Defendant and its managers failed to make any effort to stop or disallow it and instead suffered and permitted it to happen.

44. Defendant possesses, controls, and/or has access to information and electronic data indicating the times Plaintiffs and all other CSRs booted-up and logged into their computers each day, along with the time they logged into the timekeeping system.

45. Because Defendant required its CSRs, including Plaintiffs, to perform pre- and mid-shift work off-the-clock, the hours tracked in Defendant's timekeeping system are inaccurate representations of the total amount of time CSRs spent working for Defendant. Thus, the hours reflected on the CSRs' paystubs are also inaccurate representations of the hours they worked.

Pre-Shift Off-the-Clock Work

46. The off-the-clock pre-shift process took substantial time on a daily basis,

approximately ten (10) to twenty (20) minutes per shift. Specifically, before each shift CSRs had to undertake the following essential work tasks:

a. Turn on or wake up their computer;

b. Log into Microsoft Windows using a username and password;

c. Secure access to Defendant's server (the Virtual Private Network or "VPN") using a three-factor authentication process;

d. Open Microsoft Teams – the application Defendant's CSRs used for meetings and internal communications;

e. Open Microsoft Outlook – the application used to review emails for meetings and new information regarding policy or procedure changes;

f. Open and/or log into government platform (i.e., Medicaid/Medicare);

g. Open and log into phone system using a username and password;

h. Open and log into their timekeeping system, ADP; and

i. Clock into the timekeeping system and place themselves in "Available" immediately.

47. Defendant's CSRs must complete much, if not all, of this process ***before***: (1) the start of their scheduled shifts; (2) they were allowed to clock into Defendant's timekeeping program; and (3) fielding calls. Consequently, the CSRs had to arrive to work approximately ten (10) to twenty (20) minutes before their scheduled shifts to complete their above-described start-up and log-in activities.

48. Thus, in workweeks where Defendant's CSRs worked forty (40) hours or more, or close enough to forty (40) hours to have worked over forty (40) hours when considering the uncompensated off-the-clock work time discussed herein, Defendant violated the FLSA by failing to: (1) pay them the federally mandated overtime compensation for all work performed; (2) pay them straight time for all regular hours worked up to forty (40); and (3) record all of the time its

CSRs, including Plaintiffs, worked for Defendant's benefit.

49. The pre-shift off-the-clock work CSRs performed directly benefited Defendant and was integral and indispensable to their job duties and responsibilities.

Meal-Period Off-the-Clock Work

50. Defendant provided its CSRs with a scheduled 30-minute unpaid meal period during each work shift.

51. Under federal law, in order to deduct an unpaid meal period from an employee's compensable time, an employee must be completely relieved of his or her employment duties for the entire meal period. C.F.R. § 785.19(a) states:

> **Bona fide meal periods.** Bona fide meal periods are not work time. Bona fide meal periods do not include coffee breaks or time for snacks. These are rest periods. The employee must be completely relieved from duty for the purposes of eating regular meals. Ordinarily 30 minutes or more is long enough for a bona fide meal period. A shorter period may be long enough under special conditions. The employee is not relieved if he is required to perform any duties, whether active or inactive, while eating. For example, an office employee who is required to eat at his desk or a factory worker who is required to be at his machine is working while eating. (emphasis added).

52. According to the U.S. Department of Labor, "[r]est periods of short duration, usually 20 minutes or less, are common in the industry (and promote employee efficiency), and must be counted as hours worked. Bona fide meal periods (typically 30 minutes or more) generally need not be compensated as work time as long as the employee is relieved from duty for the purpose of eating a regular meal." (*Fact Sheet #64* at p. 2).

53. Defendant did not provide CSRs with legitimate bona fide meal periods because it required the CSRs to return to their computer stations prior to the end of their unpaid meal periods to unlock and log back into their computer and program/applications, and place themselves in in an "available" state so they could resume taking/making calls/emails promptly at the end of their

scheduled meal periods.

54. CSRs spent approximately five (5) to ten (10) minutes performing this work during their unpaid meal periods. This process was similar to the pre-shift login process described herein, and this time went uncompensated.

55. In workweeks where Defendant's CSRs worked forty (40) hours or more, or close enough to forty (40) hours to have worked over forty (40) hours when considering the uncompensated off-the-clock time discussed herein, Defendant violated the FLSA by failing to: (1) pay them the federally mandated overtime compensation for all work performed; and (2) record all of the time that its CSRs,, including Plaintiff, worked for Defendant's benefit.

56. The unpaid off-the-clock work Plaintiffs and other CSRs perform during their lunch breaks and prior to clocking back into Defendant's timekeeping system is compensable, directly benefits Defendant and the tasks undertaken in connection with the off-the-clock work are integral and indispensable to their job duties and responsibilities as CSRs.

Defendant Breached Valid and Binding Agreements with Plaintiffs and All other CSRs

57. Throughout Plaintiffs entire employment with Defendant, Defendant repeatedly and systematically breached its contract with Plaintiffs by not paying Plaintiffs for all hours worked, including overtime pay required by applicable law.

