Docket #1349 Date Filed: 02/13/2024

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

OBJECTION TO ECF 1324 (VIRTUAL Argument Requested)

1. As my claims are based in ECF 1071, EX D, E, F, the letter by the United States Senate, statements by counsel and that this bankruptcy is fraudulent, was manufactured by Gray Reed, in order to intimidate me and other prisoners into takin the $5,000 offered, counsel is trying to have me declared a vexatious litigant, in bad faith, with no legal or factual basis. ECF 1324 should be denied as the request is retaliatory, the argument has been waived, is subject to laches, estoppel etc. Both the Debtor and counsel should be sanctioned. See also EX G

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CASES

STATUTES

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TABLE OF EXHIBITS

EXHIBIT A (Document showing that the members of the United States Senate have asked the Justice Department to investigate.)

EXHIBIT B ECF 244, 280, 411 (Motions I filed in the Chapter 11)

EXHIBIT C ECF 388 (Response to my motions)

EXHIBIT D TORT COMMITTEES MOTION TO DISMISS BANKRUPTCY. (These are the documents from which I obtained my information)

EXHIBIT E ECF 1259 (These are the documents from which I obtained my information)

EXHIBIT F ECF 1071 (These are the documents from which I obtained my information)

EXHIBIT G ECF 576 (Amicus Brief)

EXHIBIT H ECF 93 (Motion for sanctions in the adversary)

EXHIBIT I ECF 165, 170 (Motion for contempt citation)

EXHIBIT J ECF 192 (801(d)(2) statements in adversary)

EXHIBIT K Tripati v Wexford (Showing my claims were not found frivolous, vexatious)

THE UNITED STATES SENATE HAS ASKED THE UNITED STATES DEPARTMENT OF JUSTICE TO INVESTIGATE THIS FRAUDULENT BANKRUPTCY. AS SUCH THE CLAIMS RAISED ARE NOT VEXATIOUS

2. Attached is a document that shows The United States Senate has asked the United States Department of Justice to investigate this fraudulent bankruptcy and these same players. Clearly any allegations as to fraud by the debtor, these lawyers and those associated with them, cannot be deemed vexatious because even the United States Senate is concerned. (EX A)
3. When a lot of money is at stake, lawyers make creative arguments. That was certainly the case in Grupo Mexicano de Desarrollo, SA v. Alliance Bond Fund, Inc. 527 U.S. 308 (1999). EX J However, these arguments are not creative but designed to intimidate and harass. 1/ 2

[1] **Counsel misstates my flings in this case. I have filed objections to the Debtors filings i.e .ECF 411, 782, 926 and motions i.e. ECF 47, 49, 184, 244 etc. These are not vexatious acts.**

[2] **Counsel misleads this court about my conduct in the adversary.** Counsel leads this court to believe I am clogging the court. They omit the fact that The spoliation claims were screened by the United States District Court but nevertheless in bad faith Defendants filed ECF 25, 28, 30, 33, 39, 43, 45, 46, 67, 69, 85, 86, 87, 89, 111, 112, 131, 133, 134, 135, 138, 154, 158, 164. I filed ECF 40, 48, 51, 55, 65, 66, 115, 140, 147. ECF 27, 32, 34, 47, 45, 58, 63, 167, 169 are motions to dismiss and responses. I filed ECF 96 curing the deficiencies. ECF 73-84, 132, 141, 149, 150 are my applications for default and responses to Defendants

ECF 1071, EX D, E AND F DISCLOSE THAT THIS FRAUDULENT BANKRUPTCY WAS THE BRAIN CHILD OF GRAY REED

4. Exhibits D, E, F filed by the Tort Committee on January 16, 2024 discloses the following evidence:
5. The scheme Gray Reed; Jason S. Brookner; Aaron Kaufman; Lydia Webb; Amber Carson; created calls for a divisive merger conducted by a subsidiary of a wealthy corporation under a 1989 amendment to the Texas Business Corporations act. Under the merger one entity "GoodCo" has all the assets and non tort liabilities, and the other "TortCo" has all the tort liabilities. TortCo agreed to indemnify the entire non Debtor corporate family and provided the necessary funding agreement backstop from GoodCo and/or an affiliate to fund the bankruptcy case and provide funding to TortCo to pay tort claims within certain parameters.
6. Next TortCo files for bankruptcy seeking to enjoin all tort liability litigation against non Debtor affiliates and indemnified parties because without the assistance of the court in this fraudulent scheme, it fails. Once the injunction is issued TortCo usually led by a purported independent board, will engage in mediation or other activities to prolong the bankruptcy.
7. As the Debtor is a shell and not an operating company the Debtor has no reason to exit bankruptcy, except on terms favorable to GoodCo.
8. Flacks Group a Miami based investment firm acquired the equity of Corizon in 2020. It then formed M2 related companies to acquire Corizon's purportedly secured debt at steep discount, resulting in the M2 companies becoming both Corizon's parent and secured lender.

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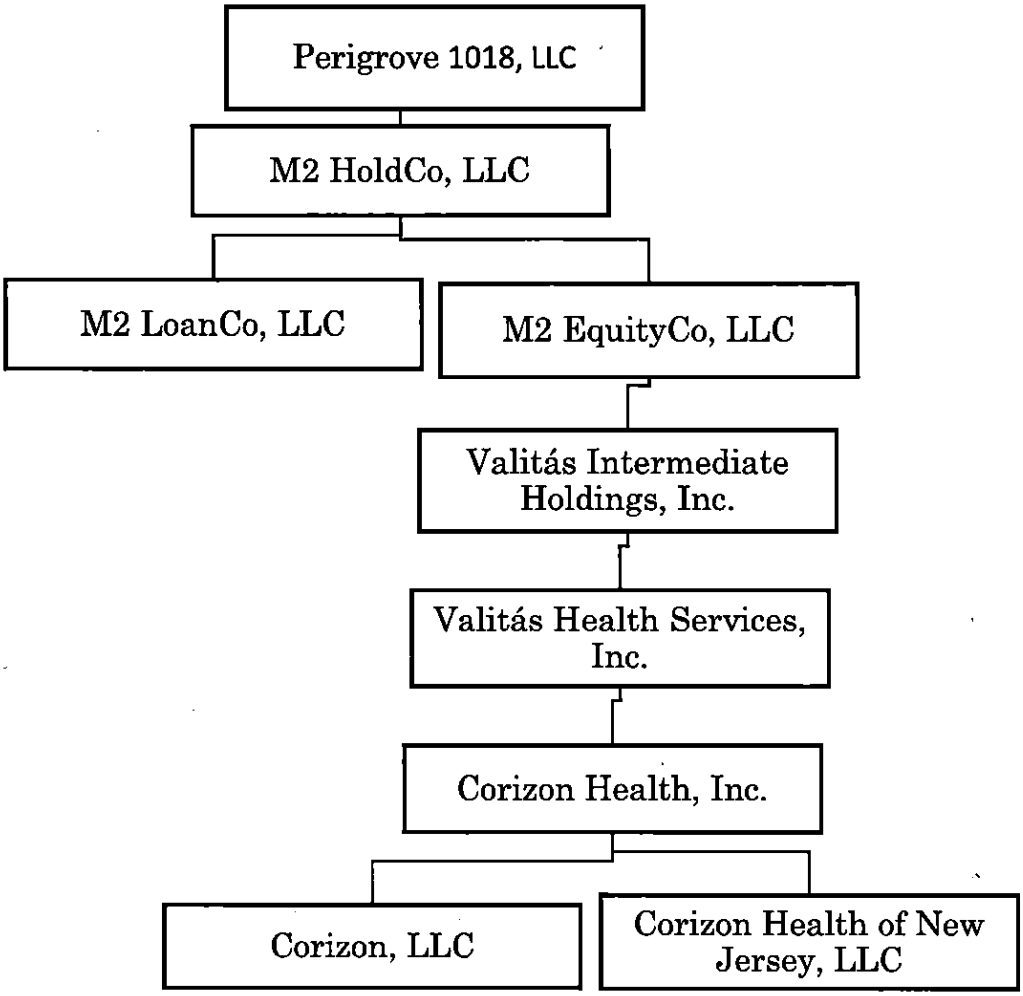
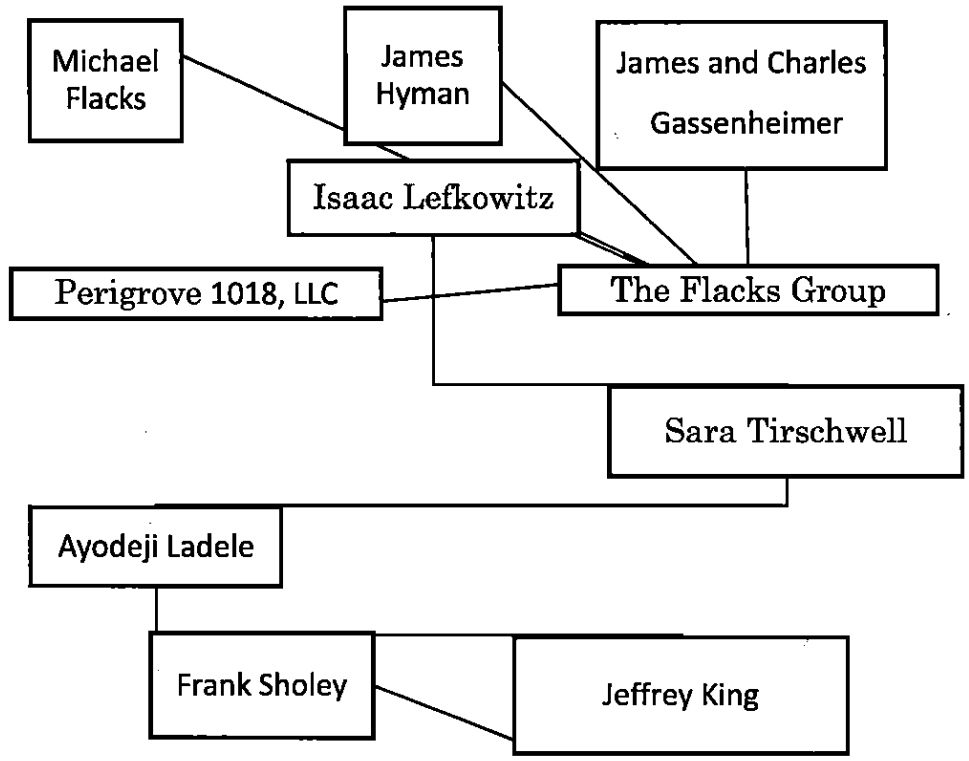
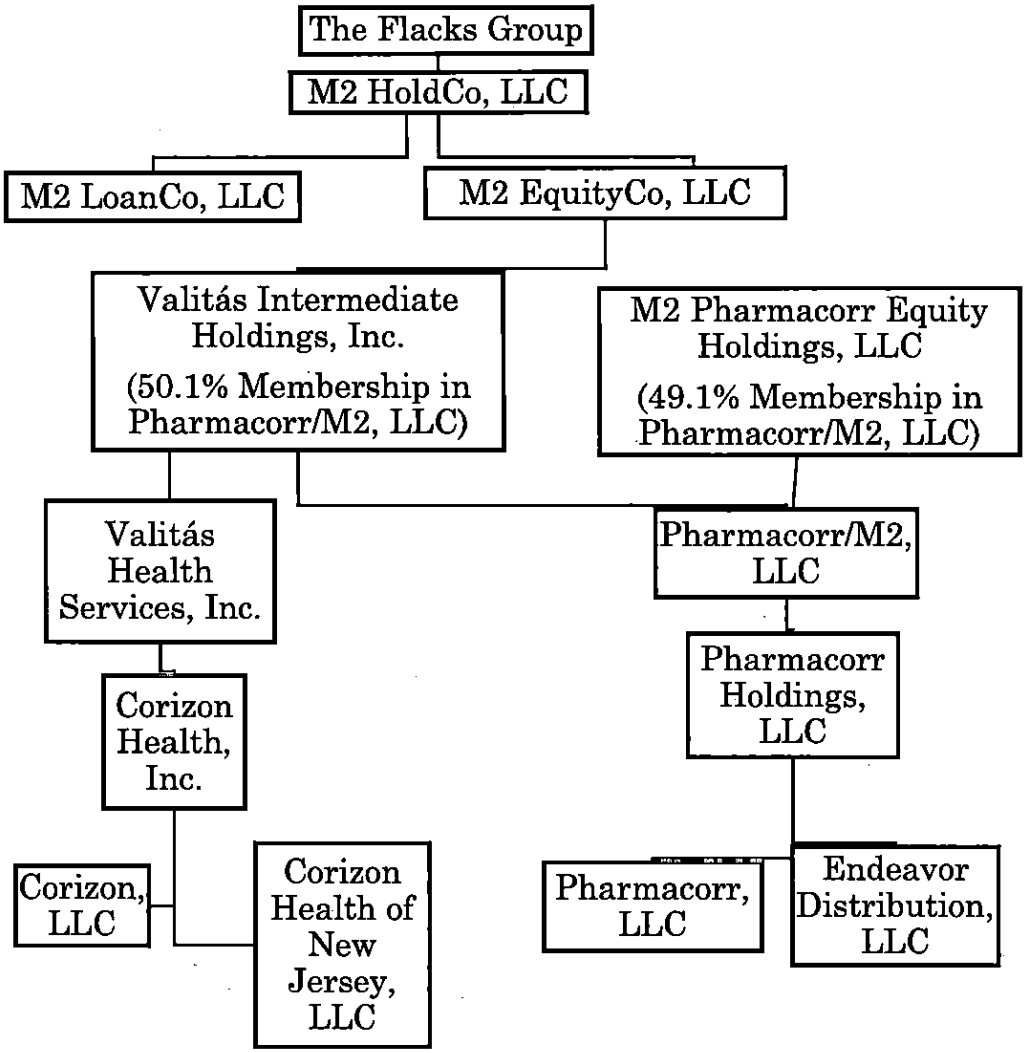
objections ECF 85, 102, 105, 109, 137, 144.Scottsdale responded to my default and by ECF 108 this court relieved of default. The court ordered Defendant to file a responsive pleading. Instead it moved to dismiss. I moved the court to hold it in contempt ECF 165 and Defendants field ECF 170. I moved for sanctions ECF 93, 162 and ECF 117, 119, 122, 124, 127, 128, 162, 172, 175, 176 . I filed replies but have no Dkt number are the responses.

REVELATIONS FROM EX D , E AND F



THE PERSONS WHO CALL THE SHOTS AND AIDED IN THE FRAUDULENT ACTIVITIES




The Flacks Group
M2 HoldCo, LLC
M2 LoanCo, LLC
M2 EquityCo, LLC
Valitás Intermediate Holdings, Inc.
(50.1% Membership in Pharmacorr/M2, LLC)
M2 Pharmacorr Equity Holdings, LLC
(49.1% Membership in Pharmacorr/M2, LLC)
Valitás Health Services, Inc.
Pharmacorr/M2, LLC
Pharmacorr Holdings, LLC
Corizon Health, Inc.
Corizon, LLC
Corizon Health of New Jersey, LLC
Pharmacorr, LLC
Endeavor Distribution, LLC

9. Flacks spun off Corizon's profitable entity PharmaCorr and then evaluated bankruptcy as an exit strategy. By chance Flacks met Isaac Lefkowitz and Perigrove and sold them the business.
10. Isaac Lefkowitz; Perigrove 1018 ; Geneva Consulting Inc; and its advisors set off to shield their companies from litigation in the tort system and impose a forced bankruptcy settlement on the victims and their families, thereby freeing all future profits for equity holders, and also transferring millions from tort victims to equity.
11. Senator Elizabeth Warren, Dick Durbin, Marie Hirono, Dick Blumenthal, Ron Wyden, Bernie sanders, Peter welch and Carey Booker wrote a letter to Lefkowitz and genesis reminding them that in 2021 they received $300,000,000 in COVID funds.
12. In December 2021 Perigrove acquired Corizon Health, its parent the M2Companies and their debt, all profitable government contracts and Corizon's cash. It then looted through intentional and constructive fraudulent transfers millions from Corizon.
13. In May 2022 Perigrove directed all Corizon and affiliated business entities with assets and ongoing operations to merge into a single entity.
14. Through Texas Divisive Merger the new entity Corizon Health Inc housed all disfavored liabilities, including torts. The other entity CHS TX Inc was transferred all productive assets and favored liabilities. This was similar to a 363 sale to an insider, where the insider takes all the productive assets and assignment of profitable contracts and related liabilities, rejects nonprofitable contracts, with undesirable liabilities left behnd.
15. According to former Corizon Health CEO James Hyman this was "essentially an old fashioned bankruptcy fraud scheme."
16. Sara Tirschwell the sole shareholder contributed 95% equity to YesCare, wholly owned by undisclosed insiders.
17. Flacks Group; Isaac Lefkowitz; Perigrove 1018 ; Geneva Consulting Inc; Senior Management of Corizon Health; Sara Tirschwell; YesCare, CHS Tex; after looting Corizon Health, with the help of Gray Reed; Jason S. Brookner; Aaron Kaufman; Lydia Webb; Amber Carson, searched for a law firm that could influence Judge David Jones.Senior Management of Corizon Health, YesCare, CHS Tex;
18. They hired Liz Freeman, Jackson Walker which had a personal relationship with the Judge so as to defraud the prisoners.
19. They were caught and this court appointed another arbitrator.
20. Flacks Group; Isaac Lefkowitz; Perigrove 1018 ; Geneva Consulting Inc; Senior Management of Corizon Health; Sara Tirschwell; YesCare, CHS Tex; after looting Corizon Health, with the help of

Gray Reed; Jason S. Brookner; Aaron Kaufman; Lydia Webb; Amber Carson, searched for a law firm that could influence Judge David Jones.Senior Management of Corizon Health, YesCare, CHS Tex; deprived me and other prisoners of monies due us by laundering monies and engaging in transactions set forth herein.

21. Flacks Group; Isaac Lefkowitz; Perigrove 1018 ; Geneva Consulting Inc; Senior Management of Corizon Health; Sara Tirschwell; YesCare, CHS Tex; after looting Corizon Health, with the help of Gray Reed; Jason S. Brookner; Aaron Kaufman; Lydia Webb; Amber Carson, searched for a law firm that could influence Judge David Jones. Senior Management of Corizon Health, YesCare, CHS Tex; its affiliates engaged in avoidance, unjust enrichment, spoliation, fraudulent concealment, fraud, avoidance, deceit, common law constructive fraud, constructive taking, breach of fiduciary duty, deceptive business practices, fraud upon the court, and conspiracy to engage in these torts.

TRANSFERS TO M2 LOANCO

22. At all relevant times, M2 LoanCo had two directors—Isaac Lefkowitz and Alan Rubenstein. M2 LoanCo never had employees and did not maintain e-mail records on its own server.

12/29/2021 $10,000,000.00

12/30/2021 $5,000,000.00

1/4/2022 $2,300,000.00

1/5/2022 $600,000.00
1/31/2022 $5,000,000.00
2/18/2022 $600,000.00

3/8/2022 $10,000,000.00

3/9/2022 ($10,000,000.00)
5/17/2022 $1,000,000.00
11/14/2022 $25,572.19
11/14/2022 $12,583.00
Total to M2 LoanCo $24,538,155.19

TRANSFERS TO GENEVA CONSULTING

23. Within days of Perigrove 1018's acquisition of Corizon Perigrove 1018 appointed one of its directors, Isaac Lefkowitz, as the decision-maker for all of the companies. Mr. Lefkowitz, in turn, caused the Debtor Perigrove 1018 to enter into a "Consulting Agreement" with Geneva. The "Consulting Agreement" is between Valitás Health Services, Inc. and Geneva Consulting, LLC. Mr. Lefkowitz signed the Consulting Agreement as the "Interim CEO" for Valitás.
24. A director listed on Perigrove's website signed the Consulting Agreement as "Director" of Geneva. Mr. Lefkowitz directed James Hyman, the then-CEO of Corizon Health, Inc., and Jeff Sholey, the then-CFO of Corizon Health, Inc., to transfer substantial sums to Geneva under the Consulting Agreement.
25. On December 8, 2021, the Corizon transferred $3 million to Geneva, purportedly as a retainer required under the Consulting Agreement.
26. Corizon then transferred $500,000 per month for the subsequent five (5) months, purportedly for "Corporate Restructuring" services under the Consulting Agreement.
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TRANSFERS TO AMERISOURCE BERGEN TO BENEFIT PHARMACORR AND PERIGROVE 1018 RELATED PARTIES

33. Amerisource Bergen to satisfy obligations of PharmaCorr, which ceased being a subsidiary of Corizon under the Perigrove's ownership and control:

    1/31/2022 $500,000.00
    2/15/2022 $456,707.08
    Total to Amerisource Bergen $956,707.08

MATERIAL OMISSIONS FROM ECF 1324 THAT COURTS INSPITE OF REQUESTS FROM COUNSEL, DID NOT FIND MY CLAIMS, A SUBJECT OF THIS LITIGATION, VEXATIOUS OR FRIVOLOUS

34. Counsel fail to state that the courts did not find the spoliation claims frivolous or vexatious, though the lawyers asked the courts to so find. (EX K)
35. As I am using evidence that is in ECF 1071 (EX D,E,F), and arguing what the Tort Committee, Creditors Committee, the Senate and legal community have been arguing, that this bankruptcy is fraudulent and designed by Gray Reed, the fact that I have previously been found vexatious is irrelevant. This is because my arguments and conduct in this case is not frivolous or vexatious.
36. I am not involved in harassing and abusive litigation as federal courts have found my spoliation claims not frivolous or vexatious (ECF 1324 @ 1).
37. The rules of practice before this court require every party be informed " 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." If counsel would have complied with these provisions the 30 3/704 filings would not have been. Counsel never

[3] **Counsel misstates my flings in this case. I have filed objections to the Debtors filings i.e .ECF 411, 782, 926 and motions i.e. ECF 47, 49, 184, 244 etc. These are not vexatious acts.**

[4] **Counsel misleads this court about my conduct in the adversary.** Counsel leads this court to believe I am clogging the court. They omit the fact that The spoliation claims were screened by the United States District Court but nevertheless in bad faith Defendants filed ECF 25, 28, 30, 33, 39, 43, 45, 46, 67, 69, 85, 86, 87, 89, 111, 112, 131, 133, 134, 135, 138, 154, 158, 164. I filed ECF 40, 48, 51, 55, 65, 66, 115, 140, 147. ECF 27, 32, 34, 47, 45, 58, 63, 167, 169 are motions to dismiss and responses. I filed ECF 96 curing the deficiencies. ECF 73-84, 132, 141, 149, 150 are my applications for default and responses to Defendants

contacted me about any motion he filed. I contacted counsel by letter whenever I filed a motion or responded to a motion. In these contacts, I gave all pros and cons, and informed counsel, that in the event we were unable to settle, what are the potential consequences. This is not harassment or threats, but complying with the meet and confer provisions. ECF 1324 @ 2).

38. The Chapter 7 case and supplemental complaint are not frivolous. They are valid and based on the evidence disclosed in EX D,E,F. (ECF 1324 @ 7).
39. Contrary to para 8-20 federal courts have not found the claims on spoliation before this court frivolous or vexatious. My conduct in this litigation and not in any other litigation is at issue. EX K

THE CHAPTER 7 IS VALID AND BASED ON ECF 1071 AND EX D, E,F

40. I contacted Perigrove (Chapter 7 @ 1) set forth the notice (@3) and listed the conduct that warrant piercing the corporate veil (@ 74-78). I set forth the monies Piergrove stole (@ 79-81) and that Perigrove controlled Corizon's accounts (@82-1000) stating that my claims accrued when the Chapter 11 was filed (@ 101). I list some other victims (@ 120-270) setting forth a conspiracy (@ 271-280) and pattern (@281-290)
41. Clearly this is not vexatious as these are based on ECF 1071, EX D, E, F.

EXHIBITS APPENDED TO ECF 1324

42. Counsel takes these exhibits as my threatening them. These are not threats, but my letters, telling them what the issues are, and how to resolve these. As required during meet and confer, I am candid, telling them, that in the event they did not comply, there may be adverse consequences, including suits by other inmates. As I cannot call them, I had to write to them. No response was received. This court mandates "If you oppose the motion, you should immediately contact the

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objections ECF 85, 102, 105, 109, 137, 144.Scottsdale responded to my default and by ECF 108 this court relieved of default. The court ordered Defendant to file a responsive pleading. Instead it moved to dismiss. I moved the court to hold it in contempt ECF 165 and Defendants field ECF 170. I moved for sanctions ECF 93, 162 and ECF 117, 119, 122, 124, 127, 128, 162, 172, 175, 176 . I filed replies but have no Dkt number are the responses.

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. Counsel and none of these attorneys have complied with these provisions. These Exhibits satisfy these provisions and satisfy Rule 408. See generally Bhandari v First National Bank of Commerce,, 808 F.2d 1082(5th Cir.) 829 F.2d 1343 (5th Cir. En banc. 1987)

ECF 1324 WAS FILED BY COUNSEL AS RETALIATION FOR MY " JOINDER BY ANANT KUMAR TRIPATI IN "MOTION OF THE OFFICIAL COMMITTEE FOR STRUCTURED DISMISSAL OF CHAPTER 11 CASE" "AND SUBMITTING OBJECTIONS TO ECF 1259. LACHES, UNLEAN HANDS AND EQUITABLE ESTOPPEL BAR THE APPLICATION

43. On February 28, 2023 I filed ECF 47 setting forth my intent to move to dismiss, and subsequently filed ECF 244, 261, 280, 344, 411 (EX B) with Gray Reed filing ECF 338 (EX C).
44. At all times, the Debtor and counsel were aware of my litigation history (See ECF 338 EX C) With this knowledge when they filed ECF 338, they did not ask the court to declare me as being vexatious.
45. By refusing to release the evidence that I asked the Debtor to provide the Debtor frustrated and impeded my ability to support my argument in EX B, thereby denying my access to court. Lueck v Wathen, 262 F Supp 2d 690, 695 (ND Tex. 2003)(Evidence needed to present PCR successfully)
46. However, through the "Motion of the Official Committee for Structured Dismissal of Chapter 11 Case" filed by the Torts Committee (EX D @)) and in ECF 1259 pp 6-16; 29-31) I became privy in January 2024 of the facts that makeup my joinder and objections to ECF 1259.
47. At EX D 10-27 it shows how counsel for the Debtor manufactured this bankruptcy. See also EX E.
48. This is exactly what I requested from counsel in EX B, and which they refused to give me (EX C).
49. Only and only after I received EX D and E I moved the supplement my complaint in the adversary.
50. Given the requirements imposed by the Bankruptcy Code, failure to disclose assets or claims of which the debtor has knowledge is always a violation of the debtor's "oath." Courts have noted that the discrepancy between a debtors's sworn disclosures or representations and a later position may serve as evidence that the individual's two positions are "intentionally inconsistent." Schomaker v. United States, 334 F. App'x 336, 340 (1st Cir. 2009). Additionally, the level of judicial acceptance required to justify application of the doctrine is generally fairly low. White v. Wyndham Vacation Ownership, Inc., 617 F.3d 472, 478–79 (6th Cir. 2010) (applying judicial estoppel where prior bankruptcy court adopted inconsistent position as a preliminary matter). An essential element of

the American legal system is the expectation that the execution of proceedings, suits, and actions in its courts are not founded upon fraud. The courts have "inherent powers" through which judges ensure efficient, orderly, and fair disposition of cases. See Chambers v. NASCO, Inc., 501 U.S. 32, 58 (1991) (Scalia, J., dissenting) ("It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" (quoting United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812))). Among these powers is a court's ability to guard against litigant duplicity by employing the equitable doctrine of judicial estoppel. See New Hampshire v. Maine, 532 U.S. 742, 749 (2001) ("This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." (internal quotation marks omitted)). Briefly put, judicial estoppel permits a court to dismiss claims inconsistent with a petitioning party's representations in a prior legal proceeding. Invoked to protect the integrity of the judicial system, judicial estoppel has become an increasingly popular means of dismissing claims brought by individuals who have previously filed for bankruptcy and failed to disclose those claims as assets in the bankruptcy proceeding. There is now a strong consensus among the federal circuits as to the standards to be applied in such cases. In re Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999).

51. Underpinning the courts' common application of the doctrine are the broadly recognized interests served by the United States' uniform Bankruptcy Code and the desire of the courts to ensure the integrity of their processes. "The basic principle of [U.S.] bankruptcy is to obtain a discharge from one's creditors in return for all one's assets, except those exempt, as a result of which creditors release their own claims and the bankrupt can start fresh." Payless Wholesale Distribs. Inc. v. Alberto Culver (P.R.) Inc., 989 F.2d 570, 571 (1st Cir. 1993). Sea Trade Co. v. FleetBoston Fin. Corp., No. 03 Civ. 10254, 2008 WL 4129620 (S.D.N.Y. Sept. 4, 2008) (applying the doctrine of judicial estoppel after extensive and contested review of bankruptcy disclosure requirements under Argentine Bankruptcy Law).

52. "It is a well-established principle that courts will not permit themselves to become agents for the commission of recognized wrongs. If a defendant may use the judicial process to delay, diminish, or even defeat a valid claim, then the court has in effect become a partner in the abuse." Van Patten & Willard, The Limits of Advocacy: A Proposal for the Tort of Malicious Defense in Civil Litigation, 35 Hastings L.J. 891, 917 (1984) Clearly ECF 1324 has been filed as retaliation for my bringing forth the challenges in my objection to ECF 1259.

53. To establish a First Amendment retaliation claim, the prisoner must show that (1) he engaged in constitutionally protected speech or conduct. The right to access this court satisfies these

provisions. (2) The defendant took adverse action which is satisfied by filing of ECF 1324. And (3) there was a causal connection between the protected activity and the adverse action. Rhodes v. Robinson, 408 F.3d 559, 567–68 (9th Cir. 2005). This is satisfied by the fact that there is connections between the evidence used to file the motion and the timing of the vexatious litigation application.

54. The adverse action must be "sufficient to deter a person of ordinary firmness" from exercising his constitutional rights. Rauser v. Horn, 241 F.3d 330, 333 (3d Cir. 2001) this problem is satisfied by the fact that most inmates and members of the general public would throw in the towel, when they get a motion to be declared vexatious.

55. Laches bars ECF 1324 because the Debtor and counsel waited until the evidence they concealed was disclosed in E X D and E and after I moved for relief based on that evidence. For example, has been applied to deny a party relief by bill of review, but the basis for the application is questionable. Flores v. Flores, 116 S.W.3d 870, 876-77 (Tex. App.—Corpus Christi 2003, no pet.). In Ross v. National Center for the Employment of the Disabled, 49 Tex. S.Ct. J. 760, 197 S.W.3d 795 (Tex. 2006)(per curiam), the Texas Supreme Court threw out a similar unclean hands finding in part because there had been no basis provided for the trial court to sanction a party in one proceeding for misconduct in a different proceeding. The Court looked to equitable decisions, typically its own decisions from the nineteenth century or the early twentieth century. McCutchen, 133 S. Ct. at 1546 (citing Barnes v. Alexander, 232 U.S. 117 (1914), and Walker v. Brown, 165 U.S. 654 (1897)); Sereboff, 547 U.S. at 357–58 (citing Barnes and Walker as well). Less common are citations to state courts and English courts. The primary discussion of English practice appeared in Grupo Mexicano, where Justice Scalia discussed the modern development of the Mareva injunction. 527 U.S. at 327–29. Hence Laches bars ECF 1324

56. As the Debtor was aware of the matters as to my prior litigation, but chose not to raise it, until EX D and E, Judicial estoppel bars the application .In In In re Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999). The court applied judicial estoppel to bar a breach of contract suit brought by the former Chief Executive Officer (CEO) of Coastal Plains, Inc., a then-defunct Chapter 11 debtor-corporation. The debtor's CEO had formed a new company and purchased the residual of Coastal Plains' estate from a third party. Though this later purchase by the CEO's new company expressly included the claim, Coastal Plains' schedule of assets had contained no mention of the claim. In effect, the court adopted a three part standard for application of the doctrine in the context of post-bankruptcy litigation: "(1) [Judicial estoppel] may be applied only where the position of the party to be estopped is clearly inconsistent with its previous one"; and "(2) that party must have convinced the court to accept that previous position"; and (3) the parties' inconsistency was not inadvertent;

the debtor acts inadvertently if (a) "the debtor . . . lacks knowledge of the undisclosed claims"; or (b) "has no motive for their concealment."

57. Unclean hands bar the application, because, counsel waited too long. As counsel after did not provide the evidence when I requested the evidence, the evidence subsequently provided to the Tort Committee, unclean hands bars the application. Equitable estoppel bars the application as counsel has played fast and loose and filed this application to send a message to all prisoners, that they must not lodge the challenges.
58. As EX D, E, and F shows the Debtor and counsel had knowledge In re Coastal Plains, Inc., 179 F.3d 197, 210 (5th Cir. 1999) ("[I]n considering judicial estoppel for bankruptcy cases, the debtor's failure to satisfy its statutory disclosure duty is 'inadvertent' only when . . . the debtor either lacks knowledge of the undisclosed claims or has no motive for their concealment.").

COUNSEL HAS TARGETED TRIPATI AS HE IS WITHOUT COUNSL, WHILE AT THE SAME TIME HE HAS NOT FILED ANY SIMILAR APPLICATION AGAINST COUNSEL FOR CREDITORS AND TORT COMMITTEE WHO HAVE MADE SIMILAR ARGUMENTS

59. In their objections lawyers for the Creditors and Tort Committees have made similar arguments. (EX D and E)
60. Counsel has chosen not to seek similar relief against them. Counsel and Debtor by concealing the evidence (EX B) and now opting the declaration of the vexatious litigation route, when even the United States Senate is seriously concerned about the fraudulent bankruptcy (EX A) have used this Chapter 11 "instead of serving as a vehicle for the ascertainment of the truth.....adjudication of a hypothetical fact situation imposed by (their) selective disclosure of information." Rozier v Ford Motor Co. 573 F2d 1332, 1346 (5th Cir, 1978)(emphasis added)
61. As the Debtor and counsel, when they refused to give me the evidence (EX B), did not contemplate the evidence would be a part of pleadings filed by lawyers (EX D and E), they targeted me a non lawyer, and not sources of the evidence that I got.
62. Counsel has chosen to deny me to equal litigation opportunity by ECF 1324 because they concealed that evidence, now obtained. (EX B, D, AND E). The" fundamental right to equal litigation opportunity" L. Tribe, American Constitutional Law 16-11 at 161 (2nd. Ed. 1988) includes access to raw materials because "access to the courthouse doors does not by itself assure a proper functioning of the adversary process." Ake v. Oklahoma, 470 US 68, 71 (1985)

PRIVILEGE IS CONFERRED BY FREV 408 AND THE MEET AND CONFER PROVIIONS, WHICH MANDATE CANDID DISCUSSIONS BETWEEN PARTIES AS TO WHY A PARTY SHOULD NOT PURSUE A POSITION DURING LITIGATION

63. 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. This is what the rules of this court require. There is privilege in engaging in settlement practices. Bhandari v First National Bank of Commerce,, 808 F.2d 1082(5th Cir.) 829 F.2d 1343 (5th Cir. En banc. 1987)
64. FREV 408 and the meet and confer provisions confer a privilege and that privilege forbids a court considering any part of the discussions before the court. These provisions mandate candid discussions, as to why a party should not pursue a position, the pros and cons and consequences.
65. There is no prisoner exception and the fact that I as a prisoner complied with these provisions, does not waive the privilege.
66. It is understandable counsel takes exception that he was informed that continuing to pursue this bankruptcy, shall have certain consequences

THE BANKRUPTCY SHOULD BE DISMISSED UNDER HUSKY, BECAUSE THE PURPOSE OF ECF 1324 IS TO INITMIDATE ME AND OTHER PRISONERS FROM CHALLENGING THE CONDUCT OF THE DEBTOR AND COUNSEL

67. Counsel and the Debtor, after they became aware of EX D and E, moved to have me declared vexatious, so that I and others do not use the Husky challenge.
68. In Husky International Electronics, Inc. v. Ritz, 136 S. Ct. 1581 (2016) the Supreme Court held that actual fraud does not require a misrepresentation to the creditor. The Court thereby created the option of recovery for creditors under Section 523(a)(2)(A) even where they had not been directly lied to, as long as the debtor still implemented actual fraud in relation to its debt.
69. The Supreme Court opened the door to creditor recovery under Section 523(a) (2) (A) in situations where a debtor might be innocent but vulnerable, such as prisoners and Tripati. This overly wide net is a result of "badges of fraud," a set of objective factors courts and state legislatures have used to evaluate fraud in bankruptcy. See, e.g., TEX. BUS. & COM. CODE ANN. § 24.005 (West 1987) (integrating badges of fraud into its exception to discharge statute).
70. In In re Ritz, 459 B.R. 623, 626 (Bankr. S.D. Tex. 2011), aff'd, 513 B.R. 510 (S.D. Tex. 2014), aff'd, 787 F.3d 312 (5th Cir. 2015), rev'd and remanded sub nom. Husky Int'l Elecs., Inc. v. Ritz, 136 S.

Ct. 1581 (2016), vacated and remanded sub nom. In re Ritz, No. 14-20526, 2016 WL 4253552 (5th Cir. Aug. 10, 2016). the case that would ultimately become Husky International Electronics, Inc. v. Ritz, the Fifth Circuit found that, for a debt to be excepted from discharge under Section 523(a)(2)(A), there must be a misrepresentation and actual fraud does not include any fraudulent acts other than misrepresentation for the purpose of Section 523(a)(2)(A). To fully appreciate the scope of the issue presented in Husky, a detailed discussion of the case at issue follows.

71. Defendant Daniel Lee Ritz Jr. ("Ritz") was a director of Chrysalis Manufacturing Corp. ("Chrysalis"). He was also in financial control of Chrysalis and owned at least thirty percent of its common stock during the relevant period. The plaintiff, Husky International Electronics, Inc. ("Husky"), contracted to sell and deliver electronic device components to Chrysalis, and transacted with Chrysalis from 2003 through 2007. Chrysalis failed to pay Husky for $163,999 worth of components. Husky sued Chrysalis to recover that debt in May of 2009. Unfortunately for Husky, Ritz transferred hundreds of thousands of dollars of Chrysalis's assets to seven other companies, which he also controlled, between November of 2006 and May of 2007, and ignored Chrysalis's debts. After Husky sued to recover its debts, Ritz filed for Chapter 7 bankruptcy.

72. Husky filed an adversary proceeding to Ritz's bankruptcy claim to recover the $163,999 owed by Chrysalis, hoping to pierce the corporate veil and hold Ritz personally liable for Chrysalis's debts. This case began in Bankruptcy Court in the Southern District of Texas in 2011, where Ritz's bankruptcy case was "routine" until Husky filed its adversary proceeding. Husky pursued several different routes to recover its debts. The bankruptcy court quickly dismissed Husky's attempt to recover under Section 523(a) (4), an exception to discharge limited to parties with a fiduciary relationship, which did not apply because there was no fiduciary relationship between the parties. The second route and the true area of contention in this case was whether Ritz's fraudulent transfer of Chrysalis's assets to his other companies fell within the scope of the meaning of "actual fraud" in Section 523(a)(2)(A). The Bankruptcy Court found that Husky could not recover under Section 523(a) (2) (A) because, according to Texas law, "actual fraud" requires a false representation intended to induce the creditor to enter into a debt agreement. Because there was no evidence of a representation made by Ritz to induce Husky to enter into the contract, Husky could not recover under the "actual fraud" language in Section 523(a) (2) (A).

73. Husky appealed to the U.S. District Court for the Southern District of Texas, which affirmed the decision of the bankruptcy court. Slightly straying from the bankruptcy court's course of logic, the district court acknowledged that there are cases where a party can pierce the corporate veil because of actual fraud without a misrepresentation. The district court did not find that there was actual fraud, however. Instead, it followed the canon of construction that a statute created by

Congress must be interpreted according to its common law meaning. In this case, the district court relied on The Restatement (Second) of Torts. The Restatement (Second) of Torts only references fraudulent misrepresentation, not actual fraud. The district court, therefore, held that a misrepresentation was necessary to show actual fraud. Because Husky provided no evidence of a misrepresentation, the court concluded, Ritz could discharge its debt. Husky appealed to the Fifth Circuit. The Fifth Circuit affirmed the decisions of the bankruptcy and district courts. The Fifth Circuit held that Congress did not intend for fraudulent transfers to fall within the scope of "actual fraud" in Section 523(a)(2)(A) because another provision of the Bankruptcy Code, Section 727(a)(2), prohibits discharge of debt involving fraudulent transfers, and statutes should be construed to avoid redundancy. The Fifth Circuit acknowledged its decision was in conflict with the Seventh Circuit's decision in McClellan v. Cantrell, which expanded the interpretation of "actual fraud" to include fraudulent transfers. It contended, however, that McClellan contradicted the Supreme Court's decision in Field v. Mans. Finally, the Fifth Circuit felt it was important to honor the purpose of bankruptcy law, which is to give the debtor a clean start. To achieve this, courts should err on the side of giving debtors the opportunity to start anew when considering an ambiguity in the statute. Recognizing the need to resolve the circuit split regarding the issue of "actual fraud," the Supreme Court granted Husky's petition for certiorari.

74. THIS BANKRUPTCY FITS WITHIN The Supreme Court's Reasoning in Husky International Electronics, Inc. v. Ritz In Husky International Electronics, Inc. v. Ritz, the Supreme Court reversed the Fifth Circuit's decision, holding that the term "actual fraud" in Section 523(a)(2)(A) of the Bankruptcy Code includes schemes like fraudulent transfers where no misrepresentation is involved. The Court first analyzed the meaning of "actual fraud" under the common law, then interpreted it within the context of the rest of the Bankruptcy Code. It concluded that neither the common law nor the Bankruptcy Code precludes actual fraud from including fraudulent transfer schemes or other types of fraud without misrepresentations. The Court relied on the general principle that the judiciary interprets statutes based upon their common law meanings, so the Court split up the term "actual fraud" into "actual" and "fraud" in an effort to discern the most accurate common law meaning for the term. In the fraud context, "actual," in contrast with "constructive," refers to behavior that "involv[es] moral turpitude or intentional wrong." As for "fraud," bankruptcy common law has always recognized the transfer of assets to impede a creditor's ability to collect its debts as "fraud."

75. The Court referred to Statute of 13 Elizabeth, which it described as deeply influential in modern bankruptcy law, to show the long-standing concept that transfers to hide assets from creditors is fraud. The Court also noted that common law indicates that fraudulent transfers do not require a

misrepresentation to be considered fraud. In this case, the Court noted that the common law reflects common sense because the wrongfulness of a fraudulent transfer like Ritz's is not in the inducement to enter into a contract, but in the secrecy of hiding assets. Opportunities for representations are limited in a fraudulent transfer, so representations are not a "defining feature of this type of fraud." After the Court determined that the common law does not exclude fraudulent conveyances from "actual fraud," it examined how "actual fraud" under Section 523(a) (2) (A) fits into the scheme of the Bankruptcy Code and whether construing "actual fraud" broadly to include fraudulent transfers was logical under the statutory scheme.

76. The defendant contended that that interpreting "actual fraud" to include fraudulent conveyances would be duplicative of other provisions in the bankruptcy code; namely Sections 523(a) (4), 523(a) (6), or 727(a) (2). The Court discussed meaningful differences between Section 523(a) (2) (A) and these other sections, and concluded that, just because the provisions cover transfers or conveyances does not make them redundant. For example, Section 523(a) (4) only covers fraud while acting as a fiduciary, while 523(a) (2) (A) has no such limitations. Section 523(a) (6) covers willful and malicious injury, regardless of whether the injury was a result of fraud; Section 523(a) (2) (A) only covers fraudulent acts. Section 727(a) is broader than Section 523(a) (2) (A) in that it prevents a debtor from discharging all debts, but narrower because it limits the fraudulent time frame of relevance to one year. The separate sections of the statute all have meaningful differences, indicating that recognition of fraudulent transfers under Section 523(a) (2) (A) would not be redundant. The defendant also argued that Section 523(a) (2) (A) cannot include conveyances because it is limited to debt "obtained by" fraud, and in a fraudulent conveyance, the debt is already possessed. The Court declined to follow this argument based on two cases. First, it cited McClellan v. Cantrell for the proposition that a third party who receives assets from a fraudulent transfer is someone who "obtained" debt by fraud, which leads to the conclusion that the "obtained by" language is not "wholly incompatible" with fraudulent transfers. Then, the Court disputed the defendant's reliance upon Field v. Mans, which the defendant cited as support for the rule that actual fraud must relate to the "inception of a credit transaction." The Court distinguished the rule created in Field, because it only applies where fraud is perpetrated by a misrepresentation to a creditor, not in all cases under Section 523(a)(2)(A). The Court concluded by discrediting the defendant's final argument: that Congress intended the phrase "or actual fraud" to mean "by actual fraud." The Court noted that Ritz's statutory interpretation argument was unprecedented and would not work in this situation. After rejecting all of the defendant's interpretive hurdles obstructing fraudulent conveyance's inclusion in "actual fraud," the Court concluded that fraudulent conveyances are within the scope of Section 523(a)(2)(A) and reversed and remanded the case.

77. As such this bankruptcy should be dismissed under Husky.

AS ECF 1324 HAS BEEN FILED TO INTIMIDATE ME AND OTHER PRISONERS INTO NOT CHALLENGING THE CONDUCT OF THE DEBTOR AND COUNSEL, QUESTIONABLE DEALINGS, THEREFORE, MUST BE EXAMINED TO DETERMINE IF THE LIMITED LIABILITY PRIVILEGE CONFERRED ON THE DEBTOR ENTITY HAS BEEN ABUSED BY THOSE IN CONTROL.

78. The purpose of ECF 1324 is to intimidate me and other prisoners.

79. Harvey Gelb, Personal Corporate Liability, A Guide for Planners, Litigators and Creditors' Counsel (1991), includes a lengthy first chapter on veil piercing containing considerable analysis on the subject, as well as several articles dealing with piercing.

80. The limited liability privilege is granted to owners of certain enterprises, such as corporations or limited liability companies, to encourage investment. "The common purpose of statutes providing limited shareholder liability is to offer a valuable incentive to business investment." Thus, in general, a person can transfer assets to and become an owner of a limited liability entity without losing assets uncommitted to the venture. Persons are encouraged thereby to take risks, but on a limited basis. This privilege should appeal to passive investors who are willing to place at least some of their assets into enterprises controlled by others. But it should also be attractive to investors who participate in the control of an enterprise.

81. While much good may come from the existence of the limited liability privilege, it may be abused, and when that happens courts have shown a readiness, however reluctant, to counter the abuse. To take an extreme example, suppose a person who organizes and operates a limited liability entity neither provides, nor allows it to retain, any assets available for the payment of creditors, and permits it to purchase no insurance. Suppose further that a customer is seriously injured because of the entity's negligent high-risk operations, and that the customer obtains an uncollectible judgment of $50,000 against the entity for her injury. Is justice served by passing this loss to the victim, and indirectly to others to whom she is indebted because of her injury, or even to the society at large that charitably helps her meet needs traceable to it? Or, suppose the same entity purchased inventory for which it has not paid and the seller has not agreed to look only to the entity for payment. Is justice served by allowing its owner-operator to hide behind the veil of limited liability? In either case—is the public policy of stimulating investment, which underlies the limited liability privilege, being served?

82. Carried to absurd lengths, would the limited liability privilege allow pseudo-investors to accomplish through fraud or other wrongful conduct the transfer or retention of wealth for their own benefit at the expense of their creditors?

