

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

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

CERTIFICATE OF NO OBJECTION REGARDING
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
[Relates to Docket No. 341]

Pursuant to the Procedures for Complex Cases in the Southern District of Texas
(the “*Complex Case Procedures*”), the undersigned hereby certifies as follows:

1. On September 19, 2025, the above-captioned debtors in possession (collectively,
the “*Debtors*”) filed the *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]
(the “*Application*”).

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 the Chapter 11 Cases is 6900 E. Layton Avenue, Suite 1100 &
1200, Denver, Colorado 80237.



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2. The deadline to file objections to the Application was October 10, 2025 (the “***Objection Deadline***”).

3. The Objection Deadline passed, and in accordance with paragraph 44 of the Complex Case Procedures, the undersigned represents to the Court that counsel has reviewed the Court’s docket and no objections or other responses to the Application have been filed on the Court’s docket, and the Debtors are unaware of any other objection to the Application.

4. In advance of the Objection Deadline, the Debtors’ counsel received informal comments from the United States Trustee. The Debtors attach hereto (a) a revised proposed order incorporating revisions and (b) a redline of such revisions. The revisions reflected in the attached redline resolve all comments.

5. Accordingly, the Debtors respectfully request that the Court enter the revised proposed order attached hereto.

[Remainder of this page intentionally left blank.]

Dated: October 11, 2025
Houston, Texas

Respectfully submitted,

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

HUNTON ANDREWS KURTH LLP

Timothy A. ("Tad") Davidson II (Texas Bar No. 24012503)

Catherine A. Rankin (Texas Bar No. 24109810)

Brandon Bell (Texas Bar No. 24127019)

600 Travis Street, Suite 4200

Houston, TX 77002

Telephone: (713) 220-4200

Email: taddavidson@hunton.com

crankin@hunton.com

bbell@hunton.com

- and -

LATHAM & WATKINS LLP

Ray C. Schrock (NY Bar No. 4860631)

Keith A. Simon (NY Bar No. 4636007)

George Klidonas (NY Bar No. 4549432)

Jonathan J. Weichselbaum (NY Bar No. 5676143)

1271 Avenue of the Americas

New York, NY 10020

Telephone: (212) 906-1200

Email: ray.schrock@lw.com

keith.simon@lw.com

george.klidonas@lw.com

jon.weichselbaum@lw.com

*Proposed Co-Counsel for the Debtors
and Debtors in Possession*

Certificate of Service

I certify that on October 11, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas on those parties registered to receive electronic notices.

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

Timothy A. ("Tad") Davidson II

**IN THE UNITED STATES BANKRUPTCY COURT
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In re:	:	Chapter 11
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MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
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Debtors. ¹	:	(Jointly Administered)
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**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 DEBTORS, EFFECTIVE
AS OF THE PETITION DATE; AND (B) GRANTING RELATED RELIEF
[Relates to Docket No. 341]**

Upon the Application (the “*Application*”)² of the Debtors for entry of an order (this “*Order*”), (a) authorizing the Debtors to (i) employ and retain FTI Consulting, Inc. (“*FTI*”) as financial advisor and to provide the Debtors with a Chief Transformation Officer (the “*CTO*”) as well as additional supportive staff to assist the CTO (“*Hourly Temporary Staff*”) and (ii) designate Chad J. Shandler as the Debtors’ CTO (together with the Hourly Temporary Staff, collectively the “*FTI Professionals*”) pursuant to the terms of the engagement letter by and among the Debtors and FTI, dated as of January 1, 2025 (the “*Engagement Letter*”), effective as of the Petition Date and (b) granting related relief, all as more fully described in the Application; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C.

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 Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Application.