58. Defendant's failure to pay Plaintiffs for each hour of work they performed and that was required of them as CSRs, as well as applicable overtime, was a material breach by Defendant.

59. As a result of Defendant's breaches, Plaintiffs were deprived of wages owed to them under the agreements, including overtime.

60. Defendant's contractual promises to pay Plaintiff and each CSRs' applicable hourly rate for each hour worked and 1.5 times their applicable hourly rate for all overtime worked is

evidenced by, among other things, each earning statement issued to Plaintiffs, and all other CSRs.

61. Plaintiffs and all other CSRs are owed wages at their applicable hourly rate for the time they worked off-the-clock during their employment with Defendant, including overtime wages.

62. Plaintiffs and all other CSRs earned these wages the moment they performed the off-the-clock work, and the wages were due to be paid to Plaintiffs and all other CSRs no later than the pay period in which the off-the-clock work was performed.

63. Despite the fact that Plaintiffs and all other CSRs performed off-the-clock work pre- and mid-shift these off-the-clock hours were not peripheral tasks for which they were not owed compensation. Instead, the off-the-clock hours, which were performed by Plaintiffs and all other CSRs pursuant to not only their agreements with Defendant, but Defendant's verbal and/or written policies, training and direction, constituted principal work activities that were integral and indispensable to their work, and Defendant was contractually obligated to compensate its CSRs for their hours worked at their applicable regular and overtime hourly rates at which they were employed.

64. Defendant was contractually obligated to compensate Plaintiffs and all other CSRs their applicable hourly rates of pay for *all hours worked*, including all hours worked that exceeded forty (40) hours per week at the applicable overtime rate.

Defendant Benefitted from Plaintiffs' and CSRs' Off-the-Clock Work

65. At all relevant times, through its policies, training, and direction, Defendant has required and directly benefited from the off-the-clock work performed by Plaintiffs and all other CSRs in connection with the pre- and mid-shift activities described above.

66. At all relevant times, Defendant has controlled the work schedules, duties,

protocols, applications, assignments, and employment conditions of Plaintiffs and all other CSRs.

67. At all relevant times, Defendant has been able to track the amount of time Plaintiffs and all other CSRs spend in connection with pre- and mid-shift activities; however, Defendant has failed to do so and has failed to compensate Plaintiffs and all other CSRs for the off-the-clock work they performed.

68. At all relevant times, Plaintiffs and all other CSRs were non-exempt, hourly employees subject to the requirements of the FLSA and applicable state laws.

69. At all relevant times, Defendant used their attendance and adherence policies against Plaintiffs and all other CSRs in order to pressure them into performing pre- and mid-shift work off-the-clock.

70. Defendant instructed its CSRs to have all work applications and systems fully loaded before the start of their shifts, which takes them in the range of ten (10) to twenty (20) minutes per shift, but Defendant prohibited its CSRs from clocking into its timekeeping system and marking themselves as "available" before the start of their scheduled shift while simultaneously requiring its CSRs to be phone ready the moment their shift begins.

71. Defendant is in possession of the payroll and timekeeping records that will illustrate exactly which weeks Plaintiffs and all other CSRs worked over forty (40) hours and exactly which weeks they worked under forty (40) hours.

72. At all relevant times, Defendant's policies and practices deprived Plaintiffs and all other CSRs of wages owed for pre- and mid-shift activities they performed.

73. During the weeks Plaintiffs and all other CSRs worked forty (40) hours in a workweek, the outcome of Defendant's policies and practices is a deprivation of overtime wages, which are compensable under the FLSA.

The Off-the-Clock Work Results in Viable "Gap Time" Claims

74. "Gap time" claims are those "in which an employee has not worked 40 hours in a given week but seeks recovery of unpaid time worked, or in which an employee has worked over 40 hours in a given week but seeks recovery for unpaid work under 40 hours." *Kinkead v. Humana at Home, Inc.*, 450 F.Supp.3d 162, 182 (D. Conn. Mar. 31, 2020); *Conner v. Cleveland Cty., N.C.*, 22 F.4th 412, 426 (4th Cir. 2022) ("we hold that overtime gap time claims are cognizable under the FLSA").

75. Plaintiffs, and similarly situated CSRs, regularly worked non-overtime hours (i.e. "gap time") for which they were not paid.

76. During the weeks that CSRs do not work over forty (40) hours in a workweek, the outcome of Defendant's policies and practices was a deprivation of straight time wages, in breach of Defendant's contracts with its CSRs.

Plaintiff Guinyard's Exemplary Workweek

77. Defendant paid CSRs on a biweekly basis. The FLSA violations discussed herein occurred throughout Plaintiffs' employment with Defendant; however, as an example of one pay period where Defendant failed to pay Plaintiff's Guinyard's regular wages for work performed and overtime for hours worked in excess of forty (40) hours (as mandated by the FLSA), Plaintiff Guinyard provides her paystub for the pay period of 11/26/23 through 12/9/23:

November 6 – December 2 Work Week Earnings

- Plaintiff Guinyard worked more than 40 hours in the work week at an overtime rate of $21.00 per hour and upon information and belief was paid $21.00 per hour in overtime.
- With pre- and mid-shift off-the-clock work, Plaintiff Guinyard should have been paid an additional 25 to 40 minutes or more at her overtime rate of $21.00 for each hour worked in excess of 40 in the workweek.

