Docket #0732 Date Filed: 11/17/2025

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

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

MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR (I) LEAVE, DERIVATIVE STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN UPTIER TRANSACTION CLAIMS AND CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES AND (II) EXCLUSIVE SETTLEMENT AUTHORITY

This motion seeks an order that may adversely affect you. If you oppose the motion, you should immediately contact the moving party to resolve the dispute. If you and the moving party cannot agree, you must file a response and send a copy to the moving party. You must file and serve your response within 21 days of the date this was served on you. Your response must state why the motion should not be granted.

If you do not file a timely response, the relief may be granted without further notice to you. If you oppose the motion and have not reached an agreement, you must attend the hearing. Unless the parties agree otherwise, the court may consider evidence at the hearing and may decide the motion at the hearing.

[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.

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The Official Committee of Unsecured Creditors (the "**Committee**") appointed in the Chapter 11 Cases of ModivCare, Inc. ("**ModivCare**") and its affiliated debtors and debtors-in-possession (collectively, the "**Debtors**" and, together with their non-Debtor affiliates, the "**Company**") files this Motion (the "**Motion**")[2] seeking entry of an order substantially in the form attached hereto as **Exhibit A** (the "**Proposed Order**") pursuant to sections 105(a), 1103(c), and 1109(b) of title 11 of the United States Code (the "**Bankruptcy Code**") and Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), granting the Committee standing to commence, prosecute, and settle certain Uptier Transaction claims and causes of action (the "**Proposed Claims**") belonging to the Debtors' estates as asserted in the proposed complaint of the Committee attached hereto as **Exhibit B** (the "**Proposed Complaint**") against the defendants listed therein (the "**Proposed Defendants**").[3] In support of the Motion, the Committee respectfully states as follows:[4]

PRELIMINARY STATEMENT

1. The Committee brings this Motion because the Debtors have unjustifiably refused to assert the valuable causes of action set forth in the Proposed Complaint, deciding instead to release those claims for no consideration and relying on an investigation that was blessed by an "independent" director who is anything but, based on a woefully insufficient investigation that the Company refuses to disclose. Just six months before the Petition Date, at a time when the Debtors

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[2] The Committee files this Motion under seal without filing a separate motion under Local Bankruptcy Rule 9037-1 pursuant to Section 7(c) of the *Confidentiality Agreement and Stipulated Protective Order* [Docket No. 174] entered by this Court on September 17, 2025.

[3] The Committee reserves the right to revise the Proposed Complaint or to amend it after filing.

[4] Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Proposed Complaint and the *Declaration of Chad J. Shandler in Support of Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 14].

were unquestionably insolvent and had no prospect of avoiding a near term bankruptcy filing, the Debtors (1) issued $251 million in Second Lien Notes to a select group of existing creditors (the "**March 7 Uptiered Creditors**") in exchange for $251 million of Unsecured Notes (the "**March 7 Uptier Notes Exchange**") and (2) issued approximately $20 million in Second Lien Notes to Coliseum, one of the Company's major shareholders (together with the March 7 Uptiered Creditors, the "**Uptiered Creditors**" or "**Second Lien Noteholders**") in exchange for an equal amount of the Unsecured Notes (the "**March 14 Uptier Notes Exchange**" and, together with the March 7 Uptier Notes Exchange, the "**Uptier Notes Exchange**"). This exchange, including the Debtors' pledge of assets as collateral to secure the Second Lien Notes, the Second Lien Notes Guarantees (as defined below) and the payment of the Uptier Fees (as defined below), was a transfer of "an interest in property" of the Debtors under section 548 of the Bankruptcy Code that was enormously valuable to the previously unsecured Uptiered Creditors and if allowed to stand would severely impair the recoveries of the remaining creditors. By contrast, on the Debtors' side of the ledger, the Uptier Notes Exchange was a giveaway to the Uptiered Creditors, with the pledge of collateral substantially reducing the Debtors' equity cushion in their collateral.

2. While precise values will be determined at trial, there is no genuine dispute that the Uptier Notes Exchange was an enormous giveaway to the Uptiered Creditors at the expense of the remaining unsecured noteholders who were not invited to participate in the Uptier Notes Exchange (the "**Left Behind Unsecured Noteholders**") and other unsecured creditors. As the Uptier Transaction was being finalized, the Debtors' CEO, Heath Sampson, admitted in an internal email to the other senior executives referring to the March 7 Uptier Notes Exchange that

[REDACTED]

[REDACTED] Despite full awareness of the [REDACTED] that would be suffered by the Left Behind Unsecured Noteholders, the Debtors proceeded with the Uptier Transaction anyway.

3. Not only did the Debtors elevate $271 million of Unsecured Notes to secured status with first access to substantially all of the Debtors' assets, the Debtors also stripped standard covenants and other protections from the left behind Unsecured Notes and released the guarantee obligations of forty-eight ModivCare subsidiaries under those notes (such guarantee stripping, collectively with the Uptier Notes Exchange, the Second Lien Notes Guarantees, the Uptier Fees and the Subordination Agreement (as defined below), the "**Uptier Transaction**"). As a further part of the scheme, the Uptiered Creditors also directed (by the vote of their cross holdings) the Unsecured Notes Trustee to enter into a subordination agreement providing for payment subordination of the Unsecured Notes to the First Lien Loans and Second Lien Notes. Meanwhile, the newly-created Second Lien Notes were granted secured guarantees by substantially all of the ModivCare subsidiaries (the "**Second Lien Notes Guarantees**").

4. Moreover, for the privilege of giving away all of this value to the Uptiered Creditors, the Debtors paid $10.19 million to the lenders under the First Lien Credit Agreement (the "**First Lien Lenders**") and various fees in connection with the Uptier Transaction and related transactions.

5. By effectuating this massive value transfer to the Uptiered Creditors, the Debtors had actual intent, and did, to hinder and delay the Left Behind Unsecured Noteholders and other unsecured creditors from recovering on their claims. Despite bankruptcy being a virtual certainty, the Debtors consummated a "liability management" transaction (the Uptier Transaction) that they

knew would cause unsecured creditors to suffer [REDACTED] and that immediately left the Debtors needing additional liquidity that would not be available, outside of chapter 11, to survive. The Debtors had already (1) hired Kirkland & Ellis LLP ("**K&E**") to prepare for bankruptcy and invited a leading K&E bankruptcy attorney attend at least one Board meeting, (2) disclosed in its SEC filings, before and after the Uptier Transaction, that "substantial doubt exists about our ability to continue as a going concern," (3) discussed with its lenders that the [REDACTED] and prepared an illustrative DIP term sheet, and (4) had the Company's financial advisor create 13-week cash flows assessing the Company's solvency, likely in preparation for the inevitable financial depletion. And as a result of the Uptier Transaction, the Company increased its secured debt by over 52% and accelerated its nearest maturity by over one year. As discussed in more detail herein, at the time of the Uptier Transaction, the Debtors were already insolvent as they were projecting to not be able to pay the Incremental Term Loan as it came due in January 2026 and the Company was likely to still require additional liquidity to support its operations.

6. The Debtors and the Uptiered Creditors will likely argue that the giveaway to this select group of creditors was justified because the Uptiered Creditors also provided some new liquidity to the Company in the form of a $75 million incremental term loan and Coliseum's purchase of $30 million of Second Lien Notes at a time of financial distress. This is irrelevant with respect to demonstrating actual intent to hinder and delay unsecured creditors. In any event, it is clear from the evidence that this incremental funding combined with the Uptier Transaction, was merely an exercise by the Uptiered Creditors in positioning themselves for the inevitable bankruptcy. To that end, the additional liquidity came with severe additional restrictions and ceded control to the Uptiered Creditors over decisions regarding the inevitable bankruptcy. In short, any

supposed "value" provided to the Company as a result of the additional liquidity was entirely illusory.

7. It is clear that the Debtors received far less than reasonably equivalent value in the lopsided Uptier Transaction. As the Fifth Circuit has observed, in assessing the question of reasonably equivalent value, "[t]he proper focus is on the net effect of the transfers on the debtor's estate, the funds available to the unsecured creditors."[5] By exchanging unsecured notes into secured obligations and further encumbering their assets to secure the newly issued Second Lien Notes at a time when the value of the Debtors' assets exceeded their secured debt, the Debtors transferred significant and valuable interests in their property to the Uptiered Creditors.

8. For these reasons, and as set forth in more detail below and in the Proposed Complaint, the Uptier Transaction was an actual fraudulent transfer, avoidable under sections 544 and 548 of the Bankruptcy Code because, by entering into the transaction, the Debtors intended to hinder and delay the Left Behind Unsecured Noteholders and other unsecured creditors. Further, because the Debtors did not receive reasonably equivalent value in exchange for the transfers comprising the Uptier Transaction, and because the Uptier Transaction occurred only six months prior to the Petition Date (well within any relevant "lookback period") when the Debtors were insolvent, the Uptier Transaction was also constructive fraudulent transfer, avoidable under the same sections of the Bankruptcy Code.

9. The issues raised in the Proposed Complaint are critical with respect to the confirmability of the Debtors' proposed plan. This is true not only with respect to the validity of the proposed free releases but also with respect to whether the distribution scheme complies with

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[5] *Hinsley v. Boudloche (In re Hinsley)*, 201 F.3d 638, 644 (5th Cir. 2000) (quoting *Viscount Air Servs., Inc. v. Cole (In re Viscount Air Servs., Inc.)*, 232 B.R. 416, 435 (5th Cir. 2000).

section 1129 of the Bankruptcy Code. If the Uptier Transaction is unwound, it could result in the conversion of the Second Lien Notes (other than the minority of those purchased directly) back to Unsecured Notes, the reinstatement of the guarantees for the Unsecured Notes, the extinguishing of the Subordination Agreement and the disgorging of the Uptier Fees. These remedies matter greatly because the Committee intends to argue that the value of the Debtors' assets exceeds their secured debt. Therefore, the distribution waterfall beyond the First Lien Loans is crucial to any proposed plan and must be adjudicated.

10. For all of these reasons, and as set forth in more detail below, the Proposed Claims are colorable and the Debtors have unjustifiably refused to bring them. The Committee therefore respectfully requests that the Committee be granted standing to bring the Proposed Claims on behalf of the Debtors.

JURISDICTION AND VENUE

11. The United States District Court for the Southern District of Texas has jurisdiction over this matter pursuant to 28 U.S.C. § 1334, as a core matter "arising under" and "related to" the Bankruptcy Code. This proceeding has been referred to this Court under 28 U.S.C. § 157(a) and the *Order of Reference to Bankruptcy Judges (District Court General Order 2012-6)*, dated May 24, 2012 (Hinojosa, C.J.). This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Committee confirms its consent to Bankruptcy Rule 7008 to the Court entering a final order in connection with the Motion.

12. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

13. The statutory predicates for the relief requested herein are sections 105(a), 1103(c)(2), 1103(c)(5) and 1109(b) of the Bankruptcy Rules.

14. This Motion is filed pursuant to the authority of the Committee as set forth in paragraph 6 of the *Final Order (A) Authorizing the Debtors to Obtain Postpetition Financing, (B) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (C) Authorizing the Use of Cash Collateral, (D) Modifying the Automatic Stay, and (E) Granting Related Relief* [Docket No. 463].

ALLEGATIONS OF THE PROPOSED COMPLAINT[6]

I. Despite Raising $1.85 Billion Since 2020, the Company Contemplated Bankruptcy in 2024

15. ModivCare was founded in 1996 as The Providence Services Corporation and became publicly traded in 2003. Proposed Compl. ¶ 19. The Company provides non-emergency medical transportation services. Over the years, the Company acquired other businesses to create a more well-rounded care solutions provider. *Id.* At least in part to fund its acquisition strategy, the Company raised $1.85 billion since 2020 including through (i) ModivCare's issuance of $500 million in aggregate principal amount of 5.000% Senior Unsecured Notes due October 1, 2029 (the "**Unsecured Notes**"), guaranteed by forty-eight subsidiaries, and (ii) execution of the First Lien Credit Facility, as amended from time to time. *Id.* ¶¶ 20-22.

16. The Board was aware as early as July 2024 that the Company's liquidity [REDACTED] *Id.* ¶ 23. In mid-September 2024, the Board knew that the Company was in need of [REDACTED] and discussed [REDACTED]. *Id.* ¶ 24. On September 30, 2024, the Company, the First Lien Lenders, and the First Lien Agent executed the Fourth Amendment to, among other things,

[6] The Proposed Complaint contains a more detailed recitation of the facts uncovered as part of the Committee's investigation to date. The Committee reserves its right to amend the Complaint and supplement this Motion as its investigation continues.

increase the maximum total net leverage ratio for the fiscal quarter ended September 30, 2024, reduce the minimum interest coverage ratio, and add a monthly and quarterly minimum liquidity of $75 million. *Id.* ¶ 25. At the end of the third quarter of 2024, the Company had only [REDACTED] in cash and cash equivalents. *Id.* ¶ 26. The Company stated that "substantial doubt exists about the Company's ability to meet its obligations as they come due within one year of issuance of [the financial statements]." *Id.*

17. The Fourth Amendment was only a "band aid" to avoid imminent default. On November 20, 2024, the Company's management reiterated to the Board during a special meeting its need to [REDACTED] *Id.* ¶ 28. Shortly thereafter, the Company engaged Moelis, FTI, and Kirkland. *Id.* ¶¶ 29-32. According to FTI, at that time, [REDACTED] *Id.* ¶ 31.

18. At the November 29, 2024 Board meeting, the Company's advisors presented two liquidity forecasts prepared by management: (i) a "base case" implying a mere [REDACTED] in liquidity cash plus revolver availability at year-end and (ii) a "downside case" implying [REDACTED] of liquidity by year-end. *Id.* ¶ 32. Mr. Sampson noted that these cash forecasts [REDACTED] *Id.* The advisors recommended that the Company [REDACTED]. *Id.* On December 13, 2024, FTI showed the Board that it was forecasting [REDACTED]. *Id.* ¶ 33. Stakeholders were acutely aware of the issues the Company was facing. *Id.* ¶ 34.

19. The Company's advisors began priming the Board for a chapter 11 filing in mid-December 2024. *Id.* ¶ 36. On December 19, 2024, K&E presented to the Board members regarding their fiduciary duties [REDACTED] *Id.* Moelis began an outreach for DIP financing at latest on December 21, 2024. *Id.* ¶ 37.

20. The Company reported for year-end 2024 that it "expect[ed] to continue to generate negative cash flows from operations in the near term." *Id.* ¶ 39. The Company further disclosed that "substantial doubt about [its] ability to satisfy [] obligations . . . as they become due within one year from the issuance date of these financial statements. *Id.* As a result, it has been determined that substantial doubt exists about our ability to continue as a going concern." *Id.*

II. The Company Incurs More First Lien Debt and Announces the Uptier Transaction

21. In late December 2024 and early January 2025, two groups of First Lien Lenders negotiated with the Company to secure a better position in the Company's inevitable bankruptcy. *See, generally*, Proposed Compl. § C. Both groups submitted term sheets that focused on three key terms: the First Lien Lenders' (i) exclusive right to provide the Company with a DIP facility; (ii) ability to uptier their Unsecured Notes into a secured position; and (iii) the right to appoint "independent" directors to the Board. *Id.*

22. On December 30, 2024, the Company's advisors explained to the Board that they conveyed [REDACTED] to the First Lien Lenders if they do not consent to a proposed out-of-court financing. *Id.* ¶ 48. On December 31, 2024, the Paul Hastings Group submitted a proposal memorializing many of the ultimately agreed-to terms. *Id.* ¶ 51. These terms included a $75

million incremental term loan under the existing Credit Agreement, various fees and premiums (including an upfront fee and a make-whole), a minimum weekly liquidity requirement, the right to appoint two new directors (who would also be the sole members of a new subcommittee), and the ability to convert $251 million of Unsecured Notes for the same amount of newly-issued Second Lien Notes. *Id.*

23. The Paul Hastings Group and the Company's advisors agreed that the proposed uptier would not be available to all holders of the Unsecured Notes. *Id.* ¶ 53. Rather, it would only be made available to the lenders under the new incremental facility that consented to amend the Unsecured Notes Indenture to strip certain covenants and events of default and release the subsidiary guarantors. *Id.* The Company also knew that the Uptier Transaction would only benefit a certain group of selected cross-holders, leaving the [REDACTED] with [REDACTED] *Id.* ¶ 56.

24. On January 6, 2025, the full Board approved entering into the Fifth Amendment and the Uptier Notes Exchange. *Id.* ¶ 58. The next day, the Board learned of and approved the Coliseum Transaction, through which the Coliseum Investors agreed to (i) purchase $30 million of Second Lien Notes and (ii) exchange $20.165 million in aggregate principal amount of Unsecured Notes held by the Coliseum Investors for an equivalent principal amount of Second Lien Notes. *Id.* ¶ 59. The Board had a fiduciary out and thus was not obligated to consummate the March 14 Uptier Notes Exchange. *Id.* ¶ 67. The March 14 Uptier Notes Exchange was also subject to stockholder approval. *Id.* On March 3, 2025, the Company convened a special shareholder meeting, which was adjourned without commencing any business because there was not sufficient support to approve the Coliseum Exchange. *Id.* Therefore, closing on the March 14 Uptier Notes Exchange was far from a foregone conclusion at the time that the First Lien Exchange

Agreement was executed. *Id.* The Paul Hastings Group agreed to support the March 14 Uptier Notes Exchange in exchange for third seat on the Company's Board. *Id.* ¶ 59.

