

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

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In re:	:	Chapter 11
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MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
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**EMERGENCY MOTION AND NOTICE OF DEBTORS
TO AUTHORIZE PAYMENTS IN EXCESS OF
INTERIM CAP UNDER INTERIM CRITICAL VENDOR ORDER**

Emergency relief has been requested. Relief is requested not later than 3:00 p.m. (prevailing Central Time) on September 18, 2025.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on September 18, 2025 at 3:00 p.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Pérez's conference room number is 282694. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Pérez's home page. The meeting code is "JudgePerez". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Perez's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

¹ A complete list of each of the Debtors in these chapter 11 cases (the "*Chapter 11 Cases*") and the last four digits of each Debtor's taxpayer identification number (if applicable) may be obtained on the website of the Debtors' claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.'s principal place of business and the Debtors' service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.



ModivCare Inc. and its debtor affiliates in the above-captioned cases, as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully state as follows in support of this emergency motion (this “**Motion**”):

RELIEF REQUESTED

1. By this Motion, the Debtors hereby seek entry of an order, substantially in the form attached hereto (the “**Proposed Order**”), authorizing the Debtors to make payments on account of prepetition claims to their critical Trade Vendors in excess of the \$99 million cap (the “**Interim Vendor Cap**”) as set forth in the Interim Critical Vendor Order (defined below) prior to the final hearing (the “**Second Day Hearing**”) on the Debtors’ “first day” motions. In support of this Motion, the Debtors rely on (a) the *Declaration of Chad J. Shandler in Support of Emergency Motion and Notice of Debtors to Authorize Payments in Excess of Interim Cap Under Critical Vendor Order* filed contemptuously herewith (the “**Shandler Declaration**”) and (b) the *Declaration of Chad J. Shandler in Support of Chapter 11 Petitions and First Day Relief (the “First Day Declaration”)* [Docket No. 14].²

JURISDICTION AND VENUE

2. The United States Bankruptcy Court for the Southern District of Texas (the “**Court**”) has jurisdiction to consider this Motion under 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b) and the Court may enter a final order consistent with Article III of the United States Constitution. Venue is proper under 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, and 1107(a) of title 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in, as applicable, the (a) *Emergency Motion of Debtors for Entry of Interim and Final Orders (A) Authorizing Payment of Prepetition Trade Claims in the Ordinary Course of Business and (B) Granting Related Relief* [Docket No. 6] (the “**Critical Vendor Motion**”) or (b) First Day Declaration.

“**Bankruptcy Code**”), rule 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “**Bankruptcy Local Rules**”), and the Procedures for Complex Cases in the Southern District of Texas.

BACKGROUND

I. GENERAL BACKGROUND

4. On August 20, 2025 (the “**Petition Date**”), the Debtors each filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to operate their businesses and manage their properties as debtors in possession under sections 1107(a) and 1108 of the Bankruptcy Code.

5. On September 5, 2025, the U.S. Trustee appointed an official committee of unsecured creditors [Docket No. 124] (the “**Committee**”). No request for the appointment of a trustee or an examiner has been made in the Chapter 11 Cases.

6. 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 First Day Declaration.

II. FIRST DAY HEARING AND INTERIM CRITICAL VENDOR ORDER

7. On August 21, 2025, the Court held a hearing (the “**First Day Hearing**”) at which the Debtors presented certain “first day motions,” including the Critical Vendor Motion. The Court subsequently entered an interim order [Docket No. 64] (the “**Interim Critical Vendor Order**”) that authorized, among other things, the Debtors to make payments to Trade Vendors, including Transportation Vendors, on account of prepetition claims held by such Trade Vendors.

8. In addition to the Interim Critical Vendor Order, the Court entered an interim order [Docket No. 106] (the “**Interim DIP Order**”) approving the Debtors’ proposed debtor-in-possession financing facility (the “**DIP Facility**”). The proceeds of the DIP Facility are to be used

in accordance with the approved budget attached as Schedule 1 to the Interim DIP Order (the “***DIP Budget***”). As described further below and in the Shandler Declaration, all payments sought to be made hereunder are reflected in the DIP Budget and the Debtors are ***not*** seeking to make any changes to the DIP Budget as a result of such payments.