December 3 – 9 Work Week Earnings

- Plaintiff Guinyard worked less than 40 hours in the work week at a rate of $14.00 per hour and upon information and belief was paid $14.00 for each regular hour worked.

- With pre- and mid-shift off-the-clock work, Plaintiff Guinyard should have been paid an additional 25 to 40 minutes or more at her regular rate of $14.00 for each regular hour.

(ECF No. 1-4, Guinyard Pay Stub).

FLSA COLLECTIVE ACTION ALLEGATIONS

78. Plaintiffs bring this action pursuant to 29 U.S.C. § 216(b) of the FLSA on behalf of herself and on behalf of:

> *All current and former similarly situated CSRs who worked for Defendant at any time during the three years preceding the date of an order from this Court granting conditional certification up through and including judgment.*

(hereinafter referred to as the "FLSA Collective"). Plaintiffs reserve the right to amend this definition if necessary.

79. Excluded from the proposed FLSA Collective are Defendant's executives, administrative and professional employees, including computer professionals and outside sales persons.

80. Defendant is liable under the FLSA for, *inter alia*, failing to properly compensate Plaintiffs and others similarly situated.

81. Consistent with Defendant's policies and practice, Plaintiffs and the proposed FLSA Collective were not paid for all straight and/or premium overtime compensation in workweeks during which they worked forty (40) hours or more when considering the uncompensated off-the-clock work discussed herein.

82. All of the work Plaintiffs and the proposed FLSA Collective performed was assigned by Defendant, and/or Defendant was aware of all of the work the Plaintiffs and the

proposed FLSA Collective performed.

83. Defendant was aware, or should have been aware, that federal law required it to pay Plaintiffs and the proposed FLSA Collective members for all hours worked and an overtime premium for all hours worked in excess of forty (40) per workweek.

84. As part of its regular business practice, Defendant intentionally, willfully, and repeatedly engaged in a pattern, practice, and/or policy of violating the FLSA with respect to Plaintiffs and the members of the FLSA Collective. This policy and pattern or practice includes, but is not limited to:

a. Willfully failing to pay its employees, including Plaintiffs and the FLSA Collective members, for all regular hours that they worked off-the-clock in non-overtime workweeks;

b. Willfully failing to pay its employees, including Plaintiffs and the members of the FLSA Collective, for all overtime gap time and premium overtime wages for hours that they worked off-the-clock in excess of forty (40) hours per workweek; and

c. Willfully failing to record all of the time that its employees, including Plaintiffs and the members of the FLSA Collective, worked for the benefit of Defendant.

85. Defendant's unlawful conduct has been (and is) widespread, repeated, and consistent.

86. Upon information and belief, Defendant utilized a centralized payroll system that calculated overtime pay for all similarly situated employees in the same or similar manner.

87. A collective action under the FLSA is appropriate because the employees described above are "similarly situated" to Plaintiffs under 29 U.S.C. § 216(b). The employees on behalf of whom Plaintiffs bring this collective action are similarly situated because (a) they have been or are employed in the same or similar positions; (b) they were or are performing the same or similar job duties; (c) they were or are subject to the same or similar unlawful practices, policies, or plans;

and (d) their claims are based upon the same factual and legal theories.

88. The employment relationships between Defendant and every proposed FLSA Collective member are the same and differ only by name, location, and rate of pay. The key issues are the same for every proposed FLSA Collective member, to wit: whether the FLSA Collective members are 1) required to work without compensation due to uncompensated boot-up time and log in/out time; and 2) entitled to their regular hourly wage in non-overtime workweeks and overtime for hours worked over forty (40) in a week.

89. Plaintiffs estimate the FLSA Collective, including both current and former CSRs over the relevant period, includes hundreds, if not thousands, of members. The precise number should be readily available from a review of Defendant's personnel and payroll records, which Defendant is required to maintain pursuant to the FLSA 29 U.S.C. § 211(c); 29 C.F.R. § 516 *et seq*.

90. The FLSA Collective should be notified of and allowed to opt-in to this action, pursuant to 29 U.S.C. § 216(b). Unless the Court promptly issues such a notice, the FLSA Collective members, who have been unlawfully deprived of pay in violation of the FLSA, will be unable to secure compensation to which they are entitled, and which has been unlawfully withheld from them by Defendant.

91. Conditional certification of this case as a collective action pursuant to 29 U.S.C. § 216(b) is proper and necessary so that these employees may be readily notified of this action through direct U.S. mail and/or other means including email and allowed to opt in for the purpose of collectively adjudicating their claims for unpaid wages, unpaid overtime compensation, liquidated damages and/or interest, and attorneys' fees and costs under the FLSA.

92. All of the estimations discussed herein will be refined after collective discovery is

completed.