§ 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases being proper in this district pursuant to 28 U.S.C. § 1408; and due and proper notice of the Application having been provided, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Application; and the Court having determined that the legal and factual bases set forth in the Application and the Shandler Declaration establish just cause for the relief granted herein; and this Court being satisfied, based on the representations made in the Application and the Shandler Declaration, that FTI is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code, and that FTI does not hold or represent an interest adverse to the Debtors’ estates; and this Court having found that the terms and conditions of FTI’s employment, including the Fee and Expense Structure set forth in the Engagement Letter (as modified by this Order) and summarized in the Application, are reasonable as required by section 328(a) of the Bankruptcy Code; and this Court having found that the relief requested in the Application is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Application, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Bankruptcy Local Rules 2014-1 and 2016-1, and the Complex Case Procedures, the Debtors are authorized to (a) employ and retain FTI as financial advisor, (b) designate Chad J.

Shandler as the CTO of the Debtors, and (c) provide additional FTI Professionals for the Debtors, effective as of the Petition Date, in accordance with the terms and conditions set forth in the Shandler Declaration and the Engagement Letter, as modified by this Order.

2. The terms of the Engagement Letter, including the compensation provisions and the Indemnification Provisions, as modified by this Order, are reasonable terms and conditions of employment and are hereby approved as set forth herein; *provided, however*, that, for the avoidance of doubt, nothing in this Order shall constitute any findings regarding, or the approval or any determination with respect to, the reasonableness of any Completion Fee.

3. With regard to the Monthly CTO Fee, beginning October 1, 2025 and continuing through the Effective Date (as defined in the Plan³), the CTO shall keep his time in half-hour (.50 hourly) increments on a monthly basis and in a summary format by project category, and will submit these time records with all applications to the Court for allowance of fees and reimbursement of expenses. Notwithstanding the foregoing, the Debtors are authorized to pay the \$150,000 Monthly CTO Fees to the CTO each month when required under the Engagement Letter without a prior fee application; *provided, however*, for the avoidance of doubt, the Monthly CTO Fees shall be subject to review and approval in any interim and final fee applications. The Monthly CTO Fee shall be prorated for any month in which the CTO is not employed for each day of the month. All fees paid to FTI, including the Monthly CTO Fee, are subject to disgorgement unless and until they are approved by the Court on a final basis.

4. Upon employment and retention by the Debtors, Mr. Shandler shall be empowered and authorized to carry out all duties and responsibilities set forth in the Engagement Letter.

³ The term “**Plan**” as used herein means the *First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates* (as may be amended, supplemented, or otherwise modified) [Docket No. 465].

5. Notwithstanding anything in the Application, the Engagement Letter, the Shandler Declaration, or any exhibit(s) related to the contrary:

- (a) FTI shall not act in any other capacity (for example, and without limitation, as an investor/acquirer) in connection with the above-captioned Chapter 11 Cases.
- (b) In the event the Debtors seek to have FTI Professionals assume executive officer positions that are different than the position(s) disclosed in the Application, or to materially change the terms of the engagement by either (i) materially modifying the functions of personnel or (ii) altering or expanding the scope of the engagement, an application to modify the retention shall be filed with this Court.
- (c) During the course of the Chapter 11 Cases, FTI will only seek reimbursement of actual and necessary expenses.
- (d) No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of the Chapter 11 Cases.
- (e) Any success fees, transaction fees, or other back-end fees, including the \$750,000 Completion Fee, shall be subject to approval by this Court at the conclusion of the Chapter 11 Cases on a reasonableness standard and are not being pre-approved by entry of this Order. The rights of the U.S. Trustee, any statutory committee appointed in the Chapter 11 Cases, and all other parties in interest to object to any such fees, including the Completion Fee, on any grounds, are fully preserved.
- (f) The Debtors are permitted to indemnify those persons serving as corporate officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' directors and officers insurance policy, except to the extent a claim or expense is judicially determined to have arisen from gross negligence, willful misconduct, bad faith, fraud, or self-dealing.
- (g) There shall be no indemnification of FTI or its affiliates, except as may be provided for in this Order.
- (h) For a period of three years after the conclusion of the engagement, neither FTI nor any of its affiliates shall make any investments in the Debtors or the reorganized Debtors.
- (i) FTI Professionals serving as corporate officers of the Debtors shall be subject to the same fiduciary duties and obligations applicable to other persons serving in such capacity.