83. To counter abuse of the limited liability privilege, many courts have used veil piercing doctrines in recognition of the fact that, in some situations, blind acceptance of the privilege will permit the triumph of injustice, inequity, fraud, or the like of a serious enough nature to warrant piercing. Labadie Coal Co. v. Black, 672 F.2d 92, 96 (D.C. Cir. 1982).

84. Veil piercing cases sometimes contain colorful or symbolic terms such as "sham," "instrumentality," "alter ego," or "dummy" to reflect characteristics of entities whose veils are to be disregarded. While the terms are themselves conclusory in nature and generally of little analytical use, they form part of the vocabulary used in particular jurisdictions and their use must be understood in various contexts, say, for example, by an appellate advocate who responds to a judge asking her to present her alter ego argument.

85. In cases where creditors—whose underlying claims stem from the tort or contract liability of the entity—seek to pierce its veil, the proper targets are generally those who by virtue of their control are responsible for the conduct triggering the piercing decision. Ronald J. Colombo, Law of Corporate Officers and Directors: Rights, Duties and Liabilities § 20:13 (2017).

86. Two of the guiding tests, neither of which is written in language entirely understandable on its face and either of which appears with some frequency, though by no means universally, in cases involving piercing claims, may be set forth substantially in the forms that follow.

87. Test 1 may be referred to as the "unity of interest and ownership test," and it states that to pierce the corporate veil, the plaintiff must show that: (1) [T]here is such a unity of interest and ownership that the separate personalities of the corporation and the parties who compose it no longer exist, and (2) circumstances are such that adherence to the fiction of a separate corporation would promote injustice or inequitable circumstances Steiner Elec. Co. v. Maniscalco, 51 N.E.3d 45, 46, 56 (Ill. App. Ct. 2016). For a similar example of this test, see Semmaterials, L.P. v. Alliance Asphalt, Inc., 2008 WL 161797, at *4 (D. Idaho Jan. 15, 2008).

88. Test 2 may be referred to as the "instrumentality test" and may be stated largely as follows: The instrumentality rule requires, in any case but an express agency, proof of three elements: (1) Control, not mere majority or complete stock control, but complete domination, not only of finances but of policy and business practice in respect to the transaction attacked so that the corporate entity as to this transaction had at the time no separate mind, will or existence of its own; (2) that such control must have been used by the defendant to commit fraud or wrong, to perpetrate the violation of a statutory or other positive legal duty, or a dishonest or unjust act in contravention of [the]

plaintiff's legal rights; and (3) that the aforesaid control and breach of duty must proximately cause the injury or unjust loss complained of. Batoh v. McNeil-PPC, Inc., 167 F. Supp. 3d 296, 323 (D. Conn. 2016). For a similar statement of this test, see John Knox Village v. Fortis Const. Co., LLC, 449 S.W.3d 68, 76 (Mo. Ct. App. 2014).

GUIDING FACTORS

89. In addition, courts often set forth lists of factors as guidance in piercing decisions. Continental Cas. Co. v. Symons, 817 F.3d 979, 993–94 (7th Cir. 2016), cert. denied, 137 S. Ct. 493 (2016). Harvey Gelb, Limited Liability Policy and Veil Piercing, 9 WYO. L. REV. 551, 556–58 (2009) [hereinafter Gelb, Limited Liability Policy]. The lists do not purport to be exclusive, may be of varying sizes and content, and are rather loosely applied as guidelines without any requirement that all or any particular factors be present to justify piercing.

90. It is important too, as reflected in the second prong of Test 1 or with more detail in the second prong of Test 2, that piercing in favor of creditors is used to prevent injustice or inequity or the like of sufficient gravity to overcome the normally expected judicial reluctance to pierce.

91. Continental v. Symons provides a good vehicle for reviewing several aspects of mainstream veil piercing law for purposes of this Article. First, it contains a list of guiding factors (referred to as the "Aronson factors") under Indiana's veil piercing law, factors which to a considerable degree appear in veil piercing analyses under the law of other states. Second, it provides a good basis for the discussion of some of the important issues which may arise in veil piercing cases. Third, like Husky, Continental is a contract creditor pursuing a veil piercing claim.

92. In 1998, IGF Insurance Company (IGF) purchased a crop insurance business from Continental. In 2002, while still indebted to Continental for more than $25 million in connection with that purchase, IGF resold the crop insurance business for more than $40 million. But the Symons Group (Gordon, Alan, and Douglas) that controlled IGF structured the sale so that most of the proceeds were siphoned into other companies the group controlled as follows: $9 million to Symons International Group Inc. and Goran Capital Inc. (which were IGF parent companies) in exchange for non-compete agreements and $15 million to Granite Reinsurance Co. in exchange for a reinsurance treaty. Only $16.5 million of the purchase price went to IGF. Continental sued for breach of contract and fraudulent transfer.

93. District court findings that the non-compete and reinsurance agreements constituted fraudulent diversions of the purchase money for the crop insurance business were upheld by the circuit court, but the court expressly avoided deciding if Alan and Gordon's estate (which was substituted for Gordon after his death) were liable as transferees under the Uniform Fraudulent Transfer Act.

94. Although the appeal focused on several questions for review, the discussion here is mainly limited to the bases for the court finding Alan Symons and the Estate of Gordon Symons subject to "veil piercing" liability (at times characterized by the court as "alter ego" liability).

95. In dealing with veil piercing liability under the pertinent Indiana law, the Seventh Circuit noted that "Indiana courts hesitate to pierce the corporate veil [but they] will do so to prevent fraud or injustice to a third party." The court stated that the alter ego analysis in Indiana proceeds along the so-called "Aronson factors" which include: (1) undercapitalization; (2) absence of corporate records; (3) fraudulent representation by corporation shareholders or directors; (4) use of the corporation to promote fraud, injustice or illegal activities; (5) payment by the corporation of individual obligations; (6) commingling of assets and affairs; (7) failure to observe required corporate formalities; or (8) other shareholder acts or conduct ignoring, controlling, or manipulating the corporate form.

96. A look at the above Aronson factors and similar ones, the like of which appear in many veil piercing cases, would indicate that evidence regarding these factors may well be probative of financial irresponsibility or misbehavior, information on who was in control of the limited liability entity, and whether the defendant had wronged the plaintiff in a way serious enough to justify veil piercing. And while piercing terminology and factors are not completely uniform across the United States, Continental, in its use of the Aronson factors, offers a good example of a mainstream judicial approach.

97. The Seventh Circuit pointed to some additional factors (the "Smith factors") used where a court is asked to decide if two or more affiliated corporations should be treated as a single entity, a question which also came up in Continental: "whether similar corporate names were used; whether there were common principal corporate officers, directors, and employees; whether the business purposes of the corporations were similar; and whether the corporations were located in the same offices and used the same telephone numbers and business cards."

FACTORS ANALYSIS

98. Before considering the court of appeals' analysis and application of veil piercing factors in reviewing the district court decision to hold Alan and Gordon personally liable, it may be useful to bear in mind two points. First, there is the direct or indirect control of Symons family members over a host of entities, which the court even referred to as a corporate empire. Significantly, the court of appeals approved the district court's findings that "'Alan, Doug, and Gordon Symons ignored, controlled, and manipulated the corporate forms' of IGF, IGF Holdings, Symons International, Granite Re, Superior, Pafco, and Goran, and 'operated the corporations as a single business enterprise such that these entities were mere instrumentalities of the Symons family.'"

99. Second, the existence of controlled entities not only opens the door for possible questionable dealings between or among controlling parties and the entities, but also between or among the entities, dealings that could render a limited liability entity debtor unable to meet obligations.

100. Questionable dealings, therefore, must be examined to determine if the limited liability privilege conferred on the debtor entity has been abused by those in control. Examples of examinations involving controlled entity dealings appear in connection with circuit court references to commingling. In sustaining the district court's alter ego findings as not clearly wrong, the Seventh Circuit Court of Appeals approved the trial judge's use of factors identified in Aronson and Smith in determining if Alan and Gordon used their control over their corporate empire to enrich themselves at the expense of Continental. In doing so, the court rejected defendants' claim that use of factors from both cases involved an improper blending, stating that the Aronson factors are not necessarily exhaustive, and thus the court demonstrated an unsurprising flexibility in the utilization of factors in a piercing case. The court referred to the lower court's evaluations regarding undercapitalization, fraudulent representation by corporation shareholders or directors, corporate formalities, commingling assets, and common address as the basis for the lower court conclusion "that the Symonses used their control over the Goran-related companies to fraudulently avoid satisfying the debt to Continental."

101. Regarding undercapitalization, the appellate court pointed to the lower court's evaluation as follows: The judge did not find the companies undercapitalized for the purposes of the Aronson test because "[t]he adequacy of capital is to be measured as of the time of a corporation's formation." Nevertheless, the judge noted that the fact that almost all of the Symons companies were undercapitalized as of 1999 "cannot be ignored."

102. One can understand a court attempting to wriggle free of an arbitrary freezing of an undercapitalization determination to the time of a company's formation. There are cases which examine undercapitalization as a continuing issue. Steiner Elec. Co. v. Maniscalco, 51 N.E.3d 45, 58 (Ill. App. Ct. 2016); see also Coughlin Const. Co., Inc. v. Nu-Tec Indus., Inc., 755 N.W.2d 867, 876 (N.D. 2008). Indeed the capitalization of a corporation, along with the other assets it has available for conducting its business and paying creditors, may reflect on whether it is being operated in a financially responsible way and worthy of the limited liability privilege. In addition, liability insurance carried by an entity may be especially relevant to the financial responsibility issue where a tort victim is the creditor. Radaszewski v. Telecom Corp., 981 F.2d 305, 309 (8th Cir. 1992).

AS THE PURPOSE OF ECF 1324 IS TO INTIMIDATE ME AND OTHER PRO PER VICTIMS, INHERENT POWER SANCTIONS MUST BE IMPOSED FOR THIS BAD FAITH FILING OF ECF 1324

103. There is no valid reason for ECF 1324. The only reason why this has been filed is to intimidate me and other prisoners from challenging this fraudulent bankruptcy.

104. Federal courts have "inherent power" to sanction those who appear before them. Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991). Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980). Anderson v. Dunn, 19 U.S. 204, 227 (1821). Link v. Wabash R.R Co., 370 U.S. 626, 629-33 (1962).

105. This power, "shielded" as it is "from direct democratic controls," is said to have vested in courts "by their very creation" under Article III. Typically constrained only by basic notions of procedural due process, federal courts may invoke their inherent power to hand out all manner of sanctions, including sua sponte dismissal of a case with prejudice.

106. Based on this frivolous filing this court should sanction counsel and dismiss this bankruptcy with prejudice. See also EX H

CONCLUSION

107. "Let us always remember that the fundamental purpose of a lawsuit is to determine the truth of the matter" (Chief Justice Underwood of the Illinois Supreme Court) Bosco, Liability for the Spoliation of Evidence, 28 Trial Law Guide 85 , 97 (1984) Here the Debtor and counsel, notwithstanding recent disclosures, have fled ECF 1324 to suppress challenges. ECF 1324 is filed in retaliation, and to punish those like me who are bringing out to the court that this bankruptcy is bogus and fraudulent, and bringing these from documents filed by the Debtor and other lawyers. 51

Respectfully submitted,

Anant Kumar Tripati

51 It is Fair to say these Parties are On their way to Federal Prison.

Tripati hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT A RESPONSE TO ECF 1324

Accounts from guards provided inconsistent details, revealing discrepancies regarding when Harper was handcuffed and how he was behaving. Fellow detainees reported hearing Harper's screams and the sound of a violent struggle in his cell before his death.

"It sounded like he was being stomped in there," said one, Travis Fletcher.

Marceno insisted that injuries the coroner found were "minor in nature." Muwakkil, whose NAACP chapter accepted $5,000 from the Sheriff, said his group believed what they were told, but added that "[w]e have no problem with re-establishing our position."

However, surveillance video of the incident is no longer available; Fox determined it was exempt from state public-record disclosure laws, so LCSO deleted it after 30 days.

"They just brushed it under the rug," said Fletcher. "It's sickening."

Sources: *Fort Myers News Press, WBBH, WINK*

Corizon Health Bankruptcy Delayed by Revelation of Attorney's Affair With Mediator

On November 14, 2023, the federal Bankruptcy Court for the Southern District of Texas approved a new mediator to oversee the dissolution of Corizon Health successor Tehum Care Services, Inc. Retired bankruptcy judge Christopher Sontchi replaced former Judge David Jones, who resigned after it was revealed that he shares a home with Liz Freeman, an attorney representing the other Corizon Health successor, YesCare, in settlement talks.

As *PLN* reported, Corizon Health moved its headquarters to Texas to take advantage of state law permitting a "divisional merger" that put most of the company's liabilities into a new firm, Tehum, while its on-going—and profitable—business was transferred to another new firm called YesCare. [See: *PLN*, Aug. 2023, p.35.] Tehum promptly filed for bankruptcy in the Court, threatening nearly $1.2 billion in outstanding obligations inherited from Corizon Health, including $88 million in settlement payouts in 475 lawsuits alleging medical neglect and mistreatment.

Of those payments, 200 were owed by Corizon Health to prisoners and former prisoners before the company executed the "Texas Two-Step." After that, Jones oversaw negotiations that were about to result in a settlement of just $8.5 million for all 200 claims, netting each prisoner as little as $5,000 after legal costs and fees. But then his affair with Freeman was reported on October 6, 2023, and Jones resigned. The U.S. Trustee Program, which provides oversight to federal bankruptcy proceedings, filed an objection to the settlement with U.S. District Judge Christopher Lopez, who granted a delay requested by creditors.

That bought time to answer questions "regarding YesCare and Tehum's current ownership" raised by a group of U.S. Senators in a letter sent to executives of the firms on October 24, 2023. The lawmakers pointed to a $37 million bankruptcy loan to Tehum that was forgiven by Geneva Consulting LLC, a subsidiary of Genesis Healthcare. That firm is controlled by Isaac Lefkowitz, who also owns Perigrove, the investment firm that bought Corizon Health and still owns YesCare—as well as its lucrative contracts to provide prisoner healthcare, including one signed in 2022 with the Alabama Department of Corrections worth $1 billion.

One of the signers to the letter, Sen. Elizabeth Warren (D-Mass.), earlier called out Lefkowitz and Genesis Healthcare in 2021 for taking $300 million in government handouts during the COVID-19 pandemic to shower executives with huge bonuses, even as 2,800 residents in the firm's nursing homes died of the disease. In their more recent letter, Warren and her fellow senators warned Lefkowitz that the U.S. bankruptcy system "was not designed to provide an avenue for companies to evade accountability for wrongdoing."

But as one attorney representing the widow of an Arizona prisoner said, "These guys are playing hide-and-go-seek with all the money." Even former Corizon Health CEO James Hyman agreed it was "essentially an old-fashioned bankruptcy fraud scheme," at least before he dropped his wrongful dismissal suit in July 2023—perhaps after reaching an undocketed settlement with YesCare. *See: Hyman v. YesCare Corp.*, USDC (M.D. Tenn.), Case No. 3:22-cv-01081.

Joining Warren in sending the letter were Sens. Dick Durbin (D-Ill.), Mazie Hirono (D-Hawaii), Jeff Merkley (D-Ore.), Dick Blumenthal (D-Conn.), Ron Wyden (D-Ore.), Bernie Sanders (I-Vt.), Peter Welch (D-Vt.) and Cory Booker (D-N.J.). Judge Lopez also questioned the settlement once Jones resigned, saying he "never really liked the deal." Lopez then appointed Sontchi to replace Jones as mediator in the case, asking him to review the entire settlement and not just Jones' conflict of interest.

"We now have better disclosure," Lopez said, "but now folks need to rethink the deal."

PLN will update developments in the bankruptcy case as they are available. *See: In re: Tehum Care Services, Inc.*, USBC (S.D. Tex.), Case No. 73-90086.

Meanwhile, clients of Freeman's former law firm, Jackson Walker, are calling for millions of dollars in refunds of fees paid in cases overseen by Jones, who was one of the country's busiest bankruptcy judges before his affair with the attorney was exposed and he was forced to resign.

Additional source: *Business Insider, Reuters, USA Today*

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT B RESPONSE TO ECF 1324

Docket #244 Date Filed: 3/21/2023

Anant Kumar Tripati 102081
Arizona State Prison
P.O.Box 8909
Yuma, Arizona 85349
(928) 627-8871 ext 17226 or 17201

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

In Re:	Chapter 11
Tehum Care Services, Inc.,	No: 23-90086 CML
	MOTION TO EXPEDITE LIMITED DISCOVERY
Debtor.	

Anant Kumar Tripati moves the Court for an order expediting limited discovery and in support states:

An order allowing expedited discovery as to the Debtor's activities regarding these Chapter 11 proceedings is authorized by law. In re Mirant Corp, 2005 Bankr. Lexis 1013 (Bankr. ND Tex. 2005), as the limited discovery shall develop the evidence necessary to dismiss these Bankruptcy proceedings, filed to defraud Article III Courts and Tripati, amongst others.

Though the scope of examination is unlimited In re Kipp, 1988 Bankr. Lexis 913 (Bankr. W.D.Tex. 188) the examination sought is limited to the issues in the motion to stay and dismiss.

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Discovery is sought as to Debtor and Debtor's business associates as well as the application to stay. In re Wanamaker, 2002 Bankr. Lexis 1587 (Bankr. CD Ca. 2002)

Tripati as standing to pursue the claims as he has been involved in and is involved in litigation with the Debtor, and the conduct of the Debtor have caused him injury in fact. Davis v Eagle Legacy Credit Union (In re Davis) 2010 Bankr.Lexis 2122 (Bankr. Colo. 2010)

THE EXAMINATION SOUGHT

The information requested is the eight year period prior to filing for bankruptcy.

1. Please provide the complete metadata on any emails and documents that refer to Anant Kumar Tripati, or Tripati, including the bibliographic information.
   - This information is essential to show how Tripati has been injured and how the Debtor by its actions, injured him. It is needed to show why these Bankruptcy proceedings should be dismissed and stay denied.
2. Please provide the complete metadata on any emails and documents that discuss or mention reorganization of Corizon, including the bibliographic information.
   - These materials are necessary to show that reorganization was discussed after, in thousands of cases, Corizon engaged in spoliation and fraud upon

Article III Courts, and the Debtor's associates determined Bankruptcy protection may relieve them of fraud upon Article III Courts.

3. Please provide the complete metadata on any emails and documents that discuss the transfer of the bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, , including the bibliographic information.
   - These materials are necessary to demonstrate that there was extensive discussion that the Debtor had on how to protect the assets so that tey are untouchable by the courts and other victims.
4. Please provide the complete metadata on any emails and documents that discuss obtaining from the United States and its agencies, funds for pandemic relief Corizon, , including the bibliographic information.
   - These documents are necessary to show that the Debtor determined to take advantage of federal funds and when submitting claims, was aware they were not providing the services necessary, but nevertheless, submitted the claims.
5. Please provide the complete metadata on any emails and documents that discuss the 25 contracts cancelled or not renewed with Corizon, , including the bibliographic information.
   - These documents are necessary to show that in each of these 25 contracts, there have been allegations by the public entities and courts, that the Debtor was not providing the services, as contemplated.

6. Please provide the complete metadata on any emails and documents were allegations have been made against Corizon for concealment of evidence, , including the bibliographic information
   - These materials are necessary to show that all around the nation Federal Judges have been faced with the debtor concealing evidence, to cover up its fraudulent activities.
7. Please provide the complete metadata on any emails and documents that bonuses received by Corizon on its contracts no matter how the bonuses have been labelled, , including the bibliographic information.
   - These documents are necessary to show the Debtor threatening to leave the contracts, unless the Debtor got paid more. When the Debtor got paid more, it continued.
8. Please provide the complete metadata on any emails and documents that discuss sanctions against Corizon for litigation misconduct, including for failing to disclose evidence in litigation, including court orders, including the bibliographic information.
   - These materials are necessary to show that all around the nation Federal Judges have been faced with the Debtor engaging in litigation misconduct, to cover up its fraudulent activities.
9. Please provide the complete metadata on any emails and documents that assert Corizon falsifying records, including the bibliographic information.

- These documents are necessary to show that all around the nation, federal judges and public employees have found the Debtor falsifying records.

Respectfully submitted,

Anant Kumar Tripati

Proof of service

Copies mailed to

Jason S. Brookner, Esq
Gray Reed & McGraw LLP
1601 Elm Street # 4600
Dallas, Texas 75201

Anant Kumar Tripati 102081
Arizona State Prison
P.O.Box 8909
Yuma, Arizona 85349
(928) 627-8871 Ext 17226 or 17201

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

In Re:	Chapter 11
Tehum Care Services, Inc.,	No: 23-90086 CML
Debtor.	MOTION TO ABATE TIME TO RESPOND TO ECF 184 AND SUBMIT PROOF OF CLAIM (TELEPHONIC ARGUMENTS REQUESTED)

¶ Tripati moves this court to give him 90 days after these documents are provided in which to object to ECF 184, submit proof of claim and if necessary file an adversary, and submits the following memorandum and his declaration:

Table of Contents

CASES

Summary of the Argument

¶ Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC are all alter egos of one another. As set forth in ECF 185 pp 18 para 19 there is common ownership, and the Debtor as well as the alter egos, used independent counsel to apply for financing. They however failed to provide independent counsel with documents showing their fraudulent activities. They should be ordered to produce the documents given to independent counsel that was used to negotiate the loan.

STATEMENT OF FACTS

¶ After Corizon lost 25 contracts, it restructured through a Texas Divisional Merger. In April 2022 Corizon converted to a Texas Corporation. Days later three of its sister companies merged into Corizon Health, the surviving corporation. These corporate entities are alter egos of each other, and are acting as mere instrumentality for fraud upon Article III Judges, pandemic fraud, healthcare fraud and fraud upon prisoners.

¶ The instrumentality through a Divisional Merger transferred to another instrumentality CHS TX, a bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, and retained Corizon CEO Sara Tirschwell.

¶ Corizon then changed its name to Tehum, retained all expired contracts, liabilities, right to collect on its insurance policies, in furtherance of its fraudulent activities. After the merger YesCare Inc owned by CHS TX CEO Sara Tirschwell acquired CHS TX, doing business as Corizon, later changing its name to Tehum Care Services, Inc, the Debtor.

¶ At all times M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC were actively involved in every aspect of these reorganization.

¶ These fraudulent activities include fraud upon Article III Courts, pandemic and healthcare fraud, amongst others and M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC had knowledge of these activities.

¶ As a matter of investment strategy and in furtherance of aiding the fraudulent activities of Corizon, Tehum transferred assets and liabilities to three different entities, with approval of M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC expecting to be

shielded by bankruptcy courts, from the fraudulent activities upon Article III Courts.

¶ Tehum , M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC was aware of the litigation that Corizon was a party to ,and in particular though aware, did not review fraud upon Article III Courts, spoliation and other litigation misconduct that were perpetrated in Article III Courts.

¶After fraudulently conveying assets from Corizon, Tehum has filed for Chapter 11 protection. M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC guaranteed the necessary financially backing they needed,

¶ The investors in Tehum, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC, were at all times aware of the fraudulent activities and made a tactical decision to ingest in Tehum, counting on this court, relieving Tehum of their obligations, as a result of fraud upon Article III courts etc.

¶ The movant Tripati is involved in litigation with Corizon that involve fraud upon Article III Courts and spoliation amongst others in federal courts in Arizona, Pittsburgh, the Third and Ninth Circuits.

¶ Tehum , its investors M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC and Corizon knew the consequences of their conduct at all times.

¶ Fraud upon Article III Courts is the prime aim of this Bankruptcy .

¶Tripati has before the Third Circuit Court of Appeals a motion to recall the mandate is being pending. This relates to spoliation of evidence by Corizon amongst others.

¶Before the Ninth Circuit Court of Appeals there is an appeal on spoliation.

¶United States District Court District of Arizona are matters before the District Court in Arizona and relate to spoliation of evidence. Judges involved in these cases have expended substantial time in these matters. The United States District Court for the District of Arizona has found against Corizon, Centurion and the prison system

THE CRIME FRAUD EXCEPTION APPLIES TO THIS CASE MANDATING LIMITED DISCLOSURE

¶ Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC are all alter egos of one another . Without knowledge of their independent counsel US v Soudan, 812 F2d 920, 927 (5th Cir. 1987) the Debtor and its alter egos used their

independent counsel to aid them in perpetrating fraud upon Article III Courts, Tripati and other creditors.

¶ In re International Sys. & Controls Corp Sec Litigation, 693 F2d 1235, 1242 (5th Cir. 1982) the court stated "there must be some evidence such as will suffice until contradicted and overcome by other evidence" to pierce this privilege.

i. ECF 185 pp 19-20 argues that there is no other alternative source of financing available under favorable terms.

ii. In their moving papers the Debtor conceals the fact that in it has engaged in spoliation of evidence (Dec at 10) and that federal judges nationwide have found that set forth in the Declaration at 9.

iii. ECF 185 does not state that after getting pandemic funds,

iv. ECF 185 does not disclose that the instrumentality through a Divisional Merger transferred to another instrumentality CHS TX, a bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, and retained Corizon CEO Sara Tirschwell.

v. ECF 185 does not disclose as a matter of investment strategy and in furtherance of aiding the fraudulent activities of Corizon, Tehum transferred assets and liabilities to three different entities, with approval of M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC expecting to be shielded by

bankruptcy courts, from the fraudulent activities upon Article III Courts.

vi. ECF 185 does not disclose Tehum , M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC was aware of the litigation that Corizon was a party to ,and in particular though aware, did not review fraud upon Article III Courts, spoliation and other litigation misconduct that were perpetrated in Article III Courts.

vii. ECF 185 does not disclose after fraudulently conveying assets from Corizon, Tehum has filed for Chapter 11 protection. M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC guaranteed the necessary financially backing they needed,

viii. ECF 185 does not disclose the investors in Tehum, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC, were at all times aware of the fraudulent activities and made a tactical decision to ingest in Tehum, counting on this court, relieving Tehum of their obligations, as a result of fraud upon Article III courts etc.

¶ As ECF 185 states pp 18 para 19 there is common ownership and Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC are all alter egos of one another,

these chain of events, mandate the finding that Tripati has shown the crime fraud exception applies.

¶ The Debtor should be ordered to produce:

(a) All documents submitted independent counsel to negotiate the loan;

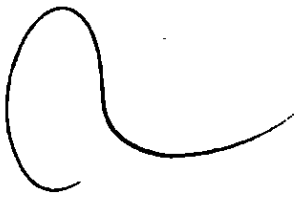
(b) All communications between Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC concerns the bankruptcy filin and forming of Tehum, Corizon, YesCare, CHS TX

CONCLUSION

¶ Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC should be ordered to provide the information sought as they fall within the crime fraud exception.

¶ Bankruptcy is not safe harbor for Article III fraud and spoliation.

Respectfully submitted,



Anant Kumar Tripati

Proof of service

Copies mailed to

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Anant Kumar Tripati 102081
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(928) 627-8871 ext 17226 or 17201

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

In Re:	Chapter 11
Tehum Care Services, Inc.,	No: 23-90086 CML
Debtor.	

DECLARATION OF ANANT KUMAR TRIPATI

I, Anant Kumar Tripati declare under the penalty of perjury these facts are true and correct and I am competent to so testify:

TABLE OF CONTENTS

My Academic Qualifications

1. I have my LLM in Public International Law from the University of London, University College London, Queen Mary University of London.
2. For my Ph.D. I have had extensive writings on Corizon and other correctional practices. My raw research is available at www.academia.edu' sureshotbooks.com and https//www.facebook.com/OpenSource-LawReviews-105337148092391/?ref=pages_you_manage

My Competence

3. In the last 30 years I have conducted research on the following issues:

- Attorney Client Privilege in the Americas 400 hours.

- Attorneys abusing zealous advocacy as the vehicle to perpetrate fraud upon the court. 600 hours.

- The increase in falsification and concealment of evidence by attorneys for corporate and public entities subject to crime fraud exception. 800 hours.

- The lack of ethics by attorneys for corporate and public entities. 4,500 hours.

- Remedies and sanctions for spoliation of evidence by attorneys for corporate and public entities. 4,000 hours.

- Spoliation of evidence by the Attorney generals, attorneys for Wexford Health, Corizon Health and Centene Corporation in prisoner litigation. 2,000 hours.

- The lack of judicial integrity in the Arizona justice system due to rampant manufacturing of crimes by the Maricopa County Attorney

with active participation of judges of the Maricopa County Superior Court. 3,000 hours.

- Liability of business and public entities due to deficient hiring and training. 300 hours.

- Liability through cover-up during internal investigations of grievances and complaints by businesses and public entities. 750 hours.

- Corporate and public entity liability through blaming. 500 hours.

- Suppression of whistleblowing through financial rewards by businesses and public entities. 1,000 hours.

- Abuse of prisoners in Arizona by the Arizona prison system through affirmative assistance by the Arizona Attorney general and judges of the Arizona judicial system. 800 hours.

- A study of 50,000 cases during the period 2000 through 2022 showing the need to abolish immunity for judges and prosecutors in state courts,

due to judicial collusion with prosecutor, resulting in rampant manufacturing of crimes and wrongful convictions. 5,000 hours.

- Public law concerns that deal with matters that affect the operations of the government. The conduct of the debtor affects the operations of state prisons hence the state.

Fraud upon Article III Courts

4. My research and personal knowledge of the manner in which Corizon operates is that it perpetrates fraud upon Article III Courts as a matter of its routine business practice. I have set forth below a chart of some cases where such fraud has been perpetrated by Corizon.

MY STANDING

Third Circuit Court of Appeals

5. In the Third Circuit there is pending a motion to recall the mandate This relates to spoliation of evidence by Corizon amongst others.

Ninth Circuit Court of Appeals

6. There is pending an appeal before the Ninth Circuit and the issue is concealment of evidence.

United States District Court District of Arizona

7. There are matters before the District Court in Arizona and relate to spoliation of evidence.

8. Judges involved in these cases have expended substantial time in these matters.

9. The United States District Court for the District of Arizona has found as follows against Corizon, Centurion and the prison system:

TABLE SHOWING HOW DEFENDANTS ARE PLACING MY LIFE, SAFETY, SECURITY IN DANGER

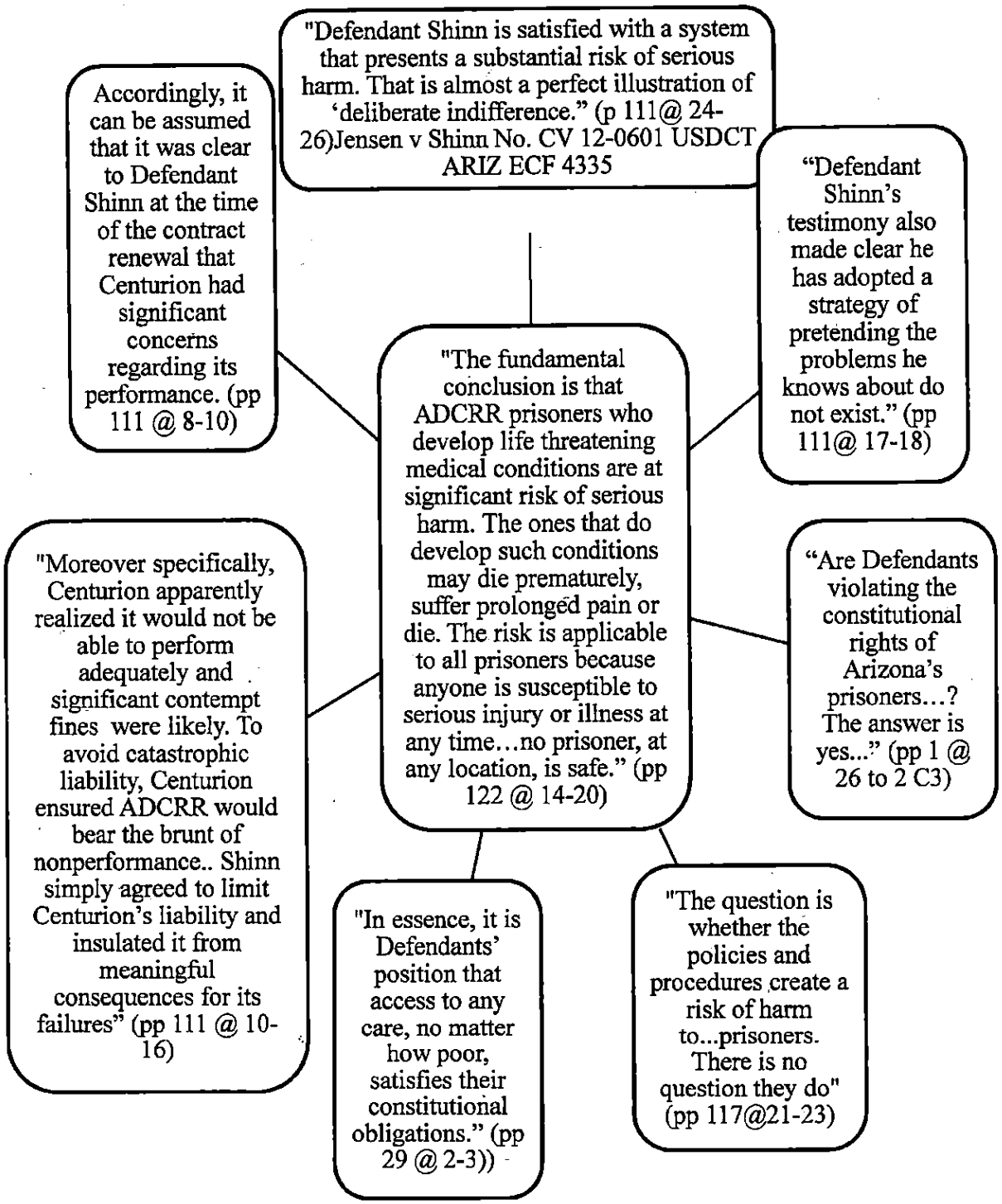
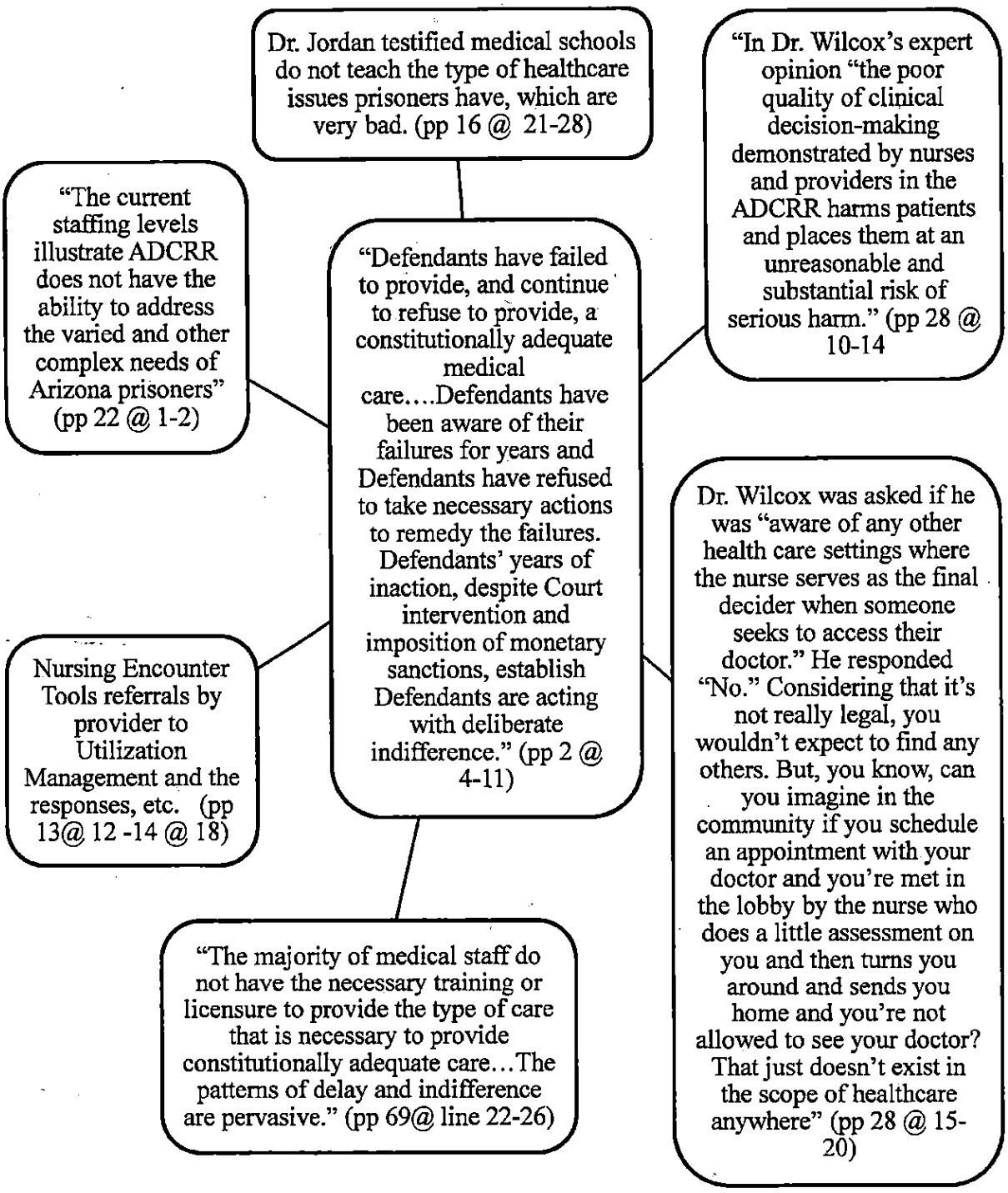


TABLE SHOWING HOW CORIZON CONCEALED EVIDENCE SHOWING THEY ARE PLACING MY LIFE, SAFETY, SECURITY IN DANGER



10. I have reviewed litigation involving Corizon and have found that Corizon as a matter of its business practice has engaged in spoliation of evidence and fraud upon Article III Federal Judges in the following cases, amongst others.

LITIGATION NATIONWIDE BEFORE ARICLE III JUDGES WHERE FRAUD HAS BEEN PERPETRATED UPON ARTICLE III COURTS

NAME OF COURT	PARTIES	CASE NUMBER
USDCT MD FLA.	Roy David Kinard, Plaintiff, V. Centurion Of Florida,	Case No. 3:19-cv-490-J-34JRK
USDCT ARIZ .	Axel Arvidson v. Charles Ryan CORIZON	2:2019cv04766
USDCT ARIZ	Erik Estrada Leal Centurion	2:2019cv04768
USDCT NEW JERSEY	Brian Grimaldi, Plaintiff, V.	Civil Action No. 10-1686 (JEI/JS)

	Corizon, Inc.,	
United States Court Of Appeals For The Third Circuit	Jessica Hankey, Individually, And As Administratrix Of The Estate Of Ryan Rohrbaugh V. Wexford Health Sources, Inc. Et Al	No. 09-3675
USDCT Eastern District Of Pennsylvania	Edward E. Stewart, III, Plaintiff, V. Michael Wenerowicz Et Al	Civil Action No. 12-4046
USDCT SDNYK	Charles Tonge, Plaintiff, V. Corizon Health Services,	No. 14-Cv-3954 (RA)
USDCT ND	Terry Davis,	5:13-Cv-0949-CLS-TMP

ALABAMA	Plaintiff, V. Corizon, Et Al.,	
USDCT . IDAHO	Idaho Ramón Runic, Plaintiff, V. Corizon Medical Services	1:19-Cv-00383-DCN
USDCT . IDAHO	Ariel Molina-Ruiz, Plaintiff, V. Corizon Health Services	1:17-Cv-00172-BLW
USDCT IDAHO	William ,, Plaintiff, V. Corizon, LLC; Michael Burton; Burette Whiting	1:14-Cv-00532-CWD
USDCT IDAHO	Michael Sheridan, Plaintiff - V. Brent Reinke	1:10-Cv-00359-EJL.
USDC ND FLA	Johnny R.	. 4:15cv349-MW/GRJ

Tallahassee Division	Gaffney, Plaintiff, V. Corizon Health, Inc., Et Al.,	
USDCT MAINE	Michael Barry, Plaintiff V. Corizon LLC, Et Al.,	2:14-Cv-00527-JDL
United States Court Of Appeals For The Eleventh Circuit	Brett Fields, Plaintiff- Versus Corizon Health, Inc.	. 11-14594
USDC ARIZ	Leobardo L. Ramirez, Plaintiff, V. Corizon Health	Cv 19-05799-PHX-DGC (JZB)
USDC ARIZ	Robert F. Lindley, Jr., Plaintiff, V. Corizon Health,	Cv 18-01860-PHX-DGC

	Et Al.,	
USDC ARIZ	Richard Johnson, Plaintiff, V. Corizon Health Services LLC,	Cv 18-02253-Phx-MTL (MHB)
USDC ARIZ	Juan F. Delacruz, Plaintiff, Vs. Charles Ryan,	Cv 11-1745-PHX-GMS-MEA
USDC ARIZ	Jeffrey James Faulkner, Plaintiff, Vs. Charles Ryan,	Cv 10-2441-PHX-SMM (JFM)
USDC ARIZ	Galen Lloyd Houser, Plaintiff, V. Charles L Ryan, Et Al.,	Cv-13-00200-PHX-GMS
USDC ARIZ	Thomas Bartholomew Layden, Iv,	Cv 14-02470 PHX DJH (DMF)

	Plaintiff, V. Charles L. Ryan	
USDC ARIZ	Robert F. Lindley, Jr., Plaintiff, Vs. Charles L. Ryan, Et Al.	Cv 12-1422-PHX-DGC (MEA)
USDC ARIZ	Robert P. Torres, Plaintiff, Vs. Charles Ryan, Et Al., Defendants.	CV 12-0006-PHX-JAT (DKD)
USDC ARIZ	Jonathan Ploof, V. Charles Ryan, Et Al.	13-0946-PHX-DGC (MHB)
USDC ARIZ	John Kristoffer Larsgard, Plaintiff, Vs. Corizon Health, Inc.,	Cv 13-01747-PHX-SPL (JFM)

USDC ARIZ	Joseph Benge, Plaintiff, V. Charles L. Ryan, Et Al	Cv 14-0402-PHX-DGC (BSB)
USDC ARIZ	Escalera V. Corizon Health Inc.	Cv 19-04934-PHX-MTL (JFM)
USDC ARIZ	Dudley V. Corizon Health Servs.	Cv-19-04507-PHX-DGC (JZB
USDC ED MICH SOUTHERN DIVISION	Kohchise Jackson, Plaintiff, V. Corizon Health Inc., Et Al	2:19-Cv-13382-TGB
USDC ED MICH SOUTHERN DIVISION	Myron Glenn, Plaintiff, V. Corizon Medical, Inc.	2:17-Cv-10972

USDC ED MICH SOUTHERN DIVISION	David Worthy, Plaintiff, V. Corizon Medical Group,	No. 18-12451
USDC ED MICH SOUTHERN DIVISION	Cory Woollard, Plaintiff V. Corizon Health, Inc	2:18-Cv-11529
USDC WD MICH SOUTHERN DIVISION	Mark Earl White, Plaintiff, V. Corizon, Inc. Et Al	1:19-Cv-948
USDC WD MICH SOUTHERN DIVISION	Joshua Snider, Plaintiff, V. Corizon Medical Et Al	No. 1:20-Cv-648
USDC MARYLAND	Mark Welcher, Plaintiff, V. Corizon Health, Inc., Et Al.,	DLB-20-1360

	Defendants..	
USDC MARYLAND	Terry Thompson, Plaintiff, V. Cpl. C. Opoku, Cpl. A. Haynes, Cpl. D. G	ELH-18-1022
USDC MARYLAND	Maurice B. Stewart, Jr., Plaintiff, V. Corizon Health Company And Holly Pierce,	GLR-19-679
USDC MARYLAND	Luis Allen Sims, Plaintiff, V. Maryland Department Of Public Safety	GLR-19-704
USDC MARYLAND	Yimoe Siddha, Plaintiff, V.	GLR-20-185

	Richard Dovey, Warden, Corizon Health, Sgt. Simmons, And Chaplain Hall,	
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA TERRE HAUTE DIVISION	Joe L. Williams, Plaintiff, V. Samuel Byrd, Maryann Chavez, Bobby Riggs, Corizon Health Inc., Defendants. No. 2:17-Cv-00114-Jph-Dlp	2:17-Cv-00114-Jph-Dlp
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA TERRE	Andre C.T. Wells, Plaintiff, V. Corizon Health Inc.	2:18-Cv-00124-Jph-Dlp

HAUTE DIVISION		
UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF INDIANA INDIANAPOLIS DIVISION	Donald E. Weaver, Jr., Plaintiff, V. Dick Brown Individually And In His Official Capacity, As Warden	1:19-Cv-00799-Twp-Dlp
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF MISSOURI SOUTHEASTERN DIVISION	Rubin Weeks, Plaintiff, V. Kimberly Birch, Et Al	1:17-Cv-22-AGF
USDC ARIZ	Patrick W Bearup v. Corizon Centurion et al	2:2019cv05828

USDC ARIZ	David William Flahive v Centurion Health Corizon	2: 2019cv0434
USDC ARIZ	Lamain Holliday v Centurion Corizon	2:2020cv02026
USDC ARIZ	Paul Harlan Lupe v Kelly McElroy, Centurion of Arizona LLC, Rodney Stewart, Unknown Parties, Corizon Healthcare LLC,	2:2020cv00708
USDC ARIZ	Alawisuces Monta Jackson v. Unknown Baraza et al	2:2019cv04766

	4:020cv00475 Axel Arvidson v. Charles Ryan CORIZON	
USDC ARIZ	Jose Manuel Lopez-Flores v. David Jendusa	4:2020cv00564
USDC ARIZ	Juan Carlos Arriaga, Plaintiff, v. Centurion of Arizona	CV-20-00084-PHX-DJH (ESW)
USDC ARIZ	Sam H Thompson v Centurion Managed Care and Corizon Health	2:2020cv01778
USDC ARIZ	Edmund Powers v Centurion and Corizon	2:2020cv01597

USDC ARIZ	Erik Estrada Leal Centurion and Corizon	2:2019cv04768
USDC ARIZ	Robert M Lepson Centurion Healthcare, Corizon	2:2020cv00208

Debtor's Expert Is Not Competent

11. I have read the declaration of Russell A. Perry and though Mr. Perry has impressive credentials, he is not qualified to testify as an expert in correctional health care, because correctional health care is different from traditional healthcare. Mr. Perry failed to consider the fraud perpetrated upon Article III Courts. As such, his declaration should be struck.

The Purpose Of These Chapter 11 Filings

12. The purpose of the bankruptcy by Tehum was to obtain relief from fraud upon Article III Courts and prisoners. This is why these different corporate entities were formed. They are nothing more than alter egos of Corizon, and they have one singe owner.

Executed under the penalty of perjury under laws of the United States on March 19, 2023.

Anant Kumar Tripati

Docket #0411 Date Filed: 04/21/2023

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In Re:	Chapter 11
JETHUM CASE SERVICES, Inc	NO- 23-90086 (CML)
Debtor	REPLY TO ECF 338.
	DECLARATION

(1) THE Judges in the three pending live cases CIV 22-0263 (ABIL) 21-15902 (9TH. CIR.) 22,861 (3RD. CIR.) HAVE ALL Rejected the arguments on litigation History (ECF 338 Pg 3. Para 8-11) AND MARCH 27 2023 BY ECF 27 in CV 22-0263 the COURT Directed me to Clarify my allegations — NOT Finding the arguments Frivolous

(2) MY Arguments on SPOLIATION in ECF 261 HAVE NOT been FOUND Devoid of MERIT AS ARGUED in ECF 338 PP 11-12 Para 17.