9. On the Petition Date, the Debtors had estimated that the total prepetition amounts owed to Trade Vendors was approximately \$103,560,000. Of this amount, the Debtors estimated that approximately \$98,958,000 was either due and payable, or would fall due in the period from the Petition Date through the date that the Debtors would seek a final order in respect of the Critical Vendor Motion. Accordingly, the Debtors sought authority to pay up to \$99 million of prepetition Trade Claims under the Interim Critical Vendor Order, which was approved by this Court.

10. In particular, the Interim Critical Vendor Order provides the following:

that payments to Trade Vendors pursuant to this Interim Order shall not in the aggregate exceed \$99 million. In the event the Debtors believe that a particular payment to a Critical Vendor will cause them to exceed this amount during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount prior to making any further payments. If no objections are filed with the Court and served on the Debtors within five business days, such overage shall be authorized to be paid.

Interim Critical Vendor Order, ¶ 1.

11. As described in the Shandler Declaration, the Debtors have been reconciling claims and requests for payment received from their Trade Vendors since the Petition Date, most notably their Transportation Vendors. As described in the Critical Vendor Motion, the First Day Declaration, and the Shandler Declaration, the Transportation Vendors are of critical importance to the Debtors’ NEMT business (their largest business segment), and the payment of the Transportation Vendors’ prepetition claims is necessary for the Debtors to continue operating in

the ordinary course. Absent payment of these claims, the Debtors' business will suffer immediate and irreparable harm.

III. ADJOURNMENT OF FINAL HEARING

12. At the conclusion of the First Day Hearing, the Court scheduled the Second Day Hearing for September 16, 2025. The matters scheduled for the Second Day Hearing included final approval of the Critical Vendor Motion, with objections due on September 10, 2025 (the "*Objection Deadline*").

13. On Friday, September 5, 2025, the Committee was formed. On Tuesday, September 9, 2025 (a day before the Objection Deadline), the Debtors were informed that the Committee selected counsel to represent it in the Chapter 11 Cases. Counsel to the Committee requested an extension of the Objection Deadline and an adjournment of the Second Day Hearing to give counsel (and the soon to be engaged financial advisor) additional time to, among other things, review the matters scheduled to be heard at the Second Day Hearing. The Debtors agreed to such requests and extended the Objection Deadline for the Committee to September 23, 2025, and adjourned the Second Day Hearing to September 30, 2025.

IV. PAYMENTS IN EXCESS OF INTERIM VENDOR CAP

14. Since the adjournment of the Second Day Hearing, the Debtors became aware of impending Trade Claims that are due and necessary for their business to be paid, but that would considerably exceed the Interim Vendor Cap. In particular, the Debtors now estimate that the amount of prepetition Trade Claims is equal to approximately \$181 million and that the amount that will become due and owing prior to the Second Day Hearing is equal to approximately \$150 million (an increase of approximately \$51 million). As described in the Shandler Declaration, this increase has arisen as a result of the Debtors' reconciliation of claims submitted during the pre- and post-petition periods, rather than from an actual increase in amounts owed to their Trade

Vendors (in particular, the Transportation Vendors). Importantly, the DIP Budget already accounts for these payments being made to Trade Vendors and, therefore, does not require any increase to the DIP Facility, nor a change to the DIP Budget. The requested relief herein merely reflects a change in the categorization of these payments; from initially anticipated postpetition administrative expenses to now-confirmed prepetition claims.

15. Upon learning of the need to make payments in excess of the Interim Vendor Cap, the Debtors promptly informed the Committee's advisors and the advisors to the First Lien Agent, the Consenting Creditors, and the DIP Lenders in order to try and reach a consensual solution to enable the Debtors to make these critical payments. The Debtors and the Committee have been negotiating revisions to the final order sought under the Critical Vendor Motion and are continuing to work cooperatively together.

16. Based on conversations with the Committee's advisors, the Debtors understand that the Committee does not object to the expedited timing for the relief sought herein (*i.e.*, as opposed to waiting five business days under the notice procedures in the Interim Critical Vendor Order). Instead, the Committee's concerns relate to whether the relief sought hereunder may have consequences for the DIP Facility. As noted above, the proposed payments to Trade Vendors do not require any adjustments to the DIP Budget, nor do they require the Debtors to seek any additional funding under the DIP Facility. Instead, and as further described in the Shandler Declaration, the increase in payments is merely the result of recategorizing certain postpetition payables (which would have been paid in the ordinary course and which are already accounted for in the DIP Budget), as prepetition payables. The Debtors further understand that the Consenting Creditors also support the relief requested.