- (j) FTI shall make appropriate disclosures of any and all facts that may have a bearing on whether FTI, its affiliates, or any individuals working on the engagement hold/represent any interest adverse to, the Debtors, their creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

6. FTI shall seek Court authorization to apply the Cash on Account and/or advanced payments to satisfy any unbilled or other remaining prepetition fees and expenses that FTI becomes aware of during its ordinary course billing review and reconciliation. Any remaining Cash on Account and/or advanced payments shall be treated as an evergreen retainer, held by FTI, and applied against any amounts owed by the Debtors and approved by the Court in FTI's final fee application. After payment of FTI's fees approved in its final fee application, FTI shall remit any remaining funds in the Cash on Account to the Debtors or as otherwise directed by the Court.

7. Notwithstanding anything in the Application or the Engagement Letter to the contrary, FTI shall (a) pass through the cost of Contractors to the Debtors at the same rate that FTI pays the Contractors, (b) with respect to costs incurred by the Contractors, seek reimbursement for actual, reasonable, and documented costs only, (c) ensure that the Contractors are subject to the same conflict checks as were required for FTI in accordance with this retention, and (d) file with the Court such disclosures as are required by Bankruptcy Rule 2014.

8. FTI shall file monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable orders and procedures of this Court. For billing purposes, the FTI Hourly Temporary Staff shall keep their time in one tenth (0.10) hour increments.

9. In the event that, during the pendency of the Chapter 11 Cases, FTI seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records

from such attorneys shall be included in FTI's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules and subject to approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such professional has been retained under section 327 of the Bankruptcy Code; *provided, however*, that FTI shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of FTI's fee applications in the Chapter 11 Cases.

10. FTI shall provide 10 days' notice to the Debtors, the U.S. Trustee, and any statutory committee appointed in the Chapter 11 Cases before any increases in the hourly rates set forth in the Application or the Engagement Letter are charged to the Debtors. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

11. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Shandler Declaration and this Order, the terms of this Order shall govern.

12. FTI shall use its reasonable efforts to avoid any unnecessary duplication of services provided by any retained professionals in the Chapter 11 Cases.

13. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of the Bankruptcy Local Rules are satisfied by such notice.

14. For FTI Professionals not serving as corporate officers of the Debtors, the Engagement Letter's Indemnification Provisions are approved and subject to the following during the pendency of these chapter 11 cases:

- (a) Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtors, the Debtors are authorized to indemnify, and shall indemnify, FTI for any claims arising from, related to, or in connection with the services to be provided by FTI as specified in the Application, but not for any claim arising from, related to, or in connection with FTI's performance of any other services other than those in connection with the engagement, unless such services and indemnification therefor are approved by this Court;
- (b) The Debtors shall not have any obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, unless the Court determines that indemnification would be permissible pursuant to applicable law, or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, but determined by this Court, after notice and a hearing, to be a claim or expense for which FTI is not entitled to receive indemnity; and
- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

15. Notwithstanding anything to the contrary in the Engagement Letter, the limitation of liability provision found in § 6.3 of FTI's Standard Terms and Conditions attached as Exhibit A to the Engagement Letter does not apply to nor is it effective against the Debtors during the pendency of the Chapter 11 Cases.

16. To the extent the Debtors and FTI enter into any supplemental agreements or engagement letters not otherwise contemplated by the Application (collectively, "***Expanded***

Retention Documents”), the Debtors will file such Expanded Retention Documents with the Court and serve such Expanded Retention Documents upon the U.S. Trustee and any official committee appointed in the Chapter 11 Cases. If no objection is filed and served on the Debtors within fourteen days after such Expanded Retention Documents are served, the Court may enter an order approving FTI’s retention under such Expanded Retention Documents. To the extent any of such party objects within 10 days of such Expanded Retention Documents being served, the Debtors will promptly schedule a hearing before the Court on such matter. The Expanded Retention Documents will not be effective unless and until they are approved by the Court. All additional services shall be subject to the provisions of this Order.

17. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

18. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

19. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____

UNITED STATES BANKRUPTCY JUDGE

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

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In re:	:	Chapter 11
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MODIVCARE INC., <i>et al.</i> ,	:	Case No. 25-90309 (ARP)
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Debtors. ¹	:	(Jointly Administered)
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**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 DEBTORS, EFFECTIVE
AS OF THE PETITION DATE; AND (B) GRANTING RELATED RELIEF
[Relates to Docket No. [341](#)]**

Upon the Application (the “*Application*”)² of the Debtors for entry of an order (this “*Order*”), (a) authorizing the Debtors to (i) employ and retain FTI Consulting, Inc. (“*FTI*”) as financial advisor and to provide the Debtors with a Chief Transformation Officer (the “*CTO*”) as well as additional supportive staff to assist the CTO (“*Hourly Temporary Staff*”) and (ii) designate Chad J. Shandler as the Debtors’ CTO (together with the Hourly Temporary Staff, collectively the “*FTI Professionals*”) pursuant to the terms of the engagement letter by and among the Debtors and FTI, dated as of January 1, 2025 (the “*Engagement Letter*”), effective as of the Petition Date and (b) granting related relief, all as more fully described in the Application; and the Court having jurisdiction to consider the Application and the relief requested therein

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² Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Application.

pursuant to 28 U.S.C. § 1334; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b); and the Court having found that it may enter a final order consistent with Article III of the United States Constitution; and the Court having found that venue of the Chapter 11 Cases being proper in this district pursuant to 28 U.S.C. § 1408; and due and proper notice of the Application having been provided, such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed and considered the Application; and the Court having determined that the legal and factual bases set forth in the Application and the Shandler Declaration establish just cause for the relief granted herein; and this Court being satisfied, based on the representations made in the Application and the Shandler Declaration, that FTI is “disinterested” as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code, and as required under section 327(a) of the Bankruptcy Code, and that FTI does not hold or represent an interest adverse to the Debtors’ estates; and this Court having found that the terms and conditions of FTI’s employment, including the Fee and Expense Structure set forth in the Engagement Letter (as modified by this Order) and summarized in the Application, are reasonable as required by section 328(a) of the Bankruptcy Code; and this Court having found that the relief requested in the Application is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and all objections and reservations of rights filed or asserted in respect of the Application, if any, having been withdrawn, resolved, or overruled; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is hereby

ORDERED, ADJUDGED, AND DECREED THAT:

1. Pursuant to sections 327(a) and 328(a) of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Bankruptcy Local Rules 2014-1 and 2016-1, and the Complex Case Procedures, the Debtors are authorized to (a) employ and retain FTI as financial advisor, (b) designate Chad J. Shandler as the CTO of the Debtors, and (c) provide additional FTI Professionals for the Debtors, effective as of the Petition Date, in accordance with the terms and conditions set forth in the Shandler Declaration and the Engagement Letter, as modified by this Order.

2. The terms of the Engagement Letter, including the compensation provisions and the Indemnification Provisions, as modified by this Order, are reasonable terms and conditions of employment and are hereby approved as set forth herein; *provided, however*, that, for the avoidance of doubt, nothing in this Order shall constitute any findings regarding, or the approval or any determination with respect to, the reasonableness of any Completion Fee.

~~3. To the extent the Engagement Letter contemplates a flat fee for services, FTI is not required to keep contemporaneous time records for such services, including all services provided by the CTO.~~

3. With regard to the Monthly CTO Fee, beginning October 1, 2025 and continuing through the Effective Date (as defined in the Plan³), the CTO shall keep his time in half-hour (.50 hourly) increments on a monthly basis and in a summary format by project category, and will submit these time records with all applications to the Court for allowance of fees and reimbursement of expenses. Notwithstanding the foregoing, the Debtors are authorized to pay the \$150,000 Monthly CTO Fees to the CTO each month

³ The term “Plan” as used herein means the First Amended Joint Chapter 11 Plan of Reorganization of ModivCare Inc. and its Debtor Affiliates (as may be amended, supplemented, or otherwise modified) [Docket No. 465].

when required under the Engagement Letter without a prior fee application; provided, however, for the avoidance of doubt, the Monthly CTO Fees shall be subject to review and approval in any interim and final fee applications. The Monthly CTO Fee shall be prorated for any month in which the CTO is not employed for each day of the month. All fees paid to FTI, including the Monthly CTO Fee, are subject to disgorgement unless and until they are approved by the Court on a final basis.

