

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

	§	
In re:	§	
	§	Chapter 11
MODIVCARE, INC.	§	
	§	
	§	Case No. 25-90309
Debtors.	§	
	§	Jointly Administered
	§	

**MODIVCARE TOPCO, LLC’S EMERGENCY
MOTION FOR STAY PENDING APPEAL**

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.

EMERGENCY RELIEF HAS BEEN REQUESTED. IF THE COURT CONSIDERS THE MOTION ON AN EMERGENCY BASIS, THEN YOU WILL HAVE LESS THAN 21 DAYS TO ANSWER. IF YOU OBJECT TO THE REQUESTED RELIEF OR IF YOU BELIEVE THAT THE EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU SHOULD FILE AN IMMEDIATE RESPONSE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

COMES NOW ModivCare Topco, LLC (“**ModivCare**”), and hereby files this *Emergency Motion for Stay Pending Appeal* (the “**Motion**”), and in support hereof, respectfully states as follows:



RELEVANT BACKGROUND FACTS

1. On February 11, 2026, AlixPartners, LLP filed its Final Fee Application for Allowance and Compensation for Professional Services Rendered and Reimbursement of Expenses (the **“AlixPartners Fee Application”**)
2. On February 12, 2026, White & Case, LLP (**“W&C”**) filed its Final Application for Allowance of Compensation and Reimbursement of Expenses (the **“W&C Fee Application”**).
3. On March 4, 2026, ModivCare filed its objection to the AlixPartners Fee Application (the **“AP Objection”**).
4. On March 5, 2026, ModivCare filed its objection to the W&C Fee Application (the **“W&C Objection”**).
5. The AlixPartners Fee Application and the W&C Fee Application are collectively referred to as **“The Fee Applications”**.
6. The W&C Objection and the AP Objection are collectively referred to as **“The Objections”**.
7. On April 6, 2026, the Court held a status conference related to The Objections (the **“Status Conference”**), during which it *sua sponte* indicated its intent to require ModivCare to deposit all disputed and unpaid amounts into the registry of the Court. The initial *sua sponte* order was made orally from the bench.
8. Although no written order was entered at that time, on April 9, 2026, ModivCare, out of an abundance of caution, filed an *Emergency Motion to Reconsider*, requesting that the Court reconsider its stated intention to require a registry deposit (the **“Motion to Reconsider”**) [ECF No. 1427].

9. On May 30, 2026, the Court held a continued Status Conference and hearing on the *Motion to Reconsider* (the “**Hearing**”).

10. At the outset of the Hearing, the Court stated that the *Motion to Reconsider* was premature because no order requiring a registry deposit had been entered. However, on May 30, 2026, following the conclusion of the Hearing, the Court entered an *Order Requiring the Reorganized Debtors to Deposit Funds in Escrow* with the Court (the “**Escrow Order**”) [ECF No.1502].

11. The Escrow Order required:

- a. ModivCare to deposit \$628,727.58 in connection with the W&C Fee Application and \$1,016,169.40 in connection with the AlixPartners Fee Application into the registry of the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the “**Registry Deposit**”);
- b. ModivCare to make the Registry Deposit on or before April 14, 2026; and
- c. The Registry Deposit to remain in the Court registry pending resolution of the Objections.

12. The Escrow Order further provided that W&C and AlixPartners were not precluded from seeking additional compensation from ModivCare, including reimbursement of fees or expenses incurred after the effective date of the Reorganized Debtors’ plan of reorganization.

13. The Escrow Order was entered as a final order, and on May 1, 2026, ModivCare filed its Notice of Appeal.

14. As reflected in the docket and the *sua sponte* entry of the Escrow Order: (a) no party filed a motion requesting that funds be deposited into the Court’s registry; (b) no party filed a motion seeking additional compensation; (c) no hearing was held prior to entry of the Escrow Order; (d)

no evidence was presented prior to entry of the Escrow Order; and (e) the Escrow Order cites no provision of the Bankruptcy Code, rule, or case law as authority for its entry.

BASIS FOR RELIEF REQUESTED

A. LEGAL STANDARD FOR GRANTING A MOTION FOR STAY PENDING APPEAL

15. The Fifth Circuit employs a four-part test in determining whether to grant a stay pending appeal¹: (i) whether the movant has made a showing of likelihood of success on the merits; (ii) whether the movant has made a showing of irreparable injury if the stay is not granted; (iii) whether the granting of the stay would substantially harm the other parties; and (iv) whether the granting of the stay would serve the public interest. *Ruiz v. Estelle*, 666 F.2d 854, 856 (5th Cir. 1982)(The party who seeks a stay bears the burden to establishing the prerequisites, however the movant need not always show a "probability" of success on the merits; instead, the movant need only present a substantial case on the merits when a serious legal question is involved and show that the balance of the equities weighs heavily in favor of granting the stay.)(citations omitted); accord *Arnold v. Garlock, Inc.*, 278 F.3d 426, 438-39 (5th Cir. 2001). The Fifth Circuit, however, “has refused to apply these factors in a rigid mechanical fashion.” *Reading & Bates Petroleum Co. v. Musslewhite*, 14 F.3d 271, 272 (5th Cir. 1994).