17. Accordingly, the Debtors file this Motion on an emergency basis to seek authorization to make additional critical payments to Trade Vendors immediately because waiting the five business days to make such payments, as contemplated by the applicable notice procedures set forth in the Interim Critical Vendor Order, would cause immediate and irreparable harm to the Debtors' business. To maintain the value of the Debtors' business, such payments are required to be paid urgently.

BASIS FOR RELIEF

I. PAYMENT OF TRADE CLAIMS IN EXCESS OF INTERIM VENDOR CAP IS WARRANTED UNDER SECTIONS 363(B) AND 105(A) OF THE BANKRUPTCY CODE

18. The Court may grant the relief requested herein pursuant to section 363(b) of the Bankruptcy Code, which provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate....” 11 U.S.C. § 363(b)(1). Courts in the Fifth Circuit have granted a debtor’s request to use property of the estate outside of the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code upon a finding that such use is supported by sound business reasons. *See, e.g., Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App’x 429, 435 (5th Cir. 2016) (noting that section 363 “requires that a sale of the estate’s assets be supported by an articulated business justification, good business judgment, or sound business reasons”) (internal quotation and citation omitted); *Inst. Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (internal citation omitted); *ASARCO, Inc. v. Elliot Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor’s use of property of the estate and

incorporates a business judgment standard . . . [t]he business judgment standard in section 363 is flexible and encourages discretion.”); *In re Terrace Gardens Park P’ship*, 96 B.R. 707, 714 (Bankr. W.D. Tex. 1989) (“[T]here must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (internal citation omitted).

19. In addition, the Court has authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein because such relief is necessary for the Debtors to carry out their duties under section 1107(a) of the Bankruptcy Code. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487 (Bankr. N.D. Tex. 2002)). Under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a); *see CoServ*, 273 B.R. at 491-93 & n.6 (holding that sections 105 and 1107 of the Bankruptcy Code provide authority for a debtor-in-possession to pay prepetition claims); *see also In re Tusa-Expo Holdings, Inc.*, Case No. 08-45057-DML-11, 2008 WL 4857954, at *1 (Bankr. N.D. Tex. Nov. 7, 2008); *CEI Roofing*, 315 B.R. at 56. Accordingly, the Bankruptcy Code authorizes the postpetition payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estates.

20. As described in greater detail in the Critical Vendor Motion and the Shandler Declaration, payment of the Trade Claims as they become due in the ordinary course of business is a proper exercise of the Debtors’ business judgment because doing so will avoid a value-destructive business interruption, while not prejudicing the Debtors’ other stakeholders. In

particular, the Debtors' ability to pay Transportation Vendors, which account for nearly all of the payments requested to be made hereunder, is critical to allow the Debtors to facilitate access for people in need to critical healthcare services. If the Transportation Vendors refuse to continue providing services on account of unpaid prepetition claims, the Debtors will be unable to facilitate access to critical healthcare services for people in need. Such a resulting disruption would have devastating consequences for those people, many of whom have limited mobility or financial resources to be able to use alternative transport. Accordingly, the Trade Vendors provide indispensable support that directly impacts the health and well-being of everyday people.

21. Further, a significant number of the Transportation Vendors are small businesses that depend on the Debtors' business and timely payment to support themselves. Accordingly, failure to timely pay to the Transportation Vendors may jeopardize the Transportation Vendors' businesses and their ability to continue providing transport to people who rely on such services.

22. The Transportation Vendors thus provide invaluable and irreplaceable services to the Debtors. In turn, the Debtors are a major source of revenue for a substantial number of the Transportation Vendors, who are small businesses that are dependent on the Debtors' business. Accordingly, the failure to timely pay the Transportation Vendor Claims may have a ripple effect, harming not just the Debtors' business, but the Transportation Vendors' business and the ultimate end user of the Debtors' services, individuals in need of access to medical care.