IN FACT on CIV 22-0263 the DISTRICT COURT on MARCH 27 2023 — FOUND — that I need to

23900862304210000000004

Claim — in the three live cases.

(3) Attached to ECF 261 are the Relevant Portions of the Arguments — that have been at issue — in the Third Circuit and District Court — [see also Petition For Certiorari that has Arguments that the Third Circuit is Considering in the pending Motion to Recall Mandate] (ECF 338 PP 11-12 at Para 17)

(4) The Debtors argument that only the Debtor can Assert the Arguments I made in ECF 261, is Contradicted by ECF 261 and the Petition For Certiorari that is attached to ECF 261

(5) By introducing the Declaration of Russell Perry and its Contents — the Debtor Cannot open the Door — and then Argue my objections that Russell

Perry is NOT Qualified - in light of the offer of Proof in my Declaration Stockstill v. Shell Oil Co 3 F3d 868 (5th Cir 1993)

The Perry Declaration [1] is inadmissible on Spoliation as he - in addition to Not Being an Expert on Corrections Health - is not an Expert on Spoliation Kozak v. Medtronic Inc 512 F. Supp. 2d 613 (S.D. Tex. 2007 (ett)) (Experts not Qualified on Damages)

Though Mr. Perry states he has Personal Knowledge (ECF 188 pp 14 para 2) and that he Reviewed "Former Operations and Related Matters" (ECF 188 pp 12 to 17) - that is NOT Admissible on Spoliation at issue in the Utmo Ranch Case. Cedar Lodge Plantation LLC v. CSAL Ranch LLC 753 Fed. Appx 191 (5th Cir 2018)

The Debtors - Boiler Plate Argument

[1] The Offer of Proof in my Declaration is Inadmissible

that the Trust Declaration is hearsay and irrelevant — without specific objections — must be overruled. Trust is both qualified and has personal knowledge of Correctional healthcare practices — and of Cognizon's practices — and litigation practices — as well as speculation.

Russell Perry's Declaration — Here is not based on any specialized knowledge — or speculation. WALLACE v. Andeavor Corp 916 F3D 423 (5th Cir 2019)

(6) General objections — Boiler Plate objections are invalid ENRON Corp Sav. Plan v Hewitt Assoc. LLC 258 FRD 149 (S.D. Tex 2009)

The argument that Request for metadata and Related data is designed

11 The Debtor does not challenge my qualifications — only that my testimony is hearsay irrelevant

to harass not Proportional And not Relevant' is Beilerplate. There is no explanation why are they Not Relevant to spoliation etc.

Hence ¶¶ 7(e) through (8)(l) — must be overruled.[2]

Conclusion

(7) This Court should:

(a) Strike the Peran Declaration

(b) Reject the arguments by counsel;

(c) Order limited discovery that has been sought

(d) Transfer the three

[2] It should be noted — Any Counsel conveniently omits the fact — that — Prior to moving the Court — I tried to contact

live cases in this Court — And after the discovery — Allow me to File A Consolidated Complaint

Respectfully Submitted

4/15/23 Grant Kinner Jones

Declaration

I Grant Kinner Jones Declare under the Penalty of Perjury — those facts are Personally known to me — to be true and Correct as I Can Swear testify

(1) Before moving this Court — I — Contacted Counsel — to see — if we Could

2 Cont'd | Connect — And Counsel Failed to Contact me — to Resolve the issue — without Judicial Intervention (See Declaration at 1 — 2)

Resolve the issues — without
further intervention

(2) Acting in BAD FAITH —
Counsel failed to contact
me — I believe — taking
the position — if they are
unable to get ALL of
what they asked for — the
issues cannot be Resolved

(3) I believe — had Counsel
Acted in GOOD FAITH — we could
have Resolved the matter.

Executed on 4/15/23.

[redacted]

[redacted]

[redacted]

rizona Department of Corrections
ehabilitation and Reentry

Legal Mail Log

Legal correspondence shall be opened and inspected for contraba only in the presence of the inmate (As outlined i a Department Corrections, Rehabilitation and Reentry (ADC epartment Ord 914, Inmate Mail). If the inmate is not in the unit return the unopene Legal Mail to Complex Mail Room.

UNIT	DATE *(mm/dd/yyyy)*
CIBOLA	02/28/2023

All metal and other contraband have been removed prior to issuing to inmate.

R Hauser 02-28-2023

Inmate Name *(Print name)*	ADCRR Number	Housing	Date *(mm/dd/yy)*	Signature	Received From / Mail To	Tracking Number	Contents	Outgoing Postage	Officer/Bad Number
TRIPATI, A	102081	4D15L	02/28/23		Jason S. Brookner, Esq Gray Reed & Mcgraw LLP 1601 Elm Street #4600 Dallas, Tx 75201				
TRIPATI, A	102081	4D15L	02/28/23		Chris Rad Esq P.O. Box 11341 Hauppauge, NY 11788				

NOTE: Shift Commander shall sign and date upon completion of all Legal/Certified Mail distribution.

SHIFT COMMANDER NAME *(Last, First M.I.) (Please print)*	SIGNATURE	DATE *(mm/dd/yyyy)*
Sg. Saavedra H #12250		02/28/2023

914

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT C RESPONSE TO ECF 1324

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

In re:	)	Chapter 11
TEHUM CARE SERVICES, INC.,[1]	)	Case No. 23-90086 (CML)
Debtor.	)	

DEBTOR'S OMNIBUS OBJECTION TO
ANANT KUMAR TRIPATI'S MOTION TO EXPEDITE
LIMITED DISCOVERY, MOTION TO DISMISS, AND MOTION TO ABATE
[Relates to Docket Nos. 244, 261 and 280]

The above-captioned debtor and debtor in possession (the "Debtor"), for its objection (the "Objection") to the *Motion to Expedite Limited Discovery* [Docket No. 244] (the "Discovery Motion"), the *Motion to Dismiss for Fraud Upon Article III Courts (Telephonic Arguments Requested)* [Docket No. 261] (the "Motion to Dismiss"), and the *Motion to Abate Time to Respond to ECF 184 and Submit Proof of Claim (Telephonic Arguments Requested)* [Docket No. 280] (the "Motion to Abate," and together with the Discovery Motion and the Motion to Dismiss, the "Tripati Motions") filed by *pro se* movant Anant Kumar Tripati ("Tripati"), respectfully represents as follows:

Jurisdiction and Venue

1. The United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

[1] The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

Background

3. The Debtor provided correctional healthcare services across the United States.[2] In May 2022, the Debtor effectuated a divisional merger pursuant to the Texas Business Organizations Code in which (among other things) assets and liabilities were allocated between CHS TX, Inc. and the Debtor (the "Divisional Merger"). The Debtor spent the second half of 2022 attempting to settle and satisfy its allocated liabilities, but ongoing litigation and associated costs have made such efforts impractical. Through this chapter 11 process, the Debtor aims to maximize the value of its estate and propose a chapter 11 plan that, to the best of the Debtor's ability, provides meaningful recoveries for creditors and other stakeholders.

4. On February 13, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this chapter 11 case. On March 2, 2023, the United States Trustee for the Southern District of Texas appointed an official committee of unsecured creditors pursuant to section 1102 of the Bankruptcy Code [Docket No. 77], as amended on March 6, 2023 [Docket No. 145].

Tripati Litigation Against the Debtor

5. Tripati is a convicted felon who has been incarcerated in Arizona for decades after being convicted of multiple crimes, including fraud. Since his incarceration in 1993, Tripati has filed eleven lawsuits against the Debtor in the United States District Court for the District of

[2] In further support of this Objection, Debtor relies on the *Declaration of Russell A. Perry in Support of Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtained Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief,* filed on March 15, 2023 [Docket No. 186].

Arizona (collectively, the "Tripati Litigation"),[3] jointly administered under *Tripati v. Corizon Inc.*, No. 4:18-cv-00066-RM (D. Ariz. Feb. 9, 2018). All of the Tripati Litigation relates to Tripati's myriad complaints over healthcare he received in prison and his conspiracy theories related to Debtor's business practices.

6. After literally hundreds of filings in the Tripati Litigation, including requests by Tripati for relief such as disqualifying the Arizona Attorney General, a request to "Disqualify Counsel for Corizon and Ryan in the Interest of the Proper Functioning of the Adversary System," and a motion to "Search Corizon's Computers," the District Court dismissed all defendants and granted a final summary judgment on March 26, 2021, dismissing the litigation.[4] Tripati then appealed the dismissal on May 15, 2021 to the Ninth Circuit Court of Appeals, which appeal remains pending under Case No. 21-15902.

7. Except for his dismissal appeal, **Tripati has no live claims or causes of action against the Debtor or any of its former employees or representatives.**

Tripati's Litigation History and Specific History with Corizon

8. Tripati is a determined user of the federal courts. Indeed, as recognized by the Third Circuit, "[i]n light of his vexatious litigation history, Tripati has been subject to filing restrictions in the United States District Court for the District of Arizona, the United States Court of Appeals for the Ninth Circuit, and the United States Supreme Court." *See Tripati v. Wexford Health Sources Inc.*, No. 22-1861, 2022 WL 17690156, *1 n.2 (3rd Cir. Dec. 15, 2022) (citing *In re Tripati*, 891

[3] The Tripati Litigation consists of: *Tripati v. Carter*, No. 4:14-cv-02077-DCV-PSOT; *Tripati v. Hale*, No. 4:15-cv-00140-DCB-PSOT; *Tripati v. Lynch*, No. 4:15-cv-00334-DCB-PSOT; *Tripati v. Corizon Inc.*, No. 4:16-cv-00282-DCB-PSOT; *Tripati v. Ryan*, No. 2:18-cv-00118-DGC-DKD; *Tripati v. Pratt*, No. 2:19-cv-01909; *Tripati v. Shinn*, No. 2:20-cv-01771-JJT-JFM; *Tripati v. Carter*, No. 2:22-cv-00243-JJT-JFM; *Tripati v. Queen*, No. 2:19-cv-00727-JJT-JFM; and *Tripati v. Corizon Inc.*, No. 2:19-cv-01053-JJT-JFM.

[4] *See Tripati v. Corizon Inc.*, No. 4:18-cv-00066-RM, Docket Nos. 61, 66, 127, 456 (D. Ariz.) (Pl.'s Mot. to Disqualify the Arizona Attorney General; Pl.'s Mot. to Disqualify Counsel for Corizon and Ryan; Pl.'s Mot. to Allow Search of Corizon's Computers; Order Granting Summ. J.).

F.2d 296, 296 n.1 (9th Cir. 1989) (table); *In re Tripati*, No. 93-80317 (9th Cir. Sept. 15, 2015); *Tripati v. Schiro*, 541 U.S. 1039 (2004) (mem. op.)); *cf. Tripati v. Corizon Inc.*, No. 3:16-cv-00076, 2016 WL 11658061, at *1 (M.D. Tenn. 2016) ("[Tripati] has previously filed more than 60 lawsuits and appeals in the courts of the Ninth Circuit. . . . Even the United States Supreme Court has previously sanctioned the plaintiff for 'repeatedly abus[ing]' the Court's process." (alteration in original) (citing *Schriro*, 541 U.S. at 1039)).

9. The Third Circuit has characterized Tripati as "a convicted fraudster who, over the past few decades, has inundated the federal courts with scores of lawsuits." *Tripati v. Wexford*, 2022 WL 17690156 at *1. A search on Westlaw's legal database shows that Tripati is, or has been, party to nearly 100 separate lawsuits, with literally dozens of suits directed at the Debtor.[5]

10. He is also a "three-strike filer" under 28 U.S.C. § 1915(g) due to the dismissal of multiple filings found to be either malicious, frivolous, or failing to state a claim. *See, e.g.*, *Tripati*

[5] *See, e.g., Tripati v. Wexford*, 2022 WL 17690156; *Tripati v. Corizon Inc.*, 828 Fed. App'x 470, 471 (9th Cir. Nov. 3, 2020) (mem. op.) (affirming summary judgment for defendant on Tripati's claims related to medical care); *Tripati v. Corizon Inc.*, No. 20-15380, 2020 WL 5237290 (9th Cir. July 23, 2020) (dismissing appeal and ordering no "motions for reconsideration, rehearing, clarification, stay of the mandate, or any other submissions shall be filed or entertained"); *Tripati v. Corizon Inc.*, No. 18-00066, 2020 WL 673490 (D. Ariz. Feb. 11, 2020) (denying 13 separate motions filed by Tripati); *Tripati v. Corizon Inc.*, No. 18-00066, 2019 WL 6114593 (D. Ariz. Nov. 18, 2019) (denying, among other requests, a request to "search Corizon's computers"); *Tripati v. Corizon Inc.*, No. 13-00615, 2018 WL 5807089 (D. Ariz. Nov. 6, 2018) (denying motion for limited discovery because requests were not related to the claims in the case after Tripati also "lied to the Court about being blind and needing a typewriter"); *Tripati v. Corizon Inc.*, No. 13-00615, 2018 WL 9440776 (D. Ariz. Aug. 24, 2018) (denying overly broad injunction and discovery requested by Tripati); *Tripati v. Corizon, Inc.*, No. 18-15227, 2018 WL 2222605 at *1 (9th Cir. Apr. 26, 2018) (dismissing appeal because it was "so insubstantial as to not warrant further review"); *Tripati v. Corizon Inc.*, No. 16-00282, 2017 WL 11482282 (D. Ariz. Sept. 19, 2017) (denying request for mandatory injunction to alter when plaintiff's medications were dispensed); *Tripati v. Corizon Inc.*, No. 16-00282, 2017 WL 11482284 (D. Ariz. Mar. 07, 2017) (dismissing complaint and noting Tripati "appear[ed] to be attempting to re-litigate issues or events that he has previously litigated without success"); *Tripati v. Corizon Inc.*, No. 3:16-cv-00076, 2016 WL 11658061 (M.D. Tenn. Feb. 2, 2016) (noting Tripati was subject to "three strikes" rule for multiple frivolous filings and denying motion to proceed *in forma pauperis*); *Tripati v. Corizon, Inc.*, No. 13-0615, 2015 WL 13827228 (D. Ariz. Apr. 28, 2015) (finding Tripati "identifies no legal basis entitling him to the relief he seeks"); *Tripati v. Corizon Inc.*, No. 13-00615, 2013 WL 12415391 (D. Ariz. Nov. 20, 2013) (dismissing Tripati's complaint and request for injunction without waiting for his reply brief because his own pleading demonstrated "only a difference of medical opinion between himself and the prison doctors."); *Tripati v. Corizon, Inc.*, No. 13-2286, 2013 WL 12415481 (W.D. Tenn. July 12, 2013) (noting Tripati failed to disclose fact that he is a three-strike filer, dismissing case, and directing all further filings to be returned to Tripati).

v. Corizon, Inc., 2013 WL 12415481 at *2 ("Tripati is a three-strike filer, and he failed to disclose that fact when he commenced the instant action.").

11. A review of Mr. Tripati's previous attempts to seek relief against Debtor are instructive. *See, e.g.*, *Tripati v. Corizon Inc.*, 2018 WL 5807089 at *1 (denying motion for limited discovery because requests were not related to the claims in the case after Tripati also "lied to the Court about being blind and needing a typewriter"); *Tripati v. Corizon Inc.*, No. 16-00282, 2018 WL 513381, at *23 (D. Ariz. Jan. 23, 2018) ("This Court has screened two of Plaintiff's five attempts to craft a viable complaint. As he did before, he fails to state a claim in his Fourth Amended Complaint even after being afforded a detailed explanation regarding pleading deficiencies in the TAC. The Court finds that further opportunities to amend would be futile. Therefore, the Court, in its discretion, will dismiss Plaintiff's Fourth Amended Complaint without leave to amend. Plaintiff's Notices and Motions will be denied to the extent that any relief is sought therein.").

Objections to the Tripati Motions

12. Tripati has now brought his misguided legal stratagems to this Court and his habit of inundating a court's docket with filings is already on display. In less than a month, Tripati filed nine documents in this chapter 11 case, including the Tripati Motions. *See* Docket Nos. 47, 48, 49, 244, 245, 260, 261, 262, and 280.

A. Objections to the Discovery Motion

13. Though it is somewhat unclear, it appears the Motion to Dismiss and Motion to Abate are generally related to the Discovery Motion. The Discovery Motion alleges that Tripati is entitled to "unlimited" discovery because he is "involved" in litigation with Debtor. *See*

Docket No. 244, p.1-2). As noted, however, Tripati's sundry claims against the Debtor have been dismissed. *See supra* ¶ 6.

14. While Tripati's history of sanctionable litigation tactics is sufficient to support denial of any requested discovery, the current requests for "expedited discovery" from the Debtor are far outside the scope permitted by the Federal Rules and untethered to any actual legal claims or issues. The requests are nothing more than Tripati's continued efforts to uncover a dubious grand conspiracy while harassing the Debtor, and accordingly, are wholly improper. *See Paul Kadiar, Inc. v. Sony Corp.*, 694 F.2d 1017, 1032 (5th Cir. 1983) ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

15. The Debtor does not believe that it is required to admit or deny the request for relief in the Discovery Motion. However, to the extent the Debtor is required to admit or deny such requested relief, the Debtor denies that Tripati is entitled to any relief through the Discovery Motion and objects to the requested discovery.

16. In the Discovery Motion, Tripati requests the following production for "the ***eight year*** period prior to filing for bankruptcy"[6]—notably not actually seeking production of documents or emails but only the "metadata" and "bibliographic information"—all of which is designed to unduly harass Debtor:[7]

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[6] *See* Docket No. 244, at 2 (emphasis added).

[7] *See Paul Kadiar, Inc. v. Sony Corp.*, 694 F.2d 1017, 1030 (5th Cir. 1983) (noting Supreme Court's approval of denial of discovery that "would merely amount to a fishing expedition and would unduly harass defendant.") (citing *First Nat'l Bank of Ariz. v. Cities Service Co.*, 391 U.S. 253 (1968)).

a. The "complete metadata on any emails and documents that refer to Anant Kumar Tripati, or Tripati, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer v. Mack Trucks, Inc.*, 981 F.2d 377, 380 (8th Cir. 1992). Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc. v. Sony Corp.*, 694 F.2d 1017, 1032 (5th Cir. 1983) ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years of complete metadata and bibliographic information of "any email and document that refer to [Tripati]," the request seeks discovery that is not proportional to the needs of the case as documents referring to Tripati have no bearing on any "claims" at issue and requiring Debtor to review eight years' worth of materials places a burden on Debtor that far outweighs any benefit. *See id.*; *see e.g.*, *In re Reagor-Dykes Motors, LP*, No. 18-50214-RLJ-11, 2021 WL 5094783, *3-4 (Bankr. N.D. Tex. 2021). Further, given Tripati's extensive litigation habits regarding the Debtor, the Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

b. The "complete metadata on any emails and documents that discuss or mention reorganization of Corizon, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years of complete metadata and bibliographic information of "any email and document that discuss[es] or mention[s] reorganization of Corizon," the request seeks discovery that is not proportional to the needs of the case given the scope of the request and the fact that requiring Debtor to review eight years' worth of materials places a burden on Debtor that far

outweighs any benefit. *See id.*; *see e.g.*, *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

c. The "complete metadata on any emails and documents that discuss the transfer of the bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years' of complete metadata and bibliographic information of "emails and documents discuss[ing] the transfer of the bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon," the request seeks discovery that is not proportional to the needs of the case given the scope of the request and the fact that requiring Debtor to review eight years' worth of materials places a burden on Debtor that far outweighs any benefit. *See id.*; *see e.g.*, *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, the request is unreasonably cumulative or duplicative of Tripati's third request. *See* Fed. R. Civ. P. 26(b)(2)(C)(i). Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

d. The "complete metadata on any emails and documents that discuss obtaining from the United States and its agencies, funds for pandemic relief Corizon, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor – and given the complete lack of explanation as to the relevancy of the requested materials to this proceeding. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years' of complete metadata and bibliographic information of "emails and documents discuss[ing] obtaining from the United States and its agencies, funds for pandemic relief Corizon," the request seeks discovery that is not proportional to the needs of the case given that requests focus on "pandemic relief" without any explanation of the relevancy of such materials and the fact that requiring Debtor to review eight years' worth of materials places a burden on Debtor that far outweighs any benefit. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(i); *see e.g.*, *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

e. The "complete metadata on any emails and documents that discuss the 25 contracts cancelled or not renewed with Corizon, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy."). Further, the request is so unspecific that it would be impossible for Debtor to respond to.

Further, by seeking eight years' of complete metadata and bibliographic information of "emails and documents that discuss the 25 contracts cancelled or not renewed with Corizon," the request seeks discovery that is not proportional to the needs of the case as Debtor's prior contracts of such materials and the fact that requiring Debtor to review eight years' worth of materials places a burden on Debtor that far outweighs any benefit. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(i); *see e.g.*, *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

f. The "metadata on any emails and documents were (sic) allegations have been made against Corizon for concealment of evidence, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See*

Hofer, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years' of complete metadata and bibliographic information of "any emails and documents were (sic) allegations have been made against Corizon for concealment of evidence," the request seeks discovery that is not proportional to the needs of the case as, seeks production of materials outside the control or possession of Debtor, and asks the Debtor to review eight years' worth of materials without regard to their relation to the current proceedings, placing a burden on Debtor that far outweighs any benefit. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(i); *see e.g., In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

g. The "complete metadata on any emails and documents that bonuses received by Corizon on its contracts no matter how the bonuses have been labelled, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years' of complete metadata and bibliographic information of "any emails and documents that bonuses received by Corizon on its contracts no matter how the bonuses have been labelled," the request seeks discovery that is not proportional to the needs of the case as it seeks discovery of Debtor's financial information for nearly a decade, asking the Debtor to review eight years' worth of materials without regard to their relation to the current proceedings and placing a burden on Debtor that far outweighs any benefit. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(i); *see e.g., In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

h. The "complete metadata on any emails and documents that discuss sanctions against Corizon for litigation misconduct, including for failing to

disclose evidence in litigation, including court orders, including the bibliographic information."

Objection: Debtor objects to this request, as it seeks discovery that is not relevant to any claim or defense given Tripati's lack of claim against Debtor. *See, e.g.*, Fed. R. Civ. P. 26(b)(1). The request's complete lack of specificity is, by definition, a "fishing expedition" that is not sanctioned by the Federal Rules. *See Hofer*, 981 F.2d at 380. Such an objection is particularly appropriate when faced with a requesting party such as Tripati. *See Paul Kadiar, Inc.*, 694 F.2d at 1032 ("Given appellant's repeated inability to provide any facts in support of his conspiracy theory, the court correctly observed that appellant would not be permitted to go fishing with the hope of fortuitously discovering some unknown and unsuspected evidence of a conspiracy.").

Further, by seeking eight years' of complete metadata and bibliographic information of "any emails and documents that discuss sanctions against Corizon for litigation misconduct, including for failing to disclose evidence in litigation, including court orders," the request seeks discovery that is not proportional to the needs of the case as it seeks documents unrelated to the matters before the Court and asks the Debtor to review eight years' worth of materials, placing a burden on Debtor that far outweighs any benefit. *See id.*; Fed. R. Civ. P. 26(b)(2)(C)(i); *see e.g.*, *In re Reagor-Dykes Motors, LP*, 2021 WL 5094783, *3-4. Further, Debtor objects to the extent it seeks production of materials subject to the attorney-client privilege or work-product doctrine.

B. Objections to Tripati's Motion to Dismiss and Motion to Abate

17. The Motion to Dismiss broadly alleges that the Debtor is "perpetuating fraud upon Article III Courts," and while the remainder of the motion is difficult to discern, it seems to seek either a dismissal of the Debtor's bankruptcy case [Docket No. 261 at 4, 5, & 19], relief in the form of this Court abstaining from hearing the Debtor's bankruptcy case, or relief loosely tied to Tripati's litigation in non-bankruptcy forums. The Debtor denies that any cause exists to dismiss its bankruptcy case, and Tripati has brought forth no evidence justifying such relief.

18. To the extent the Motion to Dismiss alleges that Tripati has asserted causes of action for fraudulent transfers or alter ego-type claims, the Debtor's bankruptcy estate owns, and only the Debtor has the ability to assert, such claims for the benefit of all creditors and parties in interest. Additionally, and as more fully set forth above, the Tripati Motions are without merit and are

merely a continuation of Tripati's harassing lawsuits and claims against the Debtor and others. In any event, the Debtor's automatic stay currently prevents Tripati from continuing his harassing lawsuits in any non-bankruptcy forums.

19. In response to Tripati's discovery requests included as an attachment to the Motion to Dismiss [Docket No. 261 at 170–172 of 173], Debtor incorporates by reference the document production objections set forth above in response to the Discovery Motion.

20. Tripati attached to the Motion to Dismiss a document entitled *Declaration of Anant Kumar Tripati* [Docket No. 261 20–43 of 173] (the "Tripati Declaration"). The Debtor requests that the Court not treat the Tripati Declaration as evidence of anything in support of the relief requested in the Motion to Dismiss. First, the Tripati Declaration is replete with inadmissible speculation, legal conclusions, and hearsay. Second, the Tripati Declaration is inadmissible because it does not include the entirety of the documents purportedly cited, rendering it, at best, misleading and unreliable.

C. Objections to Tripati's Motion to Abate

21. The Motion to Abate, without explanation or evidence, again lays out Tripati's theories regarding Debtor's fraud on the entire American court system and seeks additional document production from Debtor. *See* Docket No. 280 at 8. It appears that Tripati is again seeking the production of wide-ranging documents and an extension of the deadline for him to file any proof of claim in this bankruptcy case until ninety days after the requested documents are produced. The Motion to Abate should be denied for several reasons.

22. *First*, as more fully set forth above, Tripati is not entitled to receive the documents he has requested.[8] *Second*, to the extent there are any fraudulent transfer or alter ego claims

[8] To the extent Tripati, through the Motion to Abate, asserts that he is entitled to certain documents from Debtor based upon his interpretation of the "crime fraud exception" to the attorney/client privilege or attorney work product

relating to the Divisional Merger, those claims are property of the bankruptcy estate. *Third*, Tripati's requests for similar types of documents have previously been denied by prior non-bankruptcy courts. Once the Court sets a deadline for creditors to file proofs of claim, Tripati will receive notice of such deadline and will have sufficient time to file a proof of claim, if he so desires.[9]

23. Tripati has provided no justification or reasoning for his requested relief beyond his own unsupported allegations of a grand conspiracy and "fraud on Article III Courts." Such requests, untethered to any claims against the Debtor and designed solely to harass, are wholly improper and should be denied in all regards.

Reservation of Rights

24. Tripati has failed to comply with the applicable rules of this Court respecting the Tripati Motions. Thus, the Debtor reserves the right to amend and/or supplement this Objection in all respects prior to any hearing that may be scheduled on the Tripati Motions.

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doctrine, the Debtor denies that any of the relief requested should be granted. Other than his own unsupported assertions, Tripati brings forth no evidence justifying his request, and such "[b]are suspicions of fraud or criminal conduct are not sufficient to establish the prima facie case [for the crime fraud exception to apply]." *In re McDowell*, 483 B.R. 471, 490 (Bankr. S.D. Tex. 2012). Instead, the burden is on Tripati to establish a prima facie case that an attorney-client relationship was used to promote a crime or fraud. *See In re Grand Jury Subpoena*, 419 F.3d 329, 343 (5th Cir. 2005); *Meralex, L.P. v. The Heritage Org., L.L.C. (In re Heritage Org., L.L.C.)*, No. 04-35574-BJH-11, 2007 WL 3995587, at *2 (Bankr. N.D. Tex. Nov. 15, 2007). Tripati has wholly failed to bring forth such evidence, including evidence or the requisite intent. *See In re Hunt*, 153 B.R. 445, 454-55 (Bankr. N.D. Tex. 1992) ("In sum, if the crime-fraud exception is invoked, its proponents must establish a *prime facie* case of crime or fraud, including the requisite intent. If *in camera* review is to be part of the *prima facie* showing mandated by *Industrial Clearinghouse*, the proponents must follow the procedure mandated by *Zolin* regarding the 'threshold' showing of extrinsic evidence of crime or fraud." (citing *Industrial Clearinghouse, Inc. v. Browning Mfg. Div. of Emerson Electric Co.*, 953 F.2d 1004, 1008 (5th Cir.1992); *United States v. Zolin*, 491 U.S. 554 (1989)).

[9] The Debtor currently contemplates requesting that the Court set August 14, 2023 as the proof of claim deadline for claims of incarcerated persons (like any claims that may be asserted by Tripati). The Debtor believes a proof of claim deadline of August 14, 2023 would give Tripati more than sufficient time to file any proof of claim he desires and is manifestly fair.

25. The Debtor respectfully requests that the Court deny all of the relief requested in the Tripati Motions. The Debtor additionally requests such other and further relief to which it may show itself justly entitled.

Respectfully submitted this 10th day of April, 2023.

GRAY REED

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Proposed Counsel to the Debtor and Debtor in Possession

Certificate of Service

I certify that on April 10, 2023, 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 to all parties authorized to receive electronic notice in this case.

/s/ Jason S. Brookner
Jason S. Brookner

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT D RESPONSE TO ECF 1324

10. The fact pattern in each case varies but the goal is always the same: use the bankruptcy of a manufactured affiliate to create leverage and pressure tort victims into unacceptable settlement amounts that include a full release in favor of the non-bankrupt entity.

11. The first step involves a state law divisive merger conducted by a subsidiary of a wealthy corporation. The divisive merger typically occurs under a 1989 amendment to the Texas Business Corporations Act—hence the name *Texas* Two Step. Under the merger, the subsidiary will split its assets and liabilities among two new entities. One entity—"TortCo"—will house all the subsidiary's tort liabilities. The other entity—"GoodCo"—will be vested with the subsidiary's productive assets and its non-tort liabilities.

12. TortCo will agree to indemnify the entire non-debtor corporate family for the tort liability. To avoid arguments that the divisive merger was fraudulent, TortCo is almost always provided with a funding agreement backstop from GoodCo and/or an affiliate to fund a bankruptcy case and provide funding to TortCo to pay tort claims within certain parameters.

13. Next, TortCo will file for bankruptcy—often called the second step of the Texas *Two Step*. TortCo will immediately seek to enjoin all tort liability litigation against all non-debtor affiliates and other indemnified parties. This step is critical—without the Court's assistance in enjoining litigation against the solvent non-debtors, the Texas Two Step strategy is unlikely to succeed. Once an injunction is obtained, TortCo, usually led by a purported "independent" board, will engage in mediation or other activities designed to prolong the bankruptcy case while tort victims suffer and receive no compensation for their injuries.

14. The Texas Two Step is designed to provide the debtor and, more importantly, its non-debtor affiliates, with all the benefits of a bankruptcy—*i.e.*, a prolonged, if not multi-year stay of litigation—without any of the burdens of bankruptcy being imposed upon GoodCo or other non-

debtors who benefit from the stay and the enjoining of litigation pending before the bankruptcy case. Since the debtor is a shell and not an operating company, the debtor does not need to reach a settlement or confirm a plan; simply put, it has no incentive or reason to exit bankruptcy except on terms highly favorable to GoodCo.

15. In a traditional scenario, a debtor seeking to reorganize has the incentive to negotiate in good faith and reach settlements with victims that will result in a plan acceptable to them. But in a Texas Two Step, the incentives are far different and indeed perverse. GoodCo can operate its business, conduct further corporate transactions and upstream profits to shareholders without court oversight, while claimants are stuck in bankruptcy, anchored by a debtor that has no need to exit bankruptcy, and cannot liquidate or obtain compensation for their claims.

16. Typically, TortCo's primary objective is to stay in bankruptcy for as long as possible and prevent claimants—many of whom suffer from terminal diseases and will die before the bankruptcy case ends—from liquidating their claims to judgment. Not a single Texas Two Step case has resulted in a negotiated settlement with tort claimants holding compensable claims. Nor has any of the Texas Two Step cases resulted in a confirmable chapter 11 plan. Indeed, the first Texas Two Step, *Bestwall*, has lingered in bankruptcy for over six years with no resolution in sight.

17. To believe or hope that the Texas Two Step would ever result in a confirmed plan may be to miss the point entirely. Even when a plan is proposed, it is often one that is unconfirmable. GoodCo and its parent will demand that the plan release them of their tort liability as a condition to providing funding for any settlement trust. *See, e.g.*, LTL 2.0, Dkt. No. 525. And such funding typically will be withheld until there is a final, non-appealable order confirming the plan. If such a plan were confirmed by a Bankruptcy Court, it would face certain appeal.

18. For example, in *LTL 2.0*, the debtor's proposed plan channeled the independent liability of non-debtor Johnson & Johnson ("J&J") to a section 524(g) trust even though the Third Circuit has held that a section 524(g) injunction cannot be used to shield a non-debtor party from its own direct and independent liability. *See In re Combustion Eng'g, Inc.*, 391 F.3d 190, 233 (3d Cir. 2004). If a plan were somehow confirmed and upheld on appeal, the result would be the elimination of the right to a jury trial to hold a non-debtor responsible for its conduct through the bankruptcy of a manufactured entity. For parties who had obtained a judgment in the tort system prior to the bankruptcy of the manufactured debtor, the result would be the nullification of the jury's verdict, without an appeal, with the judgment creditor being paid an amount deemed appropriate by the defendant (in its sole and absolute discretion).

II. The 3M Variation of the Texas Two Step

19. While all the major Texas Two Step cases have been prosecuted by the same law firm that developed the strategy, other law firms more recently have attempted to implement similar strategies or innovations thereof. The chapter 11 case of *In re Aearo Technologies LLC*, Case No. 22-02890 (Bankr. S.D. Ind. July 26, 2022), an affiliate of 3M, was a recent variation of this strategy.

20. In that case, 3M faced liability for manufacturing and selling defective earplugs after acquiring the underlying operating business in the mid-2000s (and owning the operations for several years prior to terminating production of the defective product and several years prior to implementing the bankruptcy strategy). Claimants sought to hold 3M liable in the tort system.

21. 3M located an affiliate in its organization that was also named as a defendant in the consolidated litigation—Aearo Technologies ("Aearo")—and placed that company into bankruptcy. Aearo was, in substance, intended to be a Texas Two Step without the divisive merger

leading the way. Prior to the bankruptcy, Aearo entered into a funding agreement pursuant to which Aearo agreed to indemnify the entire 3M corporate family for earplug and other tort liabilities. *In re Aearo Tech. LLC*, 642 B.R. 891, 898 (Bankr. S.D. Ind. 2022).

22. To avoid arguments that this indemnification obligation could be avoided as an actual or constructive fraudulent conveyance, Aearo also received a funding agreement backstop to fund a bankruptcy case and provide funding to pay tort claims within certain parameters, including claims for indemnification. This made the funding agreement circular—Aearo's obligation to indemnify 3M could be satisfied by obtaining funds from 3M under the funding agreement. *Id.* at 909-910 (finding that the funding agreement amounted to a circular agreement).

23. Once in bankruptcy, Aearo attempted to implement the classic Texas Two Step litigation strategy. Aearo immediately moved to enjoin litigation against its non-debtor affiliates. The goal was to freeze all litigation against 3M while, at the same time, keeping 3M outside of the bankruptcy proceeding where it would be free to operate its business, conduct further corporate transactions and upstream profits to shareholders without court oversight. Claimants, in turn, would be stuck in bankruptcy and could not liquidate their claims to judgment. Aearo's goal was to create delay and confirm a plan that released 3M of its own tort liability.[5]

24. Aearo's bankruptcy did not go according to plan. The Bankruptcy Court refused to grant Aearo's request for injunctive relief at the beginning of the case. *Aearo*, 642 B.R. at 912. This was critical. Without an injunction, the parent in these cases cannot enjoy the intended litigation holiday or avoid paying defense costs while the bankruptcy is pending.

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[5] *See Informational Brief of Aearo Technologies LLC* [Dkt. No. 12] filed in *In re Aearo Tech. LLC*, Case No. 22-02890 (Bankr. S.D. Ind. July 26, 2022) ("The second cornerstone [of a plan of reorganization] would be a permanent channeling injunction and a third-party release of 3M. This injunction would require that all Combat Arms-related claims be brought only against the settlement trust, and not the reorganized Aearo entities or their non-debtor affiliates. The injunction would apply to all potential Combat Arms plaintiffs.").

for 24 hours against her will with limited supervision and few comforts or food breaks. Three days later, Ms. Norred tied her jail-issued uniform pants to her bunk and hung herself. Her mother—TCC member Elizabeth Frederick—filed a wrongful death case in Florida District Court against Corizon and the county. *Frederick v. McNeil*, Case No. 4:19-cv-162-MW-CAS (Claim 574).[9]

37. The TCC members' claims are merely examples of atrocities suffered by many other tort claimants who deserve the right to seek compensation in the tort system.[10]

38. **Tracey Grissom**. For example, Tracey Grissom brought claims against Corizon after she was forced to suffer in agony and live in her own fecal matter for four months. Ms. Grissom was convicted of murdering her husband after, according to Ms. Grissom, he had raped her and caused injuries that required her to have a stoma (a surgically made hole) in her lower stomach, which connects to an ostomy bag that collects waste.

39. For two days in 2017, Ms. Grissom suffered terrible pain while her intestines protruded several inches outside the stoma. After a portion of Ms. Grissom's lower intestine was surgically removed, Corizon provided ill-fitting ostomy bags that leaked for four months on her body, clothing, and bedding. Ms. Grissom filed a lawsuit against Corizon in Alabama District Court. As the District Court judge framed her allegations, "For four months, her feces adhered to and excoriated her skin, it soiled her clothes, it covered her bedding, and it repulsed those around her, so much so that she was segregated from other inmates." *Grissom v. Corizon, LLC*, 2:19-cv-420 (Claim 527 & 598).[11]

40. **David J. Hall**. In Maryland, a jury awarded David J. Hall $3 million against Corizon for failing to treat a wrist fracture that had collapsed and required extensive surgery.

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[9] https://storage.courtlistener.com/recap/gov.uscourts.flnd.103873/gov.uscourts.flnd.103873.24.0.pdf

[10] *See also* https://www.themarshallproject.org/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy

[11] https://casetext.com/case/grissom-v-corizon-llc-1.

from his head and nose. Despite clear signs of a traumatic head injury from a likely assault and deteriorating symptoms, Corizon did not call for emergency medical help for over two hours.

33. Ignoring medical advice to fly Mr. Allard immediately to an emergency room, he was driven by ambulance to a Bisbee airport for helicopter transport to a Tucson hospital, where he died three days later. Mr. Allard's grandmother—TCC member Aanda Slocum—filed a wrongful death case against Corizon in *Arizona District Court, Estate of Daniel Allard v. Corizon Health LLC*, Case 4:18-cv-00044-JCH (Claim 158-1).[7]

34. **Michelle Morgan**. In 2022, during Michelle Morgan's intake in a New Mexico jail, a Corizon employee noted that Ms. Morgan had been subjected to "ongoing issues of physical and emotional abuse."[8] On May 3, 2022, Ms. Morgan requested counseling services, which Corizon refused to provide. Ten days later, on May 13, 2022, Ms. Morgan committed suicide by hanging herself from her bunk bed. Corizon employees' use of an automated external defibrillator to resuscitate her failed not once, but twice, because the battery power of two different devices had run down, rendering them unusable. Ms. Morgan's daughter—TCC member Paris Morgan—is now pursuing a wrongful death claim against Corizon. *See* Claim 500.

35. **Jennifer Casey Norred**. Jennifer Casey Norred was 36 years old and suffered from chronic schizophrenia, bipolar disorder and depression when incarcerated in a county jail for "stalking." Ms. Norred had received mental health treatment before her incarceration. Jail records documented at least one prior suicide attempt.

36. On July 24, 2017, after months with virtually no treatment, no inquiry into her prior mental health condition and a failed suicide attempt, Ms. Norred was placed in a "restraint chair"

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7 https://storage.courtlistener.com/recap/gov.uscourts.azd.1077356/gov.uscourts.azd.1077356.1.0.pdf

8 https://www.abqjournal.com/news/local/suit-alleges-mdc-guards-negligence-led-to-jail-death/article_0808296b-fcf8-5b33-97b2-3fe7be37ce19.html

A. Corizon's Corporate History and the Tort Claims

28. YesCare—like J&J and 3M—turned to bankruptcy to address its tort liability. The Debtor's predecessors were in the business of providing healthcare services to inmates incarcerated in state and local prisons across the county.

29. During the 2010s, a group of private equity funds owned the Corizon Health conglomerate. During this period, Corizon was very profitable. Many States had converted to providing healthcare to inmates by contracting with private companies and there were only a handful of competitors that were able to compete for these contracts.

30. But Corizon Health ran into headwinds. The disturbing truth of the private prison health care industry is that it incentivizes and provides a level of care that leads to medical malpractice and related liability. With revenue fixed by a government contract, profits are maximized by minimizing costs. The costs here are the costs of providing health care to inmates. Less healthcare equates with a higher rate of return. This reality led to significant tort claims, including claims for wrongful death and permanent disability and disfigurement.

31. The members of the TCC exemplify the tort claims arising from serious medical malpractice and neglect that the Debtor's insiders are trying to evade in this bankruptcy case. Five TCC members have wrongful death claims, and the sixth TCC member suffered permanent disability and disfigurement caused by Corizon's business plan to avoid medical expenses by limiting care provided to inmates.

32. **Daniel Allard**. Daniel Allard had about one year left of a 2½ year sentence in an Arizona prison for attempted trafficking of stolen property. Mr. Allard was found by a prison employee lying in brown vomit. He was taken to Corizon's prison medical facility with bleeding

25. Aearo's bankruptcy—like LTL's bankruptcies—was also met with a motion to dismiss filed by an official committee representing the interests of tort claimants, among others. The Bankruptcy Court ultimately dismissed Aearo's bankruptcy as having been filed in bad faith. *See In re Aearo Tech. LLC*, No. 22-02896, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023). LTL's serial bankruptcy filings were also dismissed.[6]

26. Following dismissal, 3M returned to the tort system where it faced the reality of litigation. On August 29, 2023, roughly three months after Aearo's bankruptcy case was dismissed, 3M announced a settlement under which it agreed to pay $6 billion to settle the earplug lawsuits—roughly ***six times*** the amounts offered by 3M during Aearo's bankruptcy. But for the dismissal of Aearo's bankruptcy—which was designed to suppress tort claim values and facilitate a multi-billion-dollar transfer from victims to equity—this settlement would not have occurred, and the victims would likely be stuck in bankruptcy to this day.

III. The YesCare Two-Step

27. The YesCare Two-Step is also designed to suppress tort claim values and facilitate a transfer of millions of dollars from victims to equity. Like *LTL 1.0* and *LTL 2.0*, this case involves a divisive merger followed by a bankruptcy filing by the manufactured debtor. This case seeks to implement the core strategy that uses bankruptcy to shield affiliated companies from litigation in the tort system. To fully appreciate why the YesCare variant of the Texas Two Step is arguably even more abusive than the schemes attempted by J&J and 3M, it is helpful to start with YesCare's corporate history and the liabilities that its predecessors faced in the tort system.

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[6] *See In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023) (reversing bankruptcy court decision and directing dismissal of bankruptcy petition); and *In re LTL Mgmt., LLC*, 652 B.R. 433 (Bankr. D.N.J. 2023) (dismissing LTL's second bankruptcy where the debtor did not file its petition in good faith).

Mr. Hall was provided only an Ace bandage and told his injury would "self-heal." The jury's award was reduced to $770,000 pursuant to Maryland statute. *See* Claim 243 & 585.

41. All actions filed by the hundreds of claimants have been stayed by this bankruptcy. And many cases against Corizon and its affiliates have been dismissed without prejudice because of this bankruptcy case.

B. The 2020 Sale to the Flacks Group

42. As of 2017, BlueMountain Capital Management ("BlueMountain") was Corizon's largest ultimate beneficial owner. Given the mounting litigation, in the summer of 2020, BlueMountain decided to divest and sold the equity of Corizon to the Flacks Group, a Miami-based investment firm. Coincident to this sale, the Flacks Group formed the "M2" related entities to acquire Corizon's purportedly secured debt at a steep discount. Through this acquisition of debt and equity, the M2 companies became both Corizon's parent and secured lender.

43. The Flacks Group did not turn around Corizon's business. Instead, it spun off PharmaCorr—the prison health services adjacent pharmacy benefits manager—stripping Corizon of a profitable company. With this cash in hand, the Flacks Group evaluated a potential bankruptcy transaction as an exit strategy. But, by happenstance, the Flacks Group met Mr. Issac Leftkowitz and Perigrove—and thereby, an entreat with the owners of health care giant Genesis HealthCare—who convinced the Flacks Group to not file for bankruptcy and to sell the business to them instead.

C. The Divisive Merger (aka [redacted])

44. Perigrove had a different vision for Corizon—[redacted]. Code named [redacted]," Perigrove and its advisors set off to shield their companies from litigation in the tort system and impose a forced bankruptcy settlement on the victims and their families, thereby

freeing all future profits for equity holders. *See* **Exhibit B** (filed under seal). [redacted] was designed to use bankruptcy to transfer millions from tort victims to equity.

45. **Step 1—Acquire and Loot Corizon**. As a starting point, in December 2021, Perigrove acquired (for an undisclosed consideration), Corizon Health, its parent, the M2 companies and their debt, all the profitable government contracts, and Corizon's cash.

46. Perigrove then looted Corizon Health to the tune of approximately $30 million. The TCC contends that these transfers were both intentional and constructive fraudulent transfers that would be recoverable by any creditors in future litigation (inside or outside of bankruptcy).

47. **Step 2—Create MergeCo**. In May 2022, Perigrove directed Corizon and certain of its affiliates—*i.e.*, Corizon Health, Inc., Valitas Health Services, Inc., Corizon LLC, and Corizon Healthcare of New Jersey—to merge into a single entity called "MergerCo." MergerCo included all the business entities with assets and ongoing operations.

48. **Step 3—The Divisive Merger**. MergerCo then undertook a divisive merger under Texas law. Merger Co split its assets and liabilities among two entities. One entity—"RemainCo" or "Corizon Health, Inc." or "TortCo"—housed the disfavored liabilities, including the tort claims asserted by the inmates and their families as well as liabilities owed to certain vendors and terminated employees.

49. The other entity—"NewCo" or "CHS TX, Inc." or "GoodCo"—was vested with the MergerCo's productive assets and its favored liabilities. The allocation of liabilities owed to vendors and former employees makes this case somewhat different. In most Texas Two Steps, TortCo is allocated nothing but the disfavored tort liabilities. But the YesCare version is different.

50. The TCC's analogies "Step 3" in the YesCare scheme to a section 363 sale to an insider, where the insider takes all the productive assets and an assignment of the profitable

contracts (along with an assumption the related liabilities), rejects the non-profitable contracts, and leaves other undesirable liabilities (*e.g.*, terminated employee obligations) behind.

51. True to form, the parties provided TortCo with a Funding Agreement with M2 Loan Co. But the Funding Agreement here was subject to an aggregate cap of $15 million. Under the Funding Agreement, M2 Loan Co., as the "Payee," could advance funds to TortCo and make earmarked payments to TortCo's creditors, which it did prior to the bankruptcy.

52. **Step 4—Create a Structure to Eliminate Creditor Remedies**. Ordinarily, the next step is the immediate bankruptcy filing of TortCo—often hours after the divisive merger. But the YesCare variant did not involve an immediate bankruptcy filing.