25. On January 9, 2025, the Company executed the Fifth Amendment. *Id.* ¶ 60. The Fifth Amendment provided the Company with some financial covenant relief. *Id.* ¶ 61. However, the Fifth Amendment also significantly burdened the Company. *Id.* ¶ 63. Among other things, the Fifth Amendment made certain operating and financial covenants more restrictive. *Id.* ¶ 63. The Incremental Term Loan also accelerated the Company's nearest maturity date to January 2026. *Id.* ¶ 60. Immediately prior to the Company's announcement of the Uptier Transaction, the Unsecured Notes were trading at 57% of par.[7]

26. The availability of this Incremental Term Loan was not conditioned on consummation of the Uptier Notes Exchange. *Id.* ¶ 63. Instead, the Fifth Amendment contemplated that the Uptier Notes Exchange (including the March 7 Uptier Notes Exchange and the March 14 Uptier Notes Exchange) would be implemented later, after the Company obtained the requisite noteholder consents and stockholder approval and subject to the Board's continued decision to proceed. *Id.* ¶ 65. The Fifth Amendment altered the definition of "Solvent" under the Credit Agreement to *remove* the clause requiring that the fair value of property exceeds the total amount of liabilities for the Company to be "solvent." *Id.* ¶ 62. Applying this new, less stringent definition, Ms. Gutierrez signed a solvency certificate on behalf of the Company in connection with the Fifth Amendment. *Id.*

27. Certain Left Out Unsecured Noteholders immediately contacted Company advisors taking issue [REDACTED] *Id.* ¶ 66. Seeing the writing

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[7] Bloomberg Finance L.P., Unsecured Notes price graph for ModivCare Inc., Jan. 9, 2025.

on the wall, these noteholders also wanted to better protect their investment in a bankruptcy by obtaining security for their notes. *Id.*

III. The First Lien Lenders Take Control

28. On January 26, 2025, the First Lien Lenders proposed their first Board appointment: Erin L. Russell. Proposed Compl. ¶ 69. Effective March 7, 2025, lender-appointee Alec Cunningham replaced Garth Graham on the Board. *Id.* ¶ 70. On April 24, 2025, the final lender-selected director, Daniel B. Silvers, was appointed to the Board. *Id.* ¶ 72.

29. The next day, on April 25, 2025, the Board passed resolutions establishing the Strategic Alternatives Committee. *Id.* ¶ 73. Ms. Russell and Messrs. Cunningham and Silvers, all lender-recommended directors, were appointed as the sole members of the Strategic Alternatives Committee. *Id.*

30. On June 20, 2025, the Board discussed the resolutions forming the Capital Structure Committee to oversee all restructuring matters. *Id.* ¶ 74. Specifically, the Capital Structure Committee was established, "to investigate, review, evaluate, analyze, negotiate, and make recommendations to the Board to approve or reject, any changes to the Company's capital structure including all restructuring matters." *Id.* The conflicts inherent in creating a restructuring committee with a majority rules construct comprised of a majority of lender-appointed directors were obvious, but ignored. *Id.*

IV. The Parties Effectuate the Uptier Transaction

31. On March 7, 2025, upon receipt of the requisite consents, the Company, the guarantors party to the Unsecured Notes Indenture and Wilmington Savings Fund Society, FSB (as the successor to The Bank of New York Mellon Trust Company, N.A.), as trustee, entered into the Fifth Supplemental Indenture to strip the guarantees under the Unsecured Notes. Proposed Compl. ¶ 78.

32. Also on March 7, 2025, five of the Incremental Term Loan Lenders exchanged $251 million of aggregate principal amount of their Unsecured Notes for $251 million aggregate principal amount of Second Lien Notes. *Id.* ¶ 79. The Second Lien Notes are fully and unconditionally guaranteed by the Second Lien Notes Guarantors and are secured on a second-priority basis by substantially all of the Company's assets, subject to certain exceptions in the loan documents. *Id.* On March 14, 2025, pursuant to the First Supplemental 2L Indenture**,** the Company issued $50.165 million of Second Lien Notes to the Coliseum Investors, $20.165 of which was issued in exchange for Unsecured Notes. *Id.* ¶ 82.

33. As an integral part of the Uptier Notes Exchange, the First Lien Agent, the Second Lien Agent, and the trustee for the Unsecured Notes also entered into the Subordination Agreement dated as of March 7, 2025, which subordinated the holders of Unsecured Notes' right of payment and performance to the First Lien Lenders and Second Lien Lenders. *Id.* ¶ 81.

34. In total, on March 11, 2025 and March 14, 2025, the Company issued $301,165,000 in aggregate principal amount of Second Lien Notes in exchange for (i) $30 million cash from the Coliseum Investors, (ii) $75 million in incremental financing, and (iii) $271,165,000 in aggregate principal amount of converted Unsecured Notes. *Id.* ¶ 83. Although the Company's stated objective was to "ultimately reduce indebtedness," in March 2025, the Company's debt load reached $1.4 billion—over $140 million higher than it was in December 2024. *Id.*

V. The Company's Financial Condition Before and After the Uptier Transaction

35. As a result of the Uptier Transaction, the Company increased its secured debt by over 52% and accelerated its nearest maturity by over one year. Proposed Compl. ¶ 84. Before the ink even dried on the Fifth Amendment, FTI conducted a covenant test projecting that the Company would [redacted]

[REDACTED] *Id.* In other words, the Company was not projecting an ability to pay the Incremental Term Loan as it came due in January 2026. *Id.*

36. Likewise, in February 2025, KPMG, the Company's auditor, presented to the Audit Committee and reported that management determined that [REDACTED] because of [REDACTED] and because the Company [REDACTED] Proposed Compl. ¶ 85.

37. Consistent with its projected default under the Fifth Amendment, only two short weeks after the Company issued the Second Lien Notes, the Company began negotiating yet another amendment to the First Lien Credit Facility. *Id.* ¶ 87. The Company was requesting even further covenant relief. *Id.* The proposed sixth amendment was never executed. *Id.*

38. In the Company's 10-Q for the period ending March 31, 2025—*i.e.*, immediately after the Uptier Transaction was effectuated—the Company reported that its total liabilities exceeded its total assets, reporting approximately $1.764 billion and $1.677 billion, respectively. *Id.* ¶ 88.

39. Precisely because the Debtors were balance sheet insolvent, at the time of the Fifth Amendment, the definition of "Solvent" under the Credit Agreement had to be amended to *remove* the clause requiring that the fair value of property exceeds the total amount of liabilities – i.e. balance sheet solvency – in order for Ms. Gutierrez to certify that the Company was "Solvent" in connection with the Fifth Amendment. *Id.* ¶ 89. Ms. Gutierrez was unable to testify that she [REDACTED]. *Id.*

40. Prior to executing the Fifth Amendment, on November 29, 2024, the Company's advisors presented a "downside case" implying . *Id.* ¶ 90. Mr. Shepard, ModivCare's Senior Vice President, testified that *Id.*

41. The financial results from the first quarter of 2025 demonstrated that the Fifth Amendment and Uptier Transaction only exacerbated the Company's financial risks. *Id.* ¶ 91. The report to the Audit Committee explained that there were *Id.* As was clear, *Id.*

42. Shortly after the Company's Q1 2025 financial disclsoures, management presented a 2025 3+9 forecast (the "**3+9 Forecast**") to the Board that showed that the Company's despite the $105 million of new money from the Fifth Amendment and Coliseum. *Id.* ¶ 92. Management also noted that a *Id.* The 3+9 balance sheet outlook showed that the Company's total liabilities would . *Id.*

VI. The Consenting Creditors Control the Company's Bankruptcy Preparations

43. The Uptier Transaction did not meaningfully (if at all) delay preparations for an in-court restructuring first initiated in December 2024. Proposed Compl. ¶ 96. By June 2025, the Company fully pivoted to chapter 11 planning, now using Latham as restructuring counsel. *Id.*

44. Shortly thereafter, the Board formed the Capital Structure Committee who acted by majority vote and comprised of the lender-selected Board members. *Id.* ¶ 97. The Capital

Structure Committee was delegated the power to review, negotiate, and recommend restructuring matters to the Board. *Id.*

On June 25, 2025, the Company began negotiating non-disclosure agreements with certain First Lien Lenders and Second Lien Noteholders represented by Paul Hastings (the "**Consenting Creditors**"). *Id.* ¶ 98.

45. On July 10, 2025, the Company sent a proposal to the Consenting Creditors for a potential out-of-court restructuring transaction, which included another $75 million incremental loan facility. *Id.* ¶ 99. The Consenting Creditors' advisors made clear that [REDACTED] *Id.*

46. Given this response, the Advisors recommended to [REDACTED]. *Id.* ¶ 100. Three days later, the Company sent a proposed term sheet to the Consenting Creditors providing for, among other things, a restructuring of the Company through a chapter 11 filing and a DIP facility. The agreed restructuring term sheet including the terms of a proposed plan of reorganization that gave the First Lien Lenders 98% of the Company's reorganized equity. *Id.*

47. On August 19, 2025, the Capital Structure Committee recommended to the Board that the Company [REDACTED], the same lenders that recommended such candidates to the Board and who were slated to receive nearly all of the reorganized equity. *Id.* ¶ 101.

48. On August 20, 2025, all members of the Board, other than [REDACTED]. *Id.* ¶ 102. Later that day, the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

BASIS FOR RELIEF

I. Applicable Legal Standard for Derivative Standing

49. The filing of a petition for reorganization under chapter 11 of the Bankruptcy Code creates an estate, which includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Property of the estate includes all causes of action that belong to the debtor at the time a debtor's case is commenced. *See La. World Exposition v. Fed. Ins. Co.*, 858 F.2d 233, 245 (5th Cir. 1988) ("Section 541(a)(1)'s reference to 'all legal or equitable interests of the debtor in property' includes causes of action belonging to the debtor at the time the case is commenced.") (citing *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1149 (5th Cir. 1987)).

50. The Fifth Circuit has long recognized that sections 1103(c) and 1109(b) of the Bankruptcy Code permit creditors' committees to prosecute claims on behalf of debtors' estates with the approval of the bankruptcy court where (a) the proposed claims are colorable and (b) the debtors unjustifiably refuse to prosecute such claim. *See Wooley v. Haynes & Boone, L.L.P. (In re SI Restructuring, Inc.)*, 714 F.3d 860, 863–64 (5th Cir. 2013); *La. World Exposition*, 858 F.2d at 247; *Nat'l Convenience Stores Inc. v. Shields (In re Schepps Food Stores, Inc.)*, 160 B.R. 792, 799 (Bankr. S.D. Tex. 1993).

51. The Fifth Circuit has suggested that, where the debtor unjustifiably refuses to pursue colorable claims on behalf of the estate, the Court must permit the official committee to pursue the action. *See La. World Exposition*, 858 F.2d at 250 ("Here, the debtor-in-possession effectively could not act to maximize the value of the estate. As a result, creditors' interests were not protected. Far from barring the Committee's action . . . [Fifth Circuit law] command[s] this action to go forward.").

52. The Court should grant the Committee standing to pursue the Proposed Claims because each *Louisiana World* condition is met here: (a) each of the Proposed Claims in the Proposed Complaint are colorable and (b) the Debtors' refusal to pursue the Proposed Claims is unjustified. *See In re La. World Expos.*, 832 F.2d 1391, 1397 (5th Cir. 1987) (stating that "bankruptcy courts generally require that the claim be colorable, that the debtor-in-possession have refused unjustifiably to pursue the claim, and that the committee first receive leave to sue from the bankruptcy court") (citations omitted).

II. The Proposed Fraudulent Transfer Claims Are Colorable

53. The Uptier Transaction should be avoided as a fraudulent transfer under both section 544 and section 548 of the Bankruptcy Code. Section 548 provides that a transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred by the debtor, within two years before the petition date is avoidance as fraudulent if the debtor voluntarily or involuntarily:

> (A) made such transfer or incurred such obligation with actual intent to hinder, delay, or defraud any entity to which the debtor was or became, on or after the date that such transfer was made or such obligation was incurred, indebted; or
>
> (B) (i) received less than a reasonably equivalent value in exchange or such transfer or obligation; and
>
> (ii) (I) was insolvent on the date that such transfer was made or such obligation was incurred, or became insolvent as a result of such transfer or obligation;
>
> (II) was engaged in business or a transaction, or was about to engage in business or a transaction, for which any property remaining with the debtor was an unreasonably small capital;
>
> (III) intended to incur, or believed that the debtor would incur, debts that would be beyond the debtor's ability to pay as such debts matured; or
>
> (IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider; under an employment contract and not in the ordinary course of business.

11 U.S.C. § 548.

54. Section 544(b) of the Bankruptcy Code grants the trustee the rights and powers of any unsecured creditor to avoid obligations pursuant to applicable state fraudulent conveyance law. Here, the potentially applicable state fraudulent conveyance laws impose similar requirements as Section 548 of the Bankruptcy Code. 11 U.S.C. § 544(b); *compare* 11 U.S.C. § 548 *with* Col. Rev. Stat. § 38-8-108; N.Y. Debt. & Cred. Law § 276; Del. Code Ann. Tit. 6, § 1307.[8] Section 550 of the Bankruptcy Code provides that, if a transfer is avoided under sections 544 or 548 of the Bankruptcy Code, the transferred property (or the value of such property) may be recovered for the benefit of the debtor's estate. *See* 11 U.S.C. § 550(a). In addition, pursuant to section 551 of the Bankruptcy Code, any transfer or obligation avoided under sections 544 or 548 is automatically preserved for the benefit of the estate. *See* 11 U.S.C. § 551.

55. The Uptier Transaction was a transfer of the Debtors' interests in property and an incurrence of obligations by the Debtors within two years of the Petition Date. Proposed Compl. ¶¶ 75, 83. Through the Uptier Transaction, the Company, among other things, (1) issued $271 million in principal amount of Second Lien Notes, secured by liens on substantially all of the Company's property, (2) paid the Uptier Fees and (3) granted the Second Lien Notes Guarantees. These transactions all took place in March 2025, about six months prior to the Petition Date.

[8] Courts have held that it may be unnecessary to engage in a conflict of law analysis where statutes are not in conflict. *See Janvey v. Brown*, 767 F.3d 430, 436 (5th Cir. 2014) (agreeing with the lower court's conclusion that because there was no conflict of laws between the UFTA-enacting states, the court did not have to undertake a choice-of-law analysis as between those states); *c.f., Schneider Nat'l Transp. v. Ford Motor Co.*, 280 F.3d 532, 536 (5th Cir. 2002) (holding that law of the forum state applies when substantive state law does not conflict); *RDS Real Estate, LLC v. Abrams Grp. Constr., LLC*, No. 1:15CV361-LG-RHW, 2017 U.S. Dist. LEXIS 8180, at *6 (S.D. Miss. Jan. 20, 2017) ("While there are slight differences in the constructive fraud provisions of each state's UFTA, discussed below, the Court finds that those differences do not affect the summary judgment analysis, and, thus, a choice of law analysis at this stage is unnecessary."); *Fireman's Fund Ins. Co. v. Ill. Nat'l Ins. Co.*, No. 3:12-CV-657-CWR-FKB, 2015 U.S. Dist. LEXIS 31206, at *4 (S.D. Miss. Mar. 13, 2015) ("[I]f the laws of the states do not conflict, then no choice-of-law analysis is necessary, and the law of the forum state will apply.") (citations, quotation marks, and brackets omitted).

56. The issuance of the Second Lien Notes was not an act of securing antecedent debt because the Uptier Transaction cancelled a portion of the outstanding Unsecured Notes and replaced them with newly issued Second Lien Notes. This was a novation and incurrence of new obligations, and not the securing of preexisting debt. Had the liens truly been granted "on account of" an antecedent obligation (*i.e.*, on account of the Unsecured Notes), the lien would have been granted in favor of the Unsecured Notes Trustee for the benefit of all holders of Unsecured Notes, rather than exclusively to the subset of lenders participating in the Uptier Notes Exchange.

57. As set forth below and in the Proposed Complaint, the Uptier Transaction, as well as its individual components, also meets the remaining requirements to qualify as constructive and actual fraudulent transfers under section 548 of the Bankruptcy Code, section 544(a)(1)(B) of the Bankruptcy Code, and applicable law, including, but not limited to, the fraudulent conveyance laws as enacted in the states of New York, Colorado, and Delaware. As a result, the Uptier Transaction should be avoided and (i) all Second Lien Notes (other than those that the Coliseum Investors and any other Second Lien Noteholders paid cash for) should convert back to Unsecured Notes, (ii) the guarantees for the Unsecured Notes should be reinstated, (iii) the Subordination Agreement should be deemed null and void or otherwise invalidated, and (iv) the Uptier Fees should be disgorged.

(a) The Uptier Transaction is Avoidable as an Actual Fraudulent Transfer

58. Section 548(a)(1)(A) of the Bankruptcy Code provides that the debtor may avoid a transfer of an interest of the debtor in property, or an obligation that was incurred by the debtor, that was made or incurred with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became . . . indebted." 11 U.S.C. § 548(a)(1)(A). Similarly, under section 544(b) of the Bankruptcy Code, a bankruptcy trustee may avoid a transfer of property or obligation that is voidable under state fraudulent transfer law. 11 U.S.C. § 544(b). As mentioned above, the

fraudulent conveyance laws of the relevant states—Colorado (place of ModivCare's headquarters), New York (the governing law of the Prepetition First Lien Credit Agreement and Prepetition Second Lien Credit Agreement), Delaware (ModivCare's state of incorporation)—are similar to Section 548 of the Bankruptcy Code. *See* Col. Rev. Stat. § 38-8-108; N.Y. Debt. & Cred. Law § 276; Del. Code Ann. Tit. 6, § 1307.

59. The actual intent requirement is satisfied where the debtor knows that the challenged transfer will hinder, delay or defraud its creditors, even if that is not the debtors' primary purpose. As the Seventh Circuit reasoned in finding that the "actual intent" element under Section 548 was satisfied, "[the debtor's] primary purpose may not have been to render the funds permanently unavailable to [creditors] ... [it] certainly should have seen this result as a natural consequence of its actions. In our legal system, every person is presumed to intend the natural consequences of his acts." *In re Sentinel Mgmt. Group*, 728 F.3d 660, 667 (7th Cir. 2013). Similarly,

> § 548(a)(1)(A) intent is established if the actor believes, appreciates, or knows with substantial certainty that creditors will be hindered, delayed, or defrauded as a natural consequence of the transfer, even if the actor's actual motive is not to hinder, delay, or defraud such creditors. Thus, an officer/transferor can harbor § 548(a)(1)(A) intent even if he was trying to salvage the debtor and benefit creditors.