4. Upon employment and retention by the Debtors, Mr. Shandler shall be empowered and authorized to carry out all duties and responsibilities set forth in the Engagement Letter.

5. Notwithstanding anything in the Application, the Engagement Letter, the Shandler Declaration, or any exhibit(s) related to the contrary:

- (a) FTI shall not act in any other capacity (for example, and without limitation, as an investor/acquirer) in connection with the above-captioned Chapter 11 Cases.
- (b) In the event the Debtors seek to have FTI Professionals assume executive officer positions that are different than the position(s) disclosed in the Application, or to materially change the terms of the engagement by either (i) materially modifying the functions of personnel or (ii) altering or expanding the scope of the engagement, an application to modify the retention shall be filed with this Court.
- (c) During the course of the Chapter 11 Cases, FTI will only seek reimbursement of actual and necessary expenses.
- (d) No principal, employee, or independent contractor of FTI and its affiliates shall serve as a director of any of the above-captioned Debtors during the pendency of the Chapter 11 Cases.
- (e) Any success fees, transaction fees, or other back-end fees, including the \$750,000 Completion Fee, shall be subject to approval by this Court at the conclusion of the Chapter 11 Cases on a reasonableness standard and are not being pre-approved by entry of this Order. The rights of the U.S. Trustee, any statutory committee appointed in the Chapter 11 Cases, and

all other parties in interest to object to any such fees, including the Completion Fee, on any grounds, are fully preserved.

- (f) The Debtors are permitted to indemnify those persons serving as corporate officers on the same terms as provided to the Debtors' other officers and directors under the corporate bylaws and applicable state law, along with insurance coverage under the Debtors' directors and officers insurance policy, except to the extent a claim or expense is judicially determined to have arisen from gross negligence, willful misconduct, bad faith, fraud, or self-dealing.
- (g) There shall be no indemnification of FTI or its affiliates, except as may be provided for in this Order.
- (h) For a period of three years after the conclusion of the engagement, neither FTI nor any of its affiliates shall make any investments in the Debtors or the reorganized Debtors.
- (i) FTI Professionals serving as corporate officers of the Debtors shall be subject to the same fiduciary duties and obligations applicable to other persons serving in such capacity.
- (j) FTI shall make appropriate disclosures of any and all facts that may have a bearing on whether FTI, its affiliates, or any individuals working on the engagement hold/represent any interest adverse to, the Debtors, their creditors, or other parties in interest. The obligation to disclose identified in this subparagraph is a continuing obligation.

6. FTI ~~is authorized~~ shall seek Court authorization to apply the Cash on Account and/or advanced payments to satisfy any unbilled or other remaining prepetition fees and expenses that FTI becomes aware of during its ordinary course billing review and reconciliation. Any remaining Cash on Account and/or advanced payments shall be treated as an evergreen retainer, held by FTI, and applied against any amounts owed by the Debtors and approved by the Court in FTI's final fee application. After payment of FTI's fees approved in its final fee application, FTI shall remit any remaining funds in the Cash on Account to the Debtors or as otherwise directed by the Court.

7. Notwithstanding anything in the Application or the Engagement Letter to the contrary, FTI shall (a) pass through the cost of Contractors to the Debtors at the same rate that FTI pays the Contractors, (b) with respect to costs incurred by the Contractors, seek reimbursement for actual, reasonable, and documented costs only, (c) ensure that the Contractors are subject to the same conflict checks as were required for FTI in accordance with this retention, and (d) file with the Court such disclosures as are required by Bankruptcy Rule 2014.

8. FTI shall file monthly, interim, and final fee applications for allowance of compensation for services rendered and reimbursement of expenses incurred in accordance with the procedures set forth in sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Bankruptcy Local Rules, and any other applicable orders and procedures of this Court. For billing purposes, the FTI Hourly Temporary Staff shall keep their time in one tenth (0.10) hour increments.