53. Once the divisive merger was complete, Sarah Tirschwell, who was the sole shareholder of NewCo, contributed 95% of that equity to another newly formed company called YesCare, which would be wholly owned by certain ***undisclosed insiders***. Upon information and belief, these insiders are the **same** people who controlled Corizon prior to the divisive merger. The Funding Agreement was exhausted with millions of dollars being paid to preferred creditors.

54. Perigrove understood that Texas's divisive merger statute does not eliminate the rights of creditors under existing law, including the right to (a) argue that YesCare and/or NewCo is Corizon's legal successor, (b) assert alter ego and veil piercing theories, and (c) assert fraudulent transfer claims (both actual and constructive fraud). A divisive merger that creates an entity saddled with liabilities and no business assets constitutes the very transaction has been banned for close to 500 years since the United Kingdom passed the Statute of Elizabeth.

55. When a divisive merger looks to be a fraud, creditors can challenge the merger as a fraud. Texas law does not afford anyone a license to commit fraud. For YesCare and NewCo, the claimants' state law remedies are the problem.

56. Through the divisive merger and a subsequent bankruptcy filing, YesCare's objective was to ***create*** a new plaintiff that ***controls*** the tort claims and is controlled by YesCare. Understanding the arguments that can be advanced over what is property of a debtor's estate and the Debtor's DIP financing are key to understanding this scheme.

57. TortCo—the Debtor entity—was destined for bankruptcy. But unlike other Texas Two Steps, causing mortal delay was not the end game. YesCare needs a nonconsensual third-party release. The primary remedies available to victims of a fraudulent divisive merger are successor liability, alter ego and veil piercing, and fraudulent transfer claims. Armed with these legal theories, tort victims can seek compensation in the tort system from parties like YesCare and NewCo on account of the particularized injuries that they suffered. Victims can simply continue their lawsuits against YesCare, NewCo, and others as named defendants.

58. But when a company files for bankruptcy, the right to assert state law fraudulent transfer claims vests in the trustee. *See* 11 U.S.C. § 544(b). Generally, creditors cannot pursue such claims while the case is pending. In addition, causes of action that the ***company*** could assert against third parties under state law also become property of the estate under section 541(a).

59. As explained below, the Circuits are split on whether a bankruptcy trustee has standing to assert claims that ***belong to creditors*** under state law against third parties under the doctrines of successor liability and alter ego. *See* cases cited *infra* at fn. 30. Courts, in certain circumstances, have held that a debtor in bankruptcy can assert creditor claims—*i.e.*, claims based on a particularized injury to claimants—based on successor liability and alter ego theories.

60. When this occurs, Courts are often looking to a trustee to hold parties that engaged in misconduct that harmed creditors responsible. But, in the context of a Texas Two Step, this logic results in a perverse reality. If the tort claims asserted against YesCare, NewCo and others

under the doctrines of successor liability and veil piercing are estate causes of action—*i.e.*, they belong to TortCo during a bankruptcy proceeding—then YesCare can effectively control the tort claims asserted against it.[12] Because of the DIP financing scheme discussed below, the Debtor here is controlled by the litigation targets—*i.e.*, the parties alleged to have committed fraud and alleged to be liable as successors or alter egos.

61. By arguing that the tort claims against YesCare and NewCo (under a successorship or alter ego theory) are TortCo's property in a bankruptcy proceeding under section 541(a), YesCare and NewCo can use the Texas Two Step place themselves in the position of both the ***plaintiffs*** and the ***defendants***. The same is true for fraudulent transfer claims. The bankruptcy is used to take the property rights of the victims—*i.e.*, their tort claims against YesCare, NewCo, and others—and place them into the hands of a debtor controlled by the tortfeasor.

62. The key to YesCare's variant of the Texas Two Step is to create a bankruptcy under which it controls the claims against ***itself*** and then can ***settle*** those claims under either a Rule 9019 settlement or a chapter 11 plan. The primary obstacles to this happening are the Bankruptcy Court and estate fiduciaries who are charged with maximizing the value of a debtor's estate.

63. But Perigrove devised a plan for this as well. Before authorizing a bankruptcy filing, Perigrove made certain that the Debtor was deeply insolvent—*i.e.*, stripped of all its value **and** access to funding under the Funding Agreement. This laid the foundation for an insider DIP loan. Without the DIP loan, there is no funding for this case and no funding to pay professional fees, including the professionals retained by the Debtor and any official committees.

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[12] To be clear, the TCC does not believe that the personal injury and wrongful death claims asserted against YesCare, NewCo, and their non-debtor affiliates and insiders under the doctrines of successor liability or veil piercing are property of the Debtor's estate. A contrary result would mean that section 541(a) violates the Fifth and Seventh Amendments of the Constitution. The TCC raises and reserves the right to argue that section 541(a) violates the Fifth and Seventh Amendments to the extent that it means that such claims are the Debtor's property.

64. The DIP loan denies funding for any committee or estate party that challenges any of the prepetition transfers or the very insider DIP that controls this case. *See* DIP Motion at pp. 8-9 (DIP Credit Agreement, ¶ 6.13, 6.36(r)), D.I. 185 (the "DIP Motion"). And the DIP loan is collateralized by liens on all conceivable estate causes of action (which the Debtor will argue include the tort claims against YesCare and NewCo). *See* DIP Motion at pp. 16-17 (defining DIP Collateral to include commercial tort claims and causes of action, among other items).

65. **Step 5—File for Bankruptcy**. With the DIP loan fully negotiated and ready to go, the next step was to find professionals willing to represent the newly created debtor, file the petition, seek an injunction to shield YesCare and its non-debtor affiliates and insiders from litigation during the bankruptcy, move to approve the DIP loan (and the related liens and case controls), and then dangle a settlement before the parties as the only way out of the case.

66. On February 12, 2023, just prior to the filing, the Debtor retained Gray Reed as bankruptcy counsel. And, on February 13, 2023, the Debtor filed its chapter 11 petition.

67. **Step 6—Seek an Injunction**. Once in bankruptcy, the Debtor followed the Texas Two Step script. Like J&J and 3M, the Debtor sought an injunction to prevent claimants from pursuing their claims against YesCare and its non-debtor affiliates and insiders.[13] In the PI Action, the Debtor asserted its desires to control estate causes of action (including successor liability Claims) and the indemnity provided by the Debtor to its non-debtor affiliates, insiders, officers and directors, as part of the divisional merger as bases to support the injunction.

68. On March 3, 2023, the Court entered its *Order Regarding Debtor's Emergency Motion to Extend and Enforce the Automatic Stay* [D.I. 118] and on May 18, 2023, the Court

[13] *See* Complaint Seeking (I)(A) a Declaratory Judgment that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) Extension of the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) a Preliminary Injunction Related to Such Actions Tehum Care Services, Inc. v. Those Parties Listed in Appendix A, (the "PI Action") [Adv. P. 1].

entered its *Order (I)(A) Declaring that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted Against Certain Non-Debtors and (B) Extending the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) Preliminarily Enjoining Such Actions* (the "PI Order") [Adv. P. 43]. This Court's injunction appeared to dissolve on August 10, 2023, but has been extended by stipulation of certain parties in the months since.

69. **Step 7—Negotiate with the UCC**. After the filing, the United States Trustee appointed an Official Committee of Unsecured Creditors Committee (the "UCC"). *See* Amended Notice of Appointment of Official Committee of Unsecured Creditors [D.I. 145]. The UCC is comprised of ***five trade creditors*** of Corizon Health and two personal injury claimants.

70. The UCC engaged professionals, who in turn negotiated a settlement and plan with the Debtor. *See* Disclosure Statement Regarding Debtor and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan [D.I. 984] (subsequently revised). The TCC understands that the UCC negotiated the "settlement" and plan allocation among itself and the Debtor and without any lawyers present representing the interests solely of the tort claimants. The results of that internal negotiation speak for itself and are embodied in the proposed plan.

F. The Proposed Plan of Reorganization

71. The proposed plan reflects the final embodiment of YesCare's scheme. As one may expect, the proposed plan treats the inmates and their families poorly (and that is probably an overly generous statement).

72. **Unfair Discrimination**. Unlike the plans proposed in other Texas Two Step cases, the Debtor's plan divides the claimants among three separate classes—Class 4 (Non-Personal Injury Claims), Class 5 (Personal Injury Claims), and Class 6 (Indemnification Claims). Class 4, which includes the five trade creditors represented by the UCC, gets the lion's share of the money.

73. The plan deploys a two-trust structure, with Non-Personal Injury Claims being channeled to the "Liquidation Trust" and Personal Injury Claims being channeled to the "Personal Injury Trust." Under the settlement with the UCC, the Liquidation Trust gets between $14.5 and $15.5 million of the $37 million settlement, the right to pursue certain estates causes of action, including preference claims worth millions of dollars and claims against the Flacks Group (also worth millions of dollars), and ERC credits (purported to be worth between $5 and $10 million).[14] The Liquidation Trust can employee the professionals that currently represent the UCC.

74. Holders of Non-Personal Injury Claims will enjoy a substantially higher recovery than holders of Personal Injury Claims. The Personal Injury Trust gets between $8.5 and $8.8 million of the $37 million settlement and insurance rights that are presently estimated to have little to no value. The filed proofs of claims alleged personal injury and wrongful death claims total approximately 200 (plus), with a face value of $775 million.

75. Under the proposed settlement and plan, claimants on the UCC will receive between a 44% and 69% recovery, YesCare and NewCo will avoid millions of dollars in tort liability that it would otherwise face in the tort system, and assuming any funds are left after the payment of trust administrative claims, the inmates and their families stand to recover pennies on the dollar. Wrongful death claims worth more than $5 to $10 million in the tort system may recover less than 1.2% of their claim—*e.g.*, $60,000 or $120,000—if the plan is confirmed and upheld on appeal. Victims like David Hall may recover only $5,000 on his $770,000 judgment and be stripped of his right to pursue non-debtor tortfeasors for the difference.

[14] On December 18, 2023, the Debtor and the UCC announced a revised settlement based on a $54 million cash contribution. But this settlement presumes the existing allocation negotiated by the UCC for the benefit of Non-Personal Injury claims.

76. Further, there has been no estimation proceeding in this case to ascertain the Debtor's aggregate tort liability. Only self-serving and untested analysis presented in a liquidation analysis appended to the plan that admits the tort claims could be as high as $75 million. $9 million is not enough money to administer a trust of the kind proposed by the UCC and the Debtor, let alone provide anything other than the $5,000 quick pay payments to victims.

77. **Non-Consensual Third-Party Releases**. To lock in their winnings, the plan also effectuates nonconsensual third-party releases. This occurs through two mechanisms.

78. The first mechanism is the release set forth in Article IX of the plan. Under this Article IX, all parties who have not "opted out"—even those with no actual notice of the bankruptcy proceedings—will be deemed to grant a release to YesCare and other non-debtors, including exculpation of the estate fiduciaries.

79. The second mechanism is the proposed settlement of the estate causes of action against YesCare and its non-debtor affiliates and insiders. Under the plan's Article IX(c), the Debtor and its estate shall release all estate causes of action against YesCare and the other Released Parties. This release is broad and is intended to be the mechanism by which the Global Settlement is effectuated. It specifically includes "rights, actions (including Avoidance Actions), suits . . . . powers, privileges . . . whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, . . . assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort law, equity, or otherwise that the Debtor, the Post-Effective Date Debtor, or the Estate has, have or may have against the Released Parties."

80. If approved, YesCare and NewCo could appear as a defendant in any pending litigation and argue that any tort claims against them grounded in a successor liability or alter ego theory are barred by the Debtor's confirmation order such that no claimants can hold them

responsible for their misconduct. The same is true for fraudulent transfer claims aimed at undoing the divisive merger—the Debtor's insiders effectively act as both plaintiff and defendant of the tort claimants' claims under this scheme.

81. The plan includes an "Opt Out" for claimants who reject the proposed plan settlement, but the "Opt Out" is illusory. Due to the release in Article IX(c), any tort claimants who opt-out could be barred from pursuing their state law rights against YesCare and its non-debtor affiliates and insiders. YesCare and NewCo could be armed with the ability to defend against any prepetition personal injury claim by arguing that it is grounded in a successor liability or alter ego theory—claims that the Debtor (as controlled by YesCare) allegedly settled under the plan. The tort claimants' full value claims against YesCare and non-debtor affiliates and insiders could be extinguished under the plan without their consent. Anyone who "opts out" will lose their claims. The proposed plan is a new version of an old story where a debtor proposes a plan the cornerstone of which is a nonconsensual third-party release in favor of entities that elect to avoid the burdens of bankruptcy but want to enjoy all the benefits of bankruptcy.

82. Most tort claimants will vote to reject the plan. TCC will obviously object. United States Trustee (who can appeal without posting a bond) will likely object. Parties will argue that the plan engages in unfair discrimination, was not proposed in good faith, that the settlements are unreasonable, that the plan violates the best interests test, and that the releases are unlawful.

83. Even Circuits that permit nonconsensual third-party releases would never permit something like this. The plan—if approved over and crammed down upon tort victims—will be appealed through to at least the Fifth Circuit. Victims and creditors have no real hope for near term payment under the proposed plan, however *de minimis* it is.

84. The litigation over plan confirmation and the resulting appeals could easily go on for years, during which time YesCare and its non-debtor affiliates and insiders will continue to enjoy the benefits of an injunction and a litigation holiday. Equity holders will continue to drink fine wine and pay themselves bonuses while the inmates, and their families, recover ***nothing***. This entire bankruptcy scheme was designed and intended to achieve an unjust result.

IV. Possible Options for Resolving this Case

85. The TCC and the co-movants have analyzed various options for resolving this case and have reached the conclusion that a structured dismissal is the only viable option.

A. A Creditor Plan

86. In other Texas Two Step cases, committees have moved to terminate exclusivity to file a creditor plan.[15] But in these cases, the divisive merger involved funding agreements that facially provided sufficient funding to pay administrative claims in full and, arguably the tort liability of the debtor as well. This made it possible for the claimants to propose a plan that transferred the debtor's rights under the funding agreement to a trust consistent with section 1123(a)(5), which rights could then be used by the trust to fund the payment of tort claims as liquidated post-confirmation in accordance with Court-approved trust distribution procedures.[16] Those creditor plans would not provide for the types of nonconsensual releases for non-debtors contemplated here.

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[15] *See In re LTL Mgmt., LLC*, No. 23-12825 (MBK) (Bankr. D.N.J. June 5, 2023) (Motion of the Official Committee of Talc Claimants to Terminate the Debtor's Exclusive Period Pursuant to 11 U.S.C. § 1121(d)(1), Dkt. No. 702); *In re LTL Mgmt., LLC*, No. 21-30589 (MBK) (Bankr. D.N.J. Sept. 15, 2023) (Motion of the Official Committee of Talc Claimants to Terminate the Debtor's Exclusive Period Pursuant to 11 U.S.C. § 1121(d)(1), Dkt. No. 2721).

[16] *See In re LTL Mgmt., LLC*, No. 23-12825 (MBK) (Bankr. D.N.J. June 12, 2023) (Reply in Support of Motion of the Official Committee of Talc Claimants to Terminate the Debtor's Exclusive Period Pursuant to 11 U.S.C. § 1121(d)(1), Dkt. No. 759).

87. The YesCare Two-Step involves a bankruptcy commenced after the commission of a fraud. The Funding Agreement does not provide sufficient funding to pay administrative claims, tort claims, or commercial claims in full and does not make the full value of the predecessor available to pay claimants. The Funding Agreement was drained prior to the filing.

88. YesCare orchestrated a scheme whereby parties must support an unreasonable settlement that permits a tortfeasor to avoid responsibility for the harm it caused ***for there to be funding to pay administrative claims, including the fees and expenses of estate professionals***. The TCC does not support such a settlement. A creditor plan cannot be confirmed unless administrative claims will be paid in full.[17] Given this, there does not appear to be a path here to the confirmation of creditor plan that rejects a settlement with YesCare.

B. The Debtor's Plan

89. Likewise, there is no path here to the confirmation of the Debtor's plan to harm tort claimants and transfer millions in value from creditors to equity holders. The plan violates the best interest test, proposes unfair discrimination, was proposed in bad faith, and the Debtor's proposed settlement is an insider transaction that does not satisfy the Rule 9019 standard.

90. The tort claimants will vote against plan confirmation. The Debtor's plan, if confirmed, would take away the right to a jury trial, property rights, and the ability of tort claimants to collect from YesCare in the tort system. The releases are unlawful in every Circuit—not just under Fifth Circuit case law—given the lack claimant support and a plan that fails to provide for substantial compensation to the impacted class of creditors. *See Bank of N.Y. Tr. Co. v. 9 Official*

[17] Section 1129(a)(9)(A) of the Bankruptcy Code provides that: "Except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that—(A) with respect to a claim of a kind specified in section 507(a)(2) or 507(a)(3) of this title, on the effective date of the plan, the holder of such claim will receive on account of such claim cash equal to the allowed amount of such claim." And section 502(a)(2) of the Bankruptcy Code specifies the priority of administrative expenses.

Unsecured Creditors' Comm. (In re Pac. Lumber Co.), 584 F.3d 229 (5th Cir. 2009) ("[T]his court has held that Section 524(e) only releases the debtor, not co-liable third parties.").[18]

91. The Debtor may argue that the releases under its plan are voluntary because the claimants can theoretically opt-out. But, again, the opt-out is illusory. Any claimants who opt-out could be barred from pursuing their state law rights against YesCare and its non-debtor affiliates and insiders. Anyone who opts out will be channeled into a brick wall. Confirmation would be challenged by the TCC, claimants and public interest groups intent on preventing this case from leading to further abuses of the bankruptcy system. No plan has been confirmed in a chapter 11 case that compares to what the Debtor and the UCC are proposing here.

C. Conversion to Chapter 7

92. Next, the TCC and the co-movants considered whether conversion to chapter 7 would be in the best interest of creditors. The problem with conversion is that it does not solve the problem that the Debtor is a Potemkin village with no hard assets and no funding source.

93. A trustee could try to negotiate a settlement with YesCare that YesCare would be willing to support. Alternatively, a chapter 7 trustee could litigate against YesCare (with no litigation funding unless the trustee was able to procure a loan) and attempt to bring funds into the estate that would ultimately be distributed to creditors. The risk would be that the trustee will be incentivized to reach a cheap settlement that imposes the same estate release ramifications as the Debtor's plan that most, if not, all the claimants would reject.

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[18] Courts outside the Fifth Circuit generally require at least 85% acceptance from the class affected by a nonconsensual third-party release in a chapter 11 plan. *See In re Millennium Lab Holdings II*, 945 F.3d 126, 132 (3d Cir. 2019) (93% acceptance), *cert. denied*, 140 S. Ct. 2805 (2020); *In re Specialty Equip. Cos.*, 3 F.3d 1043, 1045 (7th Cir. 1993) (95% acceptance); *Menard-Sandford v. Mabey (In re A.H. Robins Co., Inc.)*, 880 F.2d 694, 702 (4th Cir. 1989) (94% acceptance); *In re AOV Indus.*, 792 F.2d 1140, 1143 (D.C. Cir. 1986) (90% acceptance); *In re Am. Family Enters.*, 256 B.R. 377, 392 (D.N.J. 2000) (99% acceptance); *In re Purdue Pharma L.P.*, 633 B.R. 53 (Bankr. S.D.N.Y. 2021) (96% acceptance); *In re Blitz U.S.A.*, 2014 Bankr. LEXIS 2461, at *15-16 (Bankr. D. Del. Jan. 30, 2014) (95% acceptance); *In re Master Mortgage Inv. Fund*, 168 B.R. 930, 935 (Bankr. W.D. Mo. 1994) (95% acceptance).

94. Such litigation, which could take years and years to complete, would create more delay and prevent victims from seeking to hold YesCare and NewCo responsible in the tort system. As the *Aearo* bankruptcy shows, the fastest path to payment is dismissal because it forces YesCare and NewCo back into the tort system where they face the reality of litigation.

95. Further, a trustee is not needed to undertake this litigation, avoid the divisive merger, pursue claims against YesCare or NewCo, or recover for creditors. Our legal system already provides tort victims with legal remedies and a clear path to recovery, which path can be pursued if this Court dismisses the Debtor's case. These remedies already exist under state law.

D. Structured Dismissal

96. The claimants—who are the stakeholders in this case—have a path to payment if the case is dismissed. YesCare and the parties who orchestrated the fraud are liable for the claims against the Debtor and can pay such claims when they are liquidated in the tort system. The claimants here should be afforded these rights absent a plan that has clear and broad support. Further, the claimants can assert claims against governmental entities and other parties who are co-liable with the Debtor, YesCare, and NewCo. While bankruptcy is often a solution to problems, the unique circumstances presented by the YesCare Two-Step make bankruptcy the problem.

97. **Successor Liability**. YesCare, NewCo, and/or their affiliates are liable as the successor to Corizon.[19] Under state law, successor liability is not a cause of action.[20] Rather, successor liability is an equitable doctrine or a theory of liability that transfers liability for a claim from a predecessor to a successor when certain factors are present. A successor may become liable

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[19] Corizon operated 50 facilities in over 27 different states. For tort claims, the place of injury and the place of conduct causing the injury typically determines which state law applies. *See In re Soporex, Inc.*, 446 B.R. 750, 762 (Bankr. N.D. Tex. 2011) (applying the Restatement's most significant relationship test to the choice of law question for tort claims and noting that "applicable law will usually be the local law of the state where the injury occurred."); *Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 U.S. Dist. LEXIS 198725, *14 (E.D. Mich. Nov. 1, 2022) (applying Michigan successor liability and alter ego substantive law to claims against CHS and YesCare because "a state's interest in applying its law to citizens injured by foreign corporations [often] outweighs the interest of the incorporating state."); *accord Rowland v. Novartis Pharm. Corp.*, 983 F. Supp. 2d 615, 624 (W.D. Pa. 2013); *In re W.R. Grace & Co.*, 418 B.R. 511, 519 (D. Del. 2009). For this reason, successor liability and alter ego doctrines may be analyzed differently with respect to the personal injury and wrongful death claims at issue here (depending on the state where the injury occurred). *See Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 467 (3d Cir. 2006). The TCC cites to case law in various states in this section of the Motion, including Texas. But this should not suggest that any state law applies to any specific tort claim or any legal doctrines that impose liability on non-debtor third parties. For an injury that occurred in Florida, Florida law would likely apply to the tort claims as well as remedies (*i.e.*, successor liability and alter ego) brought in aid of that personal injury claim.

[20] *See, e.g., City of Syracuse v. Loomis Armored US, LLC*, 900 F. Supp. 2d 274, 290 (N.D.N.Y. 2012) (holding that "'successor liability' is not a separate cause of action but merely a theory for imposing liability on a defendant based on the predecessor's conduct" and noting that courts in other circuits have generally agreed); *Automotive Indus. Pension Trust Fund v. Ali*, No. C–11–5216, 2012 WL 2911432, *8 (N.D. Cal. July 16, 2012) (holding that, in the context of ERISA, successor liability is not an independent cause of action but simply a theory for imposing liability based on a predecessor's ERISA violation) (citations omitted); *Tindall v. H & S Homes, LLC*, No. 5:10–CV–044, 2012 WL 369286, *2 (M.D. Ga. Feb. 3, 2012) (holding that "'[s]uccessor liability is not a tort. It is an equitable tool used to transfer liability from a predecessor to a successor'" (quotation omitted)); *In re Fairchild Aircraft Corp.*, 184 B.R. 910, 920 (Bankr. W.D. Tex. 1995), *vacated on other grounds*, 220 B.R. 909 (Bankr. W.D. Tex. 1998) ("successor liability does not create a new cause of action against the purchaser so much as it transfers the liability of the predecessor to the purchaser"); *Robbins v. Physicians for Women's Health, LLC*, 90 A.3d 925 (Conn. 2014) ("[W]hile successor liability may give a party an alternative entity from whom to recover, the doctrine does not convert the claim to an in rem action running against the property being sold. Nor does the claim have an existence independent of the underlying liability of the entity that sold the assets."); *Featherston v. Katchko & Sons Constr. Servs., Inc.*, 244 A.3d 621, 733 (Conn. App. Ct. 2020) ("Successor liability is a theory of liability to be alleged in support of a claim rather than raised as an independent claim."); *Columbia State Bank v. Invicta Law Group PLLC*, 402 P.3d 330, 332 (Wash. Ct. App. 2017) ("a claim for successor liability follows an underlying cause of action" and "merely exists to extend 'the liability on that cause of action to a corporation that would not otherwise be liable.'"); *Brown Bark III, L.P. v. Haver*, 219 Cal. App. 4th 809, 823, 162 Cal. Rptr. 3d 9, 20 (Cal. Ct. App. 2013) ("[S]uccessor liability is not a separate claim independent of Brown Bark's breach of contract claims. To the contrary, successor liability is an equitable doctrine that applies when a purchasing corporation is merely a continuation of the selling corporation or the asset sale was fraudulently entered to escape debts and liabilities."); 19 C.J.S. CORPORATIONS § 901 (2023) ("Successor liability does not create a new cause of action against the purchaser of a corporate predecessor so much as it transfers the liability of the predecessor to the purchaser"); L. Hock, comment, *Successor Liability in Asset Purchases of Bankrupt Health Care Providers*, 19 BANKR. DEV. J. 179, 182 (2002) ("Successor liability is an equitable doctrine that depends on state law. It does not give rise to a new cause of action, nor does it create an in rem claim running against the purchased property. Instead, successor liability provides for a transfer of liability from the original corporation to the acquiring corporation.").

for the debts of the predecessor when the transaction amounts to a consolidation or *de facto* merger, the transaction is fraudulent or done with the intent to escape liability, or the purchaser is a mere continuation of the seller.[21]

98. A transaction amounts to a consolidation or *de facto* merger when it has the economic effect of a statutory merger but is in the form of an acquisition or transfer of assets. Non-exclusive elements of a *de facto* merger include a continuation of the enterprise of the seller corporation, continuity of shareholders, the liquidation or dissolution of the seller, and the purchaser's assumption of seller's obligations necessary for the uninterrupted continuation of normal business operations.[22]

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[21] *See Farouk Sys., Inc. v. AG Glob. Prod.*, LLC, No. CV H-15-0465, 2016 WL 1322315, at *7 (S.D. Tex. Apr. 5, 2016) (noting that the Restatement of Torts allows for successor liability if: "(1) there is express assumption of liability; (2) the acquisition results from a fraudulent conveyance to avoid liability; (3) the acquisition constitutes a consolidation or merger with the predecessor; and (4) the acquisition results in the successor becoming a continuation of the predecessor"); *Allied Home Mortg. Corp. v. Donovan*, 830 F. Supp. 2d 223, 233 (S.D. Tex. 2011) (under Texas law "the only two circumstances in which a successor business that acquires the assets of another business also acquires its liabilities or debts are (1) the successor expressly agrees to assume liability or (2) the acquisition results from a fraudulent conveyance to escape liability for the debts or liabilities of the predecessor."); *United States v. Americus Mortg. Corp.*, No. 4:12-CV-02676, 2013 WL 4829284, at *4 (S.D. Tex. Sept. 10, 2013) (accord); *Ford, Bacon & Davis, LLC v. Travelers Ins. Co.*, No. CIV.A. H-08-2911, 2010 WL 1417900, at *6 (S.D. Tex. Apr. 7, 2010), *aff'd sub nom. Ford, Bacon & Davis, L.L.C. v. Travelers Ins. Co.*, 635 F.3d 734 (5th Cir. 2011) (accord); *see also Mozingo v. Correct Mfg. Corp.*, 752 F.2d 168, 174 (5th Cir. 1985) (applying Mississippi law) ("There are, however, four generally recognized exceptions to this rule: (1) when the successor expressly or impliedly agrees to assume the liabilities of the predecessor; (2) when the transaction may be considered a de facto merger; (3) when the successor may be considered a 'mere continuation' of the predecessor; or (4) when the transaction was fraudulent."); *Stearns Airport Equip. Co. v. FMC Corp.*, 977 F. Supp. 1263, 1269 (N.D. Tex. 1996) ("A successor may be held liable (1) where the successor expressly or impliedly agrees to assume the liability of the predecessor, (2) when the transaction may be considered a de facto merger, (3) when the successor is a mere continuation of the predecessor, and (4) when the transaction is fraudulent.").

[22] *See Suarez v. Sherman Gin Co.*, 697 S.W.2d 17, 20 (Tex. Ct. App. 1985) (factors that are indicative of a de facto merger include: "(1) There is a continuation of the enterprise of the seller corporation, so that there is a continuity of management, personnel, physical location, assets, and general business operations. (2) There is a continuity of shareholders which results from the purchasing corporation paying for the acquired assets with shares of its own stock, this stock ultimately coming to be held by the shareholders of the seller corporation so that they become a constituent part of the purchasing corporation. (3) The seller corporation ceases its ordinary business operations, liquidates, and dissolves as soon as legally and practically possible. (4) The purchasing corporation assumes those liabilities and obligations of the seller ordinarily necessary for the uninterrupted continuation of normal business operations of the seller corporation.").

99. Here, NewCo (or CHS TX, Inc.) is a mere continuation of Corizon. Its business operations are identical. The divisive merger was fraudulent and was done with the intent to escape liability. There was a continuity of shareholders, normal business operations continued without interruption, and the Debtor commenced a bankruptcy proceeding shortly after its creation. The doctrine of successor liability imposes on NewCo all the Debtor's liabilities. All claimants of the Debtor have a path to recover in full on account of their claims in the tort system.

100. These issues have already been litigated, with at least one District Court holding that NewCo is liable as Corizon's successor. *See Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 U.S. Dist. LEXIS 198725, *31 (E.D. Mich. Nov. 1, 2022) (adding CHS TX, Inc. [NewCo] as a defendant in a prepetition action and finding "[c]onsidering the totality of the circumstances here, I find that CHS TX is a mere continuation of pre-division Corizon . . . . Evidently, CHS TX picked up right where Corizon left off. Indeed, CHS TX holds itself out to clients as Corizon's successor.").

101. **Alter Ego / Veil Piercing**. The Debtor's beneficial owners are also liable as the Debtor's alter ego. Alter ego and veil piercing are also not causes of action.[23] They are also

[23] *See, e.g., Peacock v. Thomas*, 516 U.S. 349, 866 (1996) ("Piercing the corporate veil is not itself an independent ERISA cause of action, 'but rather is a means of imposing liability on an underlying cause of action.'") (quoting 1 C. Keating & G. O'Gradney, FLETCHER CYCLOPEDIA OF LAW OF PRIVATE CORPORATIONS § 41, p. 603 (perm. ed.1990)); *Blair v. Infineon Techs. AG*, 720 F. Supp. 2d 462, 469 n.10 (D. Del. 2010) ("[p]iercing the corporate veil is not itself an independent [ ] cause of action, but rather is a means of imposing liability on an underlying cause of action."); *Villnave Constr. Servs., Inc. v. Crossgate Mall Gen. Co. Newco, LLC*, 201 A.D.3d 1183, 1187-88 (N.Y. Sup. Ct. 2022) ("Properly understood, an attempt to pierce the corporate veil does not constitute a cause of action independent of that against the corporation; rather it is an assertion of facts and circumstances which will persuade the court to impose the corporate obligation on its owners"); *A.L. Dougherty Real Estate Mgmt. Co., LLC v. Su Chin Tsai*, 98 N.E.3d 504, 515 (Ill. App. Ct. 2017) ("Piercing the corporate veil is not a separate cause of action but instead is a means for imposing liability in an underlying cause of action"); *Gallagher v. Persha*, 891 N.W.2d 647, 654 (Mich. Ct. App. 2016) (piercing the corporate veil is a remedy and not a separate cause of action); *Phillips v. United Heritage Corp.*, 319 S.W.3d 156, 158 (Tex. App. 2010) (holding that alter ego liability is not a substantive cause of action but "[r]ather, they are a means of imposing on an individual a corporation's liability for an underlying cause of action."); *In re Texas Am. Exp., Inc.*, 190 S.W.3d 720, 725 (Tex. App. 2005) (accord).

equitable doctrines or a legal remedy. Alter ego and veil piercing theories do not create new causes of action. Rather, they impose liability on the company's owner when certain factors are present.

102. These factors include: the parent and subsidiary have common stock ownership, common directors or officers, the parent and subsidiary have common business departments, the parent and subsidiary file consolidated financial statements, the parent finances the subsidiary, the parent caused the incorporation of the subsidiary, the subsidiary operated with grossly inadequate capital, the parent pays salaries and other expenses of subsidiary, the subsidiary receives no business except that given by the parent, the parent uses the subsidiary's property as its own, the daily operations of the two corporations are not kept separate, and the subsidiary does not observe corporate formalities.[25]

103. Here, there is common beneficial and actual ownership, common directors and officers, the parent finances the subsidiary, the Debtor was grossly undercapitalized at its inception, and the Debtor has no business function other than to exist in bankruptcy and try to obtain a release for its master. The proposed plan, which makes releasing YesCare and its non-

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[24] *See generally Ledford v. Keen*, 9 F.4th 335, 339 (5th Cir. 2021) ("Texas law permits courts to disregard the corporate fiction when the corporate form has been used as part of a basically unfair device to achieve an inequitable result."); *SSP Partners v. Gladstrong Invs. (USA) Corp.*, 275 S.W.3d 444, 451 (Tex. 2008) ("We have held that the limitation on liability afforded by the corporate structure can be ignored only when the corporate form has been used as part of a basically unfair device to achieve an inequitable result. Examples are when the corporate structure has been abused to perpetrate a fraud, evade an existing obligation, achieve or perpetrate a monopoly, circumvent a statute, protect a crime, or justify wrong."); 1 FLETCHER CYC. CORP. § 41 (2022); 15 Tex. Jur. 3d CORPORATIONS § 162.

[25] *See, e.g., U.S. v. Jon-T Chemicals, Inc.*, 768 F.2d 686, 691-92 (5th Cir. 1985); *In re SMTC Mfg. of Texas*, 421 B.R. 251, 321 (Bankr. W.D. Tex. 2009) (noting that the Texas Supreme Court has held that "[a]lter ego applies when there is such a unity between corporation and individual that the separateness of the corporation has ceased and holding only the corporation liable would result in injustice. It is shown from the total dealings of the corporation and the individual, including the degree to which corporate formalities have been followed and corporate and individual property have been kept separately, the amount of financial interest, ownership and control the individual maintains over the corporation and whether the corporation has been used for personal purposes. Alter ego's rationale is: if the shareholders themselves disregard the separation of the corporate enterprise, the law will also disregard it so far as necessary to protect individual and corporate creditors."). In the Fifth Circuit, fraud is not a necessary element of alter ego liability when the underlying cause of action is a tort, especially if the alter ego corporation was undercapitalized. *See Jon-T Chemicals*, 768 F.2d at 692-93.

debtor affiliates and insiders the highest priority, shows that the Debtor functions solely as a façade for the Debtor's beneficial owners who have been pulling the strings in the background at all relevant times.[26] The doctrine of veil piercing imposes on these parties all the Debtor's liabilities. All claimants of the Debtor have a path to recover on account of their claims in the tort system.

104. **Fraudulent Transfer**. The divisive merger can also be unwound as a fraudulent transfer. State law allows for avoidance of actual fraudulent transfers made on or within 4 years before the petition date. *See* Tex. Bus. & Comm. Code § 24.005. To establish actual fraud, the movant must show that the transfer or obligation was made "with actual intent to hinder, delay, or defraud any creditor of the debtor." *Id.* at § 24.005(a)(1).

105. Actual intent is often inferred through circumstantial evidence and "badges of fraud." Badges of fraud include whether the transfer or obligation was to an insider, the transfer was of substantially all the debtor's assets, the debtor was insolvent or became insolvent shortly after the transfer or was made, and the debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor. *Id.* at § 24.005(b).

106. Here, the divisive merger occurred within the past 4 years, and was done with the actual intent to hinder, delay, and defraud creditors. The Debtor is a Potemkin Village with YesCare and its beneficial owners in total control. The Debtor was created to be insolvent and file for bankruptcy for the sole purpose of securing a cheap release for YesCare and its non-debtor affiliates and insiders.

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[26] *See, e.g., S.E.C. v. Res. Dev. Int'l, LLC*, 487 F.3d 295, 303 (5th Cir. 2007) (affirming District Court's piercing of the corporate veil due to debtor's use of the corporation for a fraudulent transfer); *JNS Aviation, Inc. v. Nick Corp.*, 418 B.R. 898, 908 (N.D. Tex. 2009), *aff'd sub nom. In re JNS Aviation, LLC*, 395 F. App'x 127 (5th Cir. 2010) (affirming Bankruptcy Court piercing of the corporate veil between corporations where the same owners of one corporation isolated the corporate family's liabilities in "a worthless shell.").

107. The divisive merger can also be challenged as a constructive fraud. Constructive fraud requires a movant to show that the debtor received less than reasonably equivalent value in exchange for the transfer, and that the transfer caused the debtor to be engaged, or about to be engaged, in a business or transaction for which any property remaining with the debtor was an unreasonably small capital, or that the debtor intended to incur, or believed that it would incur, debts that would be beyond its ability to pay as such debts matured. *Id.* at § 24.005(a)(2).

108. Inadequate capital turns on the nature of the debtor's business and whether it is "reasonably foreseeable" that the debtor will be able to "generate sufficient profits to sustain operations."[27] Importantly, inadequate capital includes financial difficulties short of equitable insolvency[28]—*i.e.*, whether the debtor can generate enough cash to pay its debts and still sustain operations. *See In re Vadnais Lumber Supply, Inc.*, 100 B.R. 127, 137 (Bankr. D. Mass. 1989). The test is "reasonable foreseeability." *Peltz v. Hatten*, 279 B.R. 710, 744 (D. Del. 2002).

109. Among the factors that courts consider in determining foreseeability is the length of time the debtor survived (or avoided a bankruptcy filing) after the transfer. *See ASARCO LLC v. Am. Mining Corp.*, 396 B.R. 278, 397 (Bankr. S.D. Tex. 2008) (debtor left with unreasonably small capital even though it did not file for bankruptcy for over two years after the transfer).

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[27] *See In re Lyondell Chem. Co.*, 567 B.R. 55, 109 (Bankr. S.D.N.Y. 2017) ("[T]he concept of 'unreasonable small capital' encompasses a test that incorporates an element of 'reasonable foreseeability.'") (quoting *Moody*, 971 F.2d at 1083); *Pioneer Home Builders, Inc. v. Int'l Bank of Commerce (In re Pioneer Home Builders, Inc.)*, 147 B.R. 889, 894 (Bankr. W.D. Tex. 1992) (unreasonably small capital signifies an inability to generate enough cash flow from operations and the sale of assets to remain financially stable).

[28] *See In re North Am. Clearing, Inc.*, No. 6:08-ap-00145, 2014 WL 4956848, at *8 (Bankr. M.D. Fla. Sept. 29, 2014) ("Although not defined in the Bankruptcy Code, the most common view is that 'unreasonably small capital denotes a financial condition short of equitable insolvency.'"); *Tronox Inc. v. Kerr McGee Corp. (In re Tronox Inc.)*, 503 B.R. 239, 321 (Bankr. S.D.N.Y. 2013) ("[T]he cases recognize that the unreasonably small capital test may be easier for a plaintiff to satisfy than insolvency because 'unreasonably small capital' means 'difficulties which are short of insolvency in any sense but are likely to lead to insolvency at some time in the future.'") (quoting *In re Vadnais Lumber Supply, Inc.*, 100 B.R. 127, 137 (Bankr. D. Mass. 1989)).

110. Here, the divisive merger allocated the Debtor—an entity with no business operations—with little besides liabilities. The Debtor was systematically stripped of its assets, which are now owned and operated by a highly profitable multi-million-dollar business. The Debtor has no means to generate positive cash flow and is now facing administrative insolvency. And the Debtor avoided bankruptcy for less than nine months following the divisive merger. Further, the professionals who advised on the divisive merger may face liability for aiding and abetting the fraudulent transfer and for engaging in a conspiracy to commit fraud—providing another source of recovery for victims.[29]

111. Like other Texas Two Step debtors, the Debtor and its conspirators here may argue that the operation of the divisive merger did not constitute a "transfer" under Texas state law. *See* Tex. Bus. Org. Code § 10.008(a)(2)(C) (a divisive merger takes place without "any transfer or assignment having occurred"). But Texas law does not use the same "without any transfer" language for the transfer of liabilities as it does regarding the transfer of assets, and thus the transfer of the liabilities to the Debtor would remain a "transfer" under Texas law. *Compare id. with* § 10.008(a)(3). With the transfer of liability undone, the liability goes to NewCo.

112. Further, the Texas Business Organizations Code states that it "**does not abridge any right or rights of any creditor under existing law**." *Id.* at § 10.901 (emphasis added). These rights include the right to challenge a transfer as fraudulent, as well as the right to hold successors and alter egos liable under Texas law. The definition of "transfer" in the Texas Uniform

[29] *See, e.g., In re Rest. Dev. Grp., Inc.*, 397 B.R. 891, 894 (Bankr. N.D. Ill. 2008) (denying motion to dismiss a claim against former attorneys of a restaurant company who allegedly engaged in a scheme to defraud the company's creditors); *Banco Popular N. Am. v. Gandi*, 876 A.2d 253, 263 (N.J. 2005) (creditors may bring claims against one who assists another in executing a fraudulent transfer); *Thornwood, Inc. v. Jenner & Block*, 344 Ill. App. 3d 15, 799 N.E.2d 756 (1st Dist. 2003) (refusing to dismiss claim against a law firm for aiding and abetting a client's fraudulent scheme). Under the Debtor's plan, the professionals who orchestrated the divisive merger are conveniently included within the definition of "Released Parties." *See* Plan at Art. I.A.100(bb).

Fraudulent Transfer Act "means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with an asset or an interest in an asset, and includes payment of money, release, lease, and creation of a lien or other encumbrance." Tex. Bus. & Comm. Code § 24.002(12). This definition is broad enough to encompass a divisive merger.

113. The Bankruptcy Court in *In re DBMP LLC* (Case No. 20-30080, Bankr. W.D.N.C.), addressed this issue. In *DBMP*, the committee moved to avoid a divisive merger as a fraudulent transfer. The debtor in *DBMP*, like the Debtor here, was a made-for-bankruptcy entity whose assets were stripped on the eve of the filing.

114. The debtor moved to dismiss the fraudulent transfer claims argued that the allocation of assets and liabilities under the Texas divisional merger statute did not constitute a transfer within the meaning of section 548 of the Bankruptcy Code. The *DBMP* Court rejected this argument. *See Official Comm. of Asbestos Personal Injury Claimants v. DBMP LLC*, Adv. No. 21-03023-JCW (Bankr. W.D.N.C. 2021), July 7, 2022 Hr'g Tr. [Dkt. No. 85], at 23:24-25:4 (attached as **Exhibit C**). The result should be the same under the Texas Fraudulent Transfer Act.

115. This is just the tip of the iceberg. Claimants here can also bring actions against officers and directors for breaching their fiduciary duties. The description of the foregoing legal remedies available to victims is by no means exhaustive. And, critically, this litigation can be brought outside of bankruptcy. And claimants can pursue claims against governmental entities and other parties who are co-liable with the Debtor, YesCare, and NewCo.

116. Bankruptcy is not the best forum for this litigation to take place, particularly given the constraints imposed by the DIP financing and the lack of funding available to estate professionals to pursue causes of action that YesCare does not want them to pursue. In fact, when

faced with litigation in state court by parties YesCare does not control or influence, YesCare would be free to settle claims and pay judgments.

117. The legal theories upon which YesCare and other parties can be held accountable here are neither novel nor difficult to plead. Pending litigation shows that plaintiffs are already aware that YesCare and NewCo can be held liable for all the claims at issue in this case. The Court need only restore creditor remedies and eliminate injunctions and the stay so that parties can recover from YesCare and its non-debtor affiliates and insiders.

JURISDICTION

118. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are sections 105(a), 554, 1103(c)(5), 1109(b), 1112(b) of the Bankruptcy Code.

RELIEF REQUESTED

119. By this Motion, the TCC and the co-movants seek an order terminating the preliminary injunction, granting the TCC standing to prosecute, settle, and abandon certain estate causes of action, authorizing the abandonment of certain estate causes of action that may constitute property of the estate, and dismissing this case pursuant to section 1112(b) of the Bankruptcy Code.

ARGUMENT

I. The Court Should Terminate the Preliminary Injunction

120. As a threshold matter, the Court should terminate the preliminary injunction. No bankruptcy resolution is possible given YesCare's conduct. There is no possible rehabilitation here. This case was a fraud from its inception. The Debtor's arguments regarding shared insurance have proven to be illusory. Most of the claims do not have access to insurance. And, where they do, they are subject to substantial self-insured retentions.

121. To the TCC's knowledge, no insurer, other than LSA, has expressed any interest in settling. No insurer has agreed that its policies cover the claims at issue. Even if coverage does exist, the pursuit of that coverage is not inextricably linked to liquidation of the tort claims against YesCare or the Debtor. Such coverage would require the commencement of a separate proceeding by the insured against the insurer. To the extent that any insurance is property of the estate, claims against non-debtor insureds can proceed while leaving the issue of coverage for another day.

122. Whatever injunctions are presently in place to protect YesCare and its non-debtor affiliates and insiders should be terminated. This follows from the request that the Court dismiss this case under section 1112(b) of the Bankruptcy Code since dismissal would end the case and, therefore, terminate the automatic stay imposed under section 362(a). However, lest there be any doubt, the TCC also requests that the Court terminate all injunctions as part of the dismissal so that they are no longer in effect and no longer present a bar to litigation against YesCare and NewCo.

II. The TCC Should be Granted Standing to Purse Estate Causes of Action

123. Next, the TCC should be granted standing to pursue certain alleged estate causes of action against YesCare and its non-debtor affiliates. As a threshold matter, the TCC acknowledges that there is Circuit split over what constitutes an estate cause of action.

124. **What is an estate cause of action?** Section 541(a)(1) defines "property of the estate" to include "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Causes of action belonging to the debtor prior to bankruptcy constitute estate property. A debtor has authority to pursue and settle such causes of action.

125. Whether a cause of action is available to the debtor and constitutes "property of the estate" is determined by state law. *See, e.g., Butner v. United States*, 440 U.S. 48, 49 (1979). If state law allows a company to assert a claim against another party, the claim is property of the

estate, and a bankruptcy trustee can assert it. If a claim belongs to the debtor's creditors under state law, section 541(a) **does not** confer standing to assert such claim on a trustee.

126. A trustee has **no standing** generally to sue third parties on behalf of the estate's creditors. *See Caplin v. Marine Midland Grace Trust Co. of New York*, 406 U.S. 416, 434 (1972). If a claim is specific to a creditor, it is a personal claim and is a legal or equitable interest only of the creditor that suffered the injury. *Id.* If the "cause of action does not explicitly or implicitly allege harm to the debtor, then the cause of action could not have been asserted by the debtor as of the commencement of the case, and thus is not property of the estate." *In the Matter of Educators Group Health Trust v. Wright*, 25 F.3d 1281 (5th Cir. 1994).

