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9 MEDICAL SERVICES, INC.

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

12 In re) Chapter 11
13 ModivCare Inc., *et al.*,)
14 Reorganized Debtors¹.) Case No.: 25-90309 (ARP)
15) (Jointly Administered)
16) **ALPHAONE AMBULANCE MEDICAL**
17) **SERVICES, INC.'S RESPONSE TO**
18) **REORGANIZED DEBTORS' NINTH**
19) **OMNIBUS OBJECTION TO CERTAIN**
20) **CLAIMS (SATISFIED CLAIMS) [DOC.**
21) **1395]**
22) Proof of Claim Filed: Sept. 26, 2025
23)
24)

25 **TO THE REORGANIZED DEBTORS AND THEIR ATTORNEYS OF RECORD:**

26 ALPHAONE AMBULANCE MEDICAL SERVICES, INC. ("AlphaOne") respectfully
27 submits this response to the Reorganized Debtors' Ninth Omnibus Objection to Certain
28 Claims [Doc. No. 1395] ("Objection"). This response is based on the facts and grounds
stated below and in the accompanying Declaration of Shawn M. Krogh.

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



1 **I. RELIEF REQUESTED**

2 1. AlphaOne respectfully requests that the Court (1) overrule the Objection as
3 it pertains to AlphaOne’s claim, and (2) allow Claim No. 800 in the amount of \$737,636.06,
4 less any properly documented payments, because AlphaOne’s Claim was not cured,
5 satisfied, released, waived, or barred for the reasons set forth below. In the alternative, if
6 the Court determines that material factual disputes remain unresolved, AlphaOne
7 requests that the matter be set for an evidentiary hearing.

8 **II. JURISDICTION AND VENUE**

9 2. Jurisdiction is proper before this Court as the United States Bankruptcy
10 Court for the Southern District of Texas has original and exclusive jurisdiction over all
11 cases under Title 11, including the allowance or disallowance of claims. 28 U.S.C. §§ 157,
12 1334.

13 3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409
14 because this matter arises in and relates to the pending chapter 11 case.

15 **III. STATEMENT OF FACTS**

16 4. On or about August 20, 2025, ModivCare Inc. and its affiliated debtors (the
17 "Reorganized Debtors") filed voluntary petitions for relief under Chapter 11 of the
18 Bankruptcy Code in the United States Bankruptcy Court for the Southern District of Texas,
19 Houston Division ("Petition Date").

20 5. AlphaOne is a provider of ambulance and medical transportation services.
21 On or about September 26, 2025, AlphaOne timely filed its proof of claim no. 800 in the
22 amount of \$737,636.06, reflecting amounts owed for prepetition goods and services
23 rendered. (Declaration of Shawn M. Krogh "Krogh Decl." ¶13).

24 6. On or about October 30, 2025, Reorganized Debtors filed a *Notice of*
25 *Potential Assumption of Certain Debtors’ Executory Contracts and Unexpired Leases*
26 [Doc. No. 605] ("Assumption Notice"), identifying certain "Designated Contracts" with
27 cure amounts for "\$0.00." The Assumption Notice set a deadline of November 17, 2025,
28 for counterparties to object. The Assumption Notice did not reference AlphaOne’s proof



1 of claim or the amount asserted in AlphaOne's Claim and did not state that any claimant
2 was waiving or foregoing its claim as stated in its respective proof of claim. (Krogh Decl.
3 ¶16).

4 7. On or about November 25, 2025, AlphaOne submitted its vote on the Joint
5 Chapter 11 Plan of Reorganization of ModivCare Inc. and Its Debtor Affiliates
6 ("Reorganization Plan"). AlphaOne elected to reject the Reorganization Plan, opt out of
7 the releases, and made the cash out election. (Krogh Decl. ¶17). As such, AlphaOne
8 expressly reserved all of its rights and did not agree to any releases, waivers, or
9 forfeitures. *Id.*

10 8. During the bankruptcy proceeding, AlphaOne received limited payments
11 totaling approximately \$77,966.71. (Krogh Decl. ¶14). This amount is substantially less than
12 the total asserted in AlphaOne's proof of claim, leaving an unpaid balance of approximately
13 \$659,669.35. (Krogh Decl. ¶15).

14 9. On or about March 31, 2026, Reorganized Debtors filed their Ninth Omnibus
15 Objection to Certain Claims (Satisfied Claims) [Doc. No. 1395], seeking to disallow
16 AlphaOne's Claim on the basis that it was "satisfied" through the cure process associated
17 with the assumption of its contract.

18 **IV. LEGAL STANDARD**

19 10. Under Section 502(a) of the Bankruptcy Code, "a claim or interest, proof of
20 which is filed under section 501 [of the Bankruptcy Code], is deemed allowed, unless a
21 party interest... objects." 11 U.S.C § 502(a). Further, section 502(b) of the Bankruptcy
22 code provides, in pertinent part, that "if such objection to a claim is made, the court, after
23 notice and a hearing, shall determine the amount of such claim... as of the date of the
24 filing of the petition, and shall allow such claim in such amount, except to the extent that
25 – (1) such claim is unenforceable against the debtor and property of the debtor, under any
26 agreement or applicable law for a reason other than because such claim is contingent or
27 unmatured." 11 U.S.C § 502(b)(1).