16. Accordingly, some courts within the Fifth Circuit have determined that “the absence of any one factor is not fatal to a successful motion for stay.” *In re Permian Producers Drilling, Inc.*, 263 B.R. 510, 515 (W.D. Tex. 2000) (citing *In re First S. Savs. Ass’n*, 820 F.2d 700, 709 n.10 (5th Cir. 1987)). ModivCare respectfully submits that a stay of the Court’s Escrow Order is necessary and appropriate pending appellate review.

¹ The elements to be considered for a stay pending appeal outlined by the Fifth Circuit have since been confirmed by the Supreme Court in *Nken v. Holder*, 556 U.S. 418, 434 (2009).

B. FIRST ELEMENT – LIKELIHOOD OF SUCCESS ON THE MERITS

Injunctions Require an Adversary Proceeding

17. ModivCare is likely to succeed on multiple independent grounds. First, the Escrow Order compels affirmative action and is therefore a mandatory injunction. The distinction between prohibitory and mandatory injunctions is dispositive. A prohibitory injunction restrains a party from acting and preserves the *status quo*. A mandatory injunction compels affirmative action, altering the existing state of affairs. *Savage Tavern v. Stag*, 589 F. Supp. 3d 624, 639 (N.D. Tex. 2022) (Mandatory injunction “mandates” a party to take some action inconsistent with the *status quo* rather than prohibiting them from altering the *status quo*.).

18. The Escrow Order compels ModivCare to affirmatively transfer approximately \$1.6 million into the Court’s registry before a single dollar of fees has been judicially allowed under 11 U.S.C. § 330, notwithstanding pending objections. In doing so, the Escrow Order effectively presupposes entitlement to disputed funds.

19. Injunctive relief must be brought by an adversary proceeding. FED. R. BANKR. P. 7001(7); See also *Feld v. Zale Corporation (In re Zale Corporation)*, 62 F.3d 746, 763-66 (5th Cir. 1995) (Court’s injunction issued without the protections of an adversary proceeding was improper.)

20. Furthermore, a party seeking a mandatory injunction bears a heightened burden, requiring a “clear entitlement” to relief under the facts and the law. *Justin Industries, Inc. v. Choctaw Securities, L.P.*, 920 F.2d 262, 268 n.7 (5th Cir. 1990). Such relief should not be granted except in rare instances in which the facts and law are clearly in favor of the moving party. *Exhibitors Poster Exch., Inc. v. Nat’l Screen Serv. Corp.*, 441 F.2d 560, 561-62 (5th Cir. 1971)(citations omitted).

21. The Supreme Court has further underscored that injunctive relief is “an extraordinary and drastic remedy” that is “never awarded as of right.” *Winter v. Natural Resources Defense Council, Inc.*, 555 U.S. 7, 24 (2008). *Winter* requires a clear showing on all four elements before an injunction is entered: (1) likelihood of success on the merits; (2) likelihood of irreparable harm; (3) the balance of equities favors the movant; and (4) an injunction serves the public interest.

22. Here, none of the factors were satisfied as no evidence was presented and the Escrow Order was entered *sua sponte*, without notice, without briefing, and without any evidentiary record addressing the required elements for injunctive relief.

No Statutory Authority Supports the Escrow Order

23. The Escrow Order identifies no statutory basis whatsoever for the relief it imposes.

24. It does not cite 11 U.S.C. § 105(a), nor any other provision of the Bankruptcy Code, as authority for compelling the pre-allowance deposit of disputed funds. That omission is telling, as there is no provision of the Bankruptcy Code or the Bankruptcy Rules that authorizes such relief.

25. The only conceivable statutory basis for the Escrow Order is 11 U.S.C. § 105(a). However, § 105(a) does not grant bankruptcy courts a “roving commission to do equity.” *United States v. Sutton*, 786 F.2d 1305, 1308 (5th Cir. 1986). The Supreme Court has made clear that a bankruptcy court “may not contravene specific statutory provisions” under the guise of § 105(a). *Law v. Siegel*, 571 U.S. 415, 421 (2014).

26. Section 330 provides a comprehensive framework governing the allowance of professional fees, permitting compensation only after the court determines that such fees are reasonable and necessary. The Escrow Order does not implement that framework, instead it inverts it by requiring mandatory transfer of funds by the Reorganized Debtor before any fees have been allowed.