127. Notwithstanding the Supreme Court's guidance on this issue, the Circuits are split on whether a bankruptcy trustee has standing to assert claims that belong to creditors under state law against third parties under the doctrines of successor liability and alter ego.[30]

128. Some Circuits have held that when the underlying claim against a debtor involves a personalized injury (*e.g.*, a tort claim against the debtor), such claim does **not** become an estate cause of action—or property of the debtor's estate—to the extent that such claim is asserted against a successor of the debtor or an alleged alter ego of the debtor under state law. These Courts recognize that when an injury gives rise to a claim ***against*** a debtor which can be brought against

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[30] *Compare Ahcom, Ltd. v. Smeding*, 623 F.3d 1248, 1250-51 (9th Cir. 2010) (alter ego claim not property of the estate); *Board of Trustees of Teamsters Local 863 v. Foodtown, Inc.*, 296 F.3d 164 (3d Cir. 2002) (same); *In re RCS Eng'g Products Co.*, 102 F.3d 223, 226-27 (6th Cir. 1996) (same); *Steinberg v. Buczynski*, 40 F.3d 890, 893 (7th Cir. 1994) (same); *In re Ozark Rest. Equip. Co.*, 816 F.2d 1222, 1225-26 (8th Cir. 1987) (same); *In re Cincom iOutsource, Inc.*, 398 B.R. 223, 232 (Bankr. S.D. Ohio 2008) (same); *with In re Tronox Inc.*, 855 F.3d 84, 99-104 (2d Cir. 2017) (holding alter ego claims are property of the estate); *In re Emoral, Inc.*, 740 F.3d 875 (3d Cir. 2014) (holding successor liability claims are property of the estate); *Steyr-Daimler-Puch of Am. Corp. v. Pappas*, 852 F.2d 132, 135-36 (4th Cir. 1988) (holding alter ego claims are property of the estate); *St. Paul Fire & Marine Ins. Co. v. PepsiCo, Inc.*, 884 F.2d 688, 704-05 (2d Cir. 1989) (same); *Koch Refining v. Farms Union Cent. Exchange, Inc.*, 831 F.2d 1339, 1346 (7th Cir. 1987) (same); *Matter of S.I. Acquisition, Inc.*, 817 F.2d 1142, 1153 (5th Cir. 1987) (same).

a successor of the debtor or an alleged alter ego of the debtor under state law, that claim does not transform into a claim that can be brought ***by*** a debtor because the debtor has filed for bankruptcy.[31]

129. Other Courts, however, have reached a contrary result. The theory behind this view, as recently articulated by the Third Circuit in *Emoral*, is that while the claims of all creditors involve an "individualized" injury, the case that must be put on and proven to impose liability on a successor or an affiliate is common to all creditors. 740 F.3d 875.

130. The plaintiffs in *Emoral* were individuals who suffered injuries arising from exposure to chemicals manufactured by a company called Emoral, Inc. ("Emoral"). *Id.* at 877. Emoral sold its assets to a company called Aaroma Holdings LLC ("Aaroma"). *Id.* After the sale, the plaintiffs asserted their personal injury claims against Aaroma under a state law successor liability theory. Thereafter, Emoral filed for bankruptcy and a trustee was appointed. *Id.*

131. The trustee alleged that the asset sale to Aaroma was a fraudulent transfer—likely on the grounds that the purchaser paid less than reasonably equivalent value for Emoral's assets. *Id.* Rather than litigating the issue, Aaroma settled for $500,000. The settlement agreement was worded more broadly than just releasing the fraudulent transfer claim and provided that the trustee was releasing Aaroma from any causes of action that are property of the debtor's estate. *Id.*

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[31] Because the tort claim requires proof of a particularized injury, it follows that every tort claim asserted against a successor under the doctrine of successor liability or a defendant under the doctrines of alter ego and veil piercing also requires proof of a particularized injury. A successor cannot be held responsible for a tort claim under the doctrine of successor liability absent proof of the elements of the underlying tort claim. To illustrate this point: consider a parent and a wholly owned subsidiary where the subsidiary has $500 million in bond debt and $5 million in contingent and disputed tort liability. If the tort claimant were to sue the parent, the tort claimant would first have to prove the merits of the tort claim. This would require proof that the tort claimant suffered an injury. If the tort claimant prevailed on the merits of the underlying tort claim, the next question would be whether the parent could be held responsible for the claim. If the tort claimant prevailed under the doctrines of successor liability, alter ego or veil piercing, the parent would be liable for the tort claim involving the injury to the claimant. But the parent would not necessarily become liable for $500 million in bond debt—particularly if the bond claimants were not part of the litigation between the tort claimant and the parent.

132. Post-settlement, Aaroma argued that the personal injury claims asserted against it under a successor liability theory were estate claims and were barred by the order approving the settlement. *Id.* at 877-78. The Court that approved the settlement disagreed and held that the personal injury claims were "not property of the estate" since they alleged injuries that were personal to the plaintiffs and were not generalized injuries "suffered by all shareholders or creditors of Emoral." *Id.* However, the Third Circuit held that the personal injury claims asserted against Aaroma under a state law successor liability theory were estate causes of action and, therefore, were barred by the Bankruptcy Court's order approving the settlement.

133. The Third Circuit reasoned that the "remedy against a successor corporation for the tort liability of the predecessor is, like the piercing remedy, an equitable means of expanding the assets available to satisfy creditor claims." *Id.* at 880 (quotation omitted). According to the Circuit, if successful, a finding of successor liability "would have the effect of increasing the assets available for distribution to ***all creditors***." *Id.* (emphasis added).

134. Thus, the Third Circuit held that a "cause of action" alleging successor liability is "a generalized claim constituting property of the estate." *Id.* at 881. Under this reasoning, that when a successor liability claim is successfully asserted by a trustee in bankruptcy on behalf of creditors, the result is that all the successor's assets are "available for distribution" to all the debtor's creditors—*i.e.*, the "pool of assets" available to all creditors increases. *Id.* at 880-81.

135. Applied here, this means that NewCo's assets may be available for distribution to all the Debtor's creditors. But the Third Circuit's ruling in *Emoral* was not favorable to the tort victims ***in that case***. Under the Third Circuit's ruling, the personal injury claims against Aaroma alleging successor liability belonged to the bankruptcy estate and, therefore, were included within the definition of released claims under the settlement agreement between Aaroma and the trustee.

Id. at 882. The personal injury claims ended up being barred and, in effect, released without so much as a vote on a chapter 11 plan or the victims' consent. The settlement approved in *Emoral* ended up functioning like a nonconsensual third-party release.

136. Further, it is doubtful that the trustee in *Emoral* believed at the time he settled the fraudulent transfer claims against Aaroma for a mere $500,000 that he was also settling successor liability claims which, if successfully asserted, would have made all Aaroma's assets available to pay Emoral's creditors. If the estate causes of action included successor liability claims, the settlement amount of $500,000 may have been well outside the range of reasonableness.

137. The Debtor—as controlled by YesCare—is likely to ignore the Fifth Circuit's ruling in *In the Matter of Educators Group Health Trust v. Wright*, 25 F.3d 1281 (5th Cir. 1994), and rely instead on the Fifth Circuit's decision in *S.I. Acquisition*, wherein the Fifth Circuit held that an action based on alter ego allegations was an estate claim. 817 F.2d at 1153. Such reliance is misplaced for several reasons.

138. **First**, *S.I. Acquisition* did not involve a debtor that was manufactured by the litigation target. The Fifth Circuit's holding in *S.I. Acquisition* was consistent with supporting those who attempt to "remedy" an abuse of the corporate form. 817 F.2d at 1153. The Debtor's bankruptcy turns *S.I. Acquisition* on its head by using a fictious legal entity (*i.e.*, the Debtor) created by the tortfeasor (*i.e.*, Corizon) to carry out an abuse of the corporate form.

139. *S.I. Acquisition* does not stand for the proposition that a tortfeasor against whom personal injury and wrongful death claims are asserted can seize control over those claims by undertaking a divisive merger (*i.e.*, the transaction that triggers successorship) followed by a bankruptcy filing of the manufactured debtor. If this were the law, then any defendant could

143. **Who has standing to assert estate causes of action?** It is well-settled within this Circuit that Courts may allow, under appropriate circumstances, an official committee to pursue causes of action on behalf of the estate.[32] Although the Bankruptcy Code does not expressly authorize an official committee the standing to initiate an adversary proceeding and/or to pursue other causes of action typically brought by the trustee or the debtor-in-possession, the Bankruptcy Code does establish official committees for the express purpose of protecting the rights of their constituents and similarly situated creditors.[33]

144. To achieve this purpose, section 1103(c), which enumerates the statutory functions of an official committee, authorizes committees to "perform such other services as are in the interest of those represented." 11 U.S.C. § 1103(c)(5). To that end, section 1109(b) provides that:

> A party in interest, including the debtor, the trustee, *a creditors' committee*, an equity security holders' committee, a creditor, an equity security holder, or any indenture trustee, may raise and may appear and be heard on any issue in a case under this chapter.

11 U.S.C. § 1109(b) (emphasis added).

145. Indeed, this general right to be heard would ring hollow unless official committees are also given the right to act on behalf of the estate if a debtor-in-possession or a trustee that is explicitly granted the right to act for the estate unjustifiably fails to act.[34]

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[32] *See Contractor Creditor's Comm. v. Fed. Ins. Co. (In re La. World Exposition, Inc.)*, 832 F.2d 1391, 1397 (5th Cir. 1987) (discussing how "[a] number of bankruptcy courts have held that in some circumstances, a creditors' committee has standing under 11 U.S.C. §1103(c)(5) and/or §1109(b) to file suit on behalf of debtors-in-possession... or the trustee."); *In re Chesapeake*, Case No. 20-33233, (Bankr. S.D. Tex.) Jan. 13, 2021 Hr'g Tr. at 325:5-11.

[33] *See* H.R. Rep. No. 95-595, at 91-92 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6053-54.

[34] *See Official Comm. of Unsecured Creditors of Cybergenics Corp. v. Chinery*, 330 F.3d 548, 568-69 (3d Cir. 2003) (holding that sections 1103(c)(5) and 1109(b) of the Bankruptcy Code implicitly authorize a court to grant a creditors' committee derivative standing to prosecute an avoidance action when the trustee or debtor-in-possession cannot or will not do so, or when the debtor-in-possession is unlikely to act); *In re iPCS, Inc.*, 297 B.R. 283, 290 (Bankr. N.D. Ga. 2003) ("[I]f a debtor has a cognizable claim, but refuses to pursue that claim, an important objective of the Code [the recovery and collection of estate property] would be impeded if the bankruptcy court has no power to authorize another party to proceed on behalf of the estate in the debtor's stead."); *In re Joyanna Holitogs, Inc.*, 21 B.R. 323, 326 (Bankr. S.D.N.Y. 1982) (holding that the right to be heard would

control tort claims asserted against it by committing fraud. This would not "remedy" an abuse of the corporate form. It would be an abuse of the corporate form.

140. **Second**, *S.I. Acquisition* was based on the Fifth Circuit's reading of Texas law. As explained above, for tort claims, the place of injury and the place of conduct causing the injury typically determines which state law applies. *See supra* fn. 19. Corizon operated 50 facilities in over 27 different states. The law in most states would not support the right of a debtor to assert a tort claim based on harm caused by the debtor based on the doctrine of successor liability or any other legal doctrine. *See supra* fn. 20 and fn. 23.

141. Here, the personal injury and wrongful death claims in this case give rise to a claim ***against*** the Debtor which can be brought against a successor or an alleged alter ego under state law. There is no explicit or implicit alleged harm to the Debtor. The Debtor was not forced to suffer in agony and live in its own fecal matter for four months. Claimants also have the right under state law to avoid certain fraudulent transfers made with the intent of hindering, delaying, or defrauding their ability to recover on account of their claims. These are the rights and remedies that exist because of Corizon's fraud and misconduct.

142. However, to eliminate this issue, to the extent that any of these rights or theories of recovery result in a determination that the causes of action belong to the Debtor's estate (and are not available to the claimants themselves during the pendency of the Debtor's bankruptcy proceedings) under *S.I. Acquisition*, *Emoral*, or similar case law, the TCC now seeks exclusive standing to pursue, settle, and abandon them for the benefit of the creditors whose rights may have been taken from them (without due process or compensation) due to the Debtor's bankruptcy filing.

146. Courts in the Fifth Circuit have granted creditors' committees standing in connection with claims similar to the causes of action at issue here by operation of their equitable powers.[35] Moreover, the practice of conferring standing upon official committees to pursue actions on behalf of a bankruptcy estate is widely followed and accepted in other jurisdictions as well.[36]

147. In the Fifth Circuit, where an official committee seeks to pursue an action without the consent of the debtor, the committee must satisfy a three-part test to be granted derivative standing. Under this test, the committee may obtain derivative standing where:

(i) a colorable claim exists;

(ii) the debtor-in-possession refused unjustifiably to pursue the claim; and

(iii) the committee first receives leave to sue from the bankruptcy court.

La. World Exposition, 832 F.2d at 1397.

148. The TCC satisfies each of the elements of this test and should be granted standing to further pursue any estate causes of action that in substance constitute remedies that creditors could bring outside of bankruptcy in aid of their effects to hold YesCare and its non-debtor affiliates and insiders responsible for their conduct and fraud.

149. **Colorable Claims**. Asserting a "colorable claim" is a relatively low threshold to satisfy, requiring the court to find that the claim is "not without merit."[37] In granting standing to

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be empty unless those who have such a right are also given the right to act when the debtors refuse to do so).

35 *See* cases cited *supra* at 32.

36 *See, e.g., Unsecured Creditors Comm. v. Noyes (In re STN Enters.)*, 779 F.2d 901, 904 (2d Cir. 1985) (concurring with those bankruptcy courts that have held that sections 1103(c)(5) and 1109(b) of the Bankruptcy Code imply a qualified right for creditors' committees to initiate litigation with the approval of the bankruptcy court).

37 *In re Distributed Energy Sys., Corp.*, Case No. 08-11101 (KG) (Bankr. D. Del.) [Dkt. No. 315] ("[T]he colorable claim issue, of course, is plausibility. . . I don't even have to find that it has merit; I just have to find that it's not without merit."); *see also Adelphia Commc'ns Corp. v. Bank of Am., N.A. (In re Adelphia Commc'ns Corp.)*, 330 B.R. 364, 376 (Bankr. S.D.N.Y. 2005) ("Caselaw construing requirements for 'colorable' claims has made it clear that the required showing is a relatively easy one to make."); *Official Comm. of Unsecured Creditors v. Hudson United Bank (In re Am.'s Hobby Ctr., Inc.)*, 223 B.R. 275, 288 (Bankr. S.D.N.Y. 1998) (observing that only if the claim is "facially defective" should standing be denied).

and its affiliates to the detriment of victims and their families. The UCC is fully supportive of this outcome so long as its favored creditor group obtains a recovery it considers substantial and all administrative expenses are paid.

154. **The TCC Should be Granted Standing**. The TCC should be granted exclusive standing to prosecute, settle, and abandon the estate causes of action. To entrust the Debtor—an entity created, owned, and controlled by YesCare—with settling the estate causes of action would invite mischief. Rather than maximizing the value of the estate causes of action, the UCC and the Debtor (acting at the direction of YesCare) will find the lowest rung in the range of reasonableness and then attempt to settle at exactly that, to the detriment of the tort victims. This is not speculation. There can be no illusion at this point that the Debtor is controlled by parties willing to support an unreasonable settlement. Given this, the TCC should be granted standing.

III. The Court Should Authorize the TCC to Abandon the Estate Causes of Action

155. And, upon the granting of such standing, the TCC moves to abandon back to the claimants the estate causes of action that in substance constitute remedies that claimants could use outside of bankruptcy in aid of their effects to hold YesCare and its non-debtor affiliates responsible for their conduct and fraud. *See In re Wilton Armetale, Inc.*, 968 F.3d 273, 284 (3d Cir. 2020) (trustee can relinquish estate causes of action); *Kane v. Nat'l Union Fire Ins. Co.*, 535 F.3d 380, 386 (5th Cir. 2008) (when a trustee abandons an estate cause of action, the interest in the claim reverts as if the bankruptcy was never filed). The proposed Order included herewith sets out the necessary steps and timing of such steps to accomplish this result.

156. To be clear, the proposed abandonment does not involve any hard assets, real estate, business assets, or property that belonged to the Debtor prior to the commencement of its bankruptcy case. The Debtor is a legal fiction. The abandonment here is intended to restore the

claimants' legal rights ***to the extent that*** they are now impaired by this case so that injured parties can pursue their claims against YesCare and its non-debtor affiliates and insiders.

157. Upon dismissal, to the extent any causes of action involving claims (tort claims and commercial claims) that can be asserted against YesCare and its non-debtor affiliates and insiders based on any theory of liability (including successor liability and veil piercing) are property of the Debtor's estate, such causes of action can be abandoned and relinquished to the applicable claimants to pursue against YesCare and its non-debtor affiliates and insiders in the tort system.

158. The Debtor's temporary ownership of the claims against it and YesCare (if any) would end. Successor liability and alter ego are theories of liability that can be asserted by persons or entities that have suffered damages caused by a tortfeasor. Those theories—to the extent that they are currently property of the Debtor's estate—can be restored to their rightful owners.[39] The same is true for the ability to avoid certain transactions under state law.

159. **These are rights that belonged to the claimants under state law prior to the bankruptcy. And this should be done explicitly to avoid any argument by YesCare or NewCo that they acquired any new defenses because of this bankruptcy case.**

160. Again, one aspect of the Texas Two Step that is ripe for abuse is the control that "GoodCo" can attempt to exert over the tort claims against it. By arguing that the tort claims ***against*** TortCo and GoodCo (under a successorship theory) are TortCo's property under section 541(a), GoodCo can use the Texas Two Step to place itself in the position of ***both*** the plaintiff ***and*** the defendant, and then negotiate a settlement with itself in order to extinguish those claims.

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[39] Again, the TCC does not believe that the personal injury and wrongful death claims asserted against YesCare, NewCo, and their non-debtor affiliates and insiders under the doctrines of successor liability or veil piercing are property of the Debtor's estate. A contrary result would mean that section 541(a) violates the Fifth and Seventh Amendments of the Constitution. The TCC raises and reserves the right to argue that section 541(a) violates the Fifth and Seventh Amendments to the extent that it means that such claims are the Debtor's property.

161. As applied to Mr. Kelly's lawsuit in the Eastern District of Michigan, NewCo's (or CHS TX, Inc.'s) position is that Mr. Kelly's lawsuit ***against*** NewCo (under a successorship theory) is now the Debtor's property under section 541(a) such that the Debtor (as controlled by YesCare and NewCo) can now settle Mr. Kelly's claims without his consent. *See Kelly v. Corizon Health Inc.*, No. 2:22-cv-10589, 2022 U.S. Dist LEXIS 198725, *31 (E.D. Mich. Nov. 1, 2022).

162. The proposed structured dismissal avoids this clear and obvious abuse by eliminating NewCo's ability to use the bankruptcy case to effectuate an insider settlement that attempts to deprive victims of their legal rights and remedies. Once the victims' rights are restored, there is nothing further for the Court to do other than dismiss this case.

163. Unlike most standing motions, the TCC here is **not** asking this Court to oversee the litigation against YesCare, NewCo, and the insiders who orchestrated this scheme. Nor is the TCC proposing that this Court liquidate or estimate personal injury or wrongful death claims. The TCC is not attempting to convert this Court into an alternative forum for the resolution of tort liability—the tort system in the United States already exists for that purpose. Rather, the TCC is seeking to free this Court of this case entirely so that it can focus on legitimate bankruptcy cases.

164. The only parties that could be expected to object to this are YesCare, NewCo, and parties who have negotiated preferential settlements for themselves and believe (mistakenly) that they will get paid quickly (rather than having to wait years while the plan is appealed before they get paid anything). But this is not a reason to deny the victims their legal rights. The victims here believe that YesCare, NewCo, and the parties who orchestrated this fraud are liable for hundreds of millions of dollars in damages and that they will recover substantially more in the tort system than YesCare or NewCo would ever contribute to this case.

165. YesCare and NewCo may assert that the Debtor's liability is less than asserted and that in their view the successor liability, alter ego, and fraudulent transfer claims are not meritorious. But they are not the parties who were harmed. They are the parties that caused the harm. This bankruptcy should not be run for their benefit. YesCare is entitled to test its defenses in the tort system, but its views are not a basis for this Court to deny victims of their legal rights.

IV. The Court Should Dismiss the Case for Cause

166. Finally, dismissal is the best outcome for creditors. Tort and commercial claims can seek recovery from YesCare and NewCo. Given the proposed abandonment, YesCare and NewCo will not be able to point to any aspect of this case to gain a litigation advantage over the claimants. The parties with meritorious claims will finally be permitted to seek justice.

167. Section 1112(b)(1) of the Bankruptcy Code provides:

> Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

168. Section 1112(b)(3) of the Bankruptcy Code defines the term "cause" to include, *inter alia*, "substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." Here, the Debtor is administratively insolvent, which insolvency deepens by the day as the Debtor's and the UCC's professionals continue to accrue fees and costs in pursuit of YesCare's objectives, and the Debtor has no reasonable likelihood of rehabilitation given that its alleged "rehabilitation" amounts to a fraud. Consummating a fraud cannot constitute a legitimate rehabilitation under the Bankruptcy Code.

169. Dismissal is further warranted here since the Debtor's bankruptcy was filed as a litigation tactic. *Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In Matter of Little Creek*

the committee in *In re Chesapeake Energy Corp.*, Judge Jones remarked that the standard for a 'colorable' claim was akin to a claim that was not sanctionable under the Rules of Professional Conduct: "Colorability is a really low standard. It doesn't take a lot to get over the colorability standard. And I do find that the claims asserted by the Committee meet that....[T]here are plenty of lawyers who would put their name pursuant to Rule 11 on a complaint that sets forth those claims, and if that's not exactly the colorability argument or standard, it's awfully close."[38]

150. Here, as explained above, the tort claimants have personal injury or wrongful death claims that can be asserted against YesCare and its non-debtor affiliates under the doctrines of successor liability and veil piercing. And they can seek to avoid the divisive merger as a fraudulent transfer under Texas law (to the extent necessary to ensure their recovery on account of their claims). These claims satisfy the colorability standard. Indeed, it is difficult to imagine how YesCare and its non-debtor affiliates could possibly avoid summary judgment.

151. **Debtor in Possession**. Here, the Debtor is intertwined with, and beholden to, the targets of the causes of action. In fact, this is the key feature of the YesCare Two-Step—use a divisive merger to create an entity that (a) is controlled by YesCare and (b) can argue that it can settle the personal injury and wrongful death claims without the victims' consent.

152. The Debtor's board, management, and professionals are all entwined with YesCare and NewCo. The Debtor is a legal fiction created to perpetrate an obvious fraud. The purpose of this bankruptcy—as devised by the Debtor's owners—is **not** to maximize value for the benefit of creditors, but to transfer value **from** creditors to equity holders through a bad faith settlement.

153. This is not speculation. This is what the Debtor's plan does. The Debtor has already proven through its actions that it exists solely to secure a release for the benefit of YesCare

[38] *See In re Chesapeake*, Case No. 20-33233 (Bankr. S.D. Tex.) Jan. 13, 2021 Hr'g Tr. at 325:5-11 (attached hereto as **Exhibit D**).

Dev. Co.), 779 F.2d 1068 (5th Cir.1986) (the seminal bad faith case, which opined, *inter alia*, that it is bad faith to file bankruptcy as a follow on to state court litigation); *Investors Group, LLC v. Pottorff*, 518 B.R. 380, 384 (N.D. Tex. 2014) (affirming dismissal of chapter 11 case where case was filed "as a litigation tactic" and finding that filing for bankruptcy to gain a litigation advantage "on its own" is sufficient to warrant dismissal).[40]

170. Here, the Debtor was created for a litigation purpose—*i.e.*, to give YesCare and NewCo the ability to assert control over the fraudulent transfer claims and tort claims asserted against them under doctrines of successor liability and alter ego theories. The Debtor's sole existence is to serve as a liability management tool for the benefit of non-debtors so that their profits can be shielded from tort victims (including through non-debtor injunctions already implemented in this case). This case exists to harm tort victims, create undue delay, and pressure victims to capitulate and accept an unfair settlement. As such, this case presents a classic bankruptcy-as-a-litigation tactic maneuver that should be rejected.

171. And, finally, dismissal is warranted here as being in the best interest of creditors. The Court should walk a mile in the claimants' shoes. A family member who was incarcerated dies due to inadequate healthcare—a death that was entirely preventable had proper care been provided. The estate brings a wrongful death claim like the other wrongful death claims that have resulted in judgments against Corizon in the tort system. To avoid this litigation Corizon (aided

[40] *See In re Capital Equity Land Trust No. 2140215*, 646 B.R. 463, 478 (Bankr. N.D. Ill. 2022) (finding cause for dismissal based upon "the totality of the circumstances" where bankruptcy case was filed as a "litigation tactic"); *In re Royal Properties, LLC*, 604 B.R. 742, 750 (Bankr. N.D. Ill. 2019) (weighting the "totality of the circumstances" in concluding that bankruptcy case filed as a "litigation tactic" was not filed in good faith); *In re Silberkraus*, 253 B.R. 890, 905 (Bankr. C.D. Cal. 2000) ("[I]t constitutes bad faith to file bankruptcy to impede, delay, forum shop, or obtain a tactical advantage regarding litigation ongoing in nonbankruptcy forum—whether that nonbankruptcy forum is a state court or a federal district court."); *In re HBA East, Inc.*, 87 B.R. 248, 259–60 (Bankr. E.D.N.Y. 1988) ("As a general rule where, as here, the timing of the filing of a Chapter 11 petition is such that there can be no doubt that the primary, if not sole, purpose of the filing was a litigation tactic, the petition may be dismissed as not being filed in good faith.").

by professionals, attorneys, and financial advisors) orchestrates a Texas Two Step. An injunction is entered, and all litigation is stayed.

172. The victims are then told following months of court proceedings that the proposed plan negotiated by the Debtor and the UCC will pay them pennies on the dollar, provide an illusory "opt out," deny them the right to a jury trial, and the right to seek compensation before federal and state courts from the wealthy parties that caused the death of their family members. This case gives bankruptcy a bad name.

173. Dismissal here is necessary to preserve the integrity of the courts. Victims should have the right to pursue their claims against YesCare, NewCo, and the other non-debtor parties who orchestrated the divisive merger. The TCC was charged with remembering those who were in prison, those who are in prison, and ensuring that their voices are heard in this case. Today those voices have cried out for justice. This case should not become another headline about bankruptcy abuse. This Motion is about doing the right thing. This case should be dismissed.

NOTICE

174. Notice of this Motion has been served on: (a) the U.S. Trustee; (b) counsel to the Debtor; and (c) all persons who have formally appeared in this Chapter 11 Case and requested service pursuant to Bankruptcy Rule 2002. Considering the nature of the relief requested herein, the Committee respectfully submits that no other or further notice need be provided.

NO PRIOR REQUEST

175. No prior request for the relief sought in this Motion has been made to this or any other court in connection with this case.

for all potential Estate claims that could be asserted against any released parties. The UCC's inquiry was expansive and methodical.

20. As part of its investigation, the UCC issued more than ten subpoenas to various entities affiliated with the Debtor and its parent company, including M2 HoldCo, M2 LoanCo, Geneva, Perigrove 1018, other entities the Debtor engaged in the process of its restructuring, and others the UCC believed had information relevant to the Estate's potential claims. The UCC faced substantial resistance to its discovery efforts, defended against multiple motions to quash and moved to compel compliance with four of its subpoenas.[4]

21. A summary of the Debtor's and the UCC's discovery efforts is included in Schedule 5 to the Disclosure Statement. Through formal and informal discovery requests, the Debtor and the UCC collected and reviewed over 515,000 pages of documents, including bank records, e-mails, accounting records, internal Debtor communications, and communications with third parties associated with the Debtor and/or its related entities.

22. The UCC also deposed Isaac Lefkowitz in four separate corporate representative capacities—for Perigrove 1018, for PharmaCorr, for Geneva, and for M2 LoanCo. In addition to these formal depositions, the Debtor and the UCC also conducted informal inquiries and interviews of Debtor and YesCare representatives and other relevant parties both directly and through counsel.

23. While the UCC was conducting its investigation, the Debtor's professionals were conducting their own independent investigation and collaborating with the UCC where appropriate to make sure both the Debtor and the UCC were approaching the First Global Mediation with reasonable expectations of how to maximize value to the Estate and creditors. Although the Debtor

[4] The UCC filed a motion to compel certain discovery responses and document production from M2 LoanCo. *See* Docket No. 630. M2 LoanCo filed a formal response to such motion at Docket No. 683. Ultimately, the UCC withdrew its motion to compel, as reflected at Docket No. 787.

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT E RESPONSE TO ECF 1324

and the UCC were not completely aligned prior to the First Global Mediation, their respective views of the relative merits of the Estate's potential causes of action against the Released Parties were substantially similar, providing a path for the Debtor and the UCC to work together during mediation to reach a settlement that fell within both of their ranges of reasonable settlements.

Identification of Released Parties

24. The investigations revealed the following information regarding the Settlement Parties: [5]

a. YesCare Corp. ("YesCare"), Yes Care Holdings, LLC, and CHS TX, Inc. ("CHS")

These entities were established in early 2022 in preparation for the Divisional Merger, which became effective in May 2022. CHS is the surviving entity under the Divisional Merger and now operates as YesCare. On information and belief, Yes Care Holdings, LLC holds equity in CHS.

b. M2 LoanCo, M2 EquityCo, and M2 HoldCo

M2 LoanCo, LLC was formed as a Florida limited liability company on June 18, 2020. M2 LoanCo was organized by James Gassenheimer, as authorized representative and registered agent, and the initial manager of M2 LoanCo was Michael Flacks. On or about June 26, 2020, M2 LoanCo acquired certain loans, in an aggregate principal amount of $109,104,391.08, made by various lenders in 2017 to borrowers Valitás Health Services, Inc., a Delaware Corporation, Corizon, LLC, a Missouri limited liability company, and Corizon Health, Inc., a Delaware corporation. In addition to the borrowers, the other loan parties under the credit agreement were Valitás Intermediate Holdings, Inc., a Delaware corporation, Corizon Health Clinical Solutions, LLC, a Delaware limited liability company, Corizon Health of New Jersey, LLC, a New Jersey limited liability company, PHS Community Care LLC, a Delaware limited liability company, PharmaCorr, LLC, a Delaware limited liability company and Endeavor Distribution, LLC, a Delaware limited liability company. Cortland Capital Market Services LLC served as administrative agent and collateral agent under the credit agreement. Thereafter, between May 12, 2021 and June 24, 2021, M2 LoanCo acquired certain senior notes, in an aggregate principal amount of $10,000,000, from various holders. As of the date hereof, M2 HoldCo is still the sole member and manager of M2 LoanCo and Isaac Lefkowitz and Alan Rubenstein are the sole directors of M2 LoanCo. M2 LoanCo has no operations or employees. M2 HoldCo is the sole member

[5] The following descriptions of the Settlement Parties may be found in Schedule 4 to the Disclosure Statement.

and manager of M2 EquityCo, LLC, which is the sole shareholder of Valitás Intermediate Holdings, Inc.

c. Perigrove 1018, LLC ("Perigrove 1018") and Perigrove LLC ("Perigrove")

Perigrove 1018 is a private equity fund owned by several individuals, none of whom owns more than 10% of the company. Perigrove 1018 is a related company with common ownership to Perigrove, LLC ("Perigrove"), which operated in the healthcare space at the time of the introductions referred to above. In late November and early December 2021, the Flacks Group team members were introduced to Mr. Lefkowitz and other Perigrove 1018 representatives as potential buyers for PharmaCorr. Mr. Lefkowitz and Perigrove 1018 quickly shifted focus to a potential acquisition of all of the Debtor-related entities the Flacks Group owned. After approximately a week of negotiations, Perigrove 1018 acquired the entire portfolio of companies from the Flacks Group on December 7, 2021.

d. PharmaCorr LLC ("PharmaCorr")

Until 2021, PharmaCorr was a wholly owned subsidiary of the Debtor responsible for supplying the Debtor with pharmaceutical products and devices for use in its business. As of June 2021, PharmaCorr is an indirect subsidiary of M2 HoldCo but no longer directly affiliated with the Debtor.

e. Geneva Consulting, LLC ("Geneva")

Geneva and Perigrove share some common directors and authorized representatives, including Isaac Lefkowitz. Representatives of Perigrove 1018 caused the Debtor's immediate parent company, Valitás Health Services, Inc., to enter into a Consulting Agreement with Geneva in December 2021. After the Divisional Merger, the Debtor, M2 LoanCo, and Geneva entered into a Facilitator Agreement dated as of May 4, 2022, under which Geneva agreed to provide certain services to the Debtor and M2 LoanCo in connection with the Funding Agreement between the Debtor and M2 LoanCo. According to pleadings filed by M2 LoanCo in the Chapter 11 Case, M2 LoanCo contends that Geneva assisted in arranging, negotiating, and finalizing the terms of the Funding Agreement and subsequently acted as an agent for both the Debtor and M2 LoanCo. M2 LoanCo also contends that Geneva coordinated the payment of expenses on behalf of the Debtor and ensured that funds were available from M2 LoanCo to make those payments. M2 LoanCo also contends that Geneva also provides similar consulting services for YesCare, and that Geneva continued to perform services for the Debtor up to the Petition Date. Geneva has not performed any services for the Debtor during the Chapter 11 Case. The UCC disputes all of M2 LoanCo's contentions noted herein as to Geneva.

25. The Released Parties include the Settlement Parties, as well as the following:[6]

a. Yitzchak Lefkowitz a/k/a Isaac Lefkowitz

Mr. Lefkowitz is the Debtor's sole director. Since Perigrove 1018's acquisition of the Debtor in December 2021, Mr. Lefkowitz has overseen every aspect of the Debtor's operations and finances until the Petition Date, when the Debtor executed board resolutions which, among other things, delegated sole authority to Russell Perry, the Debtor's Chief Restructuring Officer, for all restructuring matters and any matters where a conflict of interest may exist. During the bankruptcy case, Mr. Lefkowitz testified as the Debtor's corporate representative at three (3) separate 341 creditor meetings. Mr. Lefkowitz also testified at four (4) different depositions on behalf of M2 LoanCo, Perigrove 1018, PharmaCorr and Geneva. Mr. Lefkowitz is a Released Party under the Plan. Mr. Lefkowitz also testified that he is a director of YesCare, M2 LoanCo, M2HoldCo, Perigrove 1018, and Sigma.

b. Valitás Intermediate Holdings Inc. and Valitás Health Services, Inc.

The predecessor entity of the Debtor and its immediate parent that merged into Corizon Health, Inc. under the May 2022 Combination Merger and Divisional Merger. Today, Valitás Health Services, Inc. no longer exists, and Valitás Intermediate Holdings, Inc. is a special purpose entity with no assets or operations other than its ownership interest in the Debtor.

c. M2 Pharmacorr Equity Holdings LLC, Pharmacorr/M2 LLC, Pharmacorr Holdings LLC, and Endeavor Distribution LLC

Until 2021, PharmaCorr was a wholly owned subsidiary of the Debtor responsible for supplying the Debtor with pharmaceutical products and devices for use in its business. In June 2021, in an attempt to monetize PharmaCorr's business and allow PharmaCorr to market its services to customers other than the Debtor, the Flacks Group effectuated a spinoff transaction which established these entities. The result is that PharmaCorr remains an indirect subsidiary of M2 HoldCo, but it is no longer directly affiliated with the Debtor.

d. Sigma RM, LLC

Following the Divisional Merger, as part of the corporate restructuring of the Debtor and YesCare, several in-house legal staff formed their own company to provide contract services to YesCare and the Debtor and, thus, began receiving monthly contract service fees rather than compensation as W-2 employees. On November 1, 2022, the Debtor entered into a Claims Management Services Agreement with Sigma RM, LLC ("Sigma"). Sigma represents that it is owned

[6] The following descriptions of the Released Parties may be found in Schedule 4 to the Disclosure Statement. A complete list of the Released Parties is attached hereto as **Exhibit A**.

by a group of the Debtor's former in-house counsel and litigation support staff. Pursuant to the Claims Management Services Agreement, the Debtor paid Sigma $150,000 per month. Corporate filings for Sigma reflect that the entity was organized by Isaac Lefkowitz and uses his address as its corporate service address. Mr. Lefkowitz has testified that he is an unpaid director of Sigma and listed his address for Sigma's service address to ensure he gets notice of legal filings made to Sigma. The UCC has disputed the validity of the Debtor's pre- and post-petition payments to Sigma, but has consented to a one-time payment to Sigma in full satisfaction of its potential Administrative Claim, which Sigma contends has accrued to over $1.5 million to date (and continues to accrue).

e. DG Realty Management LLC

The Debtor and the UCC know very little about this entity and do not believe the Estate has colorable claims against it. The only transactions noted between the Debtor and DG Realty are two transfers, both on the same day of December 27, 2021—transfer of $7.5 million to and from DG Realty in the same offsetting amounts. Mr. Lefkowitz has testified that this transfer was intended to be a short-term loan that became unnecessary.

f. Sara Ann Tirschwell and Scaracor LLC – CEO for the Debtor (December 2021–May 2022); CEO for YesCare (May 2022–February 2023). Scaracor LLC appears to be an entity owned or controlled by Ms. Tirschwell and used by her for her contractual employment with the Debtor. Based on the Debtor's investigations, the Debtor found no evidence of direct payments made by the Debtor (or its predecessor entities) to Ms. Tirschwell or Scaracor LLC.

g. Ayodeji Olawale Ladele – Former Executive Vice President and Chief Medical Officer (CMO) for the Debtor; now the CMO for YesCare.

h. Beverly Michelle Rice – Former Corporate Controller for the Debtor; now serves the same role for YesCare.

i. Jeffrey Scott King – Former Chief Legal Officer for the Debtor; now the current Executive Vice President and Chief Legal Officer for YesCare.

j. Jennifer Lynee Finger – Former Assistant General Counsel at the Debtor and now Assistant General Counsel at YesCare and General Counsel of Sigma.

k. Frank Jeffrey Sholey – Former CFO for the Debtor; was the CFO for YesCare but was elevated to CEO upon Tirschwell's departure.

26. In addition to the foregoing, the Movants' investigations revealed the following information about the Debtor's prior ownership group, the Flacks Group, which predated Perigrove 1018's ownership. According to its website, the Flacks Group was founded and is controlled by

Michael Flacks and specializes in the acquisition and operational turnaround of medium-sized businesses in complex situations. *See* https://flacksgroup.com/about-us/. Michael Flacks serves as the Chairman, CEO, and Founder, and James Gassenheimer serves as the Chief Legal Officer. It is unclear what role Charles Gassenheimer plays in the Flacks Group. The Flacks Group was the previous owner of the Debtor. Under its ownership, and prior to a December 2021 transaction with Perigrove 1018, the Flacks Group was responsible for establishing M2 HoldCo and M2 LoanCo to hold the equity and the secured debt owed by the Debtor, respectively. The Flacks Group was also responsible for the spin off transactions that resulted in PharmaCorr being moved out of the Debtor's ownership structure. This information is provided for context only.[7] None of the Gassenheimers nor any members of the Flacks Group are included in the definition of Released Parties, and any and all claims held by the Estate against the Flacks Group are retained under the Plan.

Estate Causes of Action Identified in Advance of Mediation

27. Based on their respective investigations, the Debtor and UCC identified four main categories of potential claims against the Released Parties. Each of the following categories is discussed in turn:

a. avoidance actions arising out of potential fraudulent transfers or preferential transfers made to M2 LoanCo;

b. avoidance actions arising out of potential fraudulent transfers or preferential transfers made to Geneva;

c. avoidance actions arising out of transfers to a third-party vendor to benefit non-debtor Perigrove 1018-related parties; and

d. potential avoidance actions arising out of the May 2022 Divisional Merger.

[7] Further detail regarding the Flacks Group is provided in the Disclosure Statement, Section II.A.

28. **Avoidance Actions Against M2Loan Co.** At all relevant times, M2 LoanCo had two directors—Isaac Lefkowitz and Alan Rubenstein. M2 LoanCo had no employees and did not maintain e-mail records on its own server. Based on the Movants' review of the Debtor's bank records, and following formal and informal inquiries to Mr. Lefkowitz, Jeff Sholey (the Debtor's former CFO and YesCare's current CEO) and other members of the Debtor's former accounting staff, the Debtor and the UCC identified the following transfers made by the Debtor from its bank accounts to M2 LoanCo:

12/29/2021	$10,000,000.00
12/30/2021	$5,000,000.00
1/4/2022	$2,300,000.00
1/5/2022	$600,000.00
1/31/2022	$5,000,000.00
2/18/2022	$600,000.00
3/8/2022	$10,000,000.00
3/9/2022	($10,000,000.00)
5/17/2022	$1,000,000.00
11/14/2022	$25,572.19
11/14/2022	$12,583.00
Total to M2 LoanCo	**$24,538,155.19**

29. Although M2 LoanCo disputes the Movants' characterization of these transfers listed above,[8] the Movants believe the Estate could bring claims to avoid and recover these transfers as fraudulent transfers under 11 U.S.C. § 548 and applicable state fraudulent transfer statutes. The potential defenses and settlement considerations are discussed further below.

30. **Avoidance Actions Against Geneva.** Perigrove 1018 acquired the equity ownership of the Debtor and M2 LoanCo from the Flacks Group in early December 2021, days before the Flacks Group had planned to commence a chapter 11 bankruptcy proceeding for the Debtor. Within days of such acquisition, Perigrove 1018 appointed one of its directors, Isaac

[8] For example, M2 LoanCo contends that it transferred $3.5 million and $1.5 million to Corizon on March 23, 2023, and March 24, 2023, respectively, and those transfers are not accounted for as credits in the chart above.

Lefkowitz, as the decision-maker for all of the companies. Mr. Lefkowitz, in turn, caused the Debtor to enter into a "Consulting Agreement" with Geneva on or about December 8, 2021. The "Consulting Agreement" is between Valitás Health Services, Inc. and Geneva Consulting, LLC. Mr. Lefkowitz signed the Consulting Agreement as the "Interim CEO" for Valitás.[9] A director listed on Perigrove's website signed the Consulting Agreement as "Director" of Geneva. Mr. Lefkowitz directed James Hyman, the then-CEO of Corizon Health, Inc., and Jeff Sholey, the then-CFO of Corizon Health, Inc., to transfer substantial sums to Geneva under the Consulting Agreement. On December 8, 2021, the Debtor transferred $3 million to Geneva, purportedly as a retainer required under the Consulting Agreement. The Debtor then transferred $500,000 per month for the subsequent five (5) months, purportedly for "Corporate Restructuring" services under the Consulting Agreement. In all, the Debtor transferred $5.5 million to Geneva before the Petition Date.

12/9/2021	$3,000,000.00
1/11/2022	$500,000.00
2/7/2022	$500,000.00
3/1/2022	$500,000.00
4/1/2022	$500,000.00
5/2/2022	$500,000.00
Total to Geneva	**$5,500,000.00**

31. The Movants believe the Estate could bring claims to avoid and recover these transfers as fraudulent transfers under 11 U.S.C. § 548 and applicable state fraudulent transfer statutes. Geneva disputes these claims. The potential defenses and settlement considerations are discussed further below.

32. **Avoidance Actions Against Perigrove 1018-Related Parties.** In addition to the $30 million identified above, the Movants identified additional sums, totaling approximately

[9] The Committee believes Mr. Lefkowitz may have not actually been in this role on the date of the contract nor had the authority to so bind the company.

$956,700, paid to Amerisource Bergen—a third-party vendor—to satisfy obligations of PharmaCorr, which ceased being a subsidiary of the Debtor under the Flacks Group's ownership and control:

1/31/2022	$500,000.00
2/15/2022	$456,707.08
Total to Amerisource Bergen	**$956,707.08**

33. Based on the records reviewed by the Movants, the Movants believe that Estate could bring claims to avoid and recover these transfers from Amerisource Bergen, PharmaCorr, or other related entities that benefited from the payment. Such transfers may be considered fraudulent transfers under 11 U.S.C. § 548 and applicable state fraudulent transfer statutes. PharmaCorr disputes these claims. The potential defenses and settlement considerations are discussed further below.

34. **Avoidance Actions Related to the Divisional Merger.** As mentioned above, the transactions effectuated as part of the Divisional Merger caused the allocation of the Debtor's active contracts, employee assets, and other viable assets to CHS. The UCC believes that this allocation effectuated a "transfer" that may be subject to avoidance under 11 U.S.C. §§ 544 and 548 or other applicable state fraudulent transfer statutes. The Debtor and the UCC further believe that the financial advisory firm engaged to provide a fairness opinion on the transaction reached its fairness conclusions by relying on inaccurate information. The UCC believes that, had the financial advisory firm received accurate financials and disclosures, it would not have made the findings or recommendations reflected in the fairness opinion. When a fraudulent transfer claim is based on the transfer of an asset rather than an amount of money, damages for the transfer are calculated based on the value of the transferred asset at the time of the transfer. As a result, any potential damages for this claim would be based on a calculation of the value of the transferred assets as of the Divisional Merger.

35. The UCC's pre-mediation investigation also identified potential tort and related claims against some, but not all, of the individuals included as Released Parties.

Defenses and Settlement Considerations Supporting the Global Settlement

36. While the Debtor and the UCC identified the above categories of potential claims and believe that multiple claims are meritorious, recovery of damages for the Estate nevertheless presented a challenge. Each claim outlined above would be subject to defenses, and the Estate would be required to pursue lengthy, costly litigation to achieve a final judgment, including appeals.

37. Although the Debtor and the UCC received a substantial amount of documentation as part of their investigations, it is reasonable to conclude—based on the hurdles presented to date—that the Released Parties would present vigorous defenses of these claims, making litigation a protracted and expensive endeavor with no certainty of success on the merits. Any litigation of these claims would likely require the engagement of one or more experts on the issues of solvency, reasonably equivalent value, and/or damages. These costs would be incurred by the Estate with no guaranteed path to reimbursement.

38. The UCC and the Debtor also recognized the corporate structure of the Released Parties could present additional difficulties in converting any judgment to cash proceeds. For example, the Debtor and the UCC assume that Geneva, M2 LoanCo, and other recipients of direct transfers from the Debtor do not maintain significant cash balances in their respective bank accounts. Collecting on any successful judgments would present another cost—by having to chase an unknown number of potential third-party transferees—and only adds to the uncertainty of litigation. Each of these claims would saddle the Estate with additional costs and administrative expenses and further delay any distribution to creditors.

Exhibit A

Summary of the Released Parties and the Settlement Parties

M2 LoanCo, M2 EquityCo, and M2 HoldCo. M2 LoanCo, LLC was formed as a Florida limited liability company on June 18, 2020. M2 LoanCo was organized by James Gassenheimer, as authorized representative and registered agent, and the initial manager of M2 LoanCo was Michael Flacks. On or about June 26, 2020, M2 LoanCo acquired certain loans, in an aggregate principal amount of $109,104,391.08, made by various lenders in 2017 to borrowers Valitás Health Services, Inc., a Delaware Corporation, Corizon, LLC, a Missouri limited liability company, and Corizon Health, Inc., a Delaware corporation. In addition to the borrowers, the other loan parties under the credit agreement were Valitás Intermediate Holdings, Inc., a Delaware corporation, Corizon Health Clinical Solutions, LLC, a Delaware limited liability company, Corizon Health of New Jersey, LLC, a New Jersey limited liability company, PHS Community Care LLC, a Delaware limited liability company, PharmaCorr, LLC, a Delaware limited liability company and Endeavor Distribution, LLC, a Delaware limited liability company. Cortland Capital Market Services LLC served as administrative agent and collateral agent under the credit agreement. Thereafter, between May 12, 2021 and June 24, 2021, M2 LoanCo acquired certain senior notes, in an aggregate principal amount of $10,000,000, from various holders. As of the date hereof, M2 HoldCo is still the sole member and manager of M2 LoanCo and Isaac Lefkowitz and Alan Rubenstein are the sole directors of M2 LoanCo. M2 LoanCo has no operations or employees. M2 HoldCo is the sole member and manager of M2 EquityCo, LLC, which is the sole shareholder of Valitás Intermediate Holdings, Inc.