RULE 23 NEW JERSEY STATE LAW CLASS ACTION ALLEGATIONS

93. Plaintiff Claudio brings this action pursuant to Fed. R. Civ. P. 23(b)(3) on behalf of:

> *All current and former CSRs who worked for Defendant at any location in New Jersey during the applicable statutory period.*

(hereinafter referred to as the "Rule 23 New Jersey Class"). Plaintiff Claudio reserves the right to amend this definition if necessary.

94. The members of the Rule 23 New Jersey Class are so numerous that joinder of all Rule 23 New Jersey members in this case would be impractical. Plaintiff Claudio reasonably estimates there are hundreds, if not thousands, of Rule 23 New Jersey Class members. Rule 23 New Jersey Class members should be easy to identify from Defendant's computer systems and electronic payroll and personnel records.

95. There is a well-defined community of interests among Rule 23 New Jersey Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 New Jersey Class. These common legal and factual questions include, but are not limited to, the following:

a. Whether the off-the-clock time worked by the Rule 23 New Jersey Class members in connection with the activities described in this Complaint is compensable time;

b. Whether the Rule 23 New Jersey Class members are owed wages for the off-the-clock time worked in connection with the activities described in this Complaint;

c. Whether Defendant engaged in a policy or practice of failing to pay each Rule 23 New Jersey Class member regular wages or minimum wage for each non-overtime hour worked;

d. Whether Defendant engaged in a policy or practice of failing to pay each Rule 23 New Jersey Class member overtime compensation for each overtime hour worked; and

e. Whether Defendant should be required to pay compensatory damages, attorneys' fees, penalties, costs, and interest for violating the state laws and wage acts applicable to the members of the Rule 23 New Jersey Class.

96. Plaintiff Claudio's claims are typical of those of the Rule 23 New Jersey class in that she and all other Rule 23 New Jersey Class members suffered damages as a direct and proximate result of the Defendant's common and systemic payroll policies and practices. Plaintiff Claudio's claims arise from the same pay policies, practices, promises, and course of conduct as all other Rule 23 New Jersey Class members' claims and her legal theories are based on the same legal theories as all other Rule 23 New Jersey Class members.

97. Plaintiff Claudio will fully and adequately protect the interests of the Rule 23 New Jersey Class and Plaintiff retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff Claudio nor her counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 New Jersey Class.

98. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because *inter alia*, it is economically infeasible for Rule 23 New Jersey members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

99. This case will be manageable as a Rule 23 class action. Plaintiff Claudio and her counsel know of no unusual difficulties in this case and Defendant has advanced networked computer and payroll systems that will allow the class, wage, and damage issues in this case to be resolved with relative ease.

100. Because the elements of rule 23(b)(3) are satisfied in this case, class certification is

appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) ("[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

RULE 23 SOUTH CAROLINA STATE LAW CLASS ACTION ALLEGATIONS

101. Plaintiff Guinyard brings this action pursuant to Fed. R. Civ. P. 23(b)(3) on behalf of:

> *All current and former CSRs who worked for Defendant at any location in South Carolina during the applicable statutory period.*

(hereinafter referred to as the "Rule 23 South Carolina Class"). Plaintiff Guinyard reserves the right to amend this definition if necessary.

102. The members of the Rule 23 South Carolina Class are so numerous that joinder of all Rule 23 South Carolina members in this case would be impractical. Plaintiff Guinyard reasonably estimates there are hundreds, if not thousands, of Rule 23 South Carolina Class members. Rule 23 South Carolina Class members should be easy to identify from Defendant's computer systems and electronic payroll and personnel records.

103. There is a well-defined community of interests among Rule 23 South Carolina Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 South Carolina Class. These common legal and factual questions include, but are not limited to, the following:

a. Whether the off-the-clock time worked by the Rule 23 South Carolina Class members in connection with the activities described in this Complaint is compensable time;

b. Whether the Rule 23 South Carolina Class members are owed wages for the off-the-clock time worked in connection with the activities described in this Complaint;

c. Whether Defendant engaged in a policy or practice of failing to pay each Rule

23 South Carolina Class member regular wages or minimum wage for each non-overtime hour worked;

d. Whether Defendant engaged in a policy or practice of failing to pay each Rule 23 South Carolina Class member overtime compensation for each overtime hour worked; and

e. Whether Defendant should be required to pay compensatory damages, attorneys' fees, penalties, costs, and interest for violating the state laws and wage acts applicable to the members of the Rule 23 South Carolina Class.

104. Plaintiff Guinyard's claims are typical of those of the Rule 23 South Carolina class in that she and all other Rule 23 South Carolina Class members suffered damages as a direct and proximate result of the Defendant's common and systemic payroll policies and practices. Plaintiff Guinyard's claims arise from the same pay policies, practices, promises, and course of conduct as all other Rule 23 South Carolina Class members' claims and his legal theories are based on the same legal theories as all other Rule 23 South Carolina Class members.

105. Plaintiff Guinyard will fully and adequately protect the interests of the Rule 23 South Carolina Class and Plaintiff retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiff Guinyard nor her counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 South Carolina Class.

106. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because *inter alia*, it is economically infeasible for Rule 23 South Carolina members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

107. This case will be manageable as a Rule 23 class action. Plaintiff Guinyard and her counsel know of no unusual difficulties in this case and Defendant has advanced networked computer and payroll systems that will allow the class, wage, and damage issues in this case to be

resolved with relative ease.