Sher v. JPMorgan Chase Funding (In re Thornburg Mortgage, Inc.), 610 B.R. 807, 828 (Bankr. D. Md. 2019) (internal citations omitted).

60. Here, a natural and obvious consequence of the Uptier Transaction was that unsecured creditors were hindered and delayed in recovering on their claims. While such intent often can only be inferred from the circumstances, that is not necessary here, as the Debtors' CEO clearly admitted that he knew that unsecured creditors would be hindered by the Uptier Transaction. As set forth above, in internal correspondence with senior executives at the time of the transaction, referring to the remaining unsecured creditors, Mr. Sampson admitted that the

Uptier Transaction would [REDACTED] and that they would [REDACTED] [REDACTED] as a result of the Uptier Transaction. Proposed Compl. ¶ 56. These facts alone establish not just a colorable claim for an actual fraudulent transfer, but a strong one.

61. Even without this direct evidence, actual intent to hinder creditors can be inferred from circumstantial evidence and the presence of so-called "badges of fraud." *See Cipolla v. Roberts (In re Cipolla)*, 476 F. App'x 301, 306-7 (5th Cir. 2012); *see also In re Wiggains*, 848 F.3d 655, 661 (5th Cir. 2017). Courts have considered a variety of factors—or "badges of fraud"—to determine whether actual intent exists. *See Soza v. Hill (In re Soza)*, 542 F.3d 1060, 1066-67 (5th Cir. 2008). Courts generally look at six badges of fraud that evidence an intent to hinder, delay, or defraud:

> (1) the lack or inadequacy of consideration; (2) the family, friendship or close associate relationship between the parties; (3) the retention of possession, benefit, or use of the property in question; (4) the financial consideration of the party sought to be charged both before and after the transaction in question; (5) the existence or cumulative effect of the pattern or series of transactions or course of conduct after the incurring of debt, onset of financial difficulties, or pendency or threat of suits by creditors; and (6) the general chronology of the events and transactions under inquiry.

Cadle Co. v. Pratt (In re Pratt), 411 F.3d 561, 565 (5th Cir. 2005) (citing *Pavy v. Chastant (In re Chastant)*, 873 F.2d 89, 90 (5th Cir. 1989)); *In re Soza*, 542 F.3d at 1067. Although not dispositive, the "presence of several 'badges of fraud' gives rise to a presumption of fraudulent intent, which shifts the burden to the [defendant] to demonstrate some legitimate purpose for the transfers." *Carr v. Loeser (In re Int'l Auction & Appraisal Servs., LLC)*, No. 11-00813 (MDF), 2014 Bankr. LEXIS 5294, at *18 (Bankr. M.D. Pa. Aug. 2014) (internal citation omitted); *see also Paradigm Air Carriers, Inc. v. Tex. Rangers Baseball Partners (In re Tex. Rangers Baseball Partners)*, 498 B.R. 679, 712 n.151 (Bankr. N.D. Tex. 2013) ("A single badge of fraud is insufficient to establish intent, but the presence of several may create a presumption that the debts acted with the

requisite intent to defraud.") (quoting *In re Equipment Acq. Resources, Inc.*, 481 B.R. 422, 431 (Bankr. N.D. Ill.2012)).

62. The Debtors and the First Lien Lenders selected certain select former Unsecured Noteholders to participate in the Uptier Transaction and, in turn, delayed and hindered the Left Behind Unsecured Noteholders and other unsecured creditors. *See* Proposed Compl. ¶¶ 82, 110. The Company knew that by executing the Uptier Transaction, certain assets that would have otherwise been available to creditors would be encumbered and that the holders of the Unsecured Notes would be stripped of their subsidiary guarantees. *Id.* ¶¶ 53, 56.

63. Immediately after consummation of the Uptier Transaction, the Company had substantial doubts about its ability to continue as a going concern and pay its debts, including the Incremental Term Loan which was due only a year later. *Id.* ¶ 91. Given these facts and (i) the Company's ongoing bankruptcy preparations starting as early as December 2024, (ii) the maturity date on the Incremental Loan reducing the Company's runway to one year, (iii) the Paul Hastings Group discussing a DIP facility as early as December 2024, and (iv) the Company's chapter 11 filing (under the influence of the Capital Structures Committee controlled by appointees of the First Lien Lenders) just six months after executing Uptier Transaction, it strains credulity to argue that the Company did not know it would need to file chapter 11 before executing the Fifth Amendment and Exchange Agreement. *Id.* ¶¶ 36, 43, 60, 101. This knowledge is evidence of actual fraudulent intent. *See Faulkner v. Ford Motor Credit Co., LLC (In re Reagor-Dykes Motors, LP)*, No. 18-50214 (RLJ) 2022 Bankr. LEXIS 2815, at *34 (Bankr. N.D. Tex. Oct. 4, 2022) (explaining that transfers made in furtherance of a fraudulent scheme while the transferee knew or should have known that solvency was unachievable is evidence of a fraudulent intent because "the

transferor understands that it is making a transfer only to delay inevitable collapse, thus intending to defraud (or hinder or delay) creditors and delay potential recovery.").

64. In light of these facts, it can be reasonably inferred that the Uptier Transaction was an intentional effort by the Debtors to hinder and delay the efforts of the Left Behind Unsecured Noteholders and other unsecured creditors to recover on their claims. Ultimately, the Debtors' efforts put the Uptiered Creditors in a position to capture the value of the reorganized Debtors at a discount in a chapter 11 proceeding. Both parties understood that the result of the Uptier Transaction in a chapter 11 proceeding would be to provide all of the value of the Estates to the Company's secured lenders while leaving unsecured creditors with next to nothing. And the Debtors were indispensable to effectuating the Uptier Transaction. *See, e.g., BAC Home Loans Servicing, LP v. Tex. Realty Holdings, LLC*, 901 F. Supp. 2d 884, 916 (S.D. Tex. 2012) (finding that the defendant's "central role in the alleged scheme [was] strong evidence of [defendant's] intent to defraud [the creditor]").

65. Additionally, the Debtors did not receive reasonably equivalent value in connection with the March 7 Uptier Notes Exchange. Proposed Compl. ¶¶ 93-95; *see* Del. Code Ann. Tit. 6, § 1304 (assessing whether the debtor received reasonably equivalent value for the assets transferred or obligations incurred as a badge of fraud); Col. Rev. Stat. § 38-8-110 (same); N.Y. Debt. & Cred. Law § 273 (same).

66. As discussed in detail below, the Debtors were insolvent at the time of the March 7 Uptier Notes Exchange and could not meet their debt obligations as they became due. Proposed Compl. ¶¶ 84-92; *see* Del. Code Ann. Tit. 6, § 1304(b) (explaining that evidence of actual fraud exists if a debtor was insolvent or became insolvent shortly after a transfer was made or the

obligation was incurred); Col. Rev. Stat. § 38-8-110(2) (same); N.Y. Debt. & Cred. Law § 273(b) (same).

67. Further, three of the Uptiered Creditors were insiders of the Debtors at the time of the March 7 Uptier Exchange by virtue of their substantial equity holdings. Proposed Compl. ¶ 110; *see* Del. Code Ann. Tit. 6, § 1304(b) (explaining that evidence of actual fraud exists if the transfer was to an insider); Col. Rev. Stat. § 38-8-110(2) (same); N.Y. Debt. & Cred. Law § 273(b) (same).

68. In sum, both the direct and circumstantial evidence show that the Debtors proceeded with the Uptier Transaction despite knowing, to a substantial certainty, that the Uptier Transaction would hinder and delay unsecured creditors.

(b) The Uptier Transaction is Avoidable as a Constructive Fraudulent Transfer

(i) The Debtors Were Insolvent Before and After the Uptier Transaction

69. Section 548(a) of the Bankruptcy Code, as well as applicable state law, provides three relevant tests for insolvency: the cash flow test, the balance sheet test, and the capital adequacy test, only one of which must be met to establish a constructive fraudulent transfer claim. 11 U.S.C. § 548(a)(1)(B)(ii). Here, as pleaded in the Proposed Complaint and set forth below, the Debtors were insolvent under each of the three applicable tests. Notably, as part of the Debtors' "independent" investigation into causes of action led by Mr. Silvers (discussed in more detail *infra* at ¶¶ 88, 93-96), the Debtors' [REDACTED] for purposes of the investigation into fraudulent transfer claims associated with the Uptier Transaction. Silvers Rough Dep. Tr. 229:17-24.

70. Cash Flow Test. A debtor fails the cash flow solvency test if, at the time a transfer is made, the debtor intended to incur, or believed or reasonably should have believed that it would incur, debts beyond its ability to pay as they came due. 11 U.S.C. § 548(a)(1)(B)(ii)(III). A court

will evaluate whether any later cash flow problems were reasonably foreseeable when viewed objectively at the time of the transaction at issue. *In re WRT Energy Corp.*, 282 B.R. 343, 411 (Bankr. W.D. La. 2001) ("The question is not whether cash flow projections were correct in hindsight but rather whether they were reasonable and prudent when made.").

71. The Proposed Complaint pleads facts establishing that, at the time of the Uptier Transaction, the Company would be unable to pay debts as they matured. As a result of the Uptier Transaction, the Company increased its secured debt by over 52% and accelerated its nearest maturity by over one year. Proposed Compl. ¶ 84. Immediately after the Fifth Amendment, FTI's covenant test projected [REDACTED] [REDACTED], and that such [REDACTED], but that the Company had [REDACTED] in negotiations with the lenders. *Id.* Breaching these covenants would have constituted an event of default under the First Lien Credit Agreement. "In other words, the Company was not projecting an ability to pay the Incremental Term Loan as it came due in January 2026." *Id.*

72. Furthermore, in February 2025, KPMG, the Company's auditor, advised the Audit Committee that management had determined [REDACTED] [REDACTED] [REDACTED] because [REDACTED] [REDACTED] [REDACTED] [REDACTED] Proposed Compl. ¶ 85. And the market echoed these risks: Octus reported that, although the transaction added cash, the near-term maturity combined with weak operating performance and liquidity made the structure unsustainable and increased the likelihood of default; Moody's expected negative 2025 free cash flow of $25–50

million, which would hinder repayment of the current maturity while complying with covenants. *Id.* ¶ 86.

73. Finally, consistent with the projected defaults under the Fifth Amendment, two weeks after issuing the Second Lien Notes the Company began negotiating a sixth amendment for additional covenant relief through December 31, 2025, though it was never executed. *Id.* ¶ 87.

74. Balance Sheet Insolvency. The Bankruptcy Code defines "insolvent," with regard to an entity other than a partnership or municipality, as a "financial condition such that the sum of such entity's debts is greater than all of such entity's property, at a fair valuation." 11 U.S.C. § 101(32)(A). The facts pleaded in the Proposed Complaint demonstrate that the Debtors disclosed that they were balance sheet insolvent both before and after effectuating the Uptier Transaction. Proposed Compl. ¶¶ 88-89. In particular, in its 10-K for 2024, the Company reported approximately $1.654 billion of total assets as of December 31, 2024 and $1.693 billion of liabilities, with a resulting equity shortfall of approximately $38.5 million. *Id.* ¶ 88. In the Company's 10-Q for the period ending March 31, 2025—*i.e.*, immediately after the Uptier Transaction were effectuated—the Company reported that its total liabilities exceeded its total assets, reporting approximately $1.764 billion and $1.677 billion, respectively. *Id.*

75. Precisely because the Debtors were balance sheet insolvent, at the time of the Fifth Amendment, the definition of "Solvent" under the First Lien Credit Agreement had to be amended to remove the clause requiring that the fair value of property exceeds the total amount of liabilities – *i.e.*, balance sheet solvency – in order for Ms. Gutierrez to certify that the Company was solvent in connection with the Fifth Amendment. Ms. Gutierrez was unable to testify that she [redacted]

[redacted].

76. Capital Adequacy Test. The capital adequacy test examines whether the debtor was engaged in a transaction, or was about to engage in a transaction, for which any property remaining with the debtor was an unreasonably small capital. *See Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, n. 15 (5th Cir. 1997); *see also* 11 U.S.C. § 548(a)(1)(B)(ii)(II). To determine whether a corporation had unreasonably small capital, courts should compare the debtor's projected cash flow with the debtor's capital needs through a reasonable time after the challenged transfer. *See ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278, 396 (S.D. Tex. 2008).

77. Unreasonably small capital "denotes a financial condition short of equitable insolvency" and is "aimed at transferees that leave the transferor technically solvent but doomed to fail." *Id.*; MFS*/Sun Life Trust-High Yield Series v. Van Dusen Airport Servs.,* 910 F.Supp. 913, 944 (S.D.N.Y. 1995); *Moody v. Sec. Pac. Bus. Credit*, 971 F. 2d 1056, 1064 (3d Cir. 1992). The capital adequacy test also requires that a company's projections incorporate some margin of error to account for financial and operational difficulties that are likely to arise. *Moody*, 971 F.2d at 1073; *Brandt v. Hicks, Muse & Co. (In re Healthco Int'l, Inc.)*, 195 B.R. 971, 981 (Bankr. D.Mass. 1996). Accordingly, where a company's projections show that it is "naked to any financial storms that might assail it," it is likely left with unreasonably small capital. *Boyer v. Crown Stock Distrib.*, 587 F.3d 787, 795 (7th Cir. 2009).

78. The Proposed Complaint alleges that, prior to executing the Fifth Amendment, the Company's advisors presented a "downside case" implying a [REDACTED]

[REDACTED]. Proposed Compl. ¶¶ 90-92. ModivCare's capital position was unreasonably small for its foreseeable needs. As of April 24, 2025, the Audit Committee was advised there were [REDACTED]

[REDACTED]

[REDACTED] and would likely have [REDACTED], and these factors [REDACTED] [REDACTED] *Id.* ¶ 91. Further, management's 2025 "3+9" forecast to the Board showed the Company's l[REDACTED] despite the $105 million of new money and stated that a [REDACTED] dated May 20, 2025. *Id.* ¶ 92. The same materials reflected a balance-sheet outlook where total liabilities would c[REDACTED] [REDACTED]. *Id.* What is more, Ken Shepard, ModivCare's Senior Vice President, testified that management would only present such "downside scenarios" [REDACTED] Proposed Compl. ¶ 90. Taken together, these contemporaneous, forward-looking indications support the allegation that the property remaining with the Debtors was unreasonably small capital within the meaning of § 548(a)(1)(B)(ii)(II).

(ii) The Debtors Did Not Receive Reasonably Equivalent Value for the Uptier Transaction

79. "Reasonably equivalent value" is not defined in the Bankruptcy Code. The determination of reasonably equivalent value is left to the courts, which "judge the consideration given for a transfer from the standpoint of creditors." *Stanley v. US Bank Nat'l Ass'n (In re TransTexas Gas Corp.)*, 597 F.3d 298, 306 (5th Cir. 2010). In evaluating reasonably equivalent value, the Fifth Circuit has stated that "[t]he proper focus is on the net effect of the transfers on the debtor's estate, ***the funds available to the unsecured creditors***." *Id.* (emphasis added) (quoting *In re Viscount Air Servs., Inc.*, 232 B.R. at 435); *see also ASARCO LLC*, 396 B.R. at 251 (explaining that "[t]he determination of whether the debtor received REV should be made from the standpoint

of the debtor's creditors, by looking at the net effect of the transfer on the unsecured creditors." (citation omitted)).

80. Determining whether value given was reasonably equivalent is a fact intensive inquiry. *See In re TransTexas Gas Corp.*, 597 F.3d at 306 ("The question of reasonable equivalence is largely a question of fact, as to which considerable latitude must be allowed to the trier of the facts.") (internal quotations omitted); *see also Gaudet v. Babin (In re Zedda)*, 103 F.3d 1195, 1206 (5th Cir. 1997) ("Whether a transfer is made for a reasonably equivalent value is, in every case, largely a question of fact."). Because reasonably equivalent value compels a factual analysis of all relevant circumstances, the issue is not suited to be determined on a motion to dismiss or at the standing motion phase of an action. *ELPG I, LLC v. Citibank, N.A. (In re Qimoda Richmond), LLC*, 467 B.R. 318, 327 (Bankr. D. Del. 2012) ("[T]he issue of 'reasonably equivalent value' requires a factual determination that cannot be made on a motion to dismiss."); *see Stanziale v. Brown-Minneapolis ULC, LLC (In re BMT-NW Acquisition, LLC)*, 582 B.R. 846, 858 (Bankr. D. Del. 2018) ("Determining reasonable equivalence 'requires case-by-case adjudication,' which depends on 'all the facts of each case, an important element of which is market value.'" (quoting *Barrett v. Commonwealth Fed. Sav. And Loan Ass'n*, 939 F.2d 20, 23 (3d Cir. 1991)); *In re WRT Energy Corp*., 282 B.R. at 405 ("The detailed fact-finding and valuation entailed in the reasonably equivalent value analysis often 'requires the fact finder to assess the contrary opinions of the competing experts.'"); *see, e.g.*, *Think3 Litig. Trust v. Zuccarello (In re Think3, Inc.*), 529 B.R. 147, at 200 (Bankr. W.D. Tex. 2015) (holding that plaintiff stated sufficient facts to establish reasonably equivalent value survive a motion to dismiss).