Valitás Intermediate Holdings, Inc. and Valitás Health Services, Inc. The predecessor entity of the Debtor and its immediate parent that merged into Corizon Health, Inc. under the May 2022 Combination Merger and Divisional Merger. Today, Valitás Health Services, Inc. no longer exists, and Valitás Intermediate Holdings, Inc. is a special purpose entity with no assets or operations other than its ownership interest in the Debtor.

PharmaCorr, M2 PharmaCorr Equity Holdings LLC, PharmaCorr/M2 LLC, PharmaCorr Holdings LLC, and Endeavor Distribution LLC. Until 2021, PharmaCorr was a wholly owned subsidiary of the Debtor responsible for supplying the Debtor with pharmaceutical products and devices for use in its business. In June 2021, in an attempt to monetize PharmaCorr's business and allow PharmaCorr to market its services to customers other than the Debtor, the Flacks Group effectuated a spinoff transaction which established these entities. The result is that PharmaCorr remains an indirect subsidiary of M2 HoldCo, but it is no longer directly affiliated with the Debtor.

Perigrove, LLC and Perigrove 1018, LLC. Perigrove 1018 is a private equity fund owned by several individuals, none of whom owns more than 10% of the company. Perigrove 1018 is a related company with common ownership to Perigrove, LLC ("Perigrove"), which operated in the healthcare space at the time of the introductions referred to above. In late November and early December 2021, the Flacks Group team members were introduced to Mr. Lefkowitz and other Perigrove 1018 representatives as potential buyers for PharmaCorr. Mr. Lefkowitz and Perigrove 1018 quickly shifted focus to a potential acquisition of all of the Debtor-related entities the Flacks Group owned. After approximately a week of negotiations, Perigrove 1018 acquired the entire portfolio of companies from the Flacks Group on December 7, 2021.

YesCare Corp., Yes Care Holdings LLC, and CHS TX, Inc. These entities were established in early 2022 in preparation for the Divisional Merger, which became effective in May 2022. CHS TX, Inc. is the surviving entity under the Divisional Merger and now operates as YesCare Corp. On information and belief, Yes Care Holdings, LLC holds equity in CHS TX, Inc. d/b/a YesCare Corp.

Sigma RM, LLC. Following the Divisional Merger, as part of the corporate restructuring of the Debtor and YesCare, several in-house legal staff formed their own company to provide contract services to YesCare and the Debtor and, thus, began receiving monthly contract service fees rather than compensation as W-2 employees. On November 1, 2022, the Debtor entered into a Claims Management Services Agreement with Sigma RM, LLC ("Sigma"). Sigma represents that it is owned by a group of the Debtor's former in-house counsel and litigation support staff. Pursuant to the Claims Management Services Agreement, the Debtor paid Sigma $150,000 per month. Corporate filings for Sigma reflect that the entity was organized by Isaac Lefkowitz and uses his address as its corporate service address. Mr. Lefkowitz has testified that he is an unpaid director of Sigma and listed his address for Sigma's service address to ensure he gets notice of legal filings made to Sigma. The UCC disputes the validity of the Debtor's pre- and post-petition payments to Sigma and has reserved all rights with respect to Sigma's potential Administrative Claim.

DG Realty Management LLC. The Debtor and the UCC know very little about this entity and do not believe the Estate has colorable claims against it. The only transactions noted between the Debtor and DG Realty are two transfers, both on the same day of December 27, 2021—transfer of $7.5 million to and from DG Realty in the same offsetting amounts. Mr. Lefkowitz has testified that this transfer was intended to be a short-term loan that became unnecessary.

James Hyman. Former CEO of the Debtor until he resigned on December 3, 2021.

Scott King. Former Chief Legal Officer (CLO) for the Debtor. Now CLO for YesCare.

Isaac Lefkowitz. Mr. Lefkowitz is the Debtor's sole director. Since Perigrove 1018's acquisition of the Debtor in December 2021, Mr. Lefkowitz has overseen every aspect of the Debtor's operations and finances until the Petition Date, when the Debtor executed board resolutions which, among other things, delegated sole authority to Russell Perry, the Debtor's Chief Restructuring Officer, for all restructuring matters and any matters where a conflict of interest may exist. During the bankruptcy case, Mr. Lefkowitz testified as the Debtor's corporate representative at three (3) separate 341 creditor meetings. Mr. Lefkowitz also testified at four (4) different depositions on behalf of M2 LoanCo, Perigrove 1018, PharmaCorr and Geneva. Mr. Lefkowitz is a Released Party under the Plan. Mr. Lefkowitz also testified that he is a director of YesCare, M2 LoanCo, M2HoldCo, Perigrove 1018, and Sigma.

Russell Perry and Ankura. The Debtor's financial advisor prior to acquisition by Perigrove 1018. The pre-acquisition Ankura team was led by Roy Gallagher and assisted CFO Jeff Sholey with preparing materials for sale to a strategic buyer or alternatively, a bankruptcy filing. Ankura largely ceased work for the Debtor in early December 2021, when Perigrove 1018 consummated its acquisition from the Flacks Group, with the exception of an occasional call and e-mail to provide information to the new Perigrove 1018 management team. Russell Perry of Ankura was hired as Chief Restructuring Officer on February 13, 2023 (the same day Tehum filed for

bankruptcy).

Jeffrey Sholey. Former Chief Financial Officer (CFO) for the Debtor. Was the CFO for YesCare but was elevated to CEO upon Tirschwell's departure.

Sara Tirschwell and Scaracor LLC. Ms. Tirschwell was first introduced to the management team in mid-December 2021 and was designated as Chief Executive Officer (CEO) for the Debtor on or about December 17, 2021. She continued in this role for YesCare until her termination in early 2023 (around the time of the bankruptcy filing). Scaracor LLC appears to be an entity owned or controlled by Ms. Tirschwell and used by her for her contractual employment with the Debtor. Based on the Debtor's and the UCC's investigations, neither Ms. Tirschwell nor Scaracor LLC received any direct payments from the Debtor during her employment.

Michelle Rice. Former Corporate Controller for the Debtor. Now serves the same role for YesCare.

Geneva Consulting, LLC. Geneva and Perigrove share some common directors and authorized representatives, including Isaac Lefkowitz. Representatives of Perigrove 1018 caused the Debtor's immediate parent company, Valitás Health Services, Inc., to enter into a Consulting Agreement with Geneva in December 2021. After the Divisional Merger, the Debtor, M2 LoanCo, and Geneva entered into a Facilitator Agreement dated as of May 4, 2022, under which Geneva agreed to provide certain services to the Debtor and M2 LoanCo in connection with the Funding Agreement between the Debtor and M2 LoanCo. According to pleadings filed by M2 LoanCo in the Chapter 11 Case, M2 LoanCo contends that Geneva assisted in arranging, negotiating, and finalizing the terms of the Funding Agreement and subsequently acted as an agent for both the Debtor and M2 LoanCo. M2 LoanCo also contends that Geneva coordinated the payment of expenses on behalf of the Debtor and ensured that funds were available from M2 LoanCo to make those payments. M2 LoanCo also contends that Geneva also provides similar consulting services for YesCare, and that Geneva continued to perform services for the Debtor up to the Petition Date. Geneva has not performed any services for the Debtor during the Chapter 11 Case. The UCC disputes all of M2 LoanCo's contentions noted herein as to Geneva.

Ayodeji Olawale Ladele. Former Executive Vice President and Chief Medical Officer (CMO) at the Debtor. Now CMO for YesCare.

Jennifer Lynee Finger. Former Assistant General Counsel at the Debtor. Now Assistant General Counsel at YesCare and General Counsel of Sigma.

FTI Capital Advisors, LLC. FTI Capital Advisors, LLC was engaged by the Debtor to provide advisory services with respect to the Divisional Merger. M2 LoanCo, LLC agreed to indemnify FTI Capital Advisors, LLC in accordance with the terms and conditions of the engagement letter. FTI Capital Advisors, LLC contends that it has incurred fees and expenses since the Petition Date related to the investigation conducted by the Debtor and the UCC that it contends are covered by M2 LoanCo's agreement to indemnify. The Debtor and the UCC do not believe the Estate has claims against FTI Capital Advisors, LLC and are agreeable to release them in connection with the release being granted to M2 LoanCo.

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT F RESPONSE TO ECF 1324

WHY SHOULD I VOTE "YES" TO THE PLAN?

You should vote "yes" in support of the Plan because the Debtor and the Committee worked diligently over the past several months to negotiate a favorable settlement that is fair and reasonable and ensures quick and meaningful recoveries to you. If the Plan is approved, creditors will receive between $40 million and $55 million in value, comprised of cash, releases of certain claims against the Debtor, and rights to tax credits, refunds, and other Estate causes of action. If the Plan is not approved, the $37 million settlement fund will not be available to pay creditors and the Estate's priority lender will be entitled to repayment from tax credits prior to any funds being made available to creditors. If this happens, the bankruptcy case will likely be converted to a chapter 7 liquidation, and a trustee will be appointed to pursue litigation or settlement with the same parties who have agreed to pay $37 million to the Debtor. The Debtor and Committee believe that a trustee would likely spend years pursuing this litigation, increasing (perhaps significantly) the cost of administering this case and without any certainty of a better recovery for creditors. If, however, the Plan is approved, implementation of the Plan will ensure that distributions to creditors can be made in the near term.

WHAT IF I VOTE "NO" TO THE PLAN?

If the Debtor and Committee fail to collect the requisite number of "yes" votes, there is a chance that the Plan will not be approved by the Bankruptcy Court. By voting "no," you are not waiving your rights to distributions under the Plan, but you may be putting the Plan at risk of not being approved.

WHAT IF I WANT TO OPT OUT OF THE SETTLEMENT AND RELEASES IN THE PLAN?

Each ballot or notice you receive will contain an option for you to opt out of the settlement and releases contained in the Plan.

It is important to note that the source for most of the cash distributions to be made under the Plan is the $37 million settlement fund discussed above. These funds are not available to you if you opt out of providing a release. Without the cash and loan forgiveness being provided as part of the settlement, the Estate would not have any funds to make cash distributions from its causes of action unless it was successful in litigating claims against the settlement parties and collecting judgments. Additionally, absent the settlement, any funds the Estate receives from tax refunds would go to repay the loan received from M2 LoanCo during this bankruptcy before any cash distributions to creditors.

A more detailed description of the settlement and the various releases can be found in Section III.B of this Disclosure Statement. The "Released Parties" include YesCare, CHS TX, Perigrove, Perigrove 1018, M2 LoanCo, and several other related entities and individuals.

Because choosing to opt out of the settlement and third-party releases in the Plan will result in you giving up your rights to the cash the Estate expects to receive from the Global Settlement. The Debtor and Committee therefore strongly recommend you seek advice from bankruptcy counsel before checking the opt-out box on your ballot or opt-out form. You should also consider the following:

- First, by opting out of the releases, you are waiving any right to receive distributions from the $37 million settlement fund or the ERC fund. This will likely dramatically reduce your recoveries under the Plan.

- Second, even if you opt out of the third-party releases, the Plan still proposes to release the Debtor's causes of action against the Released Parties. These "Debtor Releases" are described in Section IV.C of this Disclosure Statement, and they may impact some of your claims, particularly if your claims derive from these Estate causes of action.

- Third, if you elect to receive an Expedited Distribution of $5,000, you may not opt out of the third-party releases.

- Finally, the Plan contains "gatekeeping provisions" that will require you to seek permission from the Bankruptcy Court before you are allowed to pursue your individual direct claims (if any) against the Released

Parties. These components of the Plan ensure consistency and predictability in rulings so that competing courts do not issue conflicting rulings about what claims have and have not been released. These provisions mean that the Bankruptcy Court will decide if you are allowed to pursue your claim. If you have a claim that is different and independent from the Estate's claims (which are all being resolved and released through the Global Settlement), then the Bankruptcy Court's gatekeeping provisions will ensure that you can pursue your claims. Because the question of whether a claim is a direct individual claim can be a complex legal issue, the Debtor and the Committee recommend you seek advice from bankruptcy counsel on this issue if you are considering choosing to opt out.

WHERE DO I SEND MY BALLOT OR OPT-OUT FORM?

Your ballot or opt-out form should be mailed to KCC, the Debtor's Solicitation Agent. Alternatively, you may fill out your ballot online using the electronic key and password mailed to you.

YOUR BALLOT OR OPT-OUT FORM WILL NOT BE COUNTED IF YOU SEND IT TO THE BANKRUPTCY COURT OR ANYONE OTHER THAN KCC.

DOES THIS PLAN PREVENT ME FROM HAVING MY DAY IN COURT?

No. If the Plan is approved, you will still be entitled to your day in court.

If you have a Personal Injury Claim and decline all settlement proposals, you will be allowed to continue your lawsuit outside of the Bankruptcy Court. There may or may not be insurance to cover your claim, depending on the nature of the claim, where the injury occurred, and the number of other potential claims that are asserted under the same policies.

If you have a Non-Personal Injury Claim, the Liquidation Trustee will attempt to settle your claim after the Effective Date. If you cannot reach an agreement with the Liquidation Trustee, you can have your claim heard by the Bankruptcy Court, after full notice and an evidentiary hearing.

Under either scenario, the Plan offers you options without limiting your rights to have your day in court, if that is what you desire.

DO I NEED TO HIRE AN ATTORNEY TO EXPLAIN MY OPTIONS TO ME?

While this Disclosure Statement was prepared in plain English to make it easier for creditors to understand, the Debtor and Committee encourage all parties to seek legal counsel before making any decisions.

If you need help filling out your ballot, you are welcome to call KCC, the Debtor's Claims Agent, at (866) 967-0491 (Toll-Free) or (310) 751-2691 (International). Please note, however, that KCC, as well as counsel to the Debtor and counsel to the Committee, are not your attorneys and cannot offer you legal advice.

If you want to object to the Plan or this Disclosure Statement, the Debtor and the Committee encourage you to hire counsel to file an appearance on your behalf.

WHAT ARE THE DEADLINES FOR ME TO RESPOND?

Below are the key dates and deadlines relevant to the Plan:

- Ballots and Opt-Out Forms Due: February [•], 2024
- Confirmation Objection Deadline: February [•], 2024
- Hearing to Consider Confirmation of the Plan: March [•], 2024

THIS DISCLOSURE STATEMENT MAY NOT BE RELIED UPON FOR ANY PURPOSE OTHER THAN AS A DESCRIPTION OF THE PLAN AND THE CHAPTER 11 CASE, AND NOTHING CONTAINED HEREIN

SHALL CONSTITUTE AN ADMISSION OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN ANY PROCEEDING INVOLVING THE DEBTOR OR ANY OTHER PARTY, OR BE DEEMED CONCLUSIVE EVIDENCE OF THE LEGAL EFFECT OF THE PLAN ON HOLDERS OF CLAIMS OR INTERESTS. CERTAIN INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT IS, BY ITS NATURE, FORWARD LOOKING, AND CONTAINS ESTIMATES, FORECASTS AND ASSUMPTIONS WHICH MAY PROVE TO BE MATERIALLY DIFFERENT FROM ACTUAL RESULTS.

THE STATEMENTS CONTAINED IN THIS DISCLOSURE STATEMENT ARE MADE AS OF THE DATE HEREOF UNLESS ANOTHER TIME IS SPECIFIED. NEITHER DELIVERY OF THIS DISCLOSURE STATEMENT NOR ANY EXCHANGE OF RIGHTS MADE IN CONNECTION WITH THE PLAN SHALL, UNDER ANY CIRCUMSTANCES, CREATE AN IMPLICATION THAT THERE HAS BEEN NO CHANGE IN THE INFORMATION SET FORTH HEREIN SINCE THE DATE OF THIS DISCLOSURE STATEMENT OR THE DATE ON WHICH THE MATERIALS RELIED UPON IN PREPARATION OF THIS DISCLOSURE STATEMENT WERE COMPILED.

THE INFORMATION CONTAINED IN THIS DISCLOSURE STATEMENT HAS NOT BEEN SUBJECT TO A CERTIFIED AUDIT OR INDEPENDENT VERIFICATION. THE INFORMATION CONTAINED HEREIN AND THE RECORDS KEPT BY THE DEBTOR ARE NOT WARRANTED OR REPRESENTED TO BE WITHOUT INACCURACY.

NO REPRESENTATIONS OR ASSURANCES CONCERNING THE DEBTOR OR THE PLAN ARE AUTHORIZED BY THE DEBTOR OTHER THAN AS SET FORTH IN THIS DISCLOSURE STATEMENT AND THE EXHIBITS ATTACHED HERETO, INCORPORATED BY REFERENCE OR REFERRED TO HEREIN. ANY REPRESENTATIONS OR INDUCEMENTS MADE BY ANY PERSON OTHER THAN THOSE CONTAINED HEREIN SHOULD NOT BE RELIED UPON. ANY SUCH ADDITIONAL REPRESENTATIONS OR INDUCEMENTS SHOULD BE REPORTED TO COUNSEL TO THE DEBTOR AND THE COMMITTEE.

THE SECURITIES AND EXCHANGE COMMISSION HAS NEITHER APPROVED NOR DISAPPROVED THIS DISCLOSURE STATEMENT, NOR HAS IT PASSED UPON THE ADEQUACY OR ACCURACY OF THE STATEMENTS CONTAINED HEREIN.

All capitalized terms used but not otherwise defined herein shall have the meanings ascribed to those terms in the Plan.

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impaired, as they are not entitled to receive any distribution under the Plan. As a result, Holders of Interests in Class 7 are conclusively deemed to have rejected the Plan. The Debtor and Committee are seeking the votes of Holders of Claims in Classes 3, 4, 5, and 6.

E. Voting and Opt-Out Rights

1. Voting on the Plan

Holders of Claims in Classes 3, 4, 5, and 6 are impaired under the Plan and are entitled to vote to accept or reject the Plan. A Ballot casting a vote on the Plan may be disregarded if the Bankruptcy Court determines, after notice and a hearing, that such Ballot was not solicited or procured in good faith or in accordance with the provisions of the Bankruptcy Code.

2. Opt-Out Rights

The Plan provides third-party releases for certain insider and related parties, including YesCare, CHS TX, Geneva Consulting, M2 LoanCo, Perigrove, Perigrove 1018, and other related entities and individuals, as more fully described in Section III.B below captioned "Global Settlement," **Schedule 4** attached hereto, and in Article IV.B of the Plan. If any Holder of a Claim or Interest does not wish to consent to a release of its individual claims and causes of action (if any) against the third parties proposed to be released, the Ballot or Opt-Out Form you received allows you to opt out of the third-party releases, as long as you do not select the Expedited Distribution option. However, if you choose to opt out, (if) you will forfeit your allocation of (a) the $37,000,000 settlement payment being made as consideration for the third-party release, and (b) any cash remaining in the ERC fund after payment of priority federal tax claims; and (ii) you will not receive a release from the Debtor or the other releasing parties. Because you will be giving up these rights by choosing to opt out, the Debtor and the Committee encourage you to consult with an attorney in making this decision.

F. Confirmation and Consummation

There are two methods by which a plan may be confirmed: (i) the "acceptance" method, pursuant to which all impaired classes of claims and interests have voted in the requisite amounts to accept the plan and the plan otherwise complies with section 1129(a) of the Bankruptcy Code; and (ii) the "cram-down" method under section 1129(b) of the Bankruptcy Code, which is available even if classes of claims vote against the Plan.

1. Acceptance of the Plan

A plan is accepted by an impaired class of claims if the holders of at least two-thirds (⅔) in amount and more than one-half (½) in number of the allowed claims in such class actually voting vote to accept the plan. A plan is accepted by an impaired class of equity interests if holders of at least two-thirds (⅔) in amount of allowed equity interests in such class actually voting vote to accept the plan.

BALLOTS THAT ARE SIGNED BUT THAT DO NOT EXPRESSLY INDICATE EITHER AN ACCEPTANCE OR REJECTION OF THE PLAN, OR INDICATE BOTH AN ACCEPTANCE AND A REJECTION OF THE PLAN, WILL BE DISREGARDED.

In addition to this voting requirement, section 1129 of the Bankruptcy Code requires that a plan be accepted by each holder of a claim or equity interest in an impaired class entitled to vote or that the plan otherwise be found by the bankruptcy court to be in the best interests of each holder of a claim or equity interest in such class (*see* discussion of "Best Interests Test" below).

2. Confirmation Without Acceptance by All Impaired Classes

Under section 1129 of the Bankruptcy Code, the Proponents have the right to seek confirmation of the Plan notwithstanding the rejection of the Plan by a class of Claims.

A plan may be confirmed notwithstanding its rejection by one or more classes of claims or equity interests if, in addition to satisfying the applicable requirements of section 1129(a) of the Bankruptcy Code, the plan (1) is "fair and equitable" with respect to each class of claims or equity interests that is impaired under, and has not accepted, the plan and (2) does not "discriminate unfairly."

A plan is "fair and equitable" under the Bankruptcy Code with respect to a dissenting class of unsecured claims if, with respect to such dissenting class either (a) the plan provides that each holder of a claim of such class receive or retain property of a value equal to the allowed amount of such claim, or (b) no holders of junior claims or equity interests receive or retain any property under the plan on account of such junior claims or interests.

This fair and equitable standard, also known as the "absolute priority rule," requires, among other things, that unless a dissenting unsecured class of claims or equity interests receives full compensation for its allowed claims or allowed interests, no holder of claims or interests in any junior class may receive or retain any property under the plan on account of such claims or interests. The Proponents believe that if a non-consensual confirmation is necessary, the requirements for non-consensual confirmation will be met and the Plan will be confirmed despite its rejection by any impaired dissenting Class of Claims.

The requirement that a plan not "discriminate unfairly" means, among other things, that a dissenting class must be treated substantially equally with respect to other classes of equal rank. The Proponents believe that the Plan meets this requirement with respect to any Class of Claims that might reject the Plan, because classes of equal rank are treated equally under the Plan.

3. Best Interests Test

Notwithstanding acceptance of the Plan by each impaired Class, in order for the Plan to be confirmed, the Bankruptcy Court must determine that the Plan is in the best interests of each Holder of a Claim or Interest in an impaired Class who has not voted to accept the Plan. Accordingly, if an impaired Class does not unanimously accept the Plan, the best interests test requires the Bankruptcy Court to find that the Plan provides for each Holder of a Claim or Interest in such Class to receive or retain on account of such Claim or Interest property of a value, as of the Effective Date of the Plan, that is not less than the amount each such Holder would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code on such date.

In this case, the Debtor is liquidating. As a result, and by implication, constituents will receive under the Plan at least what they would otherwise receive if the chapter 11 case was converted, and the Debtor was liquidated in chapter 7. To demonstrate compliance with the best interests test, the Debtor, with the assistance of its financial advisor, prepared the liquidation analysis attached hereto as **Schedule 1**. The liquidation analysis shows that the value of the distributions to Holders of Allowed Claims under the Plan would be the same or greater than under a hypothetical chapter 7 liquidation. Accordingly, the Proponents believe that the Plan is in the best interests of creditors.

II. Background and Events Leading Up to Chapter 11

A. Corizon's Business and Operations Before the Perigrove 1018 Acquisition

1. General Operations

The Debtor was formerly known as Corizon Health, Inc. and will be referred to as "Corizon" within this Section II as to events occurring prior to the May 5, 2022 Divisional Merger for narrative efficiency, ease of reference, and to avoid confusion as to the corporate changes going into effect on that date.

Corizon was a nationwide provider of correctional healthcare, providing services in multiple states across the United States. In the ordinary course of its business, Corizon entered into agreements with various (typically governmental) entities under which Corizon would provide, or arrange for the provision of, healthcare services to certain inmates or detainees of the contract counterparty.

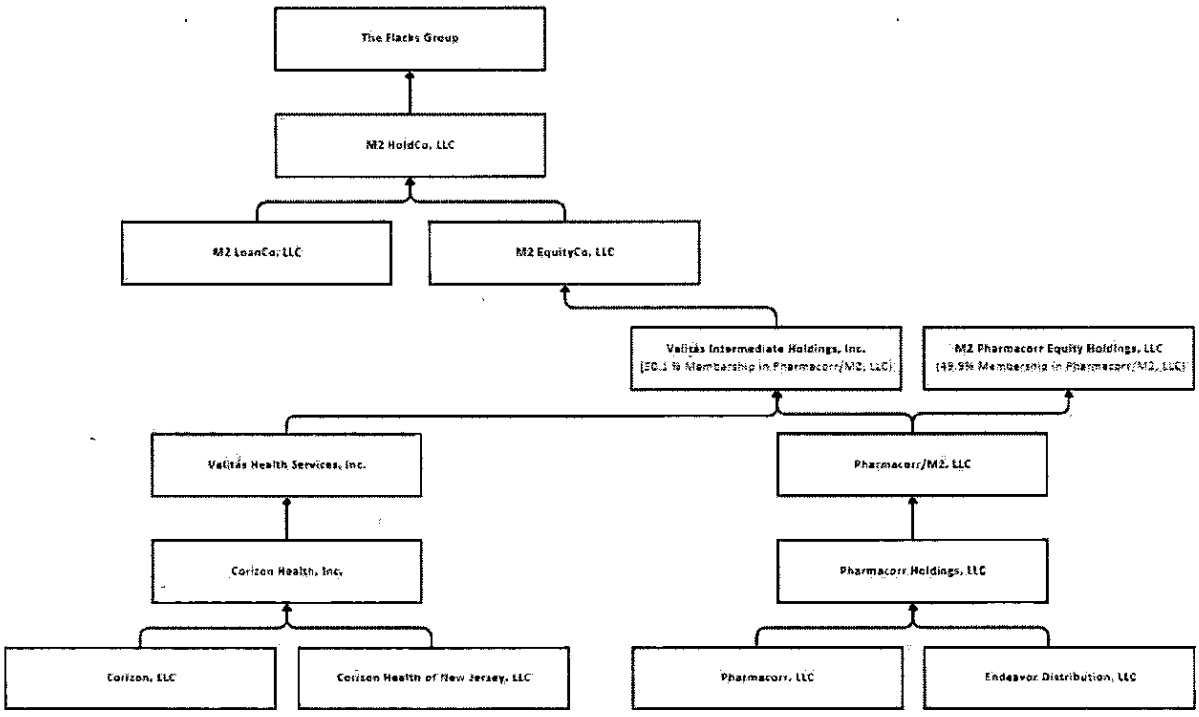
2. June 2020: Struggling Corizon Acquired as a "Distressed Asset" by The Flacks Group

For most of its history until the mid-2010s, Corizon's business was financially successful. Near the end of the decade, however, the company began to struggle due to the loss of key customer contracts and mounting liabilities, largely driven by claims asserted by incarcerated individuals alleging mistreatment or inadequate healthcare. As a result of Corizon's dramatic decline in revenues, increase in asserted tort liabilities, and the impending maturity of its institutional debt, it began to market itself for potential acquisition by companies interested in "distressed" investments.

In June 2020, the Flacks Group acquired Corizon. The Flacks Group is an investment company that focuses on "discounted assets" and has publicly portrayed itself and its principal as being willing to invest in assets that other investors "wouldn't touch." Upon information and belief, the Flacks Group acquired Corizon's operations and its existing debt for approximately $10 million. For the sake of clarity, the Debtor and the Committee do not believe, based on their extensive investigations, that there is any relationship or connection between the Flacks Group and Perigrove.

The acquisition transaction was structured to minimize the cash investment the Flacks Group made in the company. At the time of the transaction, Corizon's internal documents show that it was indebted to third-party institutional lenders for over $100 million in secured funded debt resulting from transactions that originated in or prior to 2017.

Upon and immediately following the acquisition, the Flacks Group established the following organizational structure for Corizon and its corporate family:



In this Bankruptcy Case, questions have been raised about the identity of M2 LoanCo, LLC ("M2 LoanCo") and other related parties. M2 LoanCo was established in 2020 by the Flacks Group as part of its transaction to acquire the secured funded debt instruments previously held by third-party institutional lenders. M2 LoanCo asserts that as of February 28, 2022, the amount of secured debt owed by the Debtor to M2 LoanCo was in excess of $97.8 million. The Committee disputes M2 LoanCo's characterization of the debt for a number of reasons, including without limitation the fact that the Flacks Group acquired it for pennies on the dollar using, in part, Corizon's existing funds.

The Committee disputes any assertion that the purported lender-borrower relationship between M2 LoanCo and the Debtor was genuine and believes that the purported debt obligation was canceled and/or converted to equity by the actions, transactions, course of dealing, tax filings, and statements of the Debtor and M2 LoanCo.[1] **Schedule 4** attached hereto provides additional information about M2 LoanCo and other related parties.

3. November/December 2021: Flacks Group Fails to Improve Corizon's Finances and Plans a Bankruptcy Filing Before Pivoting to a Sale to Perigrove 1018.

The Flacks Group was unsuccessful in its efforts to improve the company's financial performance or prevent its further decline. By the third quarter of 2021, Corizon's business was struggling even more than when The Flacks Group had acquired it. The company had lost its three largest company contracts and was facing millions of dollars in tort and contract liabilities stemming from alleged inadequate care at the facilities it served and the impact of its dwindling revenues on performance of obligations.

As a result, the Flacks Group began exploring sale opportunities, debt restructuring, and bankruptcy (either chapter 11 or chapter 7). Although Corizon's revenues had continued to decline, the Flacks Group seemed to view Corizon's pharmacy subsidiary—an entity called PharmaCorr, LLC ("PharmaCorr")—as a potentially profitable standalone business.

To extract value from PharmaCorr, the Flacks Group effectuated a series of transactions designed to split off and sell PharmaCorr, then file bankruptcy cases for Corizon and its related entities.[2] In late November and early December 2021, just a few weeks before the Flacks Group had planned to file those bankruptcy cases, members of the Flacks Group were introduced to Isaac Lefkowitz and other investors as potential buyers for PharmaCorr.

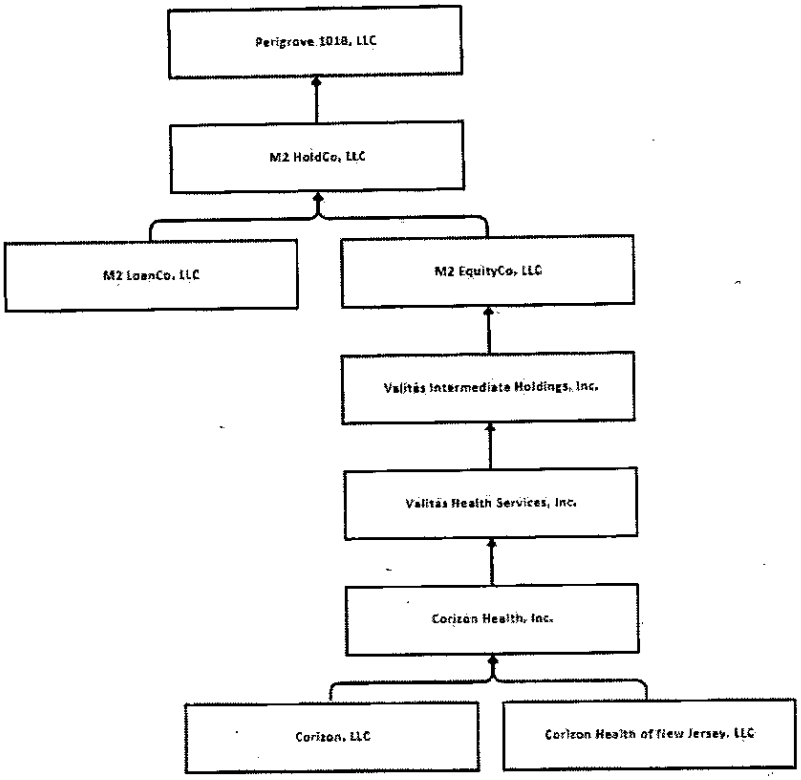
Though their initial interest was in PharmaCorr, Mr. Lefkowitz and other investors quickly shifted focus to a potential acquisition of all of the Debtor-related entities the Flacks Group owned, including Corizon and its subsidiaries, M2 LoanCo, and PharmaCorr, among others.

After approximately a week of negotiations, Mr. Lefkowitz and the other investors in an entity called Perigrove 1018, LLC ("Perigrove 1018"), acquired the entire portfolio of companies from the Flacks Group. The Committee believes Perigrove 1018 was able to acquire the companies for a nominal sum, likely due to the financial uncertainty discussed above. Rather than directly acquiring the operating companies or M2 LoanCo and M2 HoldCo, Perigrove 1018 acquired the parent companies reflected in the chart above and with them, the entirety of the Corizon operation.

As of December 7, 2021, Perigrove 1018 owned or controlled Corizon and all its owners and affiliates illustrated in the chart above, including: (1) M2 HoldCo, LLC, which itself owned M2 EquityCo, LLC and M2 LoanCo, LLC (2) Valitás Intermediate Holdings, Inc., which itself owned Valitás Health Services, Inc., Corizon Health, Inc., Corizon Health of New Jersey, LLC, and Corizon, LLC; and (3) M2/PharmaCorr Holdings, LLC, which owned PharmaCorr. Perigrove 1018's ownership structure of the Corizon entities is demonstrated in the following chart:

[1] M2 LoanCo disputes the Committee's characterization. Regardless, this dispute would be resolved under the Global Settlement.

[2] The Committee believes the Estate may have claims against the Flacks Group and Michael Flacks related to its spin-off of PharmaCorr. Those claims, if any, are not being released as part of the Global Settlement.



B. Perigrove 1018 Takes Over Corizon and Transfers Funds from Corizon Accounts to Perigrove 1018 Related Parties.[3]

1. At Isaac Lefkowitz's Direction, Corizon Sends $3 Million to Perigrove 1018 Related Party Geneva Consulting Days After Acquisition.

Perigrove 1018 did not move forward with the bankruptcy filing the Flacks Group had planned. Instead, Perigrove 1018 placed Mr. Lefkowitz in charge of the entities it had acquired and planned to move forward with the company's business. Mr. Lefkowitz's first actions at Corizon included directing Corizon's immediate parent (Valitás Health, Inc.) accountants to enter into a Consulting Agreement with related entity Geneva Consulting, LLC ("Geneva") and directing Corizon's accountants to transfer $3 million to Geneva. Geneva shares common directors with Perigrove 1018 and the Committee believes Geneva is owned, directly or indirectly, by Perigrove 1018 and its principals. Additional detail about the relationship between these entities can be found at **Schedule 4.**

Under the Consulting Agreement with Geneva, the company made an initial retainer payment of $3 million payment referenced above and five subsequent monthly payment of $500,000 each month in return for "Corporate Restructuring" services. Mr. Lefkowitz executed the agreement on behalf of Valitás Health and another individual listed as a director on Perigrove's website at the time, executed the agreement on behalf of Geneva. Though the agreement referenced only "Corporate Restructuring," Mr. Lefkowitz described the role of Geneva in e-mails to at least one Corizon executive as relating to ongoing litigation claims. The executive questioned the necessity of the payment. Mr. Lefkowitz subsequently terminated the executive's employment.

[3] As discussed in greater detail herein, the Debtor and the Committee have each engaged in extensive investigations of the Debtor's potential causes of action against insiders, affiliates and third parties. This section provides the factual background for the approximately $29 million in specific transfers of funds the Debtor and the Committee identified as giving rise to potential causes of action against Perigrove 1018, its directors and related parties, and the other parties to the Global Settlement.

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT G RESPONSE TO ECF 1324

The **Southern Center for Human Rights** ("SCHR") is a nonprofit law firm dedicated to advancing equality, dignity, and justice for people impacted by the criminal legal system. Through litigation and advocacy, SCHR has worked for over 45 years to defend the civil and human rights of incarcerated people, ensure humane conditions of confinement in jails and prisons, and end degrading law enforcement practices. In light of its experience, SCHR has a unique perspective on the issues raised in this case, including the due process rights of people in prisons and jails, and an interest in ensuring that those rights are protected in any context, including bankruptcy court.

ARGUMENT

Since its formation in 2011, Corizon (the Debtor's corporate predecessor) was one of the nation's largest providers of correctional health care services in the United States, at one point responsible for delivering health care to over 300,000 people incarcerated in state prisons and county jails across the country. Doc. 75 at 3. For over a decade, Corizon maximized profits by systematically providing substandard care—and sometimes no care at all—subjecting incarcerated people to a substantial risk of serious harm and death. Indeed, a federal district court found that the State of Arizona's prison health care system, which Corizon was responsible for administering between 2013 and 2019, "is plainly grossly inadequate." *Jensen v. Shinn*, 609 F. Supp. 3d 789, 796 (D. Ariz. 2022). As the Court detailed in its 200-

page opinion, multiple incarcerated people died or were seriously harmed as a direct result of Corizon's failure to provide timely and adequate health care. *See id.* at 815-16, 818-22, 827-30, 903 n.70. Many more suffered prolonged and preventable pain and suffering. *Id.*

The harm that Corizon perpetrated while serving as the health care provider in Arizona reflects a well-documented pattern of neglect and deliberate indifference to the lives of the incarcerated people. S*ee, e.g.*, *Jones v. Cnty. of Kent*, Judgment, ECF No. 244, No. 1:20-cv-36, (W.D. Mich. 2022) ($6.4 million judgment in wrongful death action against Corizon for deliberate indifferent to incarcerated person's alcohol withdrawal); *Pitkin v. Corizon Health, Inc.*, Judgment, ECF No. 109, No. 3:16-CV-02235-AA, (D. Or. Mar. 13, 2018) ($10 million judgment in wrongful death action against Corizon for its deliberate indifference to incarcerated person's severe, progressing, and life-threatening opioid withdrawal); *Oyenik v. Corizon Health Inc.*, 696 F. App'x 792, 794 (9th Cir. 2017) (finding that incarcerated person had provided proof of at least a dozen instances of Corizon denying or delaying consultations, biopsies, and radiation treatment for prostate cancer over the course of almost a year); New York City Department of Investigation, *Investigation Finds Significant Breakdowns by Corizon Health Inc., the City-Contracted Health Care Provider in the City's Jails, and a Lack of Oversight by the City Correction and Health Departments* (June 2015), (finding that Corizon's failure to screen and

supervise staff "cannot be disassociated from the illegal activity and inmate deaths and injuries that have occurred").[2]

Facing mounting liability for that pattern of unlawful conduct, in mid-2022, Corizon began to take steps to effectuate a financial and corporate scheme designed to evade as much liability as possible for over a decade of egregious behavior. Corizon exploited a quirk in Texas corporate law to do what is now colloquially known as the "Texas Two-Step." *See Jackson v. Corizon Health Inc.*, 2022 WL 16575691, at *1 (E.D. Mich. Nov. 1, 2022); Michael Francus, *Texas Two-Stepping Out of Bankruptcy*, Mich. L. Rev. Online (June 11, 2022). Step One: Corizon effectuates a divisional merger under Texas corporate law where it splits itself into two new corporate entities: Tehum Care Services Inc. ("Bad Co.") and CHS TX ("Good Co."). Corizon dumps all its outstanding liabilities and one million dollars into Bad Co. and put all assets—including all employees, active contracts, real estate, equipment and most of its cash—into Good Co.[3] Step Two: Liability-laden Bad Co. declares bankruptcy. Meanwhile, the Good Co. entity—with all the assets—rebrands itself as YesCare and continues business as usual, free from most debt and liabilities. Through this manipulation of Texas corporate law and the bankruptcy

[2] Available at https://www.nyc.gov/assets/doi/press-releases/2015/jun/pr16corizonrpt_61015.pdf.
[3] Good Co.—or CHS TX—remained owned by the same, sole shareholder as Corizon, and was managed by the same CEO and Chair, Sara Tirshwell, that had managed Corizon prior to the divisional merger. *Id.*

process, Corizon has effectively shielded its assets from its creditors. It has also secured an expansive stay of civil cases not just against itself, but also against correctional entities that are indemnified by Corizon. Justice for incarcerated and formerly incarcerated people—as well as many other creditors—has ground to a halt.

Section I of this brief explains that incarcerated creditors face unique obstacles that impinge on their right to appear and be heard in these proceedings. These unique obstacles demand careful consideration in deciding how to best protect the rights of incarcerated people in these proceedings.[4] Section II argues that the Bar Date Order fails to protect incarcerated people's right to notice, and Section III argues that the Court's process for handling *pro se* motions must meaningfully protect incarcerated people's right to notice and an opportunity to be heard. Finally, Section IV explains how the DIP financing agreement, if ordered, will significantly reduce, or even eliminate, the ability of incarcerated creditors to recover. The Court should delay entering a final DIP order until it is satisfied that it has complied with incarcerated creditors' due process rights.

I. INCARCERATED CREDITORS FACE UNIQUE OBSTACLES THAT IMPINGE ON THEIR RIGHT TO APPEAR AND BE HEARD IN THESE PROCEEDINGS

[4] *Amici* do not concede that this case is properly in bankruptcy court.

context of bankruptcy proceedings, for which there are often complex procedural rules and questions of corporate law that make the proceedings difficult for even non-bankruptcy lawyers to fully understand, much less *pro se* litigants with low literacy levels.

Amici ask that the Court take note of these barriers when determining how to protect incarcerated creditors' right to notice and the opportunity to meaningfully participate in these proceedings. Bankruptcy proceedings raise unique due process concerns because they attempt to *resolve* all claims against the debtor. The due process required to resolve and *preclude* an incarcerated person's claim is naturally different (and more robust) than the due process required to facilitate an incarcerated person's general access to the courts. As discussed in Sections II and III, it is within the Court's power and discretion to enact additional safeguards in these proceedings to protect incarcerated creditors' due process rights.

II. THE COURT'S BAR DATE ORDER FAILS TO PROTECT INCARCERATED CREDITORS' DUE PROCESS RIGHTS

The Court's Bar Date Order fails to establish a sufficiently robust notice plan that would adequately protect the due process rights of all incarcerated creditors. Doc. 499. "An elementary and fundamental requirement of due process in any proceeding

(national survey of almost 40,000 prisoners incarcerated in more than 200 state and federal prisons, including at least one facility located in each state).

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 an opportunity to present their objections." *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950). In bankruptcy proceedings, the application of due process requirements "depends on the specific circumstances of each creditor, and bankruptcy courts have distinguished the requisite notice that must be given to 'known' creditors and 'unknown' creditors." *In re Placid Oil Co.*, 463 B.R. 803, 816 (Bankr. N.D. Tex. 2012), aff'd, 753 F.3d 151 (5th Cir. 2014). Generally, "known" creditors must receive actual notice, while "unknown creditors" may receive only constructive notice. *See Chemetron Corp. v. Jones*, 72 F.3d 341, 345 (3d Cir. 1995).

In this case, the Bar Date Order fails to satisfy due process requirements in two ways. First, the list of creditors who will receive actual notice is underinclusive because it includes only incarcerated creditors with pending litigation. There is likely a significant group of incarcerated creditors who have previously notified Corizon/Tehum of their claims, but who have not filed a lawsuit in state or federal court. These creditors are "known" creditors who require actual notice. Second, the Bar Date Order's provisions on notice by publication are insufficient to provide meaningful constructive notice to any incarcerated creditor whose identity is unknown.

A. Incarcerated People Who Filed Medical Grievances with Corizon Pre-Petition Are "Known" Creditors Entitled to Actual Notice

The Bar Date Order requires Corizon/Tehum to mail notice of the bar date "only to its known creditors." Doc. 499 at 5. The Order does not describe what efforts Corizon/Tehum must make in identifying known creditors, although it does list the categories of people who will receive actual notice. Incarcerated creditors explicitly fall into a single category:[10] "all entities who are party to active litigation with the Debtor." *Id.* at 6. This approach will result in a significant number of known incarcerated creditors failing to receive actual notice.

Incarcerated creditors need not have filed suit in order to have a claim against Corizon/Tehum. The Bankruptcy Code defines "creditor" as "an entity that has a claim against the debtor," and defines "claim" as "a right to payment, whether or not such right is reduced to judgment . . . or unsecured." 11 U.S.C. § 101(5), (10). "The legislative history of the Bankruptcy Code indicates that Congress intended the term "claim" to be given a broad interpretation so that "all legal obligations of the debtor, no matter how remote or contingent will be able to be dealt with in the bankruptcy case." *In re Placid Oil Co.*, 463 B.R. at 812. In the Fifth Circuit, a claim arises "at the time of the debtor's negligent conduct forming the basis of liability." *Id.* at 813. In this case, there are possibly hundreds or thousands of incarcerated people who

[10] The list also includes a catch-all category: "all creditors and other known holders of Claims against the Debtor," but the Order does not specify how those creditors will be identified.

were harmed by Corizon's negligent conduct and thus have a claim, even if they have not yet filed suit.

Using active litigation as a proxy for identifying all known incarcerated creditors is particularly inadequate given that, under federal law (and many times, also state law), incarcerated people must exhaust administrative remedies before filing a civil suit. *See* 42 U.S.C. § 1997e(a); Mich. Comp. Laws § 600.5503; Mo. Rev. Stat. § 506.3840. This barrier to accessing the civil court system means that the number of incarcerated creditors with active lawsuits is in no way a true reflection of how many incarcerated people have a claim against Corizon. For example, until mid-November 2021, Corizon provided health care to approximately 23,000 people incarcerated by the Missouri Department of Corrections. Keith Sanders, *Centurion Health Supplants Corizon in Missouri After Court Ruling*, Prison Legal News, (Apr. 1, 2022).[11] Currently, Corizon/Tehum has only identified 28 currently or formerly incarcerated creditors (or their estate) in Missouri. Doc. 481 at 43-66. Notably, Missouri has a five-year statute of limitations for personal injury actions, including Section 1983 claims. Mo. Rev. Stat. § 516.120(4); *Sulik v. Taney Cnty., Mo.*, 393 F.3d 765, 767 (8th Cir. 2005). Thus, there may be hundreds, if not thousands, of

[11] Available at https://www.prisonlegalnews.org/news/2022/apr/1/centurion-health-supplants-corizon-missouri-after-court-ruling/.

incarcerated people with viable claims against Corizon/Tehum beyond those with active litigation.

Corizon/Tehum has the ability to ascertain the identities of additional incarcerated creditors. Correctional facilities administer internal grievance processes through which incarcerated people can raise complaints relating to their conditions of confinement, including the provision of inadequate health care; it is this process that must be exhausted before filing suit. *See* 42 U.S.C. § 1997e(a). Under at least some of its contracts with correctional institutions, Corizon was explicitly responsible for establishing policies and procedures for addressing grievances related to health care. *See e.g.,* Exhibit A at 30. Corizon was also required to aggregate grievance data in some form. *See id.* (requiring Corizon to "generate and provide to the Jail Commander a monthly report of complaints received. The reports should include, at a minimum, inmate name and identification number, date the complaint was received, complaint description, date of response, and a brief description of the resolution.") Corizon/Tehum should use this grievance data to identify additional incarcerated creditors who have claims against it.

Given the historic volume of litigation against it, both from individual litigants and in larger prison conditions cases alleging that the care Corizon provided was systemically inadequate, as well as the number of grievances routinely lodged against it, Corizon/Tehum knows that the number of incarcerated people with claims

against it well exceeds the number of lawsuits currently pending. These incarcerated creditors are entitled to actual notice. *See In Matter of Motors Liquidation Co.*, 829 F.3d 135, 159 (2d Cir. 2016) ("If the debtor knew or reasonably should have known about the claims, then due process entitles potential claimants to actual notice of the bankruptcy proceedings.").