23. The goal of the Chapter 11 Cases is to deleverage the Debtors' balance sheet with minimal interruption to the Debtors' business operations. Failure to pay the Trade Claims jeopardizes the Debtors' timely receipt of necessary goods and services, and therefore the ability of the Debtors to provide critical medical services to patients. This would harm the Debtors' business, damage their market reputation, result in a loss of revenue, and put the health of patients

at risk. Accordingly, the Debtors must maintain positive relationships with their suppliers and service providers, which are essential to the Debtors' business operations, throughout the course of the Chapter 11 Cases.

24. Ultimately, failure to pay the Transportation Vendor Claims risks (a) disrupting vulnerable peoples' access to critical healthcare services, (b) threatening the businesses of the Transportation Vendors, and (c) threatening the ability of ModivCare to restructure. The amounts proposed to be paid to the Transportation Vendors herein are significantly lower than the potential costs and consequences of those risks.

25. The Debtors have previewed this request with counsel to the Committee, and counsel to the First Lien Agent, the Consenting Creditors, and the DIP Lenders, and have been informed that neither object to the relief sought herein.

EMERGENCY CONSIDERATION

26. The Debtors respectfully request emergency consideration of this Motion pursuant to Bankruptcy Local Rule 9013-1(i). As described in detail above and in the Shandler Declaration, immediate and irreparable harm to the Debtors' business operations would result if the relief requested herein is not granted because the above-described payments to Trade Vendors need to be paid immediately. Given the anticipated magnitude of these business disruptions and the urgency surrounding making these payments, following the noticing procedures set forth in the Interim Critical Vendor Order pertaining to payments in excess of the Interim Vendor Cap would be detrimental to the Debtors' continued business operations and relationships with their Trade Vendors. Accordingly, the Debtors submit that the requirements of Bankruptcy Local Rule 9013-1(i) are satisfied and, therefore, respectfully request that the Court approve the relief requested in this Motion on an emergency basis.

NOTICE

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

28. A copy of this Motion is available on (a) the Court's website, at www.txs.uscourts.gov and (b) the website maintained by the Debtors' claims and noticing agent, Kurtzman Carson Consultants, LLC d/b/a Verita Global, at <https://www.veritaglobal.net/ModivCare>.

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WHEREFORE, the Debtors respectfully request that the Court enter the Proposed Order granting the relief requested in the Motion and such other and further relief as may be just and proper.

Dated: September 17, 2025
Houston, Texas

Respectfully submitted,

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

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*Proposed Attorneys for the Debtors
and Debtors in Possession*

CERTIFICATE OF SERVICE

I certify that on September 17, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

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

Timothy A. ("Tad") Davidson II

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

	X	
	:	
In re:	:	Chapter 11
	:	
MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
	:	
Debtors. ¹	:	(Jointly Administered)
	:	
	X	

**ORDER AUTHORIZING DEBTORS TO
MAKE PAYMENTS IN EXCESS OF INTERIM
CAP UNDER INTERIM CRITICAL VENDOR ORDER
[Relates to Docket No. ____]**

Upon the emergency motion (the “*Motion*”)² of the Debtors for entry an order (this “*Order*”) authorizing the Debtors to make payments on account of prepetition claims to their critical Trade Vendors in excess of the Interim Vendor Cap prior to the Second Day Hearing on the Debtors’ “first day” motions, all as more fully set forth in the Motion; and the Court having reviewed the Motion, the First Day Declaration, and the Shandler Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein in accordance with 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and that the Court may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and it appearing that proper and adequate

¹ A complete list of each of the Debtors in these chapter 11 cases (the “*Chapter 11 Cases*”) and the last four digits of each Debtor’s taxpayer identification number (if applicable) may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.veritaglobal.net/ModivCare>. Debtor ModivCare Inc.’s principal place of business and the Debtors’ service address in these Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 & 1200, Denver, Colorado 80237.

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

notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. Paragraph 1 of the Interim Critical Vendor Order is hereby amended by replacing “\$99 million” with “\$150 million.”
2. Except as modified by Paragraph 1 of this Order, the Interim Critical Vendor Order remains in full force and effect and governs all payments made to Trade Vendors on account of prepetition Trade Claims authorized under this Order and the Interim Critical Vendor Order.
3. Under the facts and circumstances of the Motion, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules.
4. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.
5. The Debtors are further authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.
6. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____, 2025
Houston, Texas

Alfredo R. Pérez
United States Bankruptcy Judge