108. Because the elements of rule 23(b)(3) are satisfied in this case, class certification is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) ("[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

RULE 23 NATIONWIDE CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action pursuant to Fed. R. Civ. P. 23(b)(3) on behalf of themselves and on behalf of:

> *All current and former similarly situated CSRs who worked for Defendant at any time during the applicable statutory period.*

(hereinafter referred to as the "Rule 23 Nationwide Class"). Plaintiffs reserve the right to amend this definition if necessary.

110. The members of the Rule 23 Nationwide Class are so numerous that joinder of all Rule 23 Nationwide Class members in this case would be impractical. Plaintiffs reasonably estimate there are thousands of Rule 23 Nationwide Class members. Rule 23 Nationwide Class members should be easy to identify from Defendant's computer systems and electronic payroll and personnel records.

111. There is a well-defined community of interests among Rule 23 Nationwide Class members and common questions of law and fact predominate in this action over any questions affecting individual members of the Rule 23 Nationwide Class. These common legal and factual questions, include, but are not limited to, the following:

a. Whether the pre-shift time Rule 23 Nationwide Class members spent on startup and login activities each shift is compensable time under applicable law;

b. Whether the mid-shift time Rule 23 Nationwide Class members spend rebooting Defendant's programs, applications, and networks during their

unpaid lunch breaks before they return from their breaks is compensable;

c. Whether Defendant's non-payment of wages for all compensable time amounted to a breach of contract; and

d. Whether Defendant's non-payment of wages for all compensable time resulted in an unjust enrichment to Defendant.

112. Plaintiffs' claims are typical of those of the Rule 23 Nationwide Class in that he and all other Rule 23 Nationwide Class members suffered damages as a direct and proximate result of the Defendant's common and systemic payroll policies and practices. Plaintiffs' claims arise from the same pay policies, practices, promises and course of conduct as all other Rule 23 Nationwide Class members' claims and their legal theories are based on the same legal theories as all other Rule 23 Nationwide Class members.

113. Plaintiffs will fully and adequately protect the interests of the Rule 23 Nationwide Class and Plaintiffs retained counsel who are qualified and experienced in the prosecution of nationwide wage and hour class actions. Neither Plaintiffs nor their counsel have interests that are contrary to, or conflicting with, the interests of the Rule 23 Nationwide Class.

114. A class action is superior to other available methods for the fair and efficient adjudication of this controversy, because, *inter alia*, it is economically infeasible for Rule 23 Nationwide Class members to prosecute individual actions of their own given the relatively small amount of damages at stake for each individual along with the fear of reprisal by their employer.

115. This case will be manageable as a Rule 23 Class action. Plaintiffs and their counsel know of no unusual difficulties in this case and Defendant has advanced networked computer and payroll systems that will allow the class, wage, and damages issues in this case to be resolved with relative ease.

116. Because the elements of Rule 23(b)(3) are satisfied in this case, class certification

is appropriate. *Shady Grove Orthopedic Assoc., P.A. v. Allstate Ins. Co.*, 559 U.S. 393; 130 S. Ct. 1431, 1437 (2010) ("[b]y its terms [Rule 23] creates a categorical rule entitling a plaintiff whose suit meets the specified criteria to pursue his claim as a class action").

COUNT I
FLSA COLLECTIVE ACTION
VIOLATION OF THE FAIR LABOR STANDARDS ACT,
29 U.S.C. § 201, *et seq*. -- FAILURE TO PAY OVERTIME

117. Plaintiffs re-allege and incorporate the foregoing paragraphs 1-92 as if fully restated herein.

118. At all times relevant to this action, Defendant was subject to the mandates of the FLSA, 29 U.S.C. § 201, *et seq*.

119. At all times relevant to this action, Defendant was engaged in interstate commerce, or in the production of goods for commerce, as defined by the FLSA.

120. At all times relevant to this action, Plaintiffs and the FLSA Collective were "employees" of Defendant within the meaning of 29 U.S.C. § 203(e)(1) of the FLSA.

121. At all times relevant to this action, Defendant "suffered or permitted" Plaintiffs and the FLSA Collective to work and thus "employed" them within the meaning of 29 U.S.C. § 203(g) of the FLSA.

122. Plaintiffs and other FLSA Collective members, by virtue of their job duties and activities actually performed, were all non-exempt employees.

123. Plaintiffs either: (1) engaged in commerce; or (2) engaged in the production of goods for commerce; or (3) were employed in an enterprise engaged in commerce or in the production of goods for commerce.

124. The FLSA requires an employer to pay employees for all hours worked and the federally mandated overtime premium rate of 1.5 times their regular rate of pay for every hour

worked in excess of forty (40) hours per workweek. 29 U.S.C. § 207.

125. The FLSA requires all employers to keep accurate payroll records and time records for at least three (3) years (including all basic timecards and daily starting/stopping times of individual employees). *See* 29 U.S.C. § 211(c); 29 C.F.R. 516.1, *et seq*.