For these reasons, the Court should order Corizon/Tehum to engage in a meaningful effort—including, but not necessarily limited to, a review of grievances filed by Corizon patients, of pending litigation in federal and state court, and notices of claims filed in accordance with state law—to identify additional known incarcerated creditors who, consistent with due process, are entitled to actual notice of the bar date. *See Chemetron*, 72 F.3d at 345. Actual notice should be provided, and the Court should consider whether, in light of the delay in identifying these additional known creditors, the bar date should be extended.

B. Due Process Requires Constructive Notice Efforts that Exceed One-Time Publication in Prison Legal News

The constructive notice efforts required under the Bar Date Order do not adequately protect the due process rights of incarcerated creditors. Although constructive notice by publication may satisfy due process, that notice must still be "reasonably calculated, under all of the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their

objections." *Placid Oil*, 463 B.R. at 816-17. The Bar Date Order requires Corizon/Tehum to publish the bar date notice "on one occasion in the national edition of the *Wall Street Journal*, the *New York Times*, and *Prison Legal News*." Doc. 499 at 7. But as Corizon/Tehum is well aware, incarcerated people cannot freely access most periodicals; and it is doubtful that all of the prisons and jails in jurisdictions where Corizon has operated subscribe to the *Journal* or the *Times*. Furthermore, some correctional facilities and systems ban the circulation of *Prison Legal News* (*PLN*). *See Prison Legal News v. Secretary, Florida Dep't of Corrs.*, 890 F.3d 954 (11th Cir. 2018). Even if an incarcerated creditor has access to *PLN*, which is published only monthly, by the time the relevant edition is circulated inside correctional facilities, incarcerated creditors will likely have less than two months to obtain and file a proof of claim before the August 14, 2023, bar date. *See* Doc. 499 at 2.

Given the unique circumstances of incarcerated people, more robust notice is warranted, particularly if the Court does not require actual notice to be given to hundreds of other known incarcerated creditors with pre-petition claims. The Purdue Pharmaceutical bankruptcy provides a useful reference for how extensive a notice plan could be. In that case, notice reached an estimated ninety-five percent of all adults in the country through a variety of means beyond publication in periodicals, with an average message frequency exposure of six times. Supp. Decl. Jeanne C.

Finegan, *In re Purdue Pharma L.P., et al.*, No. 19-23649, Doc. 1179 at 3 (Bankr. S.D.N.Y. 2019). Of note, in addition to mailing actual notice and the applicable proof of claim form to known creditors, Purdue created a two-page, full-color summary flyer that was mailed to every prescriber of Purdue brand name medications, as well as third-party organizations and community organizers likely to interact with the impacted creditor population. *Id.* at 4, 10.

A similar approach could and should be taken in this case. For example:

- Recognizing the low literacy and education rates pervasive throughout the criminal legal system, the Court should order Corizon/Tehum to create materials that use plain, easy to understand language. Like in the Purdue bankruptcy, Corizon/Tehum could create a flyer that explains, at a minimum, who Corizon is and the dates during which it provided health care services in that jurisdiction and at which facilities, what a "claim" is, what a "proof of claim" is, who can file a claim, what a creditor's basic rights are, and how to request a proof of claim form. *See* Exhibit B (informational flyer in Purdue bankruptcy). The Proof of Claim form should also be simplified. These materials also must be translated into non-English languages commonly spoken in the prison and jail facilities where the company provided services, *e.g.*, Spanish, Haitian Creole, Vietnamese, or other languages. Notice must also be provided to people in prison/jail facilities in formats accessible to people with disabilities, *e.g.*, audio recordings for people with vision impairments or who are blind, and video recordings of American Sign Language for people who are d/Deaf, as required by federal disability laws.

- Recognizing that the impact of notice by publication will be negligible under the current Order, the Court should order Corizon/Tehum to identify additional means for distributing notice. Corizon/Tehum should identify legal service providers and community organizations who work with currently and formerly incarcerated people in the jurisdictions Corizon/Tehum formerly served and provide them with physical and electronic copies of an informational flyer for widespread distribution.

Amici have no doubt that, if asked for assistance, numerous organizations would answer the call to help disseminate this information.

- Recognizing incarcerated people's inability to access legal information and legal documents, the Court should accept handwritten Proofs of Claim even if they do not conform substantially with the official form.

III. THE COURT'S PROCEDURES FOR CONSIDERING *PRO SE* MOTIONS MUST AFFORD PRO LITIGANTS SUFFICIENT DUE PROCESS

The Court held a status conference on May 11, 2023, to consider a collection of *pro se* motions. Docs. 490, 548-49. At that hearing, counsel for the Debtor represented to the Court that it had devised a procedure for handling *pro se* motions. The proposal included excusing the Debtor from responding in writing and proposed holding non-evidentiary hearings monthly. The Court indicated it would hold recurring hearings to rule on *pro se* motions but would not hear any argument. As of the date of this filing, that proposal has not been filed and cannot be scrutinized.

Like all other creditors, incarcerated creditors "may raise and may appear and be heard on any issue." 11 U.S.C. § 1109(a). *Amici* ask the Court to consider the barriers incarcerated people face in accessing the legal system and ensure *pro se* litigants' due process rights to notice and an opportunity to be heard are protected. *See supra* Section I. *Pro se* litigants who file motions that raise difficult or important legal questions should be given an opportunity to be heard by the Court in the same way a non-*pro se* or non-incarcerated litigant would have the opportunity to be heard. And

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT H RESPONSE TO ECF 1324

Docket #0093 Date Filed: 7/31/2023

IN THE UNITED STATES BANKRUPTCY COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

In Re: Tehum Care Services, Inc Debtor.	Case No: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati Plaintiff, Vs. Sarah Tirschwell et al	Adv. Pro. No. 23-03072 (CML)

MOTION FOR INHERENT POWER AND RULE 11 SANCTIONS AGAINST COUNSEL AND DEFENDANTS

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. Represented parties should act through counsel.

Plaintiff asks this court for an order imposing inherent power and Rule 11 Sanctions against counsel and Defendants. In support thereof he submits.

PROOF OF COMPLIANCE

¶ I served this motion on counsel, waited 30 days and then filed it. *In re Rollings 2008 Bankr. Lexis 993 (Bankr. SD Tx March 31, 2008)*

TABLE OF CONTENTS

Cases

MEET AND CONFER

Debtor , Sara Tirschwell and Valitas, , GrayReed, Aaron M. Kaufman Esq, Lydia R. Webb Esq, Amber M. Carson, Esq, Jason S. Brookner Esq; Norton Rose Fulbright US LLP; Jason I. Blanchard Esq; Kristian W. Gluck, Esq; Julie G. Harrison, Esq; Hayward PLLC; Mark A. Weisbart Esq; Melissa Hayward Esq

¶ I contacted counsel for the Debtor and as Sara Tirschwell and Valitas have no counsel, I also contacted them. I asked them to provide the following documents and

they did not. I informed them these documents, if they show, there was no fraud etc, I shall dismiss my claims.

a. Any facts, documents information submitted to counsel for the purpose of filing the bankruptcy petition and schedules, to include notes metadata, minutes of meetings. See In re French, 162 BR 541, 548 (Bankr. D.SD. 1994) (information submitted to counsel to prepare bankruptcy petition and schedules, are not privileged.)

b. Any emails and metadata on any emails and documents that discuss the transfer of the bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, , including the bibliographic information.

c. Any emails and metadata on any emails and documents that discuss obtaining from the United States and its agencies, funds for pandemic relief by Corizon, , including the bibliographic information.

d. Any emails and metadata on any emails and documents that discuss the 25 contracts cancelled or not renewed with Corizon, , including the bibliographic information.

e. Any emails and metadata on any emails and documents were allegations have been made against Corizon for concealment of evidence, , including the bibliographic information

f. Any emails and metadata on any emails and documents that bonuses received by Corizon on its contracts no matter how the bonuses have been labelled, , including the bibliographic information.

g. Any emails and metadata on any emails and documents that discuss sanctions against Corizon for litigation misconduct, including for failing to disclose evidence in litigation, including court orders, including the bibliographic information.

h. Any emails and metadata on any emails and documents that assert Corizon falsifying records, including the bibliographic information.

i. Any documents submitted independent counsel to negotiate the loan;

j. Any communications between Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC that concerns the bankruptcy filing and forming of Tehum, Corizon, YesCare, CHS TX

k. Any communications between any of the Defendants and Corizon.

l. Any communications between the liability insurer(s and Corizon.

m. Any cooperation agreements between Corizon, Wexford, Centurion, ADCRR, Naphcare.

n. Any information reviewed by Ankura, Russell Perry that support or contradict the Perry Declarations/ reports.

o. Any SEC Final Rule 201(4)-7 Advisers Act and 38a-1 Investment Company Act, or any filings with any state and/or federal agencies by

Tehum, Corizon, YesCare, CHS TX, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, 2012-2023

p. Filings with any federal and/or state agencies by Defendants as to prison health care.2016-2023

q. Any compliance/noncompliance reports, as to the 25 Corizon contracts cancelled.

r. Any reports submitted by Corizon, ADCRR as mandated by Parsons aka Jensen, 1/1/16 to date.

QUINTAIROS PRIETO WOOD & BOYER ;NICHOLE ROWEY ;LORI METCALF ; JOSEPH SCOTT CONLON ;RENAUD COOK DRURY MESAROS PA; KELLY JOAN MORRISSEY; MICHAEL E. GOTTFRIED ; PAUL CARTER ; DARYL JOHNSON ; JULIA ERWIN ;DIANE BOSCHUWEICZ; DANIEL P. STRUCK ;STRUCK LOVE, BOJANOWSKI & ACEDO PLLC; SARAH L BARNES ; BROENING OBERG WOODS & WILSON PC; GORDON & REES; ANNIE C. MATTHEWS ESQ; MEGAN M. ADEYEMO ESQ; BRENT MARTINELLE ESQ;

¶ I contacted counsel and asked them to provide the following documents and they did not. I informed them these documents, if they show, there was no fraud etc, I shall dismiss my claims.

a. Any documents showing that the judges in the District Court, Ninth and Third Circuits in the cases that are a subject of this litigation, found my claims frivolous or vexatious as they allege;

b. Any documents showing the predicate acts in ECF 1, 4 were previously before any of the courts they say previously adjudicated these cases.

LEXINGTON, ZEICHNER ELIMAN & KRAUSE LLP; YOAV M. GRIVER ESQ; MICHAEL S. DAVIS ESQ;

¶ I contacted counsel and asked them to provide the following documents and they did not. I informed them these documents, if they show, that the insurer did not act inappropriately, I shall dismiss my claims.

a. Any policies, guidelines, standards for issuing liability insurance coverage to healthcare providers.
b. Any applications submitted by , Corizon, for coverage, along with any agreements and contacts with them.
c. Any policies, guidelines, standards for processing healthcare claims and any agreements, contracts with Corizon, for processing claims by inmates.
d. Any claims submitted by prisoners against Corizon 2013-2016
e. Any settlements of claims by prisoners against Corizon (2013-2016

¶ I gave them my phone number and informed them they may contact me. They did not.

PERTINENT FACTS

¶ After Corizon lost 25 contracts, it restructured through a Texas Divisional Merger. In April 2022 Corizon converted to a Texas Corporation. Days later three of its sister companies merged into Corizon Health, the surviving corporation. These corporate entities are alter egos of each other, and are acting as mere instrumentality for fraud upon Article III Judges, pandemic fraud, healthcare fraud and fraud upon prisoners.

¶ The instrumentality through a Divisional Merger transferred to another instrumentality CHS TX, a bulk of the assets, the employees, active contracts, cash equipment, real estate of Corizon, and retained Corizon CEO Sara Tirschwell.

¶ Corizon then changed its name to Tehum, retained all expired contracts, liabilities, right to collect on its insurance policies, in furtherance of its fraudulent activities. After the merger YesCare Inc owned by CHS TX CEO Sara Tirschwell acquired CHS TX, doing business as Corizon, later changing its name to Tehum Care Services, Inc, the Debtor.

¶ At all times M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC were actively involved in every aspect of these reorganization.

¶ These fraudulent activities include fraud upon Article III Courts, pandemic and healthcare fraud, amongst others and M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC had knowledge of these activities.

¶ As a matter of investment strategy and in furtherance of aiding the fraudulent activities of Corizon, Tehum transferred assets and liabilities to three different entities, with approval of M2HoldCo,LLC; M2Loan Co,. Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC expecting to be shielded by bankruptcy courts, from the fraudulent activities upon Article III Courts.

¶ Tehum , M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC was aware of the litigation that Corizon was a party to ,and in particular though aware, did not review fraud upon Article III Courts, spoliation and other litigation misconduct that were perpetrated in Article III Courts.

¶After fraudulently conveying assets from Corizon, Tehum has filed for Chapter 11 protection. M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC guaranteed the necessary financially backing they needed,

¶ The investors in Tehum, M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC, were at all times aware of the fraudulent activities and made a tactical decision to ingest in Tehum, counting on this court, relieving Tehum of their obligations, as a result of fraud upon Article III courts etc.

¶ The movant Tripati is involved in litigation with Corizon that involve fraud upon Article III Courts and spoliation amongst others in federal courts in Arizona, Pittsburgh, the Third and Ninth Circuits.

¶ Tehum , its investors M2HoldCo,LLC; M2Loan Co, Inc, M2EquityCo LLC; Valitas Intermediate Holdings, LLC and Corizon knew the consequences of their conduct at all times.

¶ Fraud upon Article III Courts is the prime aim of this Bankruptcy .

¶Tripati had before the Third Circuit Court of Appeals a motion to recall the mandate and the court specifically ordered that it shall not consider that motion due to the bankruptcy. This relates to spoliation of evidence by Corizon amongst others.

¶Before the Ninth Circuit Court of Appeals there is an appeal on spoliation. Coriosn filed a suggestion of bankruptcy and the court has abstained.

This Bankruptcy Was Filed In Bad Faith

¶ *In re LTL Mgmt, LLC, 64 F4th 84, 110 (3rd Cir. 2023)* the court dismissed the bankruptcy, finding it was filed in bad faith, with no valid bankruptcy purpose. This bankruptcy concerns the unprecedented use of the Texas Two Step because the Debtor placed all corporate liability in a defunct entity with no assets, and then having that entity declare bankruptcy, which the Bankruptcy Code was not designed for, as it is fraud under Husky.

¶ *In re "Placid oil Co, 463 BR 803 (Bankr: N.D.TX 2012) reads*

> **" Under the Bankruptcy Code "claim" is defined as "a right to payment, whether or not such right is reduced to a judgment ...or**

> **unsecured" 111 USC 101(5)(10). "The legislative history of the Bankruptcy Code indicates that Congress intended the term "claim" "to be given broad interpretation so that all legal obligations of the debtor, no matter how remote or contingent will be able to b e dealt with in the Bankruptcy case"**

¶ (ECF 4@ 103)

> **Because of their identity of interests, the cooperation agreements that they have entered into, and as these Defendants are alter egos of each other, they are named as parties. These Defendants were arties, to the spoliation claims in the District and Circuit Courts. Without their joinder, I cannot get complete relief, because, as the Debtor has filed for this bankruptcy, the Circuit Court and District courts have, as required by law, declined to hear my spoliation claims.**

A. As All These Lawyers Have Adopted Struck To Divert Attention from this Fraudulent Bankruptcy

¶ Daniel Struck filed ECF 25 that asked for screening 1, aware that screening does not apply in bankruptcy because the cases were previously screened and ordered briefed. In pp 2-5 he argues my litigation history with full knowledge that the judges have refused to address these because they found the claims with merit. Struck in pp 5 states I was found to have perpetrated fraud upon the court, when the Ninth Circuit reversed and remanded finding the conduct was not fraud upon the court, as it had no bearing on the issues before the court. He argues that the racketeering issues were decided against me, when he by reviewing the complaint, knows they were not. Pp 6-7.

¶ Quintairos Prieto Wood & Boyer ;Nichole Rowey ;Lori Metcalf ; Joseph Scott Conlon ;Renaud Cook Drury Mesaros Pa; Kelly Joan Morrissey; Michael E. Gottfried ; Paul Carter ; Daryl Johnson ; Julia Erwin ;Diane Boschuweicz; Daniel P. Struck ;Struck Love, Bojanowski & Acedo PLLC; Sarah L Barnes ; Broening Oberg Woods & Wilson Pc; Gordon & Rees; Annie C. Matthews Esq; Megan M. Adeyemo Esq; Brent Martinelle Esq;

all joined Struck.

¶ Debtor , GrayReed, Aaron M. Kaufman Esq, Lydia R. Webb Esq, Amber M. Carson, Esq, Jason S. Brookner Esq; in ECF 27 spend para 8-11, fn 2 on litigation history without investigation and with full knowledge that they had no bearing on the spoliation claims before the court. He @ 13 -15 misstates the law and facts as to standing, injury @ 16, enterprise @17, person @ 18, pattern @21. Though as set forth above Rule 8 and 9 have been complied, he argues otherwise @ 22-25, misstating the predicate acts. He misstates relevance of predicate cats @ 30, misstating the law on fling amended complaints @ 31-32.

¶ Norton Rose Fulbright US LLP; Jason I. Blanchard Esq; Kristian W. Gluck, Esq; Julie G. Harrison, Esq; in ECF 32 misstate the facts and law on RICO pp 12-22 and declaratory judgment pp 23-24.

¶ Hayward PLLC; Mark A. Weisbart Esq; Melissa Hayward Esq in ECF 34 FN 3 argue litigation adopting Struck, falsely argues Rules 8-9 have not been met @ 13-14,

incorrectly argues limitations have expired @ 16-17, erroneously argues no plausible RICO claim @ 18-23, no plausible Arizona RICO @ 26-29 and lack of standing @ 30.

¶ Lexington, Zeichner Eliman & Krause Llp; Yoav M. Griver Esq; Michael S. Davis Esq; argue three year limitations for RICO pp 1, the complaint does not satisfy Rules 8-9 at 1-2, 7-9; no plausible RICO pp 3, 10-81, misstates law in fn 2 that ECF 4 should not been allowed to be filed, states no allegations against Lexington. However in pp 4 he sets forth allegations against Lexington I made in detail, misstates accrual and limitations pp 5-6, states in FN 3 that CIV 16-0282 previously decided this matter, argues lack of standing and no conspiracy.

None Of The Courts That These Lawyers Refer To Found The Claims Frivolous Or Vexatious

¶A three judge panel of the Ninth Circuit screened the claims and ordered briefing (ECF 32-2 pp 6 at 5). The court after Corizon filed a suggestion for bankruptcy, declined to decide the issues as to Corizon, (EX F ECF 32-3 pp 9 at 58, 61)

¶The Third Circuit had before it a petition on spoliation, which the court declined to consider, as to all Defendants because of this Bankruptcy. (EX F ECF 32-3 pp 10 @ 79, 80, 81). After research Tripati did not seek certiorari, for it would be contempt of court, to file certiorari when this bankruptcy is pending. The claims before this

bench are similar to the claims before the Third Circuit on spoliation and name the Defendants in the Third Circuit.1

Who Did What Where When and How Has Been Clearly Set Forth In ECF 1 In Compliance With Rules 8 And 9

Struck Struck law firm	ECF 1 @ 353, 358-361, 364, 365, 368, 380, 385, 393, 394, 397, 402-404, 405, 409-412
Erwin	ECF 1 @ 381
ADCRR	ECF 1 @ 382, 384, 388-392
BOSCHUWEICZ And ULLIBARRI	ECF1 @ 381, 385
Centurion, Barnes, Broening Oberg Woods & Wilson PC	ECF 1 @ 381, 401
Gottfried	ECF 1 @ 353, 357-361, 364, 365,368, 380, 381, 385, 393, 394, 397, 401, 402-405. 409, 412

[1] Paul Carter, Daryl Johnson, Julia Erwin and Kelly Morrissey were all served summons and the complaint, at their last known addresses, and Struck has failed to respond. Actual receipt is not required under BR 7004(b)(1) *Flores v Safadi (In re Safadi) 2010 Bankr. Lexis. 1979 (Bankr. Ariz. 2010)*Serving within two days after summons were received and at the last known address, is proper and constitutes good cause under *Richardson v Hidy Honda Inc (in re Richardson) 1998 USDist. Lexis. 9814 (D.Wy. 1998)* According to *Tennessee Student Assistance Corp v Hood, 541 US 540 (2004)* this court must consider the substance of the adversary filed, and not the title of the document. The substance of the adversary is a claim against the estate of the Debtor and those whom it trusted. Husky. After being given the notice and opportunity to respond, these Defendants have failed to respond. *Barner v Saxon Mtg. Services, 2008 US Dist. Lexis. 105341 (SD Miss. Sept. 30, 2008) affd. 597 F.3d 651 (5th Cir. 2010)*

Tirschwell, M2, Valitas, O'Keefe	ECF1 @ 339-349
Wexford	ECF 1 @358, 363, 373, 377, 378, 380, 381, 407
Weber Gallagher Simpson Stapleton Fires & Newby LLP	ECF 1@ 372, 374-376 380, 381
Corizon	ECF 1 @ 351-356; 359-362; 364-370; 381-381; 381, 393-394; 396, 398, 399-400; 403-406; 408-409
Quintairos Prieto Wood & Boyer ;Nichole Rowey; Metcalf	ECF 1@ 3357, 380-381, 401
Joseph Scott Conlon ;Renaud Cook Drury Mesaros PA	ECF 1 @ 358, 380-381; 402
Jones Skelton Hochuli	ECF 1 @ 372, 375, 376
INJURY	ECF 1@ 11-13; 417-421

Under The Injury Discovery Rule These Claims Accrued When The Bankruptcy Was Filed Not When I Knew Of The Evidence

¶ *Rotella v Wood, 528 US 549, 556 (2000) :La Porte Constrc Co. v Bayshore National Bank. 85 F.2d 1254, 1256 (5th Cir. 1986) In re Placid oil Co, 463 BR 803 (Bankr. ND Tex. 2012) @ 813* state only when there is injury, can one file suit. Lexington argues correctly that the clams are about spoliation (pp 2-3) but confuses the date

the claims accrued in this case and the date I discovered the claims. The date of the spoliation claims is different from the accrual date. (ECF 1 @ 1, 4, 44-45.)

> **"As a consequence of this scheme I was unable to have the Third Circuit, Ninth Circuit, District of Arizona, Arizona State Courts review my spoliation claims against Defendants and their agents, employees and subordinates." (ECF 1 @ 45)**

¶The Supreme Court Has Held When Documents Have Been Destroyed, The Plaintiff Has Been Deemed To Have Established Personal Jurisdiction. *Ins. Corp. V. Compagnie Des Bauxites, 456 U.S. 694 (1982)* (Affirming Order That Imposed Sanction Of Deeming Personal Jurisdiction Established) "

Struck Has Come Outright and Deceived This Judge by Stating These Claims Were Previously Litigated

¶ These causes of action were not previously decided. "Once a court decides an issue of fact or law necessary to its judgment, hat decision precludes relitigation of the same issue on a different cause of action." *Matter of Lewisville Properties Inc, 849 F.2d 946, 949 (5th Cir. 1988)*

ECF 1 And 4 Clearly State That the Failure Of The Liability Insurer To Follow Its Own Policies And Procedures Caused The Injury

The Enterprise and Defendants Are Distinct

¶Lexington through contractual business relationship participated in the operations of the Correctional Health Enterprise, defined as **(ECF 1 @ 437 ECF 4 @ 494)**

> **During all times the enterprise Correctional Health, made of Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2**

HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation and Liability Insurers, was engaged in interstate commerce, in that the enterprise acquired, financed Corizon's services all around the nation.

¶ This satisfies the test in *Old Time Enter Inc v Int'l Coffee Corp, 862 F.2d 1213 (5th Cir. 1989)*. Lexington participated in the operations of the enterprise by diverting from its written policies *United States v Posado-Ros, 158 F3d 832 (5th Cir. 1998)* benefiting Defendants. *Khurana v Innovative Health Care Sys Inc, 130 F3d 143, 155-56 (5th Cir. 1997)*

¶It provided coverage in violation of its own written policies that enabled Corizon. Lexington gave tacit authorization to the misconduct. It thereby set in motion a series of events which they should have known would cause the violations. Lexington had distinct roles then the enterprise, with Wexford, Corizon, Centurion, Naphcare and the enterprise benefiting. As it had actual or constructive knowledge of Defendants misconduct, by issuing coverage, it caused the misconduct.

¶ I am one of the thousands of victims of the Debtor enabled amongst other by Lexington. In pp 4 Lexington correctly sets forth ECF 1 pp 8-11, 427-421 as alleging the misconduct Lexington engaged in.

¶ The verified complaint states that liability insurers (ECF1 @ 8, 11, 417-421, ECF 4 @ 474-478) "set in motion a series of events" which they should have known would cause the violations. *Bruner v Baker, 506 F.3d 1021, 1026 (10th Cir 2007)* These series of events re : Liability Insurers making substantial and not minor

departures from their policies and practices. *Wassum v City of Bellaire Texas, 861 F.2d 453, 456 (5th Cir. 1998)*

¶These departures show liability insurers being aware of unlawful practices by Defendants *Ruiz v Estelle, 679 F.2d 1115, 1154-55(5th Cir. 1982)* The coverage was provided by Liability Insurers pursuant to their exceptions to their practices and policies made for the Debtor, *Lawson v Dallas County, 286 F.3d 257, 263-264(5thCir. 2002)*

¶As a consequence liability insurers had actual or constructive knowledge of Defendants misconduct. *Piotrowski v City of Houston, 237 F3d 567, 578 (5th Cir. 2001),* thereby giving tacit authorization to the misconduct.

¶This enterprise is an associated in fact enterprise and ongoing *Alcorn County v Interstate Supplies, 731 F2d 1160, 1168 (5th Cir. 1984) Shaffer v Williams, 794 F.2d 1030 (5th Cir. 1986)* The racketeering income benefits the enterprise and Defendants *Bishop v Corbitt Marie Ways Inc, 802 F2d 122 (5th Cir. 1986).* The enterprise and Defendants played entirely distinct roles as set forth in the predicate acts.

THESE LAWYERS AND DEFENDANTS MUST BE SANCTIONED

¶Bankruptcy courts have the inherent power to impose sanctions for bad faith conduct. *Cadle Co. v Pratt (In re Pratt) 2008 Bankr. Lexis 2103 (Bankr. N.D.Tex. July 30, 2008)*

¶ Federal courts have the authority to appoint special prosecutors to prosecute misconduct before the court. This court pursuant to 111 USC 105(a) and *United*

States v Donzinger, 38 F4th 290 (2nd Cir. 2022). As counsel and Defendants have perpetrated fraud upon this court and the bankruptcy process, a special prosecutor is appropriate.

¶ Under the objective standard, no lawyer would have filed this bankruptcy and because it is plain that the Texas restructuring was fraudulent. These lawyers knew they were acting in bad faith, with knowledge that their actions do not satisfy Rule 11, were fraudulent and illegal, at the time they filed their pleadings. *Leeds Building Products v Moore-Handley Inc (In re Leeds Building Products) 18 BR 1006 (Bankr. ND Ga 1995)*

¶ In this case joint liability is appropriate as Defendants and counsel are sophisticated, acted in bad faith and perpetrated one of the biggest frauds in the United States Bankruptcy Court history. *In re Midwest Donut Inc 1998 Bankr. Lexis 1333 (Bankr. ND Tex 1988)*

¶ The bankruptcy Petition, motions to dismiss and screen:

- Were filed to manipulate the bankruptcy process and perpetrate the biggest fraud in United States Bankruptcy history. *Armstrong v Davis, 2012 USD 135389 (ED Tex 2012)*
- They are not well grounded in fact and law. *In re French Gardens Ltd, 1986 Bankr. Lexis 6894 (SD Tex 1986)*
- They were filed without counsel performing their duty to investigate. *In re Phillips, 2008 Bankr.Lexis 412 (SD Tx 2008)*

- These were filed to harass and delay these proceedings. *In re R0gers 2002 Bankr. Lexis 1963 (ND Tx 2002)*
- The pleadings, arguments, bankruptcy schedules, petition and Ankura declarations all contain falsehoods and are not privileged. In re Legrand, 2022 Bankr. Lexis 894 (Bank. EDCA 2022) In re French, 162 BR 541(Bankr. D.SD. 1994)
- ----------T

he attorney client privilege was used to commit these crimes, hence they are waived under the crime fraud exception. *In Re International Sys. & Controls Corp Sec Litigation, 693 F2d 1235, 1242 (5th Cir. 1982) Us V Soudan, 812 F2d 920, 927 (5th Cir. 1987)*

¶The amicus in the Chapter 11 states correctly

- **"The Debtor, previously operating as Corizon Health, Inc, now seeks to abuse Texas corporate law and the U.S. bankruptcy system to avoid liability for over a decade of wrongdoing." "These concerns are further magnified in light Corizon's unprecedented use of Texas divisional merger to shield its assets and execution of a potentially collusive funding agreement"**

¶ El-Amin through counsel states

- **"The Debtor went so far as to suggest at the June 13, 2013 status hearing the Debtor should be the sole gatekeeper in determining**

who can and should be allowed to participate...(and not this Court) (ECF 718 @ 8) because this Bankruptcy is "a fraudulent transaction" (pp 9)

CONCLUSION

¶These lawyers and Defendants must be sanctioned. As they perpetrated fraud upon this judge and court, a special prosecutor should be appointed to prosecute them. The bankruptcy must be dismissed.

Respectfully submitted,

7/31/23

Anant Kumar Tripati

Copies eserved on counsel

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT I RESPONSE TO ECF 1324

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	
Anant Kumar Tripati	Adv. Pro. No. 23-03072 (CML)
Plaintiff,	
Vs.	
Sarah Tirschwell, et al.,	
Defendants.	

MOTION TO HOLD DEFENDANTS IN CONTEMPT FOR VIOLATING JUDGE LOPEZ'S ORDER OF AUGUST 27, 2023

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. Represented parties should act through counsel.

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¶ The willful violation of this Court's order and misrepresentations, by Patrick M. Kemp Esq; and Robert G. Wall Esq highly experienced lawyers, who have practiced law since 2003 and 2010 respectively. (EX B, C) mandated Defendants be held in contempt of court and judgment by default be entered .

TABLE OF CONTENTS

Cases

MEET AND CONFER

¶ August 27, 2023 Judge Christopher Lopez issued the order marked EX A "It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to **file a responsive pleading** to Plaintiff's Complaint no later than October 3, 2003" (emphasis added)

¶September 12, 2023 Scottsdale filed ECF 144 and this is not a responsive pleading within the meaning of the August 27, 2023 order.

¶ ECF 153 filed September 27, 2023 is not a responsive leading within the meaning of the August 27, 2023 order.

¶ I informed them that they were in contempt and they failed to withdraw the filing.

JURISDICTION

¶ Bankruptcy Courts have power to hold parties in civil contempt Matter of Terrebone Fuel and Lube Inc, 108 F3d 609 (5th Cir. 1997) In re Jacobsen 2007 Bankr Lexis 4049 (ED Tex 2007)

DEFENDANTS ARE IN CONTEMPT OF THE PLAIN UNAMBIGUOUS LANGUAGE OF THE AUGUST 27, 2023 ORDER

¶"It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to **file a responsive pleading** to Plaintiff's Complaint no later than October 3, 2003" (emphasis added) is plain and clear (EX A)

¶ ECF 153 is a motion and not a responsive pleading within the meaning of Bankruptcy Rule7012. With their extensive experience, these lawyers, know this fact. They had the duty to withdraw this filing. (EX B, C)

¶ When a litigant intentionally violates a court order, that litigant is in contempt. In re Augustus 2007 Bankr Lexis 209 (Bankr. SD Tex 2007)

¶Final judgment may be entered when a litigant is in contempt Stan v Marshall Chiang v Nelson (In re Death Row Records Inc) 2012 Bankr. Lexis 4948 (9th Cir. 2012) and may also grant summary judgment. Satija v Page (in re Page) 2023 Bankr. Lexis 1949 (Bnakr. WD Tex 2023)

THE PROPER SANCTION

¶ The proper sanction is judgment by default for the relief prayed for in the complaint.

CONCLUSION

¶ By clear and convincing evidence I have shown Defendants are in contempt. Default should be entered for $90,000,000 plus treble damages.

Respectfully submitted,

Anant Kumar Tripati

The Plaintiff hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

EXHIBIT A

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

In Re: Tehum Care Services, Inc. *Debtor*	Case No.: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

ORDER GRANTING DEFENDANT SCOTTSDALE INSURANCE COMPANY'S MOTION FOR TIME EXTENSION TO RESPOND TO COMPLAINT

ON THIS DAY came to be heard Defendant Scottsdale Insurance Company's Motion for Time Extension to Respond to Plaintiff's Complaint. After reviewing the Motion, the Court finds that the Motion is well taken, and should be and is GRANTED.

It is, therefore, ORDERED that Defendant Scottsdale Insurance Company is directed to file a responsive pleading to Plaintiff's Complaint no later than October 3, 2023.

Signed: August 07, 2023

Christopher Lopez
United States Bankruptcy Judge

WED-72004 0541-4 pdf002 23-03072
BAE Systems
Bankruptcy Noticing Center
45479 Holiday Drive
Sterling, VA 20166-9411

013609 13609 1 AB 0.534 85349 2 6 9933-1-13609

Anant Kumar Tripati
#102081
PO Box 8909
Yuma, AZ 85349-0376

013609 720040136220 12

EXHIBIT B

SEGAL McCAMBRIDGE

Patrick M. Kemp

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PDF Bio

Patrick Kemp represents insurance companies in insurance coverage and bad faith litigation arising out of a broad range of commercial and personal lines claims. He has extensive experience serving as lead counsel in first-party insurance lawsuits defending breach of contract, bad faith and statutory extra-contractual claims throughout Texas. He serves as chair of the firm's Insurance Coverage & Bad Faith practice group.

Patrick is an active member of several professional organizations including the State Bar of Texas Insurance Law Section, the Claims and Litigation Management Alliance and the Texas Association of Defense Counsel.

HONORS

- Rising Stars, 2009 – 2014

PROFESSIONAL & CIVIC INVOLVEMENT

- State Bar of Texas, Insurance Law Section
- Claims and Litigation Management Alliance (CLM)
- Texas Association of Defense Counsel

PRACTICE AREAS

- Appellate
- Complex Commercial Litigation
- Insurance & Reinsurance
- Insurance Coverage & Bad Faith

EDUCATION

- University of Houston Law Center, J.D., 2003
- Sam Houston State University, B.B.A., *summa cum laude*, 2000

ADMISSIONS

- Texas
- U.S. Court of Appeals for the Fifth Circuit
- U.S. District Court for the Eastern District of Texas
- U.S. District Court for the Northern District of Texas
- U.S. District Court for the Southern District of Texas
- U.S. District Court for the Western District of Texas
- U.S. Supreme Court

Representative Matters

- Secured a defense verdict for a homeowners insurer in a bad faith lawsuit in the Northern District of Texas arising out of a claim for hail damage to a home.
- Secured a favorable jury verdict for a commercial property insurer in a bad faith lawsuit in the Western District of Texas arising out of a claim for hail damage to multiple commercial properties.
- Secured a declaratory judgment for a commercial automobile insurer finding no coverage for a $17.5 million dollar underlying judgment and granting summary judgment on Stowers and Texas Insurance Code counterclaims brought by judgment creditors.
- Obtained a conditional writ of mandamus directing trial court to grant an automobile insurer's motion to abate severed bad faith and other extra-contractual claims.
- Secured summary judgment for a homeowners insurer in a bad faith lawsuit arising out of a hail claim in the Western District of Texas.
- Obtained judgment on the pleadings and summary judgment for a commercial property insurer on bad faith claims under Texas Insurance Code arising out of a claim in the Northern District of Texas for wind and hail damage to multiple metal commercial buildings.
- Secured defense verdict for a commercial property insurer in a bad faith lawsuit in the Northern District of Texas arising out of a wind claim to a ranch property.
- Secured summary judgment for a commercial property insurer on bad faith and Texas Insurance Code claims in the Eastern District of Texas arising out of wind and hail damage to a convenience store.
- Obtained order finding fraudulent misjoinder of a fire suppression system contractor in a bad faith lawsuit arising out of a business interruption claim by a commercial food product company in the Southern District of Texas.
- Secured a defense verdict for an automobile insurer in trial of Texas Deceptive Trade Practices Act claims arising out of a premium dispute with a policyholder in the County Courts of Bexar County, Texas.
- Secured summary judgment for a homeowners insurer in a bad faith lawsuit arising out of a sewage backup dispute in the Western District of Texas.
- Obtained a defense verdict for a mortgage lender in a lawsuit over construction funding in Harris County Courts, Texas.
- Secured summary judgment for a commercial property insurer in a bad faith lawsuit related to the applicability of an anti-concurrent causation clause in a foundation damage claim in the Western District of Texas.
- Obtained dismissal of Texas Insurance Code claims against an adjuster establishing improper joinder in the Northern District of Texas.
- Secured a defense verdict for an insurer in an arson trial in the Eastern District of Texas.
- Obtained summary judgment for a homeowners insurer on the insured's statutory bad faith and extra-contractual claims in a plumbing and dwelling foundation claim dispute in the Western District of Texas.
- Secured a directed verdict for an automobile insurer in a bad faith jury trial in Travis County District Court, Texas
- Secured a defense verdict for a national commercial mat distributor in a catastrophic personal injury lawsuit affirmed on appeal to the Fifth Circuit Court of Appeals.
- Obtained summary judgment for a commercial property carrier in a bad faith lawsuit in the Southern District of Texas related to Hurricane Ike damage to an insured's apartment complex.
- Obtained summary judgment for a commercial general liability insurer in a lawsuit brought by an insured construction subcontractor seeking to recover defense costs and indemnity in a construction defect lawsuit in the Southern District of Texas.
- Secured summary judgment on a business income loss claim in the Southern District of Texas by a consulting company following Hurricane Katrina.
- Had judgment rendered on appeal for excess commercial insurer on a claim of liability under Motor Carrier Safety Act MCS-90 endorsement in the Fifth Circuit Court of Appeals.

News & Events

NEWS 03.24.20

COVID-19: Coverage Impact for Workers Compensation and Employers Liability Insurers

Publications

Speaking Engagements

- "First-Party Property Claims – From Claim to Trial," State Bar of Texas Advanced Insurance Law Conference, 2018
- "Managing Disputes Among Liability Carriers," Webinar, 2012
- "Homeowners Claims: Roofers and Unlicensed Public Adjusters," Central Texas Insurance Seminar, 2012
- "Bad Faith in Liability Insurance," Property Loss Research Bureau/Liability Insurance Research Bureau Western Regional Adjusters Conference, 2009

EXHIBIT C

SEGAL McCAMBRIDGE

Robert G. Wall

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vCard

PDF Bio

Robert Wall concentrates his practice in the defense of insurance carriers and insurance professionals in first-party bad faith litigation. In addition to claims litigation, he has extensive experience working with clients on issues of coverage, pre-suit claims consultation, appraisal, subrogation and the defense of insureds under liability and professional liability policies.

Clients rely on Robert's experience to effectively manage risks prior to and after a disputed claim decision. He supports clients defending lawsuits arising from claims made on homeowners, business owners, commercial property and inland marine lines.

Robert manages a robust litigation docket, regularly trying cases that could not otherwise be resolved and obtaining prompt economic resolutions for his clients wherever possible. He assists clients prior to the initiation of litigation in navigating issues of coverage, statutory compliance, appraisal and other complex claims handling issues. His practice also includes matters involving the representation of insureds under professional liability and general liability policies.

PRACTICE AREAS

- Construction Litigation & Counseling
- First-Party Insurance Defense
- Insurance Coverage & Bad Faith
- Professional Liability

EDUCATION

- University of Colorado Law School, J.D., 2008
- Fort Lewis College, B.A., Business Economics, 2003

ADMISSIONS

- Texas
- U.S. Court of Appeals, Tenth Circuit
- U.S. District Court, Colorado
- U.S. District Court, Eastern District of Texas
- U.S. District Court, Northern District of Texas
- U.S. District Court, Southern District of Texas
- U.S. District Court, Western District of Texas

Representative Matters

- Obtained a defense verdict for a carrier that was low enough to preclude any recovery of attorneys' fees under Tex. Ins. Code § 542A, in a one-week federal jury trial on hail damage claim involving 27 commercial properties in Midland, Texas in a suit in the Western District of Texas.
- Obtained an order denying the recovery of attorney's fees for failure to send Tex. Ins. Code § 542A pre-suit notice in a Hurricane Harvey claim involving a farm equipment dealership with 16 affected locations on the Texas Gulf Coast in a suit in the Southern District of Texas.
- Obtained summary judgment for an insured restaurant in a dram shop action in Bexar County District Court, Texas, where the plaintiff was represented by a regional personal injury powerhouse.
- Obtained a zero-liability verdict for a carrier in a federal jury trial of a windstorm damage claim in a suit in the Northern District of Texas.
- Obtained an order denying a motion to remand based on a *Tapscott* fraudulent misjoinder analysis in a suit in the Southern District of Texas.
- Obtained dismissal of an action against an out-of-state common carrier under the Carmack Amendment preemption and personal jurisdiction in the Western District of Texas.
- Obtained summary judgment in a homeowner's bad faith lawsuit on a water damage claim in the Western District of Texas
- Obtained summary judgment in a commercial bad faith lawsuit over a foundation damage claim in the Western District of Texas.
- Obtained a jury verdict for the defense in an insurance fraud / bad faith diamond wholesaler case where contractual damage claims in the Northern District of Texas exceeded $580,000.
- Achieved dismissal of all extra-contractual claims in pretrial hearings and a zero-liability jury verdict on a contract claim.
- Obtained an order severing claims and compelling arbitration of a third-party defendant's cross claims against a carrier in a broker procurement dispute involving a $2 million dollar cargo loss in the Southern District of New York. Also obtained summary judgment on a third-party plaintiff's misrepresentation claims against a carrier.
- Obtained a zero-liability defense verdict after a one-week jury trial in a personal injury lawsuit involving medical damages in excess of $300,000 and a final pretrial demand from the plaintiff of $1.6 million in the Western District of Texas.

News & Events

NEWS 03.26.20

COVID-19 and Business Interruption Claims Under Commercial Property Insurance

NEWS 05.23.19

Austin Attorneys Robert G. Wall and Katherine M. Gonyea Obtain Victory in Pro Bono Trial

NEWS 03.01.19

Announcing the 2019 Segal McCambridge Singer & Mahoney Shareholder Promotions

Inmate
ADC #
Arizona State Prison Complex
Unit
AZ

US BANKRUPTCY COURT
515 RUSK AVE
HOUSTON, TX 77002

LEGAL MAIL

LEGAL MAIL

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

In Re: Tehum Care Services, Inc. *Debtor*	Case No.: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

DEFENDANT SCOTTSDALE INSURANCE COMPANY'S
RESPONSE TO PLAINTIFF'S MOTION FOR CONTEMPT

Defendant Scottsdale Insurance Company ("Scottsdale") files the following Response to Plaintiff's "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (Doc. 165), stating in support as follows:

I. BRIEF FACTUAL & PROCEDURAL OVERVIEW

1. Plaintiff initiated this instant action in May 2023 when he filed a 139-page and 458-paragraph complaint against numerous defendants, including Scottsdale. *See* Doc. 1, Plaintiff's Adversary Complaint (the "Complaint").

2. Scottsdale was first made aware of this action on June 24, 2023, when it was discovered that Plaintiff filed an application for default against Scottsdale (Doc. 72) for failing to respond to the Complaint. Scottsdale, however, was never served with a copy of the Complaint or Summons.

3. On August 4, 2023, Scottsdale filed a Motion for Time Extension to Respond to the Complaint (Doc. 104) where Scottsdale agreed to waive formal service of process and requested additional time to file a response to the Complaint. The Court granted that motion on August 7, 2023 (Doc. 108).

4. Scottsdale timely filed a Motion to Dismiss in lieu of a formal answer to the Complaint on September 27, 2023, arguing that the Complaint fails to state a plausible claim for relief and should be dismissed accordingly under Fed. R. Civ. P. 12(b)(6).

5. Plaintiff has since filed the "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (the "Motion for Contempt") directed at Scottsdale. *See* Doc. 165. In his Motion for Contempt, Plaintiff argues Scottsdale should be found in default and sanctioned because it violated the Court's Order by allegedly failing to file a "responsive pleading" to the Complaint. Plaintiff, however, misinterprets the Federal Rules which provide Scottsdale the option to file a Rule 12 motion in lieu of a formal answer.

II. ARGUMENTS & AUTHORITIES

6. Per to the plain and unambiguous language of Fed. R. Civ. P. 12, Scottsdale may (and did) file a Rule 12(b) motion in lieu of a formal "responsive pleading." Fed. R. Bankr. P. 7012(a) specifically states, in part:

> If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court.
> …
> *The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 14 days after notice of the court's action*; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 14 days after the service of a more definite statement.

(emphasis added). Fed. R. Civ. P. 12(b)—which includes a Rule 12(b)(6) motion to dismiss for failure to state a claim—is made applicable to bankruptcy adversary proceedings under Fed. R. Bankr. P. 7012(b).

7. While Scottsdale was never properly served with Plaintiff's Complaint, Scottsdale waived its right to formal service of process and requested an extension of time to file a response to the Plaintiff—a request which was granted by the Court (Doc 108). Therefore, contrary to Plaintiff's assertions, Scottsdale was never "in default."

8. Scottsdale, moreover, properly submitted a "responsive pleading" pursuant to Fed. R. Bankr. P. 7012 when it filed its Motion to Dismiss (Doc. 153), a motion "permitted under the Rules" which altered Scottsdale's timeframe to file a formal answer to the Complaint. *See Arias v. Franklin Credit Mgmt. Corp. (In re Arias)*, case no. 22-00004, 2023 Bankr. LEXIS 258, at *17 (Bankr. D.P.R. Feb. 1, 2023) ("In the instant case, the Complaint was a pleading to which a responsive pleading was required. [The defendant] filed [its] Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6) *in lieu of an answer*.") (emphasis added)).

9. To the extent the Court denies Scottsdale's Motion to Dismiss, Scottsdale submits it will timely file an answer to Plaintiff's Complaint pursuant to Fed. R. Bankr. P. 7012.

III. CONCLUSION & PRAYER

10. For these reasons, Scottsdale respectively prays that the Court deny Plaintiff's Motion for Contempt, and for all such other relief to which it may show itself justly to be entitled.

Respectfully submitted,

/s/ Patrick M. Kemp

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CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the foregoing instrument has been served electronically via CM/ECF and mailed this the 31st day of October, 2023 to:

Anant K. Tripati 102081
ASPC Yuma, Cibola Unit
P.O. Box 8909
Yuma, AZ 85349
United States

#9414 7266 9904 2178 2266 38

/s/ Patrick M. Kemp
Patrick M. Kemp

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

In Re: Tehum Care Services, Inc. *Debtor*	Case No.: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati *Plaintiff*, v. Sarah Tirschwell, et al., *Defendants*.	Adv. Pro. No. 23-03072 (CML)

ORDER DENYING PLAINTIFF'S MOTION FOR CONTEMPT

ON THIS DAY came to be heard Plaintiff Anant Kumar Tripati's "Motion to Hold Defendants in Contempt for Violating Judge Lopez's Order on August 27, 2023" (Doc. 165) against Defendant Scottsdale Insurance Company. After considering the Motion and the Response of Scottsdale Insurance Company, the Court is of the opinion that Plaintiff's Motion for Contempt against Defendant Scottsdale Insurance Company should be and is hereby DENIED. It is therefore ORDERED that Plaintiff's Motion for Contempt against Defendant Scottsdale Insurance Company is DENIED in its entirety.