81. In conducting a determination of "reasonably equivalent value," courts rely on a "totality of the circumstances" test. *See Asarco LLC*, 396 B.R. at 338 ("The more widely accepted

approach is to look at the totality of the circumstances."). Under this approach, courts will examine the disparity between the value conferred and the value received, whether the transaction was made at arm's length, and the good faith of the parties in executing the transaction. *Id.*

82. Here, the facts pled in the Proposed Complaint demonstrate that the Debtors received far less than reasonably equivalent value in the Uptier Transaction. Proposed Comp. ¶¶ 93-95. Although the precise amount of the value differential in the exchange will be determined at trial, there is no genuine dispute that it existed and that it was substantial. The Debtors knew and contemporaneously acknowledged that the Uptiered Creditors would be placed in a ████ ██████ by the Uptier Transaction, while unsecured creditors (ultimately, the Debtors' estate) would suffer █████████████ *Id.* ¶ 93. Mr. Sampson's prediction proved correct, as the Unsecured Notes immediately traded down on the announcement of the Uptier Transaction as the market appreciated the ██████████ that the Uptier Transaction would substantially diminish the assets available to pay unsecured creditors. *Id.*

83. Put differently, the Uptier Transaction diminished the value in the Debtors' enterprise beyond its secured debt. This "equity cushion" could have potentially been immensely beneficial in the Company's inevitable bankruptcy filing, giving the Company the ability to threaten (or even pursue) the nonconsensual use of cash, the reinstatement of the loans under First Lien Credit Facility and other defensive mechanics to preserve value for all stakeholders instead of being in a position of being forced to relinquish it all to the First Lien Lenders. While the actual value of the Debtors' assets immediately prior to the Uptier Transaction will be proven at trial, there is no dispute that it substantially exceeded the Debtors' secured debt of approximately $769 million.[9] This equity cushion could have been immensely useful to the Company in its

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[9] By way of illustration, as of December 31, 2024, the Company reported approximately $1.65 billion of assets.

unavoidable bankruptcy filing. Instead, the Company incurred an additional approximately $406 million of secured debt, substantially depleting that equity cushion and giving away precious optionality. *Id.* ¶ 94. Ultimately, that loss of optionality resulted in the Debtors proposing a plan of reorganization that would hand over the entire Company to the First Lien Lenders, demonstrating the complete evaporation in the value of the Debtors' business beyond its secured debt at the time of the Uptier Transaction. This too demonstrates a lack of reasonably equivalent value.

84. On top of this, as part of the same overall transaction, the Debtors also gave substantial additional value to the Uptiered Creditors, including: (1) fees owed to the Uptiering Creditors in the amount of $13.2 million; (2) the valuable Second Lien Notes Guarantees; (3) through the Subordination Agreement, the purported elevation of any unsecured (*i.e.*, deficiency) claims of the Uptiered Creditors above the claims of the unsecured claims of the holders of the Unsecured Notes; (4) increased interest payments if the Company chose to pay interest in kind (which was required given the Company's lack of liquidity); (5) significant control over the Company, including rights to appoint "independent directors" to the Board and a committee with such directors, as well as new consent requirements; and (6) a potential make-whole premium. *Id.* ¶ 95. These additional benefits aggregate to additional value that the Company parted with in the Uptier Transaction that was not reasonably equivalent to what it received.

85. Courts have found that the transfer of value in exchange for opportunity to avoid a potential default or bankruptcy does not constitute value when, like here, it only delayed the inevitable. *See Senior Transeastern Lenders v. Official Comm. of Unsecured Creditors* (*In re TOUSA, Inc.*), 680 F.3d 1298, 1311-13 (11th Cir. 2012); *Feltman v. Wells Fargo Bank, N.A.* (*In*

ModivCare Inc., Yearly Report (Form 10-K) (December 31, 2024) at 86, 111.

re TS Emp., Inc.), 597 B.R. 494, 528 (Bankr. S.D.N.Y. 2019) ("The opportunity to avoid a default or bankruptcy may not necessarily constitute 'reasonably equivalent value.'"); *cf. Official Comm. of Unsecured Creditors v. Credit Suisse First Boston* (*In re Exide Techs.*) 299 B.R. 732, 747-48 (Bankr. D. Del. 2003) (assertion of reasonable equivalent value of an "agree[ment] to forbear from exercising remedies," requires "a showing of what the value of the forbearance was"); *Stillwater Nat'l Bank & Trust Co. v. Kirtley* (*In re Solomon*), 300 B.R. 57, 67 (Bankr. N.D. Okla. 2003) (finding that a forbearance was not reasonably equivalent value for granting additional security), *aff'd,* 299 B.R. 626 (10th Cir. 2003). Here, that is the case. In fact, the Uptier Transaction made it more difficult for the Debtors to avoid their inevitable insolvency by restricting the Debtors' ability to raise additional capital in the future or sell their assets.

86. When considering the totality of the circumstances, it is clear that the Uptier Transaction was a lopsided giveaway to the Uptiered Creditors who, as alleged in the Proposed Complaint, were positioning themselves for the inevitable bankruptcy. And any "value" that the Uptiered Creditors provided in the form of short-term liquidity and covenant relief was illusory, precisely because bankruptcy was inevitable. And even to the extent bankruptcy was not a virtual certainty (it was), any value that could be ascribed to the liquidity and covenant relief here is difficult to quantify, subjective, and highly fact dependent. The fact-intensive nature of this "totality of the circumstances" analysis would not even be a suitable question for summary judgment, let alone for a determination of whether the claims are colorable for purposes of this Motion.

(c) In the Alternative, the March 14 Uptier Notes Exchange is Avoidable as a Preferential Transfer

87. Section 547 of the Bankruptcy Code provides that certain transfers of an interest in the Debtors' property can be avoided as preferential transfers. To avoid a transfer under section

547(b) of the Bankruptcy Code, a plaintiff must show that the transfer: (i) was made to or for the benefit of a creditor; (ii) was for or on account of an antecedent debt; (iii) was made while the debtors were insolvent; (iv) was made on or within 90 days of the petition date or one year if the creditor was an insider; and (v) enables such creditor to receive more than it would have if the case were a chapter 7 liquidation. *See* 11 U.S.C. § 547(b), (g); *In re Nathan & Miriam Barnert Mem'l Hosp. Ass'n*, No. 07-21631 (DHS), Adv. No. 07-02261 (DHS), 2009 WL 3230789 at *1 (Bankr. D.N.J. Oct. 5, 2009).

88. The Debtors' Independent Director, Daniel Silvers, who was appointed to lead an investigation into causes of action that the Debtors may have, testified that, as part of that investigation, he [REDACTED] [REDACTED]. Silvers Rough Dep. Tr. 256:25-257:5. Solely in the alternative to the foregoing allegations relating to the Uptier Transaction being an actual and constructive fraudulent transfer, the Committee asserts that the March 14 Uptier Notes Exchange was a transfer made to, or for the benefit of, Coliseum, who was a creditor of the Debtors at the time of the March 14 Uptier Notes Exchange, on account of an antecedent debt or debts owed by the Debtors to Coliseum before such transfers were made.

89. The March 14 Uptier Notes Exchange was made while the Debtors were insolvent. Proposed Compl. ¶ 128. At all relevant times, the Debtors' debts and liabilities exceeded the reasonable fair value of their assets, and they did not have the ability to meet their maturing obligations or to satisfy their existing or probable liabilities as they came due in the ordinary course of their business. Coliseum qualifies as a statutory insider under section 101(31) of the Bankruptcy Code as Coliseum was persons in control of the Debtors by virtue of his status as a substantial equityholder in ModivCare. The March 14 Uptier Notes Exchange was made within one year of

the Petition Date. As a result of the March 14 Uptier Notes Exchange, Coliseum received more than they would be entitled to receive in a hypothetical chapter 7 case had the transfers had not been made. *Id.* ¶ 131.

90. Accordingly, in the alternative to the First and Second Causes of Action, the March 14 Uptier Notes Exchange should be avoided as a preferential transfer under section 547(b) of the Bankruptcy Code, and the transferred assets, or the value thereof, should be recovered and preferred in their entirety for the benefit of the Estates and unsecured creditors.

III. Demand Would be Futile

91. Under Section 704(a)(1) of the Bankruptcy Code, a debtor in possession has an obligation to pursue estate causes of action if doing so would maximize the value of the estate. *La. World Exposition*, 858 F.2d at 246. When a colorable cause of action exists but the debtor unjustifiably "is unable or unwilling to fulfill its obligations" it is appropriate for a creditors' committee to be granted standing to pursue such claims. *Id.* at 252. Where, as here, bringing an action is in the best interests of the estates but the debtors are prevented (but not a committee) from doing so, failure to bring that claim is "unjustified" under the Bankruptcy Code. *See Canadian Pac. Forest Prods. Ltd. v. J.D. Irving, Ltd. (In re Gibson Grp., Inc.)*, 66 F.3d 1436, 1441 (6th Cir. 1995) (holding that debtor's failure to bring a value-maximizing claim is "unjustified" for the purposes of committee standing even if the motive of the debtor in failing to bring that claim is justified, such as a conflict of interest or lack of funds).

92. Moreover, the "unjustifiable refusal" element to award derivative standing to a committee is not necessary in situations where, as here, demand would be futile because the debtor has previously agreed not to sue (such as in connection with the proposed plan which seeks to release claims against the directors and officers and ratify the Uptier Transaction). *See, e.g., Official Comm. Unsecured Creditors v. Clark (In re Nat'l Forge Co.)*, 326 B.R. 532, 544-45

(Bankr. W.D. Penn. 2005) (finding formal request of debtor to bring action waived under DIP financing orders would have been futile as debtor could not have "seriously entertained the idea").

93. On August 14, 2025, Daniel Silvers, an "independent" member of the Board selected by the Consenting Creditors, was appointed to investigate potential claims and causes of action that the Debtors might hold against current and former investors, creditors, equityholders, members, directors, managers, and officers, and certain other parties currently or formerly affiliated or otherwise related to or involved with the Debtors. *See Declaration of Daniel B. Silvers, Investigating Director of ModivCare Inc., In Support of Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* [Docket No. 687] (the "**Silvers Declaration**").

94. On November 10, 2025, Mr. Silvers filed the Silvers Declaration, explaining that "Quinn Emanuel is conducting a thorough Investigation" at Mr. Silvers' direction, related to, among other things, the Fifth Amendment and Exchange Agreement, and summarizing his findings regarding the "ongoing" investigation. Despite the fact that any investigation reports were to be submitted by November 10 under the Scheduling Order, a deadline that was deliberately sequenced before the Committee's November 14 deadline to submit a standing motion, it is clear from Mr. Silvers' Declaration and his deposition testimony that Mr. Silvers' investigation is still active and ongoing in all material respects and that he has not reached any final conclusions.[10] In any event, the Silvers Declaration preliminarily concludes that there are no viable claims or causes of action held by the Debtors and that the Plan Releases are appropriate and a reasonable exercise of the Debtors' business judgment. *See* Silvers Declaration ¶ 36. Specifically, Mr. Silvers testified

[10] The Committee reserves all rights, including the right to object to any attempt by any party to rely on the conclusions of Mr. Silvers' incomplete investigation, or any attempt by Mr. Silvers or the Debtors to submit an untimely update to Mr. Silvers' declaration.

that, on a preliminary basis, he had [REDACTED] [REDACTED]. Silvers Rough Dep. Tr. 263:24-264:21.

95. The Committee has significant concerns regarding the purported "independence" of the investigation. In a shocking last-minute production that only came to light through the Committee's questioning of a witness in a deposition just hours before the filing of this Motion, the Debtors produced a previously undisclosed letter from Mr. Mounts Gonzales to the Company, raising substantial questions regarding Mr. Silvers' independence. The letter states, among other things, that Mr. Silvers [REDACTED] To be clear, these are the same lenders that were key participants in the Uptier Transaction and which Mr. Silvers is tasked with investigating.

96. These concerns about independence are only heightened by what the Committee has learned about the process of the Investigation. Importantly, Mr. Silvers did not serve document requests on the Uptiered Creditors—who should have been the key targets of the investigation—and instead found it sufficient for Quinn Emanuel to be provided with the documents produced by the First Lien Lenders in response to the discovery request served by the UCC. *Id.* 137:9-138:24. But, the Committee did not receive the First Lien Lenders' document production until 8:43 p.m. (ET) on November 4, 2025, the night before Quinn Emanuel's November 5, 2025 report was shared with Mr. Silvers, making it exceedingly unlikely that Mr. Silvers or Quinn Emanuel incorporated any review of such materials into their findings. At his deposition, Mr. Silvers testified that he could not say one way or the other whether [REDACTED]

[REDACTED]. *Id.* 144:6-22. He admitted, however, that he had no reason to believe that [REDACTED]. *Id.* 143:7-10. Mr. Silvers' also admitted that none of the First Lien Lenders were interviewed in connection with his investigation. *Id.* 166:10-13.

97. Critically, Mr. Silvers testified at his deposition that he had not [REDACTED] or conducted any [REDACTED]. *Id.* 113:22-114:22. Mr. Silvers and his counsel claim that this 85-page report is privileged and has refused to share it with the Committee. *Id.* 100:3-7; Silvers Declaration ¶ 17. Because the Debtors have claimed that all of the advice that was received in connection with the decision to release the claims is subject to privilege, the Court has no record basis on which to determine the substantive factual bases or legal precepts upon which the apparent decision to release the Proposed Claims was based.[11]

98. For all of these reasons, making a demand on the Debtors to pursue the Proposed Claims would be futile.

IV. The Committee Should be Granted Exclusive Authority to Settle the Proposed Claims

99. The Committee is entitled not only to prosecute the Proposed Claims, but also to exclusively settle any of the Proposed Claims. Courts in this district and elsewhere have provided similar relief to committees. *See, e.g., Ctr. Strategic Invs. Holdings Ltd. v. Official Comm. of Unsecured Creditors of SLP, L.L.C. (In re Senior Living Properties, LLC)*, 294 B.R. 698, 701

[11] Although Mr. Silvers states that Quinn Emauel has prepared a lengthy report with its findings, he does not cite to any provision or provide any foundation for his conclusion. Instead, Mr. Silvers reiterates statements made by the Debtors in SEC filings and the Disclosure Statement to support his conclusion.

(Bankr. N.D. Tex. 2003) (noting the committee had exclusive authority to pursue and settle its alter ego claims); *In re Majestic Cap. Ltd.*, No. 11-36225 (Bankr. S.D.N.Y. Dec. 12, 2011) [Docket No. 211] (granting committee exclusive authority to pursue and settle claims); *In re Evergreen Solar, Inc.*, No. 11-12590 (Bankr. D. Del. Oct. 28, 2011) [Docket No. 382] (granting derivative standing to unsecured creditors' committee included "exclusive right and authority to negotiate and enter into settlements on behalf of the Debtor's estate" with respect to certain causes of action); *In re Old CarCo LLC*, No. 09-50002 (Bankr. S.D.N.Y. Aug. 13, 2009) [Docket No. 5151] (same).

100. Any such settlements would be subject to approval of this Court (pursuant to notice and a hearing with all parties, including the Debtors, reserving the right to object). It is indisputable that any decision to settle any of the Proposed Claims, and at what level, will have a direct economic impact on the Debtors' unsecured creditors, whose interests the Committee represents in these cases. It also stands to reason that the party with the authority to bring the Proposed Claims also be able to settle them.

RESERVATION OF RIGHTS

101. The Committee reserves its right to supplement this Motion and seek standing for any claims or causes of actions uncovered by Mr. Silvers. As stated in the Silvers Declaration, Mr. Silvers' investigation remains ongoing and therefore, could be supplemented with newly discovered claims and causes of action held by the Debtors. To the extent Mr. Silvers supplements or otherwise amends the Silvers Declaration and identifies claims, the Committee reserves its right to seek standing to pursue such claims to ensure such potentially valuable claims are not released on account of procedural technicality.

NOTICE

102. 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 Committee submits that, under the circumstances, no other or further notice is required. 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.

CONCLUSION

103. WHEREFORE, for the reasons set forth herein, the Committee respectfully requests that the Court entered the Order granting the relief requested herein and other relief that the Court deems appropriate under the circumstances.

Dated: November 14, 2025
Houston, Texas

/s/ Charles R. Koster

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Counsel for the Official Committee of Unsecured Creditors

Certificate of Service

I certify that on November 14, 2025, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Charles R. Koster
Charles R. Koster

EXHIBIT A

Proposed Order

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

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

ORDER GRANTING MOTION OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FOR (I) LEAVE, DERIVATIVE STANDING, AND AUTHORITY TO COMMENCE AND PROSECUTE CERTAIN UPTIER TRANSACTION CLAIMS AND CAUSES OF ACTION ON BEHALF OF THE DEBTORS' ESTATES AND (II) EXCLUSIVE SETTLEMENT AUTHORITY

Upon the *Motion of the Official Committee of Unsecured Creditors for (I) Leave, Derivative Standing, and Authority to Commence and Prosecute Certain Uptier Transaction Claims and Causes of Action on Behalf of the Debtors' Estates and (II) Exclusive Settlement Authority* (the "**Motion**") of the Official Committee of Unsecured Creditors (the "**Committee**") of ModivCare, Inc. and its affiliated debtors and debtors-in-possession (collectively, the "**Debtors**") in these Chapter 11 Cases, seeking entry of an order (this "**Order**"), under sections 1103(c) and 1109(b) of the Bankruptcy Code, authorizing the Committee to pursue, and, if appropriate, settle certain Proposed Claims set forth in the Proposed Complaint against the proposed Defendants, and other potential parties, on behalf of and for the benefit of the Debtors' estates, all as more fully set forth in the Motion; and the Court having jurisdiction over this matter under 28 U.S.C. § 1334; and the Court having found that this proceeding is a core proceeding

[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' proposed 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.

pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in the Court is proper under 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the Bankruptcy Rules and the Local Rules, and it appearing that no other or further notice need be provided; and the record of the Hearing, if any, and all of the proceedings had before the Court and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor, it is hereby ORDERED that:

1. The Motion is GRANTED.

2. The Committee is granted standing to pursue, and if appropriate, settle the Proposed Claims on behalf of and for the benefit of the Debtors' estates.

3. The Committee's right to seek standing with regard to any other claims and/or causes of action is not precluded, prevented, or otherwise prejudiced upon entry of this Order.

4. The Court retains jurisdiction and power to interpret and enforce the terms of this Order.

EXHIBIT B

Proposed Complaint

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

In re: MODIVCARE INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 25-90309 (ARP) (Jointly Administered)
OFFICIAL COMMITTEE OF UNSECURED CREDITORS OF MODIVCARE INC., on behalf of the estates of the Debtors, *Plaintiff* *v.* Wilmington Trust, National Association, solely in its capacity as Administrative Agent and Collateral Agent under the First Lien Credit Agreement, Ankura Trust Company, LLC, solely in its capacity as Trustee and Notes Collateral Agent under the Second Lien Notes Indenture, Coliseum Capital Partners, L.P.; Blackwell Partners LLC, [OTHER UPTIERED CREDITORS], and John Does 1-100, *Defendants.*	Adv. Proc. No. 25-________ **JURY TRIAL DEMANDED**[2]

[PROPOSED] ADVERSARY COMPLAINT

The Official Committee of Unsecured Creditors ("**Plaintiff**" or the "**Committee**") of ModivCare Inc. ("**ModivCare**") and its affiliated debtors and debtors in possession (collectively, the "**Debtors**," and together with their non-Debtor affiliates, "**Company**") in the above-captioned chapter 11 cases (the "**Chapter 11 Cases**"), by and through its undersigned counsel, files this

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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' proposed 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 The Committee reserves its right to seek a jury trial in connection with appropriate claims.

complaint (the "**Complaint**") as Plaintiff on behalf of the Debtors' estates against Defendants Wilmington Trust, National Association, solely in its capacity as Administrative Agent and Collateral Agent under the First Lien Credit Agreement (the "**First Lien Agent**"),[3] Ankura Trust Company, LLC, (the "**Second Lien Trustee**"), solely in its capacity as Trustee and Notes Collateral Agent under the Second Lien Notes Indenture, Coliseum Capital Partners, L.P.; Blackwell Partners LLC, [OTHER UPTIERED CREDITORS][4] and John Does 1-100 (collectively with the First Lien Agent, the Second Lien Trustee, Coliseum Capital Partners, L.P. and Blackwell Partners LLC, the "**Defendants**"). In support of this Complaint, and based upon knowledge, information, belief, and its investigation to date, the Committee alleges as follows:

NATURE OF ACTION

1. Just six months before the Petition Date, at a time when the Debtors were unquestionably insolvent and had no prospect of avoiding a near term bankruptcy filing, the Debtors (1) issued $251 million in Second Lien Notes to a select group of existing creditors (the "**March 7 Uptiered Creditors**") in exchange for $251 million of Unsecured Notes (the "**March 7 Uptier Notes Exchange**") and (2) issued approximately $20 million in Second Lien Notes to Coliseum, one of the Company's major shareholders (together with the March 7 Uptiered Creditors, the "**Uptiered Creditors**" or "**Second Lien Noteholders**"), in exchange for an equal amount of the Unsecured Notes (the "**March 14 Uptier Notes Exchange**" and, together with the March 7 Uptier Notes Exchange, the "**Uptier Notes Exchange**"). This exchange, including the Debtors' pledge of assets as collateral to secure the Second Lien Notes, the Second Lien Notes

[3] Wilmington Trust, National Association has been selected as successor First Lien Agent to replace JPMorgan Chase Bank, N.A. ("**JPM**"). *See* Amended Disclosure Statement at 28, n. 9. If such replacement has not yet taken effect at the time this Complaint is to be filed, Plaintiff reserves the right to name JPM as an additional Defendant.

[4] Other Uptiered Creditors to be named if standing to bring the Complaint is granted.

Guarantees (as defined below) and the payment of the Uptier Fees (as defined below), was a transfer of "an interest in property" of the Debtors under section 548 of the Bankruptcy Code that was enormously valuable to the previously unsecured Uptiered Creditors and if allowed to stand would severely impair the recoveries of the remaining creditors. By contrast, on the Debtors' side of the ledger, the Uptier Notes Exchange was a giveaway to the Uptiered Creditors, with the pledge of collateral substantially reducing the Debtors' equity cushion in their collateral.

2. While precise values will be determined at trial, there is no genuine dispute that the Uptier Notes Exchange was a tremendous giveaway to the Uptiered Creditors at the expense of the remaining unsecured noteholders who were not invited to participate in the Uptier Notes Exchange (the "**Left Behind Unsecured Noteholders**") and other unsecured creditors. As the Uptier Transaction was being finalized, the Debtors' CEO, L. Heath Sampson, admitted in an internal email to the other senior executives referring to the March 7 Uptier Notes Exchange that [REDACTED] Despite full awareness of the [REDACTED] that would be suffered by the Left Behind Unsecured Noteholders, the Debtors proceeded with the Uptier Transaction anyway.

3. Not only did the Debtors elevate $271 million of Unsecured Notes to secured status with first access to substantially all of the Debtors' assets, the Debtors also stripped standard covenants and other protections from the Left Behind Unsecured Notes and released the guarantee obligations of forty-eight ModivCare subsidiaries under those notes (such guarantee stripping, collectively with the Uptier Notes Exchange, the Second Lien Notes Guarantees, the Uptier Fees

and the Subordination Agreement (as defined below), the "**Uptier Transaction**"). As a further part of the scheme, the Uptiered Creditors also directed (by the vote of their cross holdings) the Unsecured Notes Trustee to enter into a subordination agreement providing for payment subordination of the Unsecured Notes to the First Lien Loans and Second Lien Notes. Meanwhile, the newly-created Second Lien Notes were granted secured guarantees by substantially all of the ModivCare subsidiaries (the "**Second Lien Notes Guarantees**").

4. Moreover, for the privilege of giving away all of this value to the Uptiered Creditors, the Debtors paid $10.19 million to the lenders under the First Lien Credit Agreement (the "**First Lien Lenders**") and various fees in connection with the Uptier Transaction and related transactions.

5. By effectuating this massive value transfer to the Uptiered Creditors, the Debtors had actual intent to, and did, hinder and delay the Left Behind Unsecured Noteholders and other unsecured creditors from recovering on their claims. Despite bankruptcy being a virtual certainty, the Debtors consummated a "liability management" transaction (the Uptier Transaction) that they knew would cause unsecured creditors to suffer "substantial losses" and that immediately left the Debtors needing additional liquidity that would not be available, outside of chapter 11, to survive. The Debtors had already (1) hired Kirkland & Ellis LLP ("**K&E**") to prepare for bankruptcy and invited a leading K&E bankruptcy attorney attend at least one Board meeting; (2) disclosed in its SEC filings, before and after the Uptier Transaction, that "substantial doubt exists about our ability to continue as a going concern;" (3) discussed with its lenders that the [redacted] [redacted] and prepared an illustrative DIP term sheet; and (4) had the Company's financial advisor create 13-week cash flows assessing the Company's solvency. And as a result of the Uptier Transaction, the Company increased its secured

debt by over 52% and accelerated its nearest maturity by over one year. As discussed in more detail herein, at the time of the Uptier Transaction, the Debtors were already insolvent as they were projecting the inability to pay the Incremental Term Loan as it came due in January 2026 and the Company was anticipating the need for additional liquidity to support its operations.

6. The Debtors and the Uptiered Creditors will likely argue that the giveaway to this select group of creditors was justified because the Uptiered Creditors also provided some new liquidity to the Company in the form of a $75 million incremental term loan and Coliseum's purchase of $30 million of Second Lien Notes at a time of financial distress. This is irrelevant with respect to demonstrating actual intent to hinder and delay unsecured creditors. In any event, it is clear from the evidence that this incremental funding, combined with the Uptier Transaction, was merely an exercise by the Uptiered Creditors to better position themselves in the inevitable bankruptcy. To that end, the additional liquidity came with severe additional restrictions and ceded control to the Uptiered Creditors over decisions regarding the inevitable bankruptcy. In short, any supposed "value" provided to the Company as a result of the additional liquidity was entirely illusory.

7. For these reasons, and as set forth in more detail below, the Uptier Transaction was an actual fraudulent transfer, avoidable under sections 544 and 548 of the Bankruptcy Code because, by entering into the transaction, the Debtors intended to hinder and delay the Left Behind Unsecured Noteholders and other unsecured creditors. Further, because the Debtors did not receive reasonably equivalent value in exchange for the transfers comprising the Uptier Transaction, and because the Uptier Transaction occurred only six months prior to the Petition Date (well within any relevant "lookback period") when the Debtors were insolvent, the Uptier Transaction was also an avoidable constructive fraudulent transfer.

PARTIES[5]

8. The Committee was appointed in the Chapter 11 Cases on September 5, 2025, pursuant to section 1102(a) of title 11 of the United States Code (the "**Bankruptcy Code**") by the United States Trustee the Southern District of Texas. The Committee is vested with, among other things, the powers described in section 1103 of the Bankruptcy Code, including the power to investigate the acts, conduct, assets, liabilities, and financial condition of the Debtors, and any other matter relevant to the Chapter 11 Cases.

9. The Committee brings this action derivatively, on behalf of the Debtors' estates (the "**Estates**"). Standing was granted to the Committee to file this Complaint by the *Order Granting the Official Committee of Unsecured Creditors' Motion For (I) Leave, Standing, and Authority to Commence and Prosecute Certain Claims and Causes of Action on Behalf of Debtors' Estate and (II) Exclusive Settlement Authority* [Docket No. [●]].

10. Defendant Wilmington Trust, National Association is a federal savings bank organized under the laws of the United States and the National Bank Act, with its principal office located in the state of Delaware. This suit is brought against it solely in its capacity as First Lien Agent.

11. Defendant Ankura Trust Company, LLC is a New Hampshire state-chartered trust company organized under the laws of the United States and the National Bank Act, with its principal office located in the state of New Hampshire. This suit is brought against it solely in its capacity as Second Lien Trustee.

12. Defendant Blackwell Partners LLC ("**Blackwell Partners**") is a Delaware limited

5 Plaintiff reserves the right to name additional defendants, including the Uptiered Creditors, either through the amendment of this Complaint if standing is granted, and such defendants are related to the Defendants named herein, or through a subsequent motion for standing to bring claims against additional defendants.

liability company.

13. Defendant Coliseum Capital Partners, L.P. (together with Blackwell Partners, "**Coliseum**") is a Delaware limited partnership. On December 5, 2024, Coliseum held 20.88% of the Company's common stock.

14. [OTHER UPTIERED CREDITORS]

15. Defendants John Does 1-100 are defendants whose true names, identities and capacities are presently unknown to the Committee, including transferees and subsequent transferees that are not currently named. As and when the names, identities, and capacities of these fictitiously named Defendants become known, the Committee will amend this Complaint to set forth these Defendants' true names, identities, and capacities and otherwise proceed against them as if they had been named parties upon the commencement of this adversary proceeding.

JURISDICTION AND VENUE

16. The Court has jurisdiction over this proceeding pursuant to 28 U.S.C. §§ 157(b), 1331, 1334(a) and 1367. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2) and an adversary proceeding pursuant to Rule 7001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

17. The Committee consents to entry of a final order by the Court in connection with this Complaint to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

18. Venue in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409 because this adversary proceeding arises under and in connection with cases commenced under chapter 11 of the Bankruptcy Code.

FACTUAL BACKGROUND

A. ModivCare's Aggressive Acquisition Strategy Required Funding

19. ModivCare was founded in 1996 as The Providence Services Corporation and became publicly traded in 2003. The Company provides non-emergency medical transportation services. Over the years, the Company has acquired other business segments to create a more well-rounded care solutions provider.[6]

20. At least in part to finance ModivCare's aggressive acquisition strategy, ModivCare entered into three major financing transactions in the last five years. First, on November 4, 2020, the Company issued $500 million in aggregate principal amount of 5.875% senior unsecured notes due on November 15, 2025 (the "**2025 Unsecured Notes**"). Subsequently, on August 24, 2021, ModivCare issued an additional $500 million in aggregate principal amount of 5.000% Senior Unsecured Notes due October 1, 2029 (the "**Unsecured Notes**") pursuant to that certain Senior Notes Indenture, dated August 24, 2021 (as amended, restated, supplemented or otherwise modified, the "**Unsecured Notes Indenture**") by and between ModivCare, as issuer, and Wilmington Saving Fund Society, FSB (as successor to The Bank of New York Mellon Trust Company, N.A.), as trustee (the "**Unsecured Notes Trustee**"), and the subsidiaries of ModivCare from time to time party thereto as guarantors.[7] At issuance, forty-eight subsidiaries of ModivCare were listed as guarantors under the Unsecured Notes.

21. Six months later, on February 3, 2022, ModivCare entered into a credit agreement (as amended, restated, supplemented or otherwise modified, the "**First Lien Credit Agreement**") providing for a revolving credit facility (the "**Revolving Credit Facility**") in an aggregate

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[6] *See Declaration of Chad J. Shandler in Support of Debtors' Chapter 11 Petitions and First Day Relief* [Docket No. 014], ¶ 18].

[7] *See* ModivCare Inc., Yearly Report (Form 10-K) (Dec. 31, 2024) at 111.

principal amount of up to $325 million at any time outstanding (subject to increase on the terms set forth therein) with the First Lien Lenders and JPM, as administrative agent.[8] The Revolving Credit Facility was set to mature on February 3, 2027.

22. On July 1, 2024, pursuant to the third amendment to the First Lien Credit Agreement, the Company established a new term loan facility (the "**Term Loan Facility**" and, together with the Revolving Credit Facility, the "**First Lien Credit Facility**") in the aggregate principal amount of $525 million. The proceeds of the Term Loan Facility were used to (1) redeem the Company's 2025 Unsecured Notes, (2) repay a portion of the Revolving Credit Facility, and (3) pay transaction fees and expenses. The Term Loan Facility was set to mature on July 1, 2031.

B. Despite Raising $1.85 Billion Since 2020, the Company Contemplated Bankruptcy in 2024

23. Immediately following the Company obtaining the $525 million Term Loan Facility, the Company relayed to ModivCare's board of directors (the "**Board**") that its liquidity

24. In mid-September 2024, the Board was discussing . Within days of that meeting, a Board presentation stated that

The Company was analyzing whether the challenges

25. On September 30, 2024, the Company, the First Lien Lenders, and the First Lien Agent executed the Fourth Amendment to the First Lien Credit Facility (the "**Fourth**

[8] As stated, *supra*, Wilmington Trust, National Association has been selected as successor First Lien Agent to replace JPM. *See* Amended Disclosure Statement at 28, n. 9.

Amendment"). The Fourth Amendment, among other things, provided the Company with immediate covenant relief by adjusting the permissible maximum total net leverage ratio from 5.25:1.00 to 6.50:1.00 for the fiscal quarter ended September 30, 2024, reduced the minimum interest coverage ratio, and added a monthly and quarterly minimum liquidity of $75 million.

26. At the end of the third quarter of 2024, the Company's net debt was $1.203 billion and its net leverage was 6.01x. It had drawn $228 million on the Revolving Credit Facility, owed $524 million under the Term Loan Facility, and had $500 million in Unsecured Notes outstanding. The Company had only [REDACTED] in cash and cash equivalents at that time. The Company stated that "substantial doubt exists about the Company's ability to meet its obligations as they come due within one year of issuance of [the financial statements]."

27. The Fourth Amendment was only a "band aid" to avoid imminent default. The Company was seeking further covenant relief as there remained [REDACTED] In fact, the Board discussed [REDACTED] after executing the Fourth Amendment.

28. On November 20, 2024, the Company's management reiterated to the Board during a special meeting the need to [REDACTED] Mr. Sampson, the Company's CEO, believed that the Company had [REDACTED]

29. On November 22, 2024, the Board met with representatives from Moelis & Company ("**Moelis**") to discuss Moelis' ability to guide the Company in connection with its debt financial covenant and liquidity needs. "The Debtors engaged Moelis as investment banker,

financial advisor and placement agent in December 2024 in the face of significant liquidity pressure and in need of near-term covenant relief under the Debtors' debt facilities."[9] Moelis' fees were contingent on the successful completion of a bank amendment, a sale transaction of ModivCare's equity or assets, a capital transaction, or an activist event.

30. During the same Board meeting, the Board authorized board members Messrs. Christopher S. Shackleton, Todd J. Carter, and David A. Coulter (collectively the "**Finance Subcommittee**") to work with Moelis to create a formal strategic alternatives plan for the Board to consider. The Finance Subcommittee [REDACTED] where they discussed the [REDACTED]

31. One week later, at Moelis' behest, the Company engaged FTI Consulting, Inc. ("**FTI**") to, among other things, [REDACTED]

According to FTI, at that time, "[t]here were significant concerns that the company was running out of liquidity before the end of the year."[10]

32. K&E made its first appearance as the Company's restructuring counsel at the November 29, 2024 Board meeting. At this meeting, the Company's advisors presented two liquidity forecasts prepared by management: (1) a "base case" implying a mere [REDACTED] and (2) a "downside case" implying a [REDACTED]. Mr. Sampson noted that these cash forecasts [REDACTED] The advisors recommended that the Company [REDACTED]

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9 *See Declaration of Zul Jamal in Support of the Debtors' Motion to Obtain Postpetition Debtor-in-Possession Financing* [Docket No. 12].

10 *In re ModivCare*, Hr'g. Tr. (Sept. 30, 2025) 27:20-28:5.

[REDACTED]

[REDACTED].

33. On December 13, 2024, the Board called a special meeting during which FTI provided an interim update. The interim update was grim — by [REDACTED] FTI was forecasting [REDACTED]:

[REDACTED]

34. The First Lien Lenders knew that the Company was facing severe liquidity issues at this time based on information disclosed in public reporting and conversations with Moelis (i) under confidentiality agreements about the Company's financial performance and (ii) concerning additional debt financing or alternative financing transactions. Several stakeholders raised concerns during these conversations about the ability to obtain timely financing, requested changes in Company oversight, and raised the possibility of a bankruptcy filing. In one such communication, Paul Hastings LLP ("**Paul Hastings**"), who represented the

First Lien Agent and certain First Lien Lenders, expressed discontent with the Company's pace in executing non-disclosure agreements because [REDACTED]. The next day, Paul Hastings said, [REDACTED]

35. The liquidity crisis was indeed real. On December 18, 2024, the Company shared an investor presentation with Paul Hastings that projected [REDACTED]. At the time, the only positive commentary on the capital structure was that [REDACTED]

36. Company advisors began priming the Board for a chapter 11 filing in mid-December 2024. On December 19, 2024, K&E presented to the Board members regarding their fiduciary duties [REDACTED] The next day, in materials for a December 20, 2024 Board meeting, the advisors noted that [REDACTED]

37. On or before December 21, 2024, in preparation for a potential bankruptcy, Moelis began outreach for debtor-in-possession ("**DIP**") financing. On December 22, 2024, K&E met with the Nominating and Governance Committee of the Board to discuss the appointment of [REDACTED] The Board appointed Craig Barbarosh and

Neal Goldman as "disinterested directors" on December 23, 2024. Preparations for bankruptcy continued as "a relatively slow burn" through late December 2024 and early January 2025.[11]

38. Around the same time, the Company had begun looking into enhancing its D&O insurance policies in anticipation of a restructuring. On December 20, 2024, Mr. Faisal Khan, ModivCare's Senior Vice President, General Counsel and Secretary, and K&E attended an initial call with insurance broker CAC Specialty ("**CAC**") and scheduled a call with the underwriter for December 23, 2024. In an outline prepared for the underwriter call, CAC stated that [REDACTED] [REDACTED] of the call would be [REDACTED] including [REDACTED] [REDACTED] Email correspondence with CAC indicates a [REDACTED] in preparation for an anticipated bankruptcy filing. On January 14, 2025, approximately one week after the Board approved the Uptier Transaction, the Company added an additional layer of excess directors and officers liability insurance.[12] While the Company had regularly layered on additional excess liability policies in the past, this 12th layer was taken out [REDACTED] and coverage began effective immediately on January 14, 2025, whereas all previous policies were made effective in May 15 of the relevant year.

39. The Company reported in its 10-K for year-end 2024 that it "expect[ed] to continue to generate negative cash flows from operations in the near term."[13] The Company further disclosed "substantial doubt about [its] ability to satisfy [] obligations . . . as they become due

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[11] *In re ModivCare*, Hr'g. Tr. (Sept. 30, 2025) 27:20-28:5.

[12] *See Emergency Motion of Debtors for Entry of an Order (A) Authorizing Debtors to (I) Continue Insurance Programs, and (II) Pay All Obligations with Respect Thereto* [Dkt. No. 7], Exhibit A at 3.

[13] ModivCare Inc., Yearly Report (Form 10-K) (Dec. 31, 2024) at 32.

within one year from the issuance date of these financial statements. As a result, it has been determined that substantial doubt exists about our ability to continue as a going concern."[14]

C. With Chapter 11 on the Horizon, the Company Relinquished Control to a Select Group of Lenders

40. In late December 2024, two groups of First Lien Lenders emerged to negotiate for a better position in the Company's inevitable bankruptcy: one consisting of lenders under the Revolving Credit Facility and Term Loan Facility, represented by Paul Hastings (the "**Paul Hastings Group**") and a second consisting of two lenders under the Term Loan Facility, represented by Ropes & Gray LLP ("**Ropes & Gray**").

41. On December 23, 2024, Ropes & Gray sent K&E a term sheet proposing a new $75 million senior secured credit facility [REDACTED] The loan would be available on a pro rata basis to all existing lenders under a new credit agreement based on the existing First Lien Credit Agreement and backstopped by those represented by Ropes & Gray. The $251 million exchange of Unsecured Notes for new second lien notes would be secured by the same collateral that secured the proposed incremental loan and available to the backstop parties and consenting lenders. Ropes & Gray's proposal did not include an upfront fee, a make-whole, or minimum weekly liquidity amount. On December 26, 2024, 57% of the lenders under Term Loan Facility supported Ropes & Gray's proposal.

42. Over the next five days, Ropes & Gray exchanged term sheets with K&E negotiating, among other things, the number of Board seats the First Lien Lenders would control and the terms of the uptier granting the First Lien Lenders the ability to roll-up their unsecured

[14] *Id.* at 51.

notes into what ultimately became the Second Lien Notes. The drafts that went back and forth included a term that the [REDACTED]

43. Negotiations with the Paul Hastings Group were also progressing, but it was clear that they were focused on a bankruptcy filing. The Paul Hastings Group indicated that they would likely not consent to a financing *pari passu* with a third party and were instead inclined to provide DIP financing. A Board presentation from December 23, 2024 stated that the Company had responded that [REDACTED]

44. At the same time, the Company was negotiating a potential equity offering with a third party. The proposal brought to the Board was for a $15 million initial funding through Series A Convertible Preferred Stock with up to an additional $60 million cash subject to certain conditions.

45. On December 26, 2024, Moelis presented two potential financing options to the Board: (1) [REDACTED] consistent with the third-party proposal; or (2) [REDACTED] as proposed by Ropes & Gray. The Board responded with [REDACTED].

46. As negotiations progressed, on December 28, 2024, one of the First Lien Lenders chided the Company's advisors for prioritizing their [REDACTED] by trying to slip in that K&E's recent appointees to the Board, Messrs. Barbarosh and Goldman, would get to remain on the Board even

after the lenders exercised their new governance rights. Reducing the lenders' ability to have a hand in the Board selection process after negotiating an uptier transaction so close to a chapter 11 filing was a dealbreaker. The lender threatened to pivot to DIP financing negotiations—rather than negotiating a new facility—and even requested the [REDACTED] K&E removed the director proviso regarding Messrs. Barbarosh and Goldman and sent Paul Hastings a [REDACTED] (*i.e.*, Ropes & Gray's proposal).

47. On December 29, 2024, Paul Hastings provided comments to Ropes & Gray's proposal, which included a provision prohibiting a counter DIP facility proposal from lenders represented by Ropes & Gray if the lenders in the Paul Hastings Group had already proposed a DIP facility to the Company.

48. On December 30, 2024, the Company's advisors explained to the Board that they conveyed [REDACTED] to the First Lien Lenders if they do not consent to the proposed out-of-court financing.

49. Also at the December 30, 2024 Board meeting, the Company's advisors requested approval from the Board to [REDACTED]. On January 2, 2025, the Company sent a notice of default to the First Lien Agent in connection with the interest payment.

50. The next day, on December 31, 2024, Paul Hastings emailed the Company's advisors suggesting that it would be [REDACTED] for Ropes & Gray's proposal, so it was working on its own construct. Moelis responded

that there was [REDACTED] In response, Paul Hastings stated:

[REDACTED]

51. Later that day, on December 31, 2024, the Paul Hastings Group submitted a term sheet (the "**Paul Hastings Proposal**") countering Ropes & Gray's proposal. The Paul Hastings Proposal included a $75 million incremental term loan under the existing First Lien Credit Facility and would allow those lenders represented by Ropes & Gray to participate in the incremental term loan and the uptiering of the Unsecured Notes. The Paul Hastings Proposal had numerous additional terms, such as an upfront fee, a minimum weekly liquidity covenant, an increase of the interest rate if junior capital was not raised by a certain date, appointment of two new directors, appointment of a "restructuring committee" consisting of the lender-appointed directors, and a make-whole. The Company quickly pivoted to negotiate the Paul Hastings Proposal, which was now supported by the cross-holders who would be the sole beneficiaries of the transaction.

52. In a term sheet on January 1, 2025, K&E changed the name of the proposed "restructuring committee" to the "strategic alternatives committee." As was made clear on January 6, 2025, the Strategic Alternatives Committee would consist solely of the directors appointed by the Paul Hastings Group.

53. The Paul Hastings Group and the Company's advisors agreed that the uptiering of the Unsecured Notes would not be available to all holders of the Unsecured Notes. Rather, it would only be made available to the lenders under the new incremental facility that consented to amending the Unsecured Notes Indenture to strip certain covenants and events of default and release the subsidiary guarantors.

54. On January 4, 2025, the Company circulated a model projecting liquidity around the time new incremental facility would come due. Each scenario assumed either [REDACTED]:

[REDACTED]

55. The Company knew that the contemplated incremental loans under the First Lien Credit Facility would not provide the Company with sufficient liquidity to stay out of bankruptcy. For instance, Mr. Scott Kern, the Vice President of Corporate Development, testified that the Company would [REDACTED]. Ms. Barbara Gutierrez, CFO, also conceded that the Company considered [REDACTED]. No sale ever closed.

56. The Company also knew that the proposed uptier transaction would only benefit a group of selected cross-holders. For instance, on January 4, 2025, Mr. Sampson, who approved the Uptier Transaction and Fifth Amendment, wrote to Mr. Kern, Ms. Gutierrez, and Mr. Khan:

[REDACTED]

Consistent with Mr. Sampson's assessment, the Left Behind Unsecured Noteholders are projected to receive nothing under the Debtors' proposed plan of reorganization.

57. During the negotiations, the Paul Hastings Group asked for a solvency certificate in connection with the proposed incremental term loan. In response, the Company asked that the First Lien Lenders

58. On January 6, 2025, the full Board approved entering into an amendment to the First Lien Credit Agreement to incur the $75 million of incremental loans under the First Lien Credit Facility (the "**Incremental Term Loan**") and entry into the March 7 Uptier Notes Exchange. Board materials prepared for the January 6, 2025 Board Meeting indicate that

The Board nonetheless proceeded with the transaction. The Board also appointed Chad Shandler of FTI as Chief Transformation Officer ("**CTO**") at this meeting.

59. The next day, the Board learned of a financing proposal by Coliseum to (1) purchase $30 million in aggregate principal amount of new Second Lien Notes and (2) exchange $20 million aggregate principal amount of Unsecured Notes for new Second Lien Notes in a dollar-for-dollar transaction (*i.e.*, the March 14 Uptier Notes Exchange). Coliseum held 20.8% of the Company's common stock, making it the Company's largest equity holder at the time and, as such, an insider of the Company. The Paul Hastings Group agreed to support this proposal in exchange for another seat on the Board (for a total of three lender-appointed directors). The Board

immediately resolved to move forward with these transactions. Despite Mr. Coulter having an ownership interest in Coliseum, he did not recuse himself from the vote.

60. On January 10, 2025, the Company announced that it had executed on January 9, 2025 the fifth amendment to the First Lien Credit Agreement (the "**Fifth Amendment**"), memorializing the Incremental Term Loan — a $75 million incremental facility from a consortium of its existing lenders.[15] The Incremental Term Loan had a maturity date of January 10, 2026. This one-year maturity was a full year before any of the Company's other outstanding debt was to come due and, thus, it significantly shortened the Company's runway. Immediately prior to the Company's announcement of the Uptier Transaction, the Unsecured Notes were trading at 57% of par.[16]

61. The Fifth Amendment provided the Company with some financial covenant relief in the form of (1) a covenant holiday with respect to the maximum net leverage ratio and interest coverage ratio from the fourth fiscal quarter of 2024 through and including the second fiscal quarter of 2025 as well as the liquidity covenant for the fourth fiscal quarter of 2024, (2) resetting the maximum total net leverage ratio covenant to 6.75:1.00 for the third fiscal quarter of 2025 and the fourth fiscal quarter of 2025, and (3) resetting the minimum interest coverage ratio to 1.65:1.00 for the third fiscal quarter of 2025 and the fourth fiscal quarter of 2025.

62. The Fifth Amendment also altered the definition of "Solvent" under the First Lien Credit Agreement to remove the clause requiring that the fair value of property exceeds the total amount of liabilities for the Company to be "solvent." Applying this new, less stringent definition,

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[15] *Modivcare Raises $105 Million in Incremental Financing Backed by Stakeholders Across the Capital Structure and Takes Strategic Steps to Position Business for the Future*, ModivCare, Inc. (Jan. 9, 2025), Modivcare Inc., https://investors.modivcare.com/news-and-media/news-releases/news-details/2025/Modivcare-Raises-105-Million-in-Incremental-Financing-Backed-by-Stakeholders-Across-the-Capital-Structure-and-Takes-Strategic-Steps-to-Position-Business-for-the-Future/default.aspx.

[16] Bloomberg Finance L.P., Unsecured Notes price graph for ModivCare Inc., Jan. 9, 2025.

Ms. Gutierrez signed a solvency certificate on behalf of the Company in connection with the Fifth Amendment.

63. In exchange for the funds provided under the Incremental Term Loan, the Fifth Amendment gave the First Lien Lenders (many of whom are now also Second Lien Noteholders) significant governance control, increased the interest rates across the existing First Credit Lien Facility, and made certain operating and financial covenants more restrictive. Specifically, in connection with the Fifth Amendment, the Company was required to:

i. appoint three new directors from a list of directors provided by the lenders under the Incremental Term Loan and required First Lien Lenders;[17]

ii. cap the Board at seven members;[18]

iii. create a strategic alternatives committee comprised solely of the three directors proposed by the First Lien Lenders;[19]

iv. commence a sale process of the remote patient monitoring and personal care services businesses with certain milestones that would be overseen by the strategic alternatives committee;[20]

v. appoint a Chief Transformation Officer and retain FTI and Moelis; [21]

vi. maintain a minimum liquidity covenant of $35 million and certain total net leverage ratios and interest coverage ratios;[22]

vii. raise $15 million of junior financing by March 31, 2025 or risk an interest raise increase of 50 bps PIK and an additional 50 bps PIK by June 30, 2024;[23]

viii. pay the Secured Creditors' Fees, which included:

1. an upfront fee of $1.5 million (2 bps) paid to the First Lien Agent for the

[17] *See* Fifth Amend. §§ 5.12, 7.01.

[18] *See id.* at §§ 5.12, 7.01.

[19] *See id.*

[20] *See id.*

[21] *See id.* at §§ 5.11, 7.01.

[22] *See id.* at §§ 5.17; 7.01

[23] *See id.* at § 5.16.

benefit of the First Lien Lenders;

2. a consent fee of $2.49 million (50 bps PIK) paid to the First Lien Agent for the benefit of the First Lien Lenders;

3. a backstop fee of $3.75 million (5% of PIK) paid to the First Lien Lenders;

4. a cash fee of $2.5 million in connection with the Uptier Transaction (the "**Cash Fee**"); and

5. professional fees amounting to $2.3 million to the participating lenders' advisors (the "**Lender Advisor Fees**").

ix. pay a make-whole payment in the event of certain triggering events, including a bankruptcy filing by the Company;[24]

x. pay the Company's advisors $4.3 million (collectively with the Cash Fee and the Lender Advisor Fees, the "**Uptier Fees**");[25]

xi. pay Jefferies a fronting fee of $187,500;

xii. pay the arrangement fees of $250,000 to JP Morgan Chase Bank, N.A.; and

xiii. as a condition subsequent to the Fifth Amendment, enter into the First Lien Exchange Agreement and consummate an exchange of Unsecured Notes for Second Lien Notes only available to First Lien Lenders who consented to amend the Unsecured Notes Indenture and use "commercially reasonable" efforts to effectuate the exchange as soon as practicable after January 31, 2025.

64. The Company also executed an exchange agreement dated January 9, 2025 with five First Lien Lenders backstopping the Incremental Term Loan (the "**First Lien Exchange Agreement**"). Pursuant to the First Lien Exchange Agreement, the Debtors agreed to:

i. the terms of the Subordination Agreement, which elevated any unsecured (*i.e.*, deficiency) portion of the First Lien Lenders' and the Second Lien Noteholders' claims over the claims of the holders of the Unsecured Notes;

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[24] *See* Fifth Amendment, Art. 1 (definition of "Make-Whole Event"). Neither the Debtors' proposed plan nor the Debtors' schedules acknowledge the existence of the make-whole. However, the First Lien Agent has filed a proof of claim that includes all fees and premiums owed under the First Line Credit Agreement. To the extent any First Lien Secured Party asserts the right to the make-whole, the Committee reserves the right to challenge any such assertion.

[25] The breakdown of Lender Advisor Fees is as follows: [redacted].

ii. release the guarantees of forty-eight ModivCare affiliates of their guarantee obligations under the Unsecured Notes; and

iii. grant the Second Lien Notes Guarantees.

65. The contemplated uptier exchange was contingent on obtaining requisite consents to amend the Unsecured Notes Indenture to eliminate substantially all affirmative covenants, negative covenants and certain events of default, as well as to release all subsidiary guarantees leaving the issuer, ModivCare, as the only obligor for the Unsecured Notes. The funding of the Incremental Term Loan was not contingent on the notes exchange. Rather, the exchange was a condition subsequent that ultimately was not satisfied until over two months later.

66. Only those holders of Unsecured Notes who funded the Incremental Term Loan were given the opportunity to participate in the exchange. Certain of the Left Behind Unsecured Noteholders immediately contacted the Company advisors taking issue [REDACTED] Seeing the writing on the wall, these noteholders also wanted to better protect their investment in a bankruptcy by obtaining security for their notes. The response was [REDACTED]

67. Separately, on January 10, 2025, the Company and Coliseum announced that also on January 9, 2025, it and Coliseum had executed a purchase and exchange agreement (the "**Coliseum Exchange Agreement**" and, together with the First Lien Exchange Agreement, the "**Exchange Agreements**") for the March 14 Uptier Notes Exchange.[26] Through the Coliseum Exchange Agreement, Coliseum agreed to (1) purchase $30 million of Second Lien Notes; and (2) exchange $20.165 million in aggregate principal amount of Unsecured Notes for an equivalent

[26] *Modivcare Raises $105 Million in Incremental Financing Backed by Stakeholders Across the Capital Structure and Takes Strategic Steps to Position Business for the Future*, ModivCare, Inc. (Jan. 9, 2025), Modivcare Inc., https://investors.modivcare.com/news-and-media/news-releases/news-details/2025/Modivcare-Raises-105-Million-in-Incremental-Financing-Backed-by-Stakeholders-Across-the-Capital-Structure-and-Takes-Strategic-Steps-to-Position-Business-for-the-Future/default.aspx.

principal amount of Second Lien Notes. The Board had a fiduciary out and thus was not obligated to consummate the March 14 Uptier Notes Exchange. The March 14 Uptier Notes Exchange was also subject to stockholder approval.[27] In fact, on March 3, 2025, the Company convened a special shareholder meeting, which was adjourned without commencing any business because there was not sufficient support to approve the March 14 Uptier Notes Exchange.[28] In other words, closing on the March 14 Uptier Notes Exchange was far from a foregone conclusion at the time that the First Lien Exchange Agreement was executed. As Mr. Kern testified, [REDACTED]

[REDACTED].

68. Pursuant to the Fifth Amendment, also on January 9, 2025, the Company retained Mr. Shandler as CTO and executed a new engagement letter with FTI.[29] Unlike the FTI engagement letter executed just six weeks earlier, FTI's engagement letter appointing Mr. Shandler as CTO explicitly contemplated the continued retention of FTI during chapter 11.

D. The First Lien Lenders Take Control

69. On January 26, 2025, after the Incremental Term Loan had been provided but before the Uptier Transaction was consummated, the First Lien Lenders proposed their first Board appointment: Erin L. Russell. Ms. Russell's loyalties were clear: five weeks prior, Ms. Russell [REDACTED]

[REDACTED]

[REDACTED] Ms. Russell was officially appointed to the Board on February 10, 2025. At the

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[27] *See* ModivCare Inc., Yearly Report (Form 10-K) (Dec. 31, 2024) at 126.

[28] ModivCare Inc., Current Report (Form 8-K) (March 13, 2025) at 2.

[29] *See Application of Debtors for Entry of an Order (A) Authorizing the Debtors to (I) Employ and Retain FTI Consulting, Inc. as Financial Advisor, (II) Designate Chad J. Shandler to Serve as Chief Transformation Officer, and (III) Provide Additional Personnel for the Debtors Effective as of the Petition Date; and (B) Granting Related Relief* [Docket No. 341-1].

same time, Mr. Goldman resigned from his position on the Board.

70. Effective March 7, 2025, Alec Cunningham replaced Mr. Graham on the Board. Mr. Cunningham was appointed "pursuant to [the Company's] contractual obligations with its lenders." The Company touted Mr. Cunningham's experience with "turnaround situations," an expertise desperately needed given the Company's prolonged poor performance.

71. Before the third First Lien Lender appointee to the Board was confirmed, the Company exhibited buyer's remorse. During a Board meeting on March 27, 2025, the Company expressed that it [REDACTED] [REDACTED] and [REDACTED] [REDACTED] While the Company temporarily held strong on the former, they caved on the latter.

72. On April 4, 2025, the First Lien Agent sent a letter to the Company stating that it had until April 25 to appoint the third First Lien Lender director to the Board. On April 24, 2025, the Company publicly announced that three Board members, Messrs. Barbarosh, Coulter, and Kerley resigned from the Board and that "the size of the Board was reduced to seven members . . . as required by the Fifth Amendment."[30] That same day, the final lender-selected director, Daniel B. Silvers, was appointed to the Board.[31]

73. The next day, on April 25, 2025, the Board passed resolutions establishing a strategic alternatives committee (the "**Strategic Alternatives Committee**"). Although the First Lien Agent demanded that the Strategic Alternatives Committee be authorized to, among other things, direct and oversee the Company's financial advisors and determine whether to file the

[30] ModivCare Inc., Current Report (Form 8-K) (Apr. 24, 2025) at 2.

[31] *Id.*

Company for bankruptcy, the resolutions provided the Strategic Alternatives Committee with authority to "oversee processes for the sale of the Company's remote monitoring business and the sale of its personal care business" and make recommendations to the Board regarding the Company's capital structure and cost saving and optimization initiatives. Ms. Russell and Messrs. Cunningham and Silvers, all lender-recommended directors, were appointed as the sole members of the Strategic Alternatives Committee.

74. The First Lien Lenders ultimately did get control of the Company's chapter 11 planning. On June 20, 2025, the Board — now including the three Lender-selected directors — passed resolutions forming a capital structure committee (the "**Capital Structure Committee**"), which was tasked with overseeing "potential changes to the Company's capital structure, including all restructuring matters (including any matters related to any insolvency or bankruptcy proceeding)." Specifically, the Capital Structure Committee was established, "to investigate, review, evaluate, analyze, negotiate, and make recommendations to the Board to approve or reject, any changes to the Company's capital structure including all restructuring matters."[32] The conflicts inherent in creating a restructuring committee with a majority rules construct comprised of a majority of lender-appointed directors were obvious. As Board member Mr. David Mounts Gonzales stated, such a [REDACTED] Over [REDACTED] protest, the Board, consisting of Ms. Norwalk, Russell and Messrs. Carter, Cunningham, Sampson, and Silvers, passed resolutions forming the Capital Structure Committee.

32 *See* First Day Decl. ¶ 31.

E. The Parties Effectuate the Uptier Transaction

75. A few days after the parties executed the Fifth Amendment on January 9, 2025, K&E and Ropes & Gray discussed obtaining the necessary consents to amend the indenture governing the Unsecured Notes. Initially, K&E stated that the notes trustee would agree to [REDACTED] However, K&E quickly retracted this, pushing instead for the DTC demand and dissent consent process for the collection of consents, stating:

[REDACTED]

76. Weeks later and a little over a week before the Uptier Transaction was fully consummated, ModivCare's CEO asked FTI for clarification regarding [REDACTED] Mr. Sampson was trying to better understand the priorities to [REDACTED]

77. At this point in time, nearly two months after entry into the Fifth Amendment and the Exchange Agreements, the Company, having received the proceeds of the Incremental Term Loans and needing more, could have avoided its obligation to effectuate the Uptier Transaction (and had it filed for bankruptcy at that time, would not have to face the consequences of doing so). Instead, it plowed ahead.

78. On March 7, 2025, upon receipt of the requisite consents, the Company, the guarantors party to the Unsecured Notes Indenture and the Unsecured Notes Trustee, entered into

the Fifth Supplemental Unsecured Notes Indenture (the "**Fifth Supplemental Indenture**").[33] Among other things, the Fifth Supplemental Indenture provided that "all Guarantees of the Guarantors under the [Unsecured] Notes and the Indenture shall be automatically released and terminated."[34] This provision released forty-eight ModivCare affiliates of their guarantee obligations under the Unsecured Notes.

79. As part of the March 7 Uptier Notes Exchange, five of the lenders under the Incremental Term Loan exchanged $251 million of aggregate principal amount of their Unsecured Notes for $251 million aggregate principal amount of second lien secured notes (the "**Second Lien Notes**") issued by the Company pursuant to the Secured PIK Toggle Notes Indenture, dated as of March 7, 2025 (as amended, restated, supplemented or otherwise modified from time to time, the "**Second Lien Notes Indenture**"), entered into with certain of the issuer's affiliates (the "**Second Lien Notes Guarantors**") and the Second Lien Trustee. The Second Lien Notes were scheduled to mature on October 1, 2029.

80. The Second Lien Notes are guaranteed by most of ModivCare's subsidiaries and are secured on a second-priority basis by substantially all of the Company's assets, subject to certain exceptions in the loan documents. In other words, by converting their Unsecured Notes to Second Lien Notes, the select few that were given the opportunity to participate vaulted ahead of former *pari passu* creditors (both the Left Behind Unsecured Noteholders and all other unsecured creditors) in an inevitable bankruptcy waterfall.

81. As an integral part of the March 7 Uptier Notes Exchange, the First Lien Agent, the Second Lien Trustee, and the Unsecured Notes Trustee also entered into a subordination agreement

33 ModivCare, Inc., Current Report (Form 8-K) (March 7, 2025) at 2.

34 ModivCare, Inc., Current Report (Form 8-K) (March 11, 2025) at 2.

dated as of March 7, 2025 (the "**Subordination Agreement**"), which subordinated the holders of Unsecured Notes' right of payment to the First Lien Lenders and Second Lien Noteholders. This payment priority elevated not only the First Lien Lenders' and Second Lien Noteholders' liens ahead of those of the Left Behind Unsecured Noteholders but their unsecured deficiency claims as well.

82. On March 13, 2025, the special shareholder meeting that was adjourned on March 3 was reconvened and approved the March 14 Uptier Notes Exchange.[35] The next day, the Company, the Second Lien Notes Guarantors, and the Second Lien Trustee entered into a supplemental indenture to the Second Lien Notes Indenture, pursuant to which the Company issued $50.165 million of Second Lien Notes to Coliseum, $20.17 of which was issued in exchange for Unsecured Notes.[36]

83. In total, through the Uptier Transaction, the Company issued $301,165,000 in aggregate principal amount of its Second Lien Notes in exchange for $30 million cash from Coliseum and the retirement of $271,165,000 of Unsecured Notes. Although the Company's stated objective was to "ultimately reduce indebtedness," in March 2025, the Company's debt load reached $1.4 billion—over $140 million higher than it was in December 2024.[37] And, of the $75 million of the Incremental Term Loan, the Company only received $54.25 million, of which $25 million went into a controlled account—the rest went to make an interest payment on the First Lien Loan and paid transaction costs (including the Uptier Fees).[38]

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[35] *See* ModivCare Inc., Quarterly Report (Form 10-Q) (March 31, 2025) at 19-20.

[36] *See* ModivCare Inc., Current Report (Form 8-K) (March 13, 2025) at 2.

[37] *See* ModivCare, Inc., Current Report (Form 8-K) (Apr. 2, 2025) at 2.

[38] *See* Borrowing Request, (Jan. 8, 2025), at Ex. A (Funds Flow).

F. The Company Was Insolvent Before and After the Uptier Transaction

1. The Company Was Unable to Pay Debts as They Came Due

84. As a result of the Uptier Transaction, the Company increased its secured debt by over 52% and accelerated its nearest maturity by over one year. Before the ink even dried on the Fifth Amendment, FTI conducted a covenant test [REDACTED] [REDACTED] [REDACTED]. FTI noted that these covenants were [REDACTED] [REDACTED] Breaching these covenants would have constituted an event of default under the First Lien Credit Agreement. In other words, the Company was projecting an inability to pay the Incremental Term Loan when it came due in January 2026.[39]

85. Likewise, in February 2025, KPMG, the Company's auditor, presented to the Audit Committee regarding the planned audit strategy. KPMG reported that Company management determined that [REDACTED] because of [REDACTED] [REDACTED] [REDACTED] [REDACTED]

86. The market also took notice. Octus reported that "[a]lthough the transaction adds cash to the balance sheet, it introduces a near-term debt maturity that, combined with weak operating performance and liquidity, is expected to make the capital structure unsustainable and increase the likelihood of default." In rating the Second Lien Notes, Moody's reported that it

[39] Mr. Silvers testified that, as of August 19, 2025, the day before the Petition Date, he believed it was unlikely—meaning that there was less than a 50% chance—that the Company would be able to pay the $75 million at maturity.

"expect[s] ModivCare to continue generating negative free cash flow in 2025, ranging from negative $25-50 million, which will hinder its ability to repay the current maturity while complying with its covenants."

87. Consistent with its projected default under the Fifth Amendment, only two weeks after the Company issued the Second Lien Notes, it began negotiating yet another amendment to the First Lien Credit Agreement requesting even further covenant relief. On March 27, 2025, K&E informed the Board that [redacted] The proposed sixth amendment was never executed.

2. The Company Disclosed Balance Sheet Insolvency

88. In the Company's 10-K for 2024, it reported approximately $1.654 billion of total assets as of December 31, 2024 and $1.693 billion of liabilities, with a resulting equity shortfall of approximately $38.5 million.[40] In the Company's 10-Q for the period ending March 31, 2025—*i.e.*, immediately after the Uptier Transaction was effectuated—the Company reported that its total liabilities exceeded its total assets, reporting approximately $1.764 billion and $1.677 billion, respectively.[41]

89. Precisely because the Debtors were disclosing that they were balance sheet insolvent, at the time of the Fifth Amendment, the definition of "Solvent" under the First Lien Credit Agreement had to be amended to remove the clause requiring that the fair value of property exceeds the total amount of liabilities – *i.e.*, balance sheet solvency – in order for Ms. Gutierrez to certify that the Company was "Solvent" in connection with the Fifth Amendment. Ms. Gutierrez

[40] ModivCare Inc., Yearly Report (Form 10-K) (Dec. 31, 2024) at 86.

[41] ModivCare Inc., Quarterly Report (Form 10-Q) (March 31, 2025) at 4.

was unable to testify that she [redacted]

[redacted].

3. The Company Was Inadequately Capitalized

90. As discussed above, prior to executing the Fifth Amendment, on November 29, 2024, the Company's advisors presented a "downside case" implying a [redacted]. Mr. Shepard, ModivCare's Senior Vice President, testified that the downside scenarios that management presented to the Board at various points of time were [redacted]

91. The financial results from the first quarter of 2025 also demonstrated that the Fifth Amendment and Uptier Transaction only exacerbated the Company's financial risks.[42] The report to the Audit Committee explained that there were [redacted] In other words, the Company was still [redacted] and would likely have difficulty meeting the negotiated financial covenants under the existing First Lien Credit Agreement. As was clear, [redacted]

92. On May 20, 2025, Company management presented a 2025 3+9 forecast (the "**3+9 Forecast**") to the Board that showed that the Company's [redacted] despite the $105 million of new money from the Incremental Term Lenders and

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[42] *See id.*

Coliseum. Management also noted that a [redacted] The 3+9 balance sheet outlook illustrated that the Company's total liabilities would [redacted] [redacted]:

[redacted]

G. The Company Did Not Receive Reasonably Equivalent Value in Connection With the Uptier Transaction

93. The Company received far less than reasonably equivalent value in the Uptier Transaction. Although the precise amount of the value differential in the exchange will be determined at trial, there is no genuine dispute that it existed and that it was substantial. The Company knew and contemporaneously acknowledged that the Uptiered Creditors would be placed in a [redacted] by the Uptier Transaction, while unsecured creditors (ultimately, the Debtors' estate) would suffer [redacted] Mr. Sampson's prediction proved correct, as the Unsecured Notes immediately traded down on the announcement of the Uptier Transaction as the market appreciated the [redacted] that the Uptier Transaction would substantially diminish the assets available to pay unsecured creditors.

94. Put differently, the Uptier Transaction diminished the value in the Debtors' enterprise beyond its secured debt. While the actual value of the Company's assets immediately

prior to the Uptier Transaction will be proven at trial, there is no dispute that it substantially exceeded the Company's secured debt of approximately $769 million.[43] This equity cushion could have been immensely useful to the Company in its unavoidable chapter 11 proceeding. Instead, the Company incurred an additional approximately $406 million of secured debt, substantially depleting that equity cushion and giving away precious optionality. Ultimately, that loss of optionality resulted in the Debtors proposing a plan of reorganization that would hand over the entire Company to the First Lien Lenders, demonstrating the complete evaporation in the value of the Debtors' business beyond its secured debt at the time of the Uptier Transaction. This too demonstrates a lack of reasonably equivalent value.

95. As part of the same overall transaction, the Debtors also gave substantial additional value to the Uptiered Creditors, including: (1) Secured Creditors' Fees in the amount of $13.2 million; (2) the valuable Second Lien Notes Guarantees; (3) through the Subordination Agreement, the purported elevation of any unsecured (*i.e.*, deficiency) claims of the Uptiered Creditors above the claims of the unsecured claims of the holders of the Unsecured Notes; (4) increased interest payments if the Company choose to pay interest in kind (which was required given the Company's lack of liquidity); (5) significant control over the Company, including rights to appoint "independent directors" to the Board and a committee with such directors, as well as new consent requirements; and (6) a potential make-whole claim. These additional benefits aggregate to additional value that the Company parted with in the Uptier Transaction that was not reasonably equivalent to what it received.

H. The Consenting Creditors Control the Company's Bankruptcy Preparations

96. The Uptier Transaction did not meaningfully (if at all) delay bankruptcy

[43] By way of illustration, as of December 31, 2024, the Company reported approximately $1.65 billion of assets. ModivCare Inc., Yearly Report (Form 10-K) (Dec. 31, 2024) at 86, 111.

preparations that were initiated in December 2024. Mr. Mounts Gonzales testified that the Company [REDACTED] [REDACTED] By June 2025, the Company fully pivoted to chapter 11 planning, now using Latham & Watkins LLP ("**Latham**") as restructuring counsel. Shortly thereafter, the Board formed the Capital Structure Committee. After Latham joined, Mr. Mounts Gonzales met with a Latham attorney and asked him his thoughts on the Fifth Amendment, the Latham attorney told him that the Fifth Amendment was [REDACTED] Mr. Mounts Gonzales also believed that the Fifth Amendment gave the First Lien Lenders control over the Company [REDACTED] [REDACTED]

97. As noted above, the Capital Structure Committee was formed to review, negotiate, and recommend restructuring matters to the Board.[44] This committee acted by majority vote and the lender-selected Board members held a majority. On June 25, 2025, the Company began negotiating non-disclosure agreements with certain First Lien Lenders and Second Lien Noteholders represented by Paul Hastings (collectively, the "**Consenting Creditors**"). The Capital Structure Committee provided a written update to the Board on June 28, 2025, explaining that the Company's advisors initiated outreach to [REDACTED] (*i.e.*, those that appointed the majority of the Capital Structure Committee) regarding [REDACTED] [REDACTED]

98. On July 10, 2025, the Company sent a proposal to the Consenting Creditors for a potential out-of-court restructuring transaction, which included another $75 million incremental loan facility. On two separate conferences calls, on July 12, 2025 and July 15, 2025, the Consenting Creditors' advisors [REDACTED]

[44] *See* First Day Decl. ¶ 31.

99. Given the absence of a on July 21, 2025, the Company's advisors recommended to . Three days later, the Company sent a proposed term sheet to the Consenting Creditors providing for, among other things, a restructuring of the Company through a chapter 11 filing and a DIP facility. Under this proposal, the Consenting Creditors would receive a *pro rata* share of an exit loan, a percentage of the Company's reorganized equity, and the right to provide a DIP facility. The Company left many of the amounts and percentages — *e.g.*, the backstop fee – blank for the Consenting Creditors to fill in. Latham and Paul Hastings exchanged several restructuring terms sheets, ultimately agreeing upon general terms by August 15, 2025. The agreed restructuring term sheet included the terms of a proposed plan of reorganization that would give the First Lien Lenders 98% of the Company's reorganized equity.

100. On August 19, 2025, the Capital Structure Committee recommended to the Board that the Company , the same lenders that recommended such candidates to the Board and who were slated to receive nearly all of the reorganized equity. Mr. Mounts Gonzales Ultimately, four members of the Capital Structure Committee—three of whom had been selected by the First Lien Lenders— .

101. On August 20, 2025, all members of the Board, other than Mr. Mounts Gonzales,

[REDACTED]. The Company also agreed to file a proposed plan of reorganization that would (1) release from all claims and causes of action the First Lien Lenders, the Second Lien Noteholders, and Company's directors and officers, among others, for no consideration, and (2) distribute 98% of the Company's reorganized equity to the First Lien Lenders.[45]

102. Later that day, on August 20, 2025 (the "**Petition Date**"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors also filed the RSA and the agreed-upon proposed plan of reorganization.

CAUSES OF ACTION

FIRST CAUSE OF ACTION

Avoidance of the Uptier Transaction as an Actual Fraudulent Conveyance Under Bankruptcy Code §§ 544, 548, 550, and 551 and Applicable State Law of New York, Colorado, and/or Delaware
(Against Defendants First Lien Agent, Second Lien Trustee, Uptiered Creditors, and John Does 1-100)

103. The Committee repeats and realleges the allegations in the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

104. Section 548(a)(1)(A) of the Bankruptcy Code provides that a debtor or trustee may avoid a transfer of an interest of the debtor in property, or an obligation incurred by the debtor, that was made or incurred with "actual intent to hinder, delay, or defraud any entity to which the debtor was or became . . . indebted." 11 U.S.C. § 548(a)(1)(A).

105. Under section 544(b) of the Bankruptcy Code, a debtor may avoid a transfer of an interest of the debtor in property or any obligation incurred by the debtor that is avoidable under applicable law, including any applicable state fraudulent transfer laws. 11 U.S.C. § 544(b).

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[45] *See* First Day Decl., Ex. A, B.

106. The Uptier Transaction constituted transfers of the Debtors' interests in property and an incurrence of obligations by the Debtors within the appropriate lookback period set forth in the Bankruptcy Code and relevant fraudulent transfer statutes as enacted in the states of New York, Colorado, and Delaware.

107. The Company effectuated the Uptier Transaction with actual intent to hinder and delay the Left Behind Unsecured Noteholders and other unsecured creditors in realizing the value of their claims. Immediately after effectuating the Uptier Transaction, the Debtors acknowledged the need for additional capital and their doubt as to their ability to continue as a going concern. As such, the Debtors knew that the Uptier Transaction substantially increased the Debtors' secured debt by $271 million while doing nothing to prevent an inevitable bankruptcy.

108. Further, the Uptier Transaction resulted in the (1) encumbrance of substantially all of the Company's assets, the value of which (in excess of the First Lien Loans) would otherwise have been available for collection by unsecured creditors, (2) payment subordination of the Unsecured Notes to the loans under the First Lien Credit Facility and Second Lien Notes; and (3) stripping the Unsecured Notes of their subsidiary guarantees. These actions served no purpose other than to elevate the Uptiered Creditors ahead of the Left Behind Unsecured Noteholders and other unsecured creditors in any recovery scenario, including a bankruptcy, and was thus intended to hinder and delay unsecured creditors.

109. The Debtors' intent to hinder or delay unsecured creditors in realizing the value of their unsecured claims is further established by at least the following badges of fraud:

a. the transfers were not made in the ordinary course of Debtors' business;

b. the value of the consideration received by the Debtors was not reasonably equivalent to the value of the assets transferred or the amount of the obligation incurred;

c. the Debtors were insolvent or became insolvent shortly after the transfers

were made or the obligation was incurred;

d. three of the Uptiered Creditors were insiders of the Debtors; and

e. the transfer occurred shortly after the Debtors incurred the Incremental Term Loan.

110. The Uptier Transaction was an intentional effort by the Debtors to serve the Uptiered Creditors' interests at the direct expense of the similarly-situated Left Behind Unsecured Noteholders and other unsecured creditors. The Debtors' knowledge that the Uptier Transaction did nothing to prevent an inevitable bankruptcy filing combined with explicit efforts to elevate the Uptiered Creditors ahead of unsecured creditors demonstrates the Debtors' actual intent to hinder, delay, and/or defraud their general unsecured creditors.

111. Therefore, the Uptier Transaction should be avoided as an actual fraudulent transfer under section 548 of the Bankruptcy Code and section 544(b) of the Bankruptcy Code.

112. Each of the Second Lien Trustee, the First Lien Agent, Coliseum, the other Uptiered Creditors and John Does 1-100 is an initial transferee of the transfers in the Uptier Transaction, an entity for whose benefit one or more of the transfers in the Uptier Transaction was made, or an immediate or mediate transferee of one or more of the transfers in the Uptier Transaction.

113. Under sections 550(a) and 551 of the Bankruptcy Code, the Committee, on behalf of the Estates, seeks (1) to convert the Second Lien Notes issued pursuant to the Uptier Transaction (other than the $30 million of Second Lien Notes that Coliseum paid cash for) back to Unsecured Notes, (2) to reinstate the Unsecured Notes Guarantees, (3) to invalidate and avoid the Subordination Agreement, (4) to disgorge the Uptier Fees, and (5) such other relief as the Court deems appropriate in connection with the unwinding of the Uptier Transaction.

SECOND CAUSE OF ACTION

Avoidance and Recovery of the Uptier Transaction as a Constructive Fraudulent Conveyance Under Bankruptcy Code §§ 544, 548, 550, and 551, and Applicable State Law of New York, Colorado, and/or Delaware
(Against Defendants First Lien Agent, Second Lien Trustee, Uptiered Creditors, and John Does 1-100)

114. The Committee repeats and realleges the allegations in the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

115. Section 548 of the Bankruptcy Code provides that a trustee or debtor may avoid a transfer of an interest of the debtor in property, or any obligation incurred by the debtor, that was made or incurred on or within two years before the petition date as constructively fraudulent if it can be shown that: (1) the transfer made or obligation incurred was for less than reasonably equivalent value; and (2) the debtor (a) was insolvent on the date of the transaction or was rendered insolvent thereby, (b) had unreasonably small capital, or (c) intended to incur, or reasonably should have known it would incur, debts that it could not pay as they matured. 11 U.S.C. § 548(a)(1)(B).

116. Section 544(b) of the Bankruptcy Code operates similarly and permits a trustee or debtor to avoid a transfer or obligation of the debtor pursuant to state fraudulent conveyance law, which imposes similar requirements as section 548 of the Bankruptcy Code. 11 U.S.C.§ 544(b). The fraudulent conveyance laws of the relevant states—New York (based on the governing law of the Second Lien Notes Indenture), Colorado (based on ModivCare's domicile and main place of business, and Delaware (based on ModivCare's state of incorporation)—are similar to section 548 of the Bankruptcy Code. *See* N.Y. Debt. & Cred. Law § 273-74 (McKinney); Colo. Rev. Stat. Ann. § 38-10-115 (West); Del. Code Ann. Tit. 6, §§ 1304, 1305 (West).

117. The Uptier Transaction was transfers of the Debtors' interests in property and an obligation incurred by the Debtors within the appropriate lookback period set forth under all relevant law. In connection with the Uptier Transaction, the Company exchanged $271 million of

Unsecured Notes for $271 million of Second Lien Notes that were secured by a lien on substantially all of the Company's assets, had more onerous terms and that actually increased the Company's net debt.

118. As set forth above, the Debtors (1) were insolvent at the time of each of the Uptier Transaction and (2) did not receive reasonably equivalent value in connection with the Uptier Transaction.

119. By virtue of the foregoing, the Uptier Transaction constituted a constructive fraudulent transfer avoidable under section 548 of the Bankruptcy Code, section 544(a)(1)(B) of the Bankruptcy Code, and applicable law, including, but not limited to, the fraudulent conveyance laws as enacted in the states of New York, Colorado, and Delaware.

120. Each of the Second Lien Trustee, the First Lien Agent, Coliseum, the other Uptiered Creditors and John Does 1-100 is an initial transferee of the transfers in each of the Uptier Transaction, an entity for whose benefit one or more of the transfers in the Uptier Transaction were made, or an immediate or mediate transferee of one or more of the transfers constituting the each of the Uptier Transaction.

121. Under sections 550(a) and 551 of the Bankruptcy Code, the Committee, on behalf of the Estates, seeks (1) to convert the Second Lien Notes issued pursuant to the Uptier Transaction (other than the $30 million of Second Lien Notes that Coliseum paid cash for) back to Unsecured Notes, (2) to reinstate the Unsecured Notes Guarantees, (3) to invalidate and avoid the Subordination Agreement, (4) disgorge the Uptier Fees, and (5) such other relief as the Court deems appropriate in connection with the unwinding of each of the Uptier Transaction.

THIRD CAUSE OF ACTION (IN THE ALTERNATIVE)

Avoidance and Recovery of Preferential Transfers of the March 14 Uptier Notes Exchange Under Bankruptcy Code §§ 547 and 550 (Against Defendant Coliseum)

122. The Committee repeats and realleges the allegations in the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

123. The Committee asserts herein that the March 14 Uptier Notes Exchange is a fraudulent conveyance under Bankruptcy Code §§ 544, 548, 550, and 551, and Applicable State Law of New York, Colorado, and/or Delaware, but brings this Third Cause of Action in the alternative to the First and Second Causes of Action.

124. Section 547(b) of the Bankruptcy Code permits the avoidance as a preference of all transfers made to or for the benefit of a creditor on account of an antecedent debt, while the debtor was insolvent, within 90 days before the petition date, or up to one year before the petition date if such transfer was made to or for the benefit of a creditor who was an insider, which enables such creditor to receive more than such creditor would have received in a chapter 7 liquidation if such transfer had not been made.

125. Pursuant to the March 14 Uptier Notes Exchange, the Company issued $20.17 million in Second Lien Notes to Coliseum in exchange for an equal amount of Unsecured Notes.

126. Daniel Silvers, the director of the Board authorized to lead an investigation into causes of action that the Debtors [REDACTED] [REDACTED]. Solely in the alternative to the foregoing allegations relating to the First and Second Causes of Action, and solely for purposes of asserting this Third Cause of Action in the alternative, the Committee asserts that the March 14 Uptier Notes Exchange was a transfer made to, or for the benefit of, Coliseum,

who was a creditor of the Debtors at the time of the March 14 Uptier Notes Exchange, on account of an antecedent debt or debts owed by the Debtors to Coliseum before such transfers were made.

127. The March 14 Uptier Notes Exchange was made while the Debtors were insolvent. At all relevant times, the Debtors' debts and liabilities exceeded the reasonable fair value of their assets, and they did not have the ability to meet their maturing obligations or to satisfy their existing or probable liabilities as they came due in the ordinary course of their business.

128. Coliseum qualifies as a statutory insider under section 101(31) of the Bankruptcy Code as Coliseum was persons in control of the Debtors by virtue of its status as a substantial equity holder in ModivCare.

129. The March 14 Uptier Notes Exchange was made within one year of the Petition Date.

130. As a result of the March 14 Uptier Notes Exchange, Coliseum received more than it would be entitled to receive if (1) under a hypothetical chapter 7 case; (2) the transfers had not been made; and (3) such creditor received payment of such debt to the extent provided by the provisions of the Bankruptcy Code.

131. Accordingly, in the alternative to the First and Second Causes of Action, the March 14 Uptier Notes Exchange should be avoided as a preferential transfer under section 547(b) of the Bankruptcy Code, and such assets, or the value thereof, should be recovered and preferred in their entirety for the benefit of the Estates and unsecured creditors.

132. Based upon the foregoing, and in the alternative to the First and Second Causes of Action, the March 14 Uptier Notes Exchange constitutes an avoidable preferential transfer pursuant to section 547(b) of the Bankruptcy Code and, in accordance with section 550(a) of the

Bankruptcy Code, the Committee may recover from Coliseum on behalf of the Debtors the amount of the March 14 Uptier Notes Exchange, plus interest.

FOURTH CAUSE OF ACTION

Disallowance of Claims
11 U.S.C. § 502(d)
(Against Defendants First Lien Agent, Second Lien Trustee, Coliseum, Uptiered Creditors and John Does 1-100)

133. The Committee repeats and realleges the allegations in the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

134. The First Lien Agent, the Second Lien Trustee, Coliseum, the other Uptiered Creditors, and John Does 1-100 (the "**Chapter 5 Defendants**") are persons or entities from which property is recoverable under section 550 of the Bankruptcy Code or is a transferee of transfers avoidable under sections 544, 547, and 548 of the Bankruptcy Code.

135. The Chapter 5 Defendants have not paid the amount or turned over any property transferred for which the Chapter 5 Defendants are liable under section 550 of the Bankruptcy Code.

136. To the extent that any of the Chapter 5 Defendants assert any claims, including any claims that are filed or scheduled, against the Debtors, such claims are disallowed unless and until such Chapter 5 Defendant, as appropriate, returns to the Estates property, and pay the Estates amounts, for which it is liable under section 550 of the Bankruptcy Code.

FIFTH CAUSE OF ACTION

Declaratory Judgment Regarding Right to Setoff
28 U.S.C. §§ 2201 and 2202, 11 U.S.C. § 558, and Applicable State Law
(Against First Lien Agent, Second Lien Trustee, Coliseum, Uptiered Creditors and John Does 1-100)

137. The Committee repeats and realleges the allegations in the foregoing paragraphs, which are incorporated by reference as if fully set forth herein.

138. The Estates have the benefit of any defense available to the Debtors as against any entity. As such, the Committee, bringing the Complaint on behalf of the Estates, may assert the Debtors' right to setoff as a defense under section 558 of the Bankruptcy Code and applicable state law.

139. The Estates have claims against Coliseum, the other Uptiered Creditors, the Second Lien Trustee, and the First Lien Agent for damages arising under the applicable counts alleged herein that arose from Coliseum's, the Second Lien Trustee's, or the First Lien Agent's conduct and are entitled to such damages as described herein.

140. To the extent that any damages are awarded to the Estates from Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent under the applicable counts alleged herein, the Estates are entitled to setoff any such damages against any claims asserted by Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or First Lien Agent against the Debtors.

141. To the extent that any damages are awarded to the Estates from Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent under the applicable counts alleged herein, an actual controversy exists between the parties regarding the Estates' right to apply the damages incurred by the Estates as a result of Coliseum's, the other Uptiered Creditors', the Second Lien Trustee's, or the First Lien Agents' conduct to setoff the amounts possibly owed to Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent on account of any claims by Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent against the Debtors.

142. To the extent any damages are awarded to the Estates from Coliseum, the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent, on account of any claims

against Coliseum, any of the other Uptiered Creditors, the Second Lien Trustee, or the First Lien Agent, there exists a substantial controversy between the parties of sufficient immediacy and reality to warrant the issuance of a declaratory judgement under 28 U.S.C. § 2201. A prompt judicial determination of the respective rights and duties of the parties in these respects is necessary and appropriate.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter an order consistent with the relief sought in the above listed causes of action as follows:

(i) Ordering damages in an amount to be proven at trial;

(ii) Avoiding, as a fraudulent conveyance under section 548 of the Bankruptcy Code, section 544 of the Bankruptcy Code, and applicable state law, the Uptier Transaction;

(iii) Disgorging the Uptier Fees;

(iv) Ordering, that, under sections 550(a) and 551 of the Bankruptcy Code, the Second Lien Notes Notes issued pursuant to the Uptier Transaction (other than the $30 million of Second Lien Notes that Coliseum paid cash for) are converted back to Unsecured Notes, and other such relief as appropriate in connection with the unwinding of the Uptier Transaction;

(v) Ordering, that, under sections 550(a) and 551 of the Bankruptcy Code, Plaintiff may recover the value of the property conveyed in connection with Uptier Transaction and the Uptier Fees, plus interest, for the benefit of the Estates;

(vi) Avoiding and invalidating, as fraudulent conveyances under section 548 of the Bankruptcy Code, section 544 of the Bankruptcy Code, and applicable state law, all of the guarantees and collateral pledges in favor of the Second Lien Trustee made by each of the Debtors, extinguishing the Subordination Agreement, reinstating the guarantees under the Unsecured Notes, and recovering and preserving such guarantees and pledges in their entirety, or the value thereof, for the benefit of the Estates and unsecured creditors;

(vii) Ordering and declaring, to the extent necessary, that Plaintiff is entitled to setoff the damages awarded to the Estates under the applicable counts alleged herein against any claims raised by Coliseum, the Second Lien Noteholders, and First Lien Lenders, and any other amounts allegedly owed to Coliseum, the Second Lien Noteholders, and First Lien Lenders;

(viii) Granting Plaintiff costs of suit incurred herein, including, without limitation, attorneys' fees, costs, and other expenses incurred in this action;

(ix) Granting Plaintiff pre- and post-judgment interest on the judgment amount to the fullest extent allowed by applicable law; and

(x) Granting such other and further relief, at law or in equity, to which Plaintiff is justly entitled.

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