126. At all times relevant to this action, Defendant engaged in an unlawful policy and practice of requiring Plaintiffs and all the proposed FLSA Collective members to perform pre- and mid- shift work off the clock, every shift, and failed to pay these employees their regular hourly rate for all hours worked in non-overtime workweeks, overtime gap time in weeks where it occurred and the federally mandated overtime compensation for all work performed over forty (40) hours per week.

127. The off-the-clock work performed every shift by Plaintiffs and the proposed FLSA Collective was an essential part of their jobs and these activities and the time associated with these activities was significant.

128. In workweeks where Plaintiffs and other FLSA Collective members worked forty (40) hours or more, or close enough to forty (40) hours to have worked over forty (40) hours when considering the uncompensated off-the-clock work time discussed herein, all of this overtime should have been paid at the federally mandated rate of 1.5 times each employee's regular hourly wage, including a shift differential where applicable. 29 U.S.C. § 207. Further, all "gap time" should have been paid at Plaintiffs and the FLSA Collective's regular hourly rate.

129. As a result of Defendant's unlawful policies and practices, Plaintiffs and the FLSA Collective members were deprived of both straight time and overtime wages in violation of the FLSA.

130. Defendant's violations of the FLSA were knowing and willful. Defendant could

have easily accounted for and properly compensated Plaintiffs and the proposed FLSA Collective members for all work activities, but did not.

131. At all relevant times, Defendant had a policy and practice of willfully refusing to pay Plaintiffs and all putative FLSA Collective members the legally required amount of overtime compensation for all hours worked in excess of 40 hours per workweek, in violation of the FLSA.

132. As a result of Defendant's willful failure to compensate Plaintiffs and the putative FLSA Collective members at a rate not less than 1.5 times the regular rate of pay for work performed in excess of 40 hours in a workweek, Defendant violated and continues to violate the FLSA, 29 U.S.C. §§ 201, *et seq.* Defendant's conduct as alleged herein constitutes a willful violation of the FLSA within the meaning of 29 U.S.C. § 255(a).

133. As a result of the foregoing, Plaintiffs were injured and seek appropriate relief against Defendant including unpaid wages (including unpaid overtime), an additional equal amount in liquidated damages (double damages), reasonable attorneys' fees and costs, interest, and all other relief just and appropriate under the circumstances.

COUNT II
RULE 23 NEW JERSEY CLASS ACTION
VIOLATIONS OF NEW JERSEY WAGE AND HOUR LAWS, N.J.S.A. 34:1156A, *et seq*.
FAILURE TO PAY OVERTIME WAGES; VIOLATION OF NEW JERSEY WAGE PAYMENT LAW, N.J.S.A., 34:114-1, *et seq*.
FAILURE TO PAY STRAIGHT TIME WAGES ("NEW JERSEY WAGE ACTS")

134. Plaintiff Claudio re-alleges and incorporates the foregoing paragraphs 1-17, 19-76, 93-100 as if fully restated herein and further alleges as follows.

135. At all times relevant to the action Defendant was an employer covered by the overtime and wage mandates of the New Jersey Wage Acts, and the Rule 23 New Jersey Class are employees entitled to the protections of the New Jersey Wage Acts N.J.S.A. 34:11-56a1(h) and

N.J.S.A. 34:11-4.1b.

136. Defendant 'suffered or permitted" Plaintiff Claudio and other Rule 23 New Jersey Class members to work and thus "employed" them within the meaning of N.J.S.A. 34:11-56a1(f).

137. N.J. Stat. § 34:11-56a4(a) provides that "each employer shall pay to each of his employees wages at a rate of not less than $8.85 per hour as of January 1, 2019…."

138. N.J. Stat. § 34:11-56a4(b) provides that "An employer shall also pay each employee not less than 1 1/2 times such employee's regular hourly rate for each hour of working time in excess of 40 hours in any week…."

139. N.J. Stat. § 34:11-4.2 provides that "every employer shall pay the full amount of wages due to his employees at least twice during each calendar month, on regular paydays designated in advance by the employer…."

140. Under New Jersey law, employees are entitled to be paid for "all hours worked." N.J. Admin. Code tit. 12, § 56-5.1.

141. Defendant violated the New Jersey Wage Act by regularly and repeatedly failing to compensate the Rule 23 New Jersey Class for the time spent on the work activities described in this Complaint.

142. Defendant's uniform policy and practice, as described above, was/is willful, intentional, unreasonable, arbitrary, and in bad faith.

143. As a result, the Rule 23 New Jersey Class has and will continue to suffer loss of income and other damages. Accordingly, the Rule 23 New Jersey Class is entitled to recover unpaid wages owed, including overtime wages, liquidated damages in the amount of 200% of the wages owed, plus costs and attorneys' fees, and other appropriate relief under the New Jersey Wage Acts at an amount to be proven at trial. *See* N.J. Stat. § 34:11-58.

COUNT III
RULE 23 SOUTH CAROLINA CLASS ACTION
VIOLATIONS OF THE SOUTH CAROLINA PAYMENT OF WAGES ACT, S.C. CODE ANN. §§ 41-10-10, et. seq. ("SOUTH CAROLINA WAGE ACT")

144. Plaintiff Guinyard re-alleges and incorporates the foregoing paragraphs 1-18, 20-77, 101-108 as if fully restated herein and further alleges as follows.