SO ORDERED on this ____ day of _____, 2023.

Hon. Christopher Lopez
United States Bankruptcy Judge

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT J RESPONSE TO ECF 1324

Docket #0192 Date Filed: 12/7/2023

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	
Anant Kumar Tripati	Adv. Pro. No. 23-03072 (CML)
Plaintiff,	
Vs.	
Sarah Tirschwell, et al.,	
Defendants.	

MOTION TO FILE 801(d)(2)(A)(B)(C)(D STATEMENTS IN SUPPORT OF PENDING MOTIONS

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. Represented parties should act through counsel.

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¶ON November 2, 2023 I received the attached and ask this court to consider these in support of all pending motions.

TABLE OF CONTENTS

CASES

OTHER AUTHORITIES

FIRST BASIS FOR RELIEF

¶The attached ECF 986-1pp 2 shows that the Debtor has not changed the address of Sara Tirschwell and Valitas.

¶ However Sara Tirschwell and Valitas have argued that the address that the Debtor has given this Court is not the address for service. Cossio v Cate, (In re Cossio) 56 F.3d 70 (9th Cir. 1995) holds that the Debtor has the duty to change the address and the adder on the petition is the proper address to serve.

¶ This material false statement mandates default be entered.

SECOND BASIS FOR RELIEF

¶ In ECF 986-1 pp 82 attached the Debtor wants releases to Corizon, M2, Valitas, Tirschwell and others.

¶These are 801(d)(2)(A)(B)(C)(D) admissions that a conspiracy exists, knowledge of each other's activities. United States v Mendoza, 473 F 2d 697(5th Cir. 1973) Morrisson v Western Building of Amarillo Ins (In re Morrisson) 555 F.3d 473 (5th Cir. 2009) United States v Gurroia, 898 F2d 524(5th Cir. 2018)

WHAT DO THESE 801(D)(2) STATEMENTS ESTABLISH

¶After taking billions of dollars during COVID, the Debtor hid its assets with its parent Valitas and sister companies M2 Loan, M2Equity and M2Hold. (ECF 96 @ 119) It did not make these disclosures as mandated by the law, in the schedules it filed.

¶In order to ensure the success of the Debtor's scheme, the liability insurers, made policy exceptions because of the premiums, thereby enabling the Debtor. (ECF 96@ 125-264-287) by and through emails and faxes (ECF 96@ 128-147)

¶Billions of dollars have been allocated by the United States during the COVID. Corizon, an entity owned by Valitas ,Becken O'Keefe, obtained these funds. They however did not use these funds for the purposes intended.

¶They gave their management bonuses, but the staff in the prisons got nothing.

¶Corizon did this in every prison or jail, they have had contracts in.

¶In furtherance of the scheme to conceal assets and file this fraudulent bankruptcy, Sara Tirschwell; Valitas Intermediate Holdings Incorporated, a Delaware Corporation; M2 HoldCo LLC, a Florida Limited Liability Co; M2 LoanCo LLC, a Florida Limited Liability Co; M2 EquityCo LLC, a Florida Limited Liability Co; Becken Petty O'Keefe, a Delaware Corporation, (hereinafter Valitas Family Of Companies), all through mail and emails from and to ch.com determined that Corizon reorganize in Texas.

¶They agreed to form Tehum Care Services Inc aka Corizon a Texas Corporation; YesCare Corporation, a TexasCorporation and CHS Tex, a Texas Corpration. Never has Corizon maintained its place of business in Texas. It has always maintained its principal place of business in Tennessee. This was all accomplished by emails sent from corizonhealth.com (hereinafter "ch.com")

¶They agreed to transfer bulk of the assets to CHS TEX, liabilities to Yescare and bonds and policies to Tehum. This reorganization was a sham designed to defraud. They then as planned filed for bankruptcy.

¶The Ankura consulting was hired to conduct due diligence. Russell Perry of Ankura did not examine the financials as he should have, especially the use of COVID funds, and any claims against Corizon for spoliation of evidence.

¶M2 HoldCo LLC, ;M2 LoanCo LLC; M2 EquityCo LLC, agreed to give Corizon loans from monies laundered from the assets of Corizon. These were sham loans.

¶Valitás Health Services is majority owned by Beecken Petty O'Keefe & Company, a Chicago-based private equity management firm. Beecken's other holdings are primarily in the healthcare industry.

THE CORPORATE STRUCTURE IS A MERE INSTRUMENTALITY TO PERPETRATE FRAUD

¶The corporate structure is a mere instrumentality to perpetrate fraud. The medical director of Wexford, Corizon, Centurion and Naphcare have testified that the Debtor is in the business of denying inmates care that meets constitutional standards. (ECF 96@ 100-118)

¶In Husky International Electronics, Inc. v. Ritz, explores the meaning of the word "fraud" under a federal bankruptcy statutory section. That section uses the term "actual fraud," and bears upon the question of whether a particular debt should be denied a discharge. The Court's approach in defining fraud affords guidance to the question of defining fraud under other statutes. The Husky case also raised a veil piercing issue to be dealt with on remand. That issue involved the application of Texas statutory law precluding veil piercing in cases brought by contract creditors unless they were victims of "actual fraud."

¶In Husky Int'l Elecs., Inc. v. Ritz, 136 S. Ct. 1581 (2016) the Supreme Court interpreted the meaning of the word fraud, a very important word in the legal lexicon. "Fraud" appears in various guises in different parts of speech, including as a noun by itself; an adjective,

fraudulent; a verb, defraud; or an adverb, fraudulently. It is also found, in one form or another, in various contexts including statutes and cases. In Husky, the phrase "actual fraud" is used as a part of a federal bankruptcy statute that deals with denying a debtor a discharge from a particular debt. See id. at 1585 (citing 11 U.S.C. § 523(a)(2)(A) (2012)).

¶That section prohibits the discharge of an individual debtor under Chapter 7 from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by . . . false pretenses, a false representation, or actual fraud . . . ." 11 U.S.C. § 523(a)(2)(A).

¶In the United States, fraud in its various formats occurs in everyday expressions discussing claims or news of its perpetration. Many use the word to describe what they consider to be shameful behavior. In Husky, the Supreme Court rejected the very narrow interpretation of fraud that had been rendered by the Fifth Circuit, concluded that it had a broader meaning under the statutory section involved in the case, and, along the way to its decision, pointed to the historic breadth of fraud. In addition, the Court discussed the application of the "obtained by" fraud requirement.

¶Husky also involved issues to be resolved on remand—from the Supreme Court to the Fifth Circuit—regarding not only the federal bankruptcy discharge section already referred to, but also regarding the meaning of actual fraud and direct personal benefit under a Texas veil piercing statute TEX. BUS. ORGS. CODE ANN. § 21.223(b) (2017) crucial in determining if Ritz was personally indebted to Husky.

¶As will be discussed more fully, Husky sought to hold Ritz personally liable on a debt it was owed by Chrysalis Manufacturing Corporation, and also claimed that the debt was not discharged under the applicable federal bankruptcy statute. The remand resulted in

significant analyses and holdings from the Fifth Circuit In re Ritz, 832 F.3d 560 (5th Cir. 2016) and eventually the bankruptcy court. Husky Int'l Elecs., Inc. v. Ritz (In re Ritz), 567 B.R. 715 (Bankr. S.D. Tex. 2017).

¶ Both fraud and veil piercing are fundamental topics in American law, and Husky presents an excellent opportunity for giving them special attention.

THE BANKRUPTCY COURT

¶Responding to the Fifth Circuit on remand, the bankruptcy court considered whether Ritz's conduct reflected the requisite intent to hinder,

delay, or defraud in order to satisfy the actual fraud prong of TUFTA. Husky Int'l Elecs., Inc. v. Ritz (In re Ritz), 567 B.R. 715, 739 (Bankr. S.D. Tex. 2017). Explaining its reliance on circumstantial evidence, the bankruptcy court indicated that the Fifth Circuit, along with many courts, allowed the use of a "badge of fraud" analysis. TUFTA itself listed a number of specific badges such as "the transfer was to an insider," "the transfer was concealed," "the debtor was insolvent or became insolvent shortly after the transfer was made." The bankruptcy court "unequivocally [made] a finding that the Debtor's transfers of the $1,161,279.90 were made with the actual intent to hinder, delay, or defraud Husky under TUFTA."

¶The bankruptcy court also decided that the actual fraud was perpetrated primarily for Ritz's direct personal benefit. In doing so, the court referred, inter alia, to (a) the Debtor's admission that a transfer of Chrysalis's funds to a company for which he had a personal guarantee would be a personal benefit to him, (b) the Debtor's transfers of over $677,000 to one company which owed a debt for a one-million-dollar loan Debtor had guaranteed, and (c) transfers

from Chrysalis to continue the businesses of the Debtor's other companies instead of paying Chrysalis's creditors.

¶The bankruptcy court then turned to the issue of whether Ritz's debt to

Husky was non-dischargeable under § 523(a)(2)(A) as a "debt for money to the extent obtained by . . . actual fraud." The court, referring specifically to transfers to Debtor-Creditor Entities, held that money was obtained by Ritz.64 Pointing to its "badges of fraud" analysis, the court concluded that the debtor committed actual fraud when he transferred the $1,161,279.90 from Chrysalis to the Debtor-Controlled Entities.65 The bankruptcy court reasoned that Ritz's personal debt arose due to the Debtor-Controlled Entities obtaining the funds from his fraudulent conduct because the Texas veil piercing statute imposed personal liability on the debtor for the debt to Husky. The court explained, "[t]here is no question that the creation of this personal obligation is directly traceable to—i.e., resulted from—the Debtor's fraudulent actions in orchestrating the transfers of $1,161,279.90 out of Chrysalis's account and into the accounts of the Debtor-Controlled Entities." Alluding to the Supreme Court's language in Husky that "debts 'traceable to' the fraudulent conveyance,' [are] non-dischargeable under § 523(a)(2)(A)," the bankruptcy court found Ritz's debt owed to Husky to be non-dischargeable.

SECOND ARGUMENT

JUDICIAL ESTOPPEL BARS THE DEBTOR FROM SEEKING DISCHARGE BECAUSE OF NON DISCLOSURE OF THE ASSETS IN THE SCHEDULES AND INCONSISTENT POSITIONS

¶"[T]he doctrine of judicial estoppel has broader preclusive effects than . . . issue preclusion," insofar as judicial estoppel "bar[s] not only an inconsistent position with respect to [a legal issue] but also all successive claims inconsistent with that representation." Adelphia

Recovery Trust v. HSBC Bank USA (In re Adelphia Recovery Trust), 634 F.3d 678, 697 (2d Cir. 2011). "[N]o single or uniform set of judicial estoppel elements exists" at present. Alec P. Ostrow, Nondisclosure as a Basis for Judicial Estoppel in Bankruptcy, or Estop Me If You Haven't Heard This Before, in Norton Annual Survey Of Bankruptcy Law 123, 142 (William L. Norton, Jr. ed., 2011 ed.) (claiming "there are no universally accepted elements of the [judicial estoppel] doctrine")

¶ In New Hampshire v. Maine, 532 U.S. 742 (2001) a nonbankruptcy case, the Supreme Court established "several factors [that] typically inform the decision whether to apply the doctrine in a particular case," be that case a bankruptcy case or otherwise: 1. a party has taken a position in a legal proceeding that is "clearly inconsistent" For a helpful analysis of what it means for two positions to be clearly inconsistent, see Cotter v. Skylands Cmty. Bank (In re Cotter), Bankr. No. 08-12504, Adversary No. 11-01619, 2011 WL 5900811, at *6-7 (Bankr. D.N.J. Oct. 24, 2011). with a position that party has taken previously in either the same or a separate legal proceeding; 2. that party "has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create 'the perception that either the first or the second court was misled;'" and 3. that party "would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped."

¶Despite articulating this list of factors, the Supreme Court conceded that "[t]he circumstances under which judicial estoppel may appropriately be invoked are probably not reducible to any general formulation of principle." (quoting Allen v. Zurich Ins. Co., 667 F.2d 1162, 1166 (4th Cir. 1982) The Court therefore emphasized: "In enumerating these factors, we do not establish inflexible prerequisites or an exhaustive formula for determining the applicability of judicial estoppel. Additional considerations may inform the doctrine's

application in specific factual contexts." accord Burnes v. Pemco Aeroplex, Inc., 291 F.3d 1282, 1286 (11th Cir. 2002). As a result, THE Fifth Circuit considers additional elements in the bankruptcy context. Love v. Tyson Foods, Inc., 677 F.3d 258, 261 (5th Cir. 2012) (citing Reed v. City of Arlington, 650 F.3d 571, 574 (5th Cir. 2011) (en banc)) (adding the element of advertence. The most common additional elements are whether the party's assertion of an inconsistent position was inadvertent, Love, 677 F.3d at 261 (citing Reed, 650 F.3d at 574) and whether "the facts at issue are the same in both cases."

¶Unlike equitable estoppel, judicial estoppel is intended to protect the integrity of the judicial system, not the litigants E.g., Wells Fargo Bank, N.A. v. Oparaji (In re Oparaji), 698 F.3d 231, 235 (5th Cir. 2012) (citing Browning Mfg. v. Mims (In re Coastal Plains, Inc.), 179 F.3d 197, 205 (5th Cir. 1999)). Accordingly, whether any party "relie[s] on [the position advanced by the party sought to be estopped] is irrelevant because detrimental reliance is not a required element of judicial estoppel." Hancock Bank v. Bates (In re Bates), Bankr. No. 09–51279–NPO, Adversary No. 09–05092–NPO, 2010 WL 2203634, at *14 (Bankr. S.D. Miss. May 27, 2010).

¶Interestingly, several circuits and districts, at least in the bankruptcy context, have occasionally eliminated, or at least diminished the importance of, some of the elements set forth by the Supreme Court in New Hampshire, particularly the "unfair advantage"/"unfair detriment" prong. Wakefield v. SWC Sec., Inc. (In re Wakefield), 293 B.R. 372, 378 (N.D. Tex. 2003) Eliminating proceeding is unrelated to the current proceeding.").

¶Within the consumer bankruptcy context, the most common application of judicial estoppel occurs when a debtor fails to satisfy the disclosure requirements established by the Bankruptcy Code (the Code) Hereinafter, we shall use "CODE" to refer to

the Bankruptcy Code, 11 U.S.C. §§ 101-1532 (2012). and Federal Rules of Bankruptcy Procedure (the Rules).

¶In return for the bankruptcy relief debtors receive through gaining a discharge, the [Code] requires disclosure of all interests in property, the location of all assets, prior and ongoing business and personal transactions, and, foremost, honesty. The failure to comply with the requirements of disclosure and veracity necessarily affects the creditors, the application of the [Code], and the public's respect for the bankruptcy system as well as the judicial system as a whole. . . . The Code requires

nothing less than a full and complete disclosure of any and all apparent interests of any kind. Fokkena v. Tripp (In re Tripp), 224 B.R. 95, 98 (Bankr. N.D. Iowa 1998) (citations omitted).

¶Accordingly, the Code requires all debtors to file a "schedule of assets and liabilities . . . [and] a statement of the debtor's financial affairs." CODE § 521(a)(1)(B) (2012). Property of the bankruptcy estate is "construed as broadly as possible In re Stewart, 452 B.R. 726, 741 (Bankr. C.D. Ill. 2011) to include not only "claims or causes of action existing at the time the bankruptcy case is filed," but also certain post-bankruptcy causes of action. CODE §§ 1207(a)(1); 1306(a)(1) (2012). A debtor's duty to disclose assets is therefore "ongoing." Jethroe v. Omnova Solutions, Inc., 412 F.3d 598, 600 (5th Cir. 2005) (citing Kamont v. West, 83 F. App'x 1, 3 (5th Cir. 2003)).

¶Consequently, "Schedule B" of a debtor's bankruptcy schedules requires

the debtor "to list all 'contingent and unliquidated claims of every nature, . . . counterclaims of the debtor, and rights to setoff claims.'" At least one court has interpreted the word "and" in "contingent and unliquidated . . . as being disjunctive so that the petitioner is directed to list all contingent claims and all unliquidated claims," rather than conjunctive

such that the petitioner need only disclose claims that are both contingent and unliquidated. Rose v. Beverly Health & Rehab. Servs., Inc., 356 B.R. 18, 26 (E.D. Cal. 2006). "The obvious thrust of the question is to elicit a complete disclosure of all potential assets that could be marshaled to satisfy the bankruptcy estate's obligations . . . . Any more restrictive interpretation would be clearly contrary to controlling case law."

¶Failure to make these disclosures can result in dismissal of the debtor's bankruptcy case pursuant to § 521(i) of the Code. Code § 521(i) provides a mechanism for dismissal of the bankruptcy case itself. It is therefore distinct from dismissal of a subsequent lawsuit on judicial estoppel grounds. "Additionally, courts have ample power to punish debtors who wrongfully conceal assets" Valdez v. JDR LLC, No. CV 04-1620-PHX-JAT, 2006 WL 2038456, at *3 (D. Ariz. July 20, 2006).

CONCLUSION

¶ For these reasons these 801(d)(2) statements should be considered as establishing a conspiracy, and warranting the case proceed to discovery.

Respectfully submitted,
Anant Kumar Tripati

The Plaintiff hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

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

In re:	)	Chapter 11
TEHUM CARE SERVICES, INC.,[1]	)	Case No. 23-90086 (CML)
Debtor.	)	

NOTICE OF COMBINED HEARING TO CONSIDER (I) FINAL APPROVAL OF DISCLOSURE STATEMENT AND (II) CONFIRMATION OF THE DEBTOR AND OFFICIAL COMMITTEE OF UNSECURED CREDITORS' JOINT CHAPTER 11 PLAN

PLEASE TAKE NOTICE THAT on October [•], 2023, the United States Bankruptcy Court for the Southern District of Texas (the "Court") entered an order [Docket No. [•]] (the "Disclosure Statement Order"): (a) authorizing the above-captioned debtor and debtor in possession and its Official Committee of Unsecured Creditors, as joint Proponents, to solicit votes on the *Debtor and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan* (as may be amended, supplemented, or modified from time to time, the "Plan"); (b) conditionally approving the *Disclosure Statement Regarding Debtor and Official Committee of Unsecured Creditors' Joint Chapter 11 Plan* (the "Disclosure Statement") as containing "adequate information" pursuant to section 1125 of the Bankruptcy Code; (c) approving the solicitation materials and documents to be included in the solicitation packages (the "Solicitation Packages"); and (d) approving procedures for soliciting, receiving, and tabulating votes on the Plan and for filing objections to confirmation of the Plan and final approval of the Disclosure Statement.[2]

PLEASE TAKE FURTHER NOTICE THAT the hearing at which the Court will consider confirmation of the Plan and final approval of the Disclosure Statement (the "Combined Hearing") will commence on **January [•], 2024, at [•] [•].m.** prevailing Central Time, before the Honorable Christopher M. López in the United States Bankruptcy Court for the Southern District of Texas, located at Courtroom 401, 515 Rusk, Houston, TX 77002.

Please be advised: the Combined Hearing may be continued from time to time by the Court or the Proponents without further notice other than by such adjournment being announced in open court or by a Notice of Adjournment filed with the Court and served on all parties entitled to notice.

[1] The last four digits of the Debtor's federal tax identification number is 8853. The Debtor's service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the Disclosure Statement or the Plan, as applicable.

www.kccllc.net/tehum; and/or (c) writing to Kurtzman Carson Consultants LLC, Re: Tehum Care Services, Inc., Attn: Voting Department, 222 N Pacific Coast Highway, Suite 300, El Segundo, CA 90245. You may also obtain copies of any pleadings filed in this chapter 11 case for a fee via PACER at: http://www.txs.uscourts.gov. Please be advised that the Solicitation Agent is authorized to answer questions about, and provide additional copies of, solicitation materials, but may **not** advise you as to whether you should vote to accept or reject the Plan.

The Plan Supplement. The Proponents will file the Plan Supplement on or before seven (7) days prior to the Objection Deadline, and will serve notice on all Holders of Claims entitled to vote on the Plan, which will: (a) inform parties that the Proponents filed the Plan Supplement; (b) list the information contained in the Plan Supplement; and (c) explain how parties may obtain copies of the Plan Supplement.

RELEASE, EXCULPATION AND INJUNCTION PROVISIONS

Article IX of the Plan contains Release, Exculpation, and Injunction provisions, and Article IX.D contains a Third-Party Release. Thus, you are advised to review and consider the Plan carefully because your rights might be affected thereunder.

Under the Plan, "*Released Parties*" means collectively the following, in each case in its capacity as such with each being a "Released Party": (a) the Debtor; (b) Russell Perry, the Debtor's Chief Restructuring Officer; (c) the Committee and its members; (d) the Liquidation Trustee; (e) the Personal Injury Trustee; (f) the Settlement Parties; (g) M2 EquityCo LLC; (h) Valitás Intermediate Holdings Inc.; (i) Valitás Health Services, Inc.; (j) M2 Pharmacorr Equity Holdings LLC; (k) Pharmacorr/M2 LLC; (l) Pharmacorr Holdings LLC; (m) Endeavor Distribution LLC; (n) CHS Texas LLC; (o) Yes Care Holdings LLC; (p) Sigma RM, LLC; (q) DG Realty Management LLC; (r) Scaracor LLC; (s) Yitzchak Lefkowitz a/k/a Isaac Lefkowitz; (t) Sara Ann Tirschwell; (u) Ayodeji Olawale Ladele; (v) Beverly Michelle Rice; (w) Jeffrey Scott King; (x) Jennifer Lynee Finger; (y) Frank Jeffrey Sholey; (z) for each Entity listed in (a) through (y), each of their respective current and former officers, directors, and managers; (aa) for each Entity listed in (b) through (y), each of their respective current and former employees and agents; and (bb) for each Entity listed in (d) through (y), each of their respective attorneys and other professional advisors; provided, however, that James Gassenheimer, Charles Gassenheimer, James Hyman, and Michael Flacks shall not be a "Released Party."

Under the Plan, "*Releasing Parties*" means collectively the following, in each case in its capacity as such with each being a "Releasing Party": (a) the Debtor; (b) the Committee; (c) the Liquidation Trustee; (d) the Personal Injury Trustee; (e) the Settlement Parties; and (f) Consenting Creditors.

Article IX.C. of the Plan provides for a Debtor Release:

Pursuant to section 1123(b) of the Bankruptcy Code, upon payment in full of the Settlement Payment as provided in Article IV.B.1, and in exchange for other good and valuable consideration, the adequacy of which is hereby confirmed, the Debtor, its Estate,

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT K RESPONSE TO ECF 1324

Civil Action No. 2: 20-cv-0427
UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

Tripati v. Wexford Health Servs.

Decided Apr 8, 2020

Civil Action No. 2: 20-cv-0427

04-08-2020

ANANT KUMAR TRIPATI, Plaintiff, v. WEXFORD HEALTH SERVICES, INC., et al Defendants.

Cynthia Reed Eddy Chief United States Magistrate Judge

William S. Stickman, IV United States District Judge **REPORT & RECOMMENDATION**

I. Recommendation

For the following reasons, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory filing fee in the amount of $350.00, plus an administrative filing fee in the amount of $50.00, for a total of $400.00.

II. Report

a. *Dismissal Pursuant to 28 U .S.C. § 1915(g)*

A prisoner may not bring a civil action or appeal a civil judgment *in forma pauperis* ("IFP") if:

> the prisoner has, on 3 or more occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is frivolous, malicious, or fails to state a claim upon which relief may be granted, unless the prisoner is under imminent danger of serious physical injury.

2 *2 28 U.S.C.§1915(g). Plaintiff, Anant Kumar Tripati, is a very litigious state prisoner currently confined in the Arizona State Prison Complex, East Unit, in Florence, Arizona.[1] At least three of his prior actions or appeals qualify as strikes under 28 U.S.C. § 1915(g):[2]

(1) *Tripati v. Schriro*, No. CV 97-0021-PHX-ROS (D. Ariz. May 22, 1997) (dismissed for failure to state a claim);

(2) *Tripati v. Felix*, No. CV 05-0762-PHX-DGC (D. Ariz. Oct. 14, 2005) (same); and

(3) *Tripati v. Thompson*, No. CV 03-1122-PHX-DGC (D. Ariz. Dec. 28, 2005) (same).[3]

Therefore, Plaintiff may not bring a civil action without complete prepayment of the $350.00 filing fee and $50.00 administrative fee unless he is in imminent danger of serious physical injury. 28 U.S.C. § 1915(g).

[1] An attachment to the Complaint reflects that on November 30, 1993, Plaintiff was convicted in Maricopa County, Arizona, and sentenced to 28 years of imprisonment for fraudulent schemes, 20 years for attempted fraudulent schemes, and 4-1/2 years for false swearing, resulting in an aggregate prison sentence of 52-1/2 years without the possibility of parole. Complaint, Exh. 1 (ECF No. 1-4 at 5).

[2] *Abdul-Akbar v. McKelvie*, 239 F.3d 307, 310 (3d Cir. 2001) (noting that 28 U.S.C. § 1915(g) is "popularly known as the 'three strikes' rule").

[3] In *Tripati v. Schriro*, 541 U.S. 1039 (2004), the Supreme Court ordered, "As petitioner has repeatedly abused this Court's process, the Clerk is directed not to accept any further petitions in noncriminal matter from petitioner unless the docketing fee required by Rule 38(a) is paid and petition submitted in compliance with Rule 33.1." *Id.* at 1039. Additionally, the Court of Appeals for the Ninth Circuit issued a pre-filing Order on October 14, 1993, which remains in effect. *In re Tripati*, No. 93-80317 (9th Cir. Oct. 14, 1993).

b. *Imminent Danger*

To satisfy the imminent danger element, Plaintiff must allege facts in his complaint showing that he was in imminent danger at the time the complaint was filed; allegations that the prisoner has faced imminent danger in
3 the past are insufficient to trigger the exception to section *3 1915(g). *See Abdul-Akbar v. McKelvie*, 239 F.3d 307 (3d Cir. 2001) (overruling *Gibbs v. Roman*, 116 F.3d 83, 86 (3d Cir. 1997)). In making this determination, the court should construe all allegations in a complaint in favor of the plaintiff. *Gibbs v. Cross*, 160 F.3d 962, 965 (3d Cir. 1998); *Gibbs v. Roman*, 116 F.3d at 86. The Court of Appeals for the Third Circuit has instructed that:

> "[i]mminent" dangers are those dangers which are about to occur at any moment or are impending. By using the term "imminent," Congress indicated that it wanted to include a safety valve for the "three strikes" rule to prevent impending harms, not those harms that had already occurred. The imminent danger exception allows the district court to permit an otherwise barred prisoner to file a complaint I.F.P. if the prisoner could be subject to serious physical injury and does not then have the requisite filing fee.

Abdul-Akbar, 239 F.3d at 315 (internal citation omitted). Imminent danger requires a showing of serious physical injury at the time the complaint is filed. *Id.* at 312. The imminent danger exception is available only for genuine emergencies where time is pressing and a threat is real and proximate. *Long v. Lanigan, et al.*, CA No. 10-0798, 2010 WL 703181, *2 (D.N.J., Feb. 23, 2010).

c. *Discussion*

On March 27, 2020, Plaintiff initiated this case by the filing of a motion for leave to proceed *in forma pauperis*, and attached to the motion a thirty-two page handwritten pro se civil rights complaint. (ECF No. 1). In his complaint, Plaintiff names approximately 42 defendants including, *inter alia*, various former and current prison healthcare contractors (including Wexford Health Sources, Inc.; Corizon, Inc.; Centurion of Arizona) and what appears to be current or former employees of those healthcare contractors; six law firms (Broening Oberg Woods & Wilson PC; Jones Skelton Hochuli PLC; Quintairos Prieto Wood & Boyer PA; Renaud Cook Drury
4 Mesaros PA; Struck Wieneke & Love, PLC; and Weber Gallagher Simpson *4 Stapleton Fires & Newby LLP) and multiple attorneys within each of those firms, as well as a number of attorneys with the Arizona Office of Attorney General; and various Arizona Department of Corrections ("ADOC") policymakers.

Plaintiff alleges four counts in his verified complaint: Count 1 - violations of the Eighth Amendment; Count II - fraudulent concealment, fraud, deceit; Count III - violations of Customary International Law;[4] and Count VI - conspiracy. He asserts that venue is proper in this district because "events have been directed from this district." Complaint at ¶ 6. Distilled to its essence, the complaint alleges that the various healthcare providers, and their attorneys and ADOC policymakers, have engaged in a vast conspiracy "in advance of litigation . . . [and] have deployed their prefabricated defense against me and other pro per (sic) prisoner plaintiffs. They used the Permissible Procedural Devices in bad faith . . . They [] rigged the game from the very beginning. Seeking truthful, accurate, non-tainted evidence has never been their objective. Not mischaracterizing but creating alternative facts." Complaint at ¶¶ 9 and 9A. For example, Plaintiff alleges that "Wexford, Zwick, Forman, Weber Gallagher":

[4] Plaintiff contends that he is "an alien within the meaning of [the Alien Tort Claims Act, 28 U.S.C. 1350] and the conduct [of Defendants] violates Customary International Law as well as Articles I, II, III, X, XI, XXVI, [illegible] of the American Declaration and the Law of Nations." Complaint, at ¶53. --------

> assembled template and stock pleadings discovery and motions documents for use by local counsel in proper prisoner litigation, that contained false or misleading information about the practices of Wexford. Specifically, concealed all emails, reports and complaints about the practices of Wexford . . . They concealed these to frustrate prisoner litigation. Then they submitted false sworn and unsworn representations including false affidavits, false and incorrect expert reports and

5 *5

> discovery response verifications by Wexford employees, offices, consultants, and experts.

Complaint, at ¶ 14. Plaintiff further contends that this "misconduct . . . occurred in and out of courtrooms in Pitts, Tenn., Ill., Fl., Az., Mo." *Id.* at ¶ 20. Similar allegations are made in the complaint against each of the named law firms and the Arizona Attorney General's office.

As to his Eighth Amendment claim, Plaintiff asserts that he has,

> high blood pressure, shakes, tremors, chronic pain, constipation, prostate issues, allergies. I am suppose to have a nephroblast done to my kidneys to see if there is blockage. If there is no blockage found, then something else shall have to be done. Centurion is procrastinating and not sending me to be treated. They are going through the motions to treat me, but their delays show nothing they are doing helps. They have continued with the practice that Wexford began, Corizon continued, and Centurion, like Wexford and Corizon, have refused to prescribe the course of treatment that did manage my condition.

Complaint, at ¶ 8 (emphasis in original). Additionally, Plaintiff contends that,

> as a result of my being denied treatment for my blood pressure, pain, prostrate and other issues, I have been told that I have to have a nephroplast to see if my kidney is blocked and this may cause me serious injury. Had Wexford, Corizon, Centurion continued with the treatment that I received in March 2012 - . . . - continued with the diet - I would not have been in imminent danger.
>
> I am 66 years of age and it is very likely that my injury shall be permanent.

Id. at ¶¶ 46, 47.

Applying the above legal principles, and taking the complaint as a whole, the Court finds that Plaintiff's allegations are insufficient to satisfy the imminent danger requirement of 28 U.S.C. § 1915(g). While he alleges that he is being denied medical care, identical allegations are currently at issue in a pending case filed by Plaintiff in the United States District Court for District of Arizona. In that case, Plaintiff is alleging that he is receiving inadequate healthcare for high blood pressure, unbearable pain, a lung condition, shakes, tremors, and
6 the denial of a proper medical diet. *See Tripati v. Corizon, Inc.*, 4:18-cv-00066 (D. Ariz.). *6

The remaining allegations of the complaint in which he alleges fraudulent concealment, fraud, deceit, violations of customary international law, and conspiracy, do not show that Plaintiff is in imminent danger of serious physical injury.

III. Conclusion

Based on the discussion above, it is respectfully recommended that Plaintiff's Motion for Leave to Proceed *in forma pauperis* (ECF No. 1) be denied in accordance with 28 U.S.C. § 1915(g) and that this action be dismissed without prejudice to Plaintiff reopening it by paying the full statutory and administrative filing fees, totaling $400.00.

Plaintiff is permitted to file Objections to this Report and Recommendation to the assigned United States District Judge. In accordance with 28 U.S.C. § 636(b), Fed.R.Civ.P. 6(d) and 72(b)(2), and LCvR 72.D.2, Plaintiff, because he is a non-electronically registered party, may file objections to this Report and Recommendation by **April 27, 2020.** Plaintiff is cautioned that failure to file Objections within this timeframe "will waive the right to appeal." *Brightwell v. Lehman*, 637 F.3d 187, 193 n. 7 (3d Cir. 2011). Dated: April 8, 2020

/s Cynthia Reed Eddy

Cynthia Reed Eddy

Chief United States Magistrate Judge cc: ANANT KUMAR TRIPATI

102081

Arizona State Prison

Florence / East Unit

P.O. Box 5000

Florence, AZ 85132

(via U.S. First Class Mail)

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

In Re:	
Tehum Care Services, Inc	Case No: 23-90086 (CML)
	CHAPTER 11
Debtor.	

EXHIBIT L RESPONSE TO ECF 1324

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

In Re: Tehum Care Services, Inc Debtor.	Case No: 23-90086 (CML) CHAPTER 11
Anant Kumar Tripati Plaintiff, vs. Sarah Tirschwell, et al., Defendant.	Adv. Pro. No. 23-03072 (CML)

MOTION TO EXCEED PAGE LIMITS

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. Represented parties should act through counsel.

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RELIEF REQUESTED

¶ I ask that I be allowed to file an omnibus response that exceeds the page limits.

MEET AND CONFER

¶ Before filing this response I contacted these Defendants, provided them with a draft copy of my response, and informed them their motions are not well grounded and contrary law. I asked them to meet and discuss this, so that I do not have to file this exhaustive response. I informed them that their conduct is deceptive. They failed to contact me.

THE FRUSTRATION OF PURPOSE DOCTRINE MANDATES THE MOTIONS BE DENIED

¶The "frustration of purpose" doctrine Geier v American Honda, 529 US 861 (2000) see also Gulf States Utility Co., v Alabama Power Co, 824 F2d 1465(5th Cir) amended reh., 831 F2d 557 (5th Cir. 1987) applies to all contracts. Wexford Corizon Centurion Naphcare entered into contracts to provide me and other prisoners' healthcare. Without the liability insurers, they would not have been allowed to enter into these contracts. These liability insurers guaranteed their performance and liability.

¶ By their misconduct set forth in ECF 4 they frustrated the intention of these contracts.

¶ By engaging in spoliation of evidence, they aided the Debtor in perpetrating this bankruptcy fraud.

¶ By and through their misconduct under the Meet and Confer section below, these Defendants have frustrated the purpose of bankruptcy

A. AS THE PROTECTOR OF THE JUDICIAL PROCESS, THE EQUITABLE DOCTRINE OF JUDICIAL ESTOPPEL MANDATES DEFENDANTS BE BARRED FROM ACCESS TO THIS FORUM FOR PLAYING FAST AND LOOSE WITH THIS COURT AND ITS PROCESSES

¶The equitable doctrine of judicial estoppel[1] has long been applied by U.S. Courts seeking to prevent litigants from playing "fast and loose" in litigation. *New Hampshire v. Maine, 532*

1 Charles Alan Wright Et Al., Federal Practice And Procedure § 4402 (2d Ed. 2011). Procedurally, judicial estoppel appears to be treated similarly to questions of res judicata since it may be raised by defendants in a motion to dismiss or for summary judgment. See Dunellen, LLC v. Getty Props. Corp., 567 F.3d 35, 37–38 (1st Cir. 2009) (upholding trial court's application of res judicata and judicial estoppel in granting summary judgment). Also

U.S. 742, 749–50 (2001) (collecting circuit decisions). Somewhat unique among the equitable estoppel doctrines, the central purpose of judicial estoppel is to protect the integrity of the legal system itself. *In re Coastal Plains, Inc., 179 F.3d 197, 205 (5th Cir. 1999)* (characterizing judicial estoppel as protecting "the judicial system, rather than the litigants"). The basic formulation of the doctrine varies from one court to another, though common tenets pervade. Compare id. at 206 ("Most courts have identified at least two limitations on the application of the doctrine: (1) it may be applied only where the position of the party to be estopped is clearly inconsistent with its previous one; and (2) that [the] party must have convinced the court to accept that previous position."), with *Salomon Smith Barney, Inc. v. Harvey, 260 F.3d 1302, 1308 (11th Cir. 2001)* ("First, it must be shown that the allegedly inconsistent positions were made under oath in a prior proceeding. Second, such inconsistencies must be shown to have been calculated to make a mockery of the judicial system.").

¶Stated simply, the doctrine of judicial estoppel bars a litigant from proceeding with a defense which is at odds with a position asserted by the litigant in a prior legal proceeding. While jurists and scholars have identified numerous objectives of the doctrine, at its core, the doctrine is about guarding against litigant chicanery.

¶ It was not until 2001 that the Supreme Court examined the doctrine in detail in *New Hampshire v. Maine. 532 U.S. 742, 749–50 (2001)* (noting that the Court has "not had occasion to discuss the doctrine elaborately."). In New Hampshire, the court applied judicial estoppel to prevent the state of New Hampshire from asserting that its Piscataqua River

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similar to res judicata, the doctrine can be raised sua sponte by the court itself. In re M Cassidy, 892 F.2d 637, 641 (7th Cir. 1990) (citing Allen v. Zurich Ins. Co., 667 F.2d 1162, 1168 n.5 (4th Cir. 1982)) (doctrine may be raised by court on appeal sua sponte). Hence, this argument included the failure of Defendants to provide evidence, that these claims are barred by res judicata and collateral estoppel, because they have failed to show where, in what court, when these issues were addressed. They were not presented or addressed.

boundary with Maine ran along the Maine shore of the river, contrary to a 1970s consent judgment under which New Hampshire had agreed the boundary ran along the geographic center of the river.

¶The court cited the *Davis v. Wakelee 156 U.S. 680, 689 (1895)* definition but elaborated on the doctrine's unique position as a protector of the judicial process. As the Court noted, the doctrine is used to "prevent the perversion of the judicial process" Id. at 750 (quoting *In re Cassidy, 892 F.2d 637, 641 (7th Cir. 1990))* by "prohibiting parties from deliberately changing positions according to the exigencies of the moment." Id. (quoting *United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993).* Other courts have been more colorful in describing the doctrine's ultimate aims of promoting fair and honest dealing in the courts. *Reynolds v. Comm'r, 861 F.2d 469, 472 (6th Cir. 1988)* (citing the various metaphors courts have used to describe the evils judicial estoppel guards against, including: "playing fast and loose with the courts," *Scarano v. Central R.R., 203 F.2d 510, 513 (3d Cir. 1953);* "blowing hot and cold as the occasion demands," *Allen v. Zurich Ins. Co., 667 F.2d 1162, 1167 n.3 (4th Cir. 1982);* and "hav[ing] [one's] cake and eat[ing] it too," *Duplan Corp. v. Deering Milliken, Inc., 397 F. Supp. 1146, 1177 (D.S.C. 1974)).*

B. CENTRAL THRUST IS THE "INTEGRITY OF THE JUDICIAL PROCESS

¶Yet, the central thrust of all these formulations remains the same: the protection of the "integrity of the judicial process." New Hampshire, 532 U.S. at 749–51 (citing various cases to illustrate the uniform agreement among the courts as to the purpose of judicial estoppel).

¶ Underpinning the courts' common application of the doctrine of judicial estoppel are the broadly recognized interests served by the United States' uniform Bankruptcy Code and the desire of the courts to ensure the integrity of their processes. Compare *Ryan Operations G.P.*

v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362 (3d Cir. 1996) ("[J]udicial estoppel would be inappropriate in any event as there is no evidence that Ryan acted in bad faith.") See generally *Sea Trade Co. v. FleetBoston Fin. Corp., No. 03 Civ. 10254, 2008 WL 4129620 (S.D.N.Y. Sept. 4, 2008)* (applying the doctrine of judicial estoppel after extensive and contested review of bankruptcy disclosure requirements under Argentine Bankruptcy Law).

C. JUDICIAL ESTOPPEL PREVENTS A PARTY FROM PREVAILING IN ONE PHASE OF A CASE ON AN ARGUMENT AND THEN RELYING ON A CONTRADICTORY ARGUMENT TO PREVAIL IN ANOTHER PHASE

¶ In addition to litigants' statutory and pseudo statutory obligations, the courts have additional "inherent powers" through which judges ensure efficient, orderly, and fair disposition of cases. See *Chambers v. NASCO, Inc., 501 U.S. 32, 58 (1991) (Scalia, J., dissenting)* ("It has long been understood that '[c]ertain implied powers must necessarily result to our Courts of justice from the nature of their institution,' powers 'which cannot be dispensed with in a Court, because they are necessary to the exercise of all others.'" (quoting *United States v. Hudson, 11 U.S. (7 Cranch) 32, 34 (1812))).* Among these powers is a court's ability to guard against litigant duplicity by employing the equitable doctrine of judicial estoppel. *New Hampshire v. Maine, 532 U.S. 742, 749 (2001)* ("This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase." (Internal quotation marks omitted)).

¶Briefly put, judicial estoppel permits a court to overrule arguments inconsistent with a petitioning party's representations in a prior legal proceeding. Invoked to protect the integrity of the judicial system, judicial estoppel has become an increasingly popular means of dismissing claims brought by individuals who have previously filed for bankruptcy and

failed to disclose those claims as assets in the bankruptcy proceeding. *In re Coastal Plains, Inc., 179 F.3d 197 (5th Cir. 1999). Lowery v. Stovall, 92 F.3d 219, 224 (4th Cir. 1996)* ("[T]he position sought to be estopped must be one of fact rather than law or legal theory.") Such distinctions between inconsistency in law or fact, however, may be irrelevant when viewed in light of the doctrine's secondary elements which better define judicial estoppel's application. Cassidy, 892 F.2d at 642 ("[I]n this case we think that the change of position on the legal question is every bit as harmful to the administration of justice as a change on an issue of fact.").

¶It should be noted however, that neither an unfair advantage, nor a material benefit to the inconsistent party is necessary to find the "judicial acceptance" required to judicially estop a litigant. All that need be shown is that the prior tribunal or agency relied upon the representation in reaching some decision.

¶Consequently, judicial estoppel may be applied in cases where a litigant did not ultimately prevail on his case in chief, but convinced a tribunal to rely on his representation to reach some conclusion in a prior case.

D. JUDICIAL ESTOPPEL PERMITS THIS COURT TO OVERRULE ARGUMENTS INCONSISTENT WITH DEFENDANTS REPRESENTATIONS IN PRIOR LEGAL PROCEEDINGS WHERE THEY INFORMED THE JUDGES THAT THE EVIDENCE I OUTLINE DID NOT EXIST

¶ During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶In CIV 18-0066RM Corizon Quintairos Prieto Wood & Boyer; Nichole Rowey; aggressively during the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist. CR 186, 187, 188, 191, 195, 200, 205, 208, 209, 210, 212, 217, 220, 234, 236, 237, 238, 240, 241,

242, 245, 246, 248, 249, 250, 251, 255, 256, 257, 314, 318, 337, 352, 363, 383, 392, 414, 421, 425, 427, 434

¶ In CIV 13-0615 TUC DCB Corizon through Joseph Scott Conlon ;Renaud Cook Drury Mesaros PA During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶ In CIV 13-0140 TUC DCB Wexford Health Sources, Inc; Weber Gallagher Simpson Stapleton Fires & Newby LLP; Jones Skelton Hochuli During the litigation and the time frames when the judgment could be collaterally attacked, Defendants stated the evidence that is a subject matter of the spoliation did not exist.

¶ In bad faith Defendants made material false representations and were dishonest in their representations to the court, about the evidence, because it did not suit their position at the time. *In re Coastal Plains, 179 F.3d 197, 208, 210 (5th Cir. 1999)* (noting another circuit's requirement of inconsistency in factual representations but expressing no opinion on the requirement and applying judicial estoppel due to prior judicial acceptance of bankruptcy filings valuing estate assets at less than $20,000. These observers in turn classify courts as embracing either a "judicial acceptance" or "sanctity of the oath" version of judicial estoppel.

¶ As the Supreme Court noted in New Hampshire, the doctrine "'prohibit[s] parties from deliberately changing positions according to the exigencies of the moment.'" *New Hampshire v. Maine, 532 U.S. 742, 749–50 (2001)* (emphasis added) (quoting *United States v. McCaskey, 9 F.3d 368, 378 (5th Cir. 1993)).* Such bad faith may be discerned from the record where the inconsistency constitutes a particularly egregious affront to judicial dignity. See generally *Taylor v. Freeland & Kronz, 503 U.S. 638, (1992); Stoll v. Gottlieb, 305 U.S. 165 (1938).*

THESE LAWYERS HAVE NOT ACTED EQUITABLY DURING THESE ADVERSARY PROCEEDINGS BECAUSE THEY LIED OUTRIGHT, ABOUT THE CORE OF THEIR DEFENSE, THAT THE THIRD CIRCUIT ADDDRESSED SPOLIATION. THE THIRD CIRCUIT DID NOT ADDRESS THE CLAIMS BECAUSE OF THIS BANKRUPTCY

COUNSEL LIED ABOUT THE CENTRAL ISSUE AS TO THEIR DEFENSES TO THIS LITIGATION

¶Reported cases provide a broad range of examples of how not to behave as a litigant. As the First Circuit stated in *Aoude v. Mobil Oil Corp. 892 F.2d 1115, 1118 (1st Cir. 1989)* "because corrupt intent knows no stylistic boundaries, fraud on the court can take many forms."

¶ These lawyers in their filings state that the Third Circuit decided against me on the spoliation claims **This is patently false.**

¶I asked them to provide me the page and paragraph where the court resolved this spoliation claims against me, and they refused to refer me to that portion of the decision.

¶They came outright and lied to this judge about a central issue in this litigation. If this court is to take this lie outright, the claims get dismissed. On the other hand if this court were to review the court order, the complaint proceeds. So this assertion is core to this litigation.

¶ When misconduct bears a substantial relationship to the matter(s) in issue the clean hand doctrine applies. *Precision Instrument Mfg. Co. v. Auto. Main. Mach. Co., 324 U.S. 806, 815 (1945)* (suggesting that the conduct of the opposing party is not relevant)

¶Traditionally, an equitable defense, the clean hands doctrine has been applied to cases at law since the merger of law and equity.

¶The standard exposition of the clean hands doctrine speaks of the requirement of coming into court with clean hands, but many courts also require that hands remain clean during

the litigation. Thus, a plaintiff who arrives in court with clean hands may still find herself out of court if her hands become soiled during the litigation. *C.C.S. Communication Control, Inc. v. Sklar, No. 86-7191, 1987 U.S. Dist. LEXIS 4280 (S.D.N.Y. June 1, 1987), affd without op., 983 F.2d 1048 (2d Cir. 1992).*As one trial court explained: "It would be strange if a court of equity had power-because of public policy for its own protection-to throw out a case because it entered with unclean hands and yet would have no power to act if the unconscionable conduct occurred while the case was in court."

¶ As such for this fact and this fact alone the motions to dismiss should be denied with prejudice, with directions the matters in the motions to dismiss cannot be reargued in any other manner, during these proceedings.

i. THE RIGHT TO RELIEF FOR SPOLIATION IS CLEARLY ESTABLISHED

¶ *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* clearly establishes the right to seek relief by way of an independent action, because prior action ended poorly, due to the missing or fabricated evidence, set forth in the complaint. *1B J