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V. ARGUMENT

A. An Outstanding Amount of \$659,669.35 Remains Unpaid on AlphaOne’s Claim No. 800 and AlphaOne Has Not Been Made Whole.

11. An assumed lease or contract will remain in effect through and then after the completion of the reorganization. *In re National Gypsum Co.*, 208 F.3d 498, 505 (5th Cir. 2000). The non-debtor party to the agreement is not released from its duties and must continue to perform; likewise, the debtor must continue to perform or pay for the services or other costs that are not discharged. *Id.* "The act of assumption must be grounded, at least in part, in the conclusion that maintenance of the contract is more beneficial to the estate than doing without the other party's services." *In re National Gypsum Co.*, at 505, (internally citing to *In re MMR Holding Corp.*, 203 B.R. 605, 612 (Bankr. M.D. La. 1996)). The Bankruptcy Code affords the non-debtor a measure of protection, since it is possible that the contract is not beneficial to the non-debtor, and the non-debtor lacks any decision-making authority in the assumption process. *Id.* at 506. Bankruptcy Code Section 365 "allows a debtor to 'continue in a beneficial contract provided, however, that the other party is made whole at the time of the debtor's assumption of said contract.'" *Id.*

12. Here, AlphaOne’s Claim No. 800 was filed in the amount of \$737,636.06. (Krogh Decl. ¶13). As of the date of this response, AlphaOne has received only \$77,966.71, leaving an unpaid difference of approximately \$659,669.35. (Krogh Decl. ¶¶4-5). Therefore, AlphaOne’s Claim is not fully satisfied because AlphaOne continues to suffer a pecuniary loss for the outstanding balance of \$659,669.35 and has not been made whole.

B. The Assumption Notice and Purported Cure Amount Were Defective, Failed to Provide Sufficient and Specific Notice as to AlphaOne’s Claim, and Therefore Cannot Extinguish AlphaOne’s Valid Claim.

13. "An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them



1 an opportunity to present their objections." *In re Kleibrink*, 621 F.3d 370, 371 (5th Cir.
2 2010) (internally quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314,
3 70 S. Ct. 652, 94 L. Ed. 865 (1950)).

4 14. Here, the Reorganized Debtors' reliance on the Assumption Notice is
5 misplaced and improper. The notice was expressly titled as a "potential" assumption, and
6 failed to reference or identify AlphaOne's Claim No. 800 or the amount asserted therein.
7 (Krogh Decl. ¶6). As a result, the Assumption Notice did not provide adequate or specific
8 notice that AlphaOne's Claim would be affected, impaired, or deemed satisfied.
9 Accordingly, AlphaOne lacked actual notice that its claim was being targeted for
10 satisfaction, release, or forfeiture, and was deprived a meaningful opportunity to object.

11 15. Moreover, a "potential" assumption notice cannot effectuate a release,
12 waiver, or forfeiture of a creditors' rights. Nothing in Bankruptcy Code section 365
13 authorizes a debtor to deem claims satisfied, impose a waiver, or eliminate liability through
14 mere service of a notice. Section 365(b)(1) of the Bankruptcy Code specifically requires
15 actual cure of defaults and compensation for pecuniary losses as a condition to
16 assumption; it does not permit the Reorganized Debtors to declare a \$0.00 cure amount
17 where substantial sums remain unpaid, and Reorganized Debtors cannot avoid
18 outstanding obligations through procedural mechanisms alone.

19 16. Further, the alleged cure was improper because the cure amount of \$0.00
20 does not satisfy AlphaOne's Claim or extinguish the unpaid balance of \$659,669.35. Since
21 a substantial balance of \$659,669.35 remains outstanding, the Reorganized Debtors
22 cannot deem the Claim satisfied through conclusory cure designation that are unsupported
23 by sufficient evidence. Accordingly, AlphaOne's claim cannot be deemed satisfied,
24 released or waived, and its failure to object to the defective notice cannot be treated as a
25 waiver of its rights.

26 17. Importantly, AlphaOne did not consent to any waiver, release, or
27 relinquishment of its Claim. (Krogh Decl. ¶7). AlphaOne affirmatively rejected the
28 Reorganization Plan, opted out of all releases, and expressly preserved its rights. *Id.*



1 Therefore, the Reorganized Debtors cannot rely on the defective Assumption Notice to
2 impose any waiver, release, or satisfaction against AlphaOne's Claim.

3 18. Given that the Assumption Notice was defective, no valid cure occurred,
4 and AlphaOne did not consent to any waiver or release, the Reorganized Debtors cannot
5 rely on the purported assumption process to extinguish AlphaOne's claim. Therefore,
6 Objection should be overruled and Claim No. 800 should be allowed as filed, less any
7 properly documented payments received.