145. The South Carolina Payment of Wages Act, S.C. Code Ann. §§ 41-10-10, *et seq.;* provides that "[e]very employer in the State shall pay all wages due in lawful United States money or by negotiable warrant or check bearing even date with the payday." S.C. Code Ann. § 41-10-40(A).

146. Pursuant to S.C. Code Ann. § 41-10-80(C), an employee who has not been paid in accordance with the South Carolina Payment of Wages Act "may recover in a civil action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow."

147. At all times relevant to the action, Defendant was an employer covered by the overtime and wage mandates of the South Carolina Wage Act, and the Rule 23 South Carolina Class are employees entitled to the South Carolina Wage Act's protections.

148. The South Carolina Wage Act entitles employees to compensation for every hour worked in a workweek.

149. The South Carolina Wage Act entitles employees to overtime compensation at a rate equal to one and one-half the amount of their regular rate of pay for all hours worked in excess of 40 hours per week.

150. Defendant violated the South Carolina Wage Act by regularly and repeatedly failing to compensate the Rule 23 South Carolina Class for the time spent on the work activities described in this Complaint.

151. Defendant's uniform policy and practice, as described above, left it without any bona fide dispute as to why it failed to pay Plaintiff Guinyard and CSRs for all time worked.

152. As a result, the Rule 23 South Carolina Class has and will continue to suffer loss of income and other damages. Accordingly, the Rule 23 South Carolina Class is entitled to recover unpaid wages owed, plus costs and attorneys' fees, and other appropriate relief under the South Carolina Wage Act at an amount to be proven at trial.

COUNT IV
RULE 23 NATIONWIDE CLASS ACTION
BREACH OF CONTRACT

153. Plaintiffs re-allege and incorporate all the foregoing paragraphs 1-47, 49, 57-76, 109-116 herein and further allege as follows.

154. At all times relevant to this action, Defendant had a binding and valid contract with Plaintiffs and every other Rule 23 Nationwide Class member to pay each employee for each hour they worked at a pre-established (contractual) regular hourly rate in consideration of the work duties Plaintiffs and the Rule 23 Nationwide Class members performed on behalf of Defendant.

155. Evidence of these contracts include Defendant's letters offering employment, pay statements, and other documentary evidence in Defendant's possession. Additionally, Defendant made verbal offers for payment at a specified, above minimum wage for CSR work, which Plaintiffs accepted and performed, but Defendant failed to perform by paying Plaintiffs and the Rule 23 Class the promised wages.

156. For example, Defendant offered to compensate Plaintiffs at a minimum of fixed, agreed upon hourly rates if they agreed to perform services for Defendant as a CSR. Plaintiffs accepted Defendant's offer and performed their duties as CSRs in reliance on the offer.

157. Defendant breached its contractual promises by failing to pay CSRs at their fixed,

pre-agreed upon hourly rate for all of the hours worked.

158. Upon information and belief, each Rule 23 Nationwide Class member, including Plaintiffs, was contractually entitled to a varying minimum hourly rates within the applicable period.

159. Plaintiffs and every other Rule 23 Nationwide Class member accepted the terms of Defendant's contractual promises contained in Defendant's offer letters, and performed under the contracts by doing their jobs and carrying out the work they performed each shift, which included the unpaid off-the-clock work that was required of them in connection with pre- and mid- shift work described herein.

160. By not paying Plaintiffs and every other Rule 23 Nationwide Class member the agreed upon hourly wage for the work they performed each shift in connection with the off-the-clock work described herein, Defendant systematically breached its contracts with Plaintiffs and each member of the Rule 23 Nationwide Class.

161. Defendant can easily ascertain the amount of damages owed to Plaintiffs and the Rule 23 Nationwide Class members based on the allegations made in this complaint (specifically the amount of off-the-clock work claimed each shift) in conjunction with Defendant's payroll records, which will provide the number of shifts worked by each Rule 23 Nationwide Class member.

162. Plaintiffs and the Rule 23 Nationwide Class members' remedies under the FLSA are inadequate in this case to the extent Defendant paid them *more* than the federally mandated minimum wage of $7.25 per hour, but less than forty (40) hours per week (*i.e.*, pure "gap time" claims for non-overtime hours/workweeks).

163. Defendant also breached its duty of good faith and fair dealing by failing to keep

track of the time Plaintiffs and other Rule 23 Class members spent performing off-the-clock activities, which is a fundamental part of an "employer's job."

164. As a direct and proximate result of Defendant's contractual breaches, Plaintiffs and the Rule 23 Nationwide Class members were damaged in an amount to be determined at trial.

COUNT V
RULE 23 NATIONWIDE CLASS ACTION
UNJUST ENRICHMENT

165. Plaintiffs re-allege and incorporate the foregoing paragraphs 1-47, 49, 65-76, 109-116 as if fully restated herein and further allege as follows.