27. The absence of any cited statutory authority, combined with the clear conflict between the Escrow Order and the fee-allowance scheme under § 330, further underscores that the Order exceeds the Court’s authority and is unlikely to withstand appellate review.

28. No party asked for the entry of the Escrow Order. It was determined *sua sponte* at a status conference without prior notice, without briefing, and without any evidentiary record bearing on the four factors required prior to the entry of an injunction.

29. The Escrow Order presupposes that White & Case and AlixPartners are entitled to the funds and that ModivCare is liable. However, fee allowance under § 330 is not ministerial. It requires a judicial determination that fees were reasonable and necessary.

30. The Objections raise specific, detailed factual challenges that the Court has not yet evaluated. The outcome of this dispute is supposed to be uncertain and not predetermined until the Court hears, weighs and determines the factual record. Neither White & Case nor AlixPartners can demonstrate “clear entitlement” to funds for payment of fees and expenses that have not been allowed.

The Escrow Order Violates Due Process

31. ModivCare has a clear property interest in the approximately \$1.644 million in disputed funds, which remain its property unless and until the Court orders otherwise following adjudication of the Objections.

32. A property interest includes equitable and reversionary interests. The Reorganized Debtors’ property interest in the disputed funds is grounded in two independent sources, each of which is sufficient on its own.

33. First, the confirmed Plan and Confirmation Order create a contingent reversionary interest in favor of the Reorganized Debtors. Plan § 2.5(a) provides that disputed professional fees “shall

be held in trust for the Professionals” pending allowance, which pursuant to the Bankruptcy Code can only be determined pursuant to § 330. Funds held in trust pending allowance are, by the structure of § 1129(a)(9), payable only “to the extent allowed.” 11 U.S.C. § 1129(a)(9)(A). Disallowed amounts do not vanish, and the Plan does not assign them to any other party. They revert to the Reorganized Debtors as the only residual claimant under the Plan structure. That contingent reversionary interest is itself property.

34. The Reorganized Debtors hold a present, non-contingent property interest in the administration of the escrow itself. The Plan vests escrow responsibilities in the Reorganized Debtors, including the authority to select the depository, to administer the funds consistent with their fiduciary obligations, and to ensure that the funds are preserved pending disposition under § 330. The Escrow Order strips the Reorganized Debtors of those functions by transferring administration to the Court’s registry, which imposes its own administrative regime, registry fees, and procedural requirements in both depositing and subsequently withdrawing the funds. The deprivation of control over the manner of escrow administration is a present, concrete property interest distinct from, and additional to, the contingent reversionary interest in the funds themselves.

35. Each of these property interests is sufficient to support due process protection. Together, they establish that the Reorganized Debtors hold a property interest in the disputed funds that is protected by the requirements of notice, an evidentiary hearing, and a meaningful opportunity to be heard before that interest may be impaired.

36. The compelled transfer of property of the Reorganized Debtor² triggers due process protections, including the right to be heard at a meaningful time and in a meaningful manner.

Mathews v. Eldridge, 424 U.S. 319, 333 (1976).

37. The Escrow Order was entered *sua sponte*, without notice, without an evidentiary hearing, and without any opportunity for ModivCare to present evidence or argument.

38. The Escrow Order also purports to permit White & Case and AlixPartners to seek additional compensation incurred after the effective date of the plan—relief that no party requested and for which the Court identified no governing standard or statutory basis.

The Escrow Order Improperly Expands Potential Fee Liability

39. The Escrow Order goes even further by providing that White & Case and AlixPartners are “not precluded” from seeking additional compensation from ModivCare, including for fees or expenses incurred after the effective date of the Reorganized Debtors’ plan of reorganization.

40. This language is improper for multiple reasons. First, no party requested such relief. The issue before the Court concerned discrete, pending Fee Applications and corresponding Objections—not prospective, unfiled claims for future compensation.

41. Second, the Court identified no statutory or contractual basis for permitting post-effective-date compensation. The Bankruptcy Code strictly governs the allowance of professional fees, and nothing in § 330 authorizes a court to prospectively endorse or expand a professional’s right to seek compensation outside the confines of an actual fee application and the statutory framework. Third, this language injects uncertainty into the parties’ rights and obligations under the confirmed plan of reorganization, which is intended to provide finality. By finding that additional, undefined

² The ordered transfer also violates the terms of the Confirmed Chapter 11 Plan which requires the funds to be held in escrow by the Reorganized Debtor.

claims for compensation may be asserted against ModivCare, the Escrow Order effectively alters the post-confirmation landscape without notice, briefing, or legal support.

42. Finally, this aspect of the Escrow Order underscores the broader defect: the Court granted relief *sua sponte* that was neither requested nor litigated, and in doing so exceeded the scope of the matters properly before it.

The Escrow Order Imposes an Impossible Retroactive Compliance Deadline

43. The Escrow Order was entered on **April 30, 2026**, yet it required ModivCare to deposit the disputed funds by **April 14, 2026**, more than two weeks before the order even existed.

44. This retroactive deadline is facially defective. A court order cannot compel compliance with an obligation before the order is entered, as doing so deprives the affected party of any meaningful opportunity to timely comply or to seek relief.

45. The imposition of an impossible, backward-looking deadline further underscores the procedural irregularity of the Escrow Order and independently supports a finding that the order violates fundamental due process.

C. SECOND ELEMENT - IRREPARABLE INJURY IF THE STAY IS NOT GRANTED

46. ModivCare will suffer irreparable harm if a stay is not granted. The Escrow Order compels the transfer of approximately \$1.644 million from ModivCare's control into the Court's registry prior to any adjudication of the disputed Fee Applications.

47. As an initial matter, the forced transfer and loss of control over significant funds constitutes irreparable harm in and of itself. Once funds are deposited into the Court's registry, ModivCare is deprived of the ability to manage or otherwise control its property during the pendency of the appeal which is harm that cannot be fully remedied after the fact.

D. THIRD ELEMENT – NO HARM TO OTHER PARTIES

48. Granting a stay will not harm any other party. The only effect of a stay would be to preserve the *status quo* pending appellate review, a status quo that has all funds in escrow pursuant to a confirmed chapter 11 plan.

49. There is no evidence that ModivCare will dissipate or misuse the funds during the pendency of the appeal. By contrast, denying a stay would impose a unilateral burden on ModivCare by forcing it to relinquish control of significant funds before trial on the merits and before its appellate rights are adjudicated.

E. FOURTH ELEMENT – GRANTING A STAY WOULD SERVE PUBLIC INTEREST

50. Granting a stay pending appeal serves the public interest. The public has a strong interest in ensuring that bankruptcy courts act within the bounds of their statutory authority and in accordance with fundamental principles of due process.

51. This appeal raises significant legal questions concerning the limits of a bankruptcy court's authority, including whether a court may *sua sponte* compel the pre-allowance deposit of disputed funds without statutory authorization, without an adversary proceeding, and without notice or an evidentiary record. Preserving these issues for appellate review promotes confidence in the integrity and predictability of the bankruptcy system.

52. The public interest also favors adherence to the Bankruptcy Code's carefully constructed framework governing professional compensation. Section 330 reflects Congress's determination that fees may be awarded only after judicial scrutiny for reasonableness and necessity. Allowing orders that circumvent that process would undermine the uniform application of the Code.

53. For these reasons, the public interest strongly favors granting a stay pending appeal.

F. SUMMARY OF RELIEF REQUESTED

54. All four factors weigh decisively in favor of a stay pending appeal. ModivCare has demonstrated a substantial likelihood of success on the merits, as the Escrow Order was entered without statutory authority, without required procedures, and in violation of due process.

55. Absent a stay, ModivCare will suffer irreparable harm through the loss of control over significant funds and the impairment of its appellate rights.

56. By contrast, a stay will not substantially harm any other party, this is further evidenced by the fact that neither W&C nor AlixPartners filed a motion asking the Court to order the funds to be deposited in the Court's registry.

57. Finally, granting a stay serves the public interest by ensuring adherence to the Bankruptcy Code, protecting due process, and preserving meaningful appellate review. Accordingly, a stay of the Escrow Order pending appeal is warranted.

PRAYER

WHEREFORE, ModivCare respectfully requests that the Court enter an order, substantially in the form submitted herewith: (i) granting the relief requested in this Emergency Motion and staying the Court's Escrow Order; and (ii) granting ModivCare such other and further relief as the Court deems just and proper.

Dated: May 7, 2026.

Respectfully submitted,

/s/ Johnie Patterson
Johnie Patterson
SBN 15601700

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CERTIFICATE OF SERVICE

I, Johnie Patterson, hereby certify that a true and correct copy of the foregoing Emergency Motion was served on May 7, 2026, via the Court's CM/ECF system to all parties consenting to service through the same, and via email to White & Case and AlixPartners.

By: /s/Johnie Patterson
Johnie Patterson

**IN THE UNITED STATES BANKRUPTCY COURT
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HOUSTON DIVISION**

In re:	§	
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MODIVCARE, INC.	§	Chapter 11
	§	
	§	
Debtors.	§	Case No. 25-90309
	§	
	§	Jointly Administered
	§	

STAY PENDING APPEAL

It is

ORDERED that enforcement/compliance with the Court's *Order Requiring the Reorganized Debtors to Deposit Funds in Escrow* [ECF No. 1502] currently on appeal is stayed pending final determination on appeal.

Dated: _____

UNITED STATES BANKRUPTCY JUDGE