9. In the event that, during the pendency of the Chapter 11 Cases, FTI seeks reimbursement for any attorneys' fees and/or expenses, the invoices and supporting time records from such attorneys shall be included in FTI's fee applications and such invoices and time records shall be in compliance with the Bankruptcy Local Rules and subject to approval of the Court under the standards of sections 330 and 331 of the Bankruptcy Code without regard to whether such professional has been retained under section 327 of the Bankruptcy Code; *provided, however*, that FTI shall not seek reimbursement from the Debtors' estates for any fees incurred in defending any of FTI's fee applications in the Chapter 11 Cases.

10. FTI shall provide 10 days' notice to the Debtors, the U.S. Trustee, and any statutory committee appointed in the Chapter 11 Cases before any increases in the hourly rates set forth in the Application or the Engagement Letter are charged to the Debtors. The U.S.

Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

11. To the extent there is any inconsistency between the terms of the Engagement Letter, the Application, the Shandler Declaration and this Order, the terms of this Order shall govern.

12. FTI shall use its reasonable efforts to avoid any unnecessary duplication of services provided by any retained professionals in the Chapter 11 Cases.

13. Notice of the Application as provided therein shall be deemed good and sufficient notice of such Application and the requirements of the Bankruptcy Local Rules are satisfied by such notice.

14. For FTI Professionals not serving as corporate officers of the Debtors, the Engagement Letter's Indemnification Provisions are approved and subject to the following during the pendency of these chapter 11 cases:

- (a) Subject to the provisions of subparagraphs (b) and (c) below and except with respect to any officers provided by FTI to the Debtors, the Debtors are authorized to indemnify, and shall indemnify, FTI for any claims arising from, related to, or in connection with the services to be provided by FTI as specified in the Application, but not for any claim arising from, related to, or in connection with FTI's performance of any other services other than those in connection with the engagement, unless such services and indemnification therefor are approved by this Court;
- (b) The Debtors shall not have any obligation to indemnify FTI for any claim or expense that is either (i) judicially determined (the determination having become final) to have arisen primarily from FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, unless the Court determines that indemnification would be permissible pursuant to applicable law, or (ii) settled prior to a judicial determination as to FTI's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, self-dealing, or fraud, but determined by this Court, after notice and a

hearing, to be a claim or expense for which FTI is not entitled to receive indemnity; and

- (c) If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, FTI believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification obligations under the Application, including, without limitation, the advancement of defense costs, FTI must file an application in this Court, and the Debtors may not pay any such amounts to FTI before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by FTI for indemnification, and not as a provision limiting the duration of the Debtors' obligation to indemnify FTI. All parties in interest shall retain the right to object to any demand by FTI for indemnification.

15. Notwithstanding anything to the contrary in the Engagement Letter, the limitation of liability provision found in § 6.3 of FTI's Standard Terms and Conditions attached as Exhibit A to the Engagement Letter does not apply to nor is it effective against the Debtors during the pendency of the Chapter 11 Cases.

1516. To the extent the Debtors and FTI enter into any supplemental agreements or engagement letters not otherwise contemplated by the Application (collectively, "*Expanded Retention Documents*"), the Debtors will file such Expanded Retention Documents with the Court and serve such Expanded Retention Documents upon the U.S. Trustee and any official committee appointed in the Chapter 11 Cases. If no objection is filed and served on the Debtors within fourteen days after such Expanded Retention Documents are served, the Court may enter an order approving FTI's retention under such Expanded Retention Documents. To the extent any of such party objects within 10 days of such Expanded Retention Documents being served, the Debtors will promptly schedule a hearing before the Court on such matter. The Expanded

Retention Documents will not be effective unless and until they are approved by the Court. All additional services shall be subject to the provisions of this Order.

1617. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

1718. The Debtors are authorized and empowered to take all actions necessary or appropriate to implement the relief granted in this Order.

1819. The Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Signed: _____

UNITED STATES BANKRUPTCY JUDGE