166. This Count is pled in the alternative to Count IV, *supra*, pursuant to Fed. R. Civ. P. 8(d)(2)-(3).

167. At all times relevant to this action, Defendant promised Plaintiffs and every other Rule 23 Nationwide Class member a pre-established regular hourly rate in consideration of the work duties Plaintiffs and the Rule 23 Nationwide Class members performed for the benefit of Defendant.

168. Plaintiffs and every other Rule 23 Nationwide Class member relied upon Defendant's promise for the pre-established regular hourly rate and performed by doing their jobs and carrying out their required work duties.

169. By not paying Plaintiffs and every other Rule 23 Nationwide Class member the agreed upon hourly wage for the off-the-clock work they performed each shift, Defendant was unjustly enriched.

170. Plaintiffs and the Rule 23 Nationwide Class members performed off-the-clock work tasks at the request of and without objection by Defendant.

171. Defendant received and accepted the above-referenced off-the-clock work services

from Plaintiffs and every other Rule 23 Nationwide Class member and enjoyed the benefits derived therefrom.

172. Upon information and belief, Defendant used the monies owed to Plaintiffs and every other Rule 23 Nationwide Class member to finance its various business ventures or pay its equity owners.

173. Defendant has been unjustly enriched by the retention of monies received pursuant to the services Plaintiffs and the Rule 23 Nationwide Class performed for Defendant's benefit, without having compensated Plaintiffs and the Rule 23 Nationwide Class for the same.

174. Plaintiffs and the Rule 23 Nationwide Class suffered detriment due to Defendant's failure to compensate them for the off-the-clock work described herein, in that Plaintiffs and the Rule 23 Nationwide Class were deprived of the ability to utilize that time, effort and their resources in a profitable manner.

175. As a direct and proximate result of Defendant's actions, Plaintiffs and every other Rule 23 Nationwide Class member suffered damages, including but not limited to, loss of wages.

RELIEF REQUESTED

WHEREFORE, Plaintiffs request the following relief:

a. An Order conditionally certifying this case as a collective action in accordance with 29 U.S.C. § 216(b) with respect to the FLSA claims set forth herein (Count I);

b. An Order certifying this action as a class action (for the Rule 23 New Jersey Class) pursuant to Rule 23(b)(3) with respect to Plaintiff Claudio's state law claims under the New Jersey Wage Acts (Count II);

c. An Order certifying this action as a class action (for the Rule 23 South Carolina Class) pursuant to Rule 23(b)(3) with respect to Plaintiff Guinyard's state law claims under the South Carolina Wage Act (Count III);

d. An Order certifying this action as a class action (for the Rule 23 Nationwide Class) pursuant to Rule 23(b)(3) with respect to Plaintiffs' breach of contract and unjust

enrichment claims (Counts IV and V);

e. An Order compelling Defendant to disclose in computer format, or in print if no computer readable format is available, the names and addresses of all proposed FLSA Collective members, and authorizing Plaintiffs to send notice of this action to all those similarly situated individuals, including the publishing of notice in a manner that is reasonably calculated to apprise the Collective members of their right to join and participate in this lawsuit;

f. An Order designating Plaintiffs as representatives of the FLSA Collective, the Rule 23 New Jersey Class, the Rule 23 South Carolina Class, and the Rule 23 Nationwide Class, and undersigned counsel as class counsel for the same;

g. An Order declaring Defendant violated the FLSA;

h. An Order declaring Defendant's violations of the FLSA were willful;

i. An Order declaring Defendant violated New Jersey wage-and-hour law;

j. An Order declaring Defendant violated South Carolina wage-and-hour law;

k. An Order declaring Defendant breached its contracts with Plaintiffs and the members of the Rule 23 Nationwide Class (or, in the alternative, that Defendant was unjustly enriched) by failing to pay them for mandatory pre- and mid-shift work activities described herein at a pre-established (contractual) regularly hourly rate;

l. An Order granting judgment in favor of Plaintiffs and against Defendant and awarding Plaintiffs, the FLSA Collective, the Rule 23 New Jersey Class, the Rule 23 South Carolina Class and the Rule 23 Nationwide Class the full amount of damages and penalty damages available by law;

m. An Order awarding reasonable attorneys' fees and costs incurred by Plaintiffs in prosecuting this action as required by statute;

n. An Order awarding pre- and post-judgment interest to Plaintiffs on these damages; and

o. An Order awarding such other and further relief as this Court deems appropriate.

Dated: August 22, 2025

Respectfully Submitted,

/s/ Kevin J. Stoops

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Attorneys for Plaintiffs and the Putative Collective/Class Members

JURY DEMAND

Plaintiffs, Dianna Guinyard and Diana Claudio, individually and on behalf of all others similarly situated, by and through their attorneys, hereby demand a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure and the court rules and statutes made and provided with respect to the above-entitled cause.

Dated: August 22, 2025

Respectfully Submitted,

/s/ Kevin J. Stoops

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Attorneys for Plaintiffs and the Putative Collective/Class Members

CERTIFICATE OF SERVICE

I certify that on August 22, 2025, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all counsel of record.

/s/ *Kevin J. Stoops*
Kevin J. Stoops

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 1570
[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