8 ***C. AlphaOne's Proof of Claim No. 800 is Entitled to Prima Facie Validity and the***
9 ***Reorganized Debtors Have Not Met Their Burden to Rebut it.***

10 19. As set forth in Bankruptcy Rule 3001(f), a properly filed proof of claim is
11 deemed to have established a prima facie case against the debtors' assets under
12 Bankruptcy Code section 502(a). The objecting party must then produce evidence
13 rebutting the claimant or else the claimant will prevail. *In re Fidelity Holding Co.*, 837 F.2d
14 696, 698 (5th Cir. 1988). The rebuttal evidence must be "at least equal in probative force
15 to that offered by the proof of claim and which, if believed, would refute at least one of
16 the allegations that is essential to the claim's legal sufficiency." *In re 804 Congress,*
17 *L.L.C.*, 529 B.R. 213, 219 (Bankr. W.D. Tex. 2015). If sufficient evidence rebutting the
18 claim is brought forth, then the claimant must "prove the validity of the claim by a
19 preponderance of the evidence." *In re Fidelity Holding Co.*, at 698. The ultimate burden
20 of proof always rests upon the claimant. *Id.*

21 20. On or about September 26, 2025, AlphaOne filed its proof of claim in the
22 amount of \$737.636.06, for goods and transportation services rendered prior to the
23 Petition Date and submitted supporting documents therein. (Krogh Decl. ¶13).
24 Accordingly, AlphaOne's Claim was timely and properly brought before this Court and is
25 entitled to prima facie validity under Bankruptcy Rule 3001(f).

26 21. Reorganized Debtors' Objection relies solely on the asserted \$0.00 cure
27 amount in the defective Assumption Notice, not on evidence showing that AlphaOne's
28 Claim was fully paid, validly released, or otherwise made unenforceable against the



1 Reorganized Debtors.

2 22. Additionally, the Bankruptcy Code requires that, as a condition of assuming
3 an executory contract, the debtor must cure any defaults, compensate the non-debtor
4 party for any actual pecuniary loss resulting from such default, and provide adequate
5 assurance of future performance under such contract. 11 U.S.C. § 365(b). The
6 Reorganized Debtors have not presented sufficient evidence to show that the cure
7 amount accurately reflects all amounts owed under AlphaOne's Claim, compensates for
8 all actual pecuniary losses resulting from the default, or provides adequate assurance of
9 future performance. AlphaOne did not consent or execute to any waiver, release, or
10 forfeiture of its Claim against Reorganized Debtors. (Krogh Decl. ¶17). Accordingly,
11 Reorganized Debtors have not met their burden to rebut the prima facie validity of the
12 Claim, and AlphaOne's Claim should be allowed as filed under Bankruptcy Rule 3001, less
13 any properly documented payments received.

14 ***D. AlphaOne's Response Complies with Procedural Requirements.***

15 23. AlphaOne's response to the Objection is timely filed in accordance with the
16 procedures set forth in the Objection notice [Doc. No. 1395]. This Response includes a
17 caption, sets forth a concise statement of the reasons why the Court should not grant the
18 Objection, and provides the applicable contact information for the responding party. As
19 such, AlphaOne substantially complied with the procedural requirements set forth in the
20 Objection and timely brought this response before the Court.

21 **VI. CONCLUSION**

22 24. For the foregoing reasons, AlphaOne respectfully requests that this Court
23 (1) overrule the Reorganized Debtors' Ninth Omnibus Objection as it pertains to
24 AlphaOne's Claim No. 800, and (2) enter an order allowing AlphaOne's claim in the full
25 amount asserted, less any payments received to date.

26 25. Alternatively, if there is a dispute as to the validity of such amounts in the
27 Claim, AlphaOne respectfully requests that the matter be set for an evidentiary hearing to
28 resolve such disputed issues of fact.



VII. RESERVATION OF RIGHTS

26. AlphaOne expressly reserves all rights, claims, defenses, objections, and remedies with respect to Claim No. 800, including the right to supplement this Response, present additional evidence, challenge the sufficiency of the Assumption Notice, and assert any additional arguments or relief available under applicable law, the Bankruptcy Code, and the Federal Rules of Bankruptcy Procedure. Nothing in this Response shall be construed as a waiver, release, or relinquishment of any right, claim, defense, or argument, whether known or unknown, accrued or unaccrued, and AlphaOne further reserves the right to seek any additional relief that may be appropriate.

27. Nothing contained herein shall be deemed a waiver of any of AlphaOne's rights under the Bankruptcy Code or applicable non-bankruptcy law.

KROGH & DECKER, LLP

Dated: April 29, 2026

By: *Shawn M. Krogh*
Shawn M. Krogh,
Attorney for ALPHAONE
AMBULANCE MEDICAL
SERVICES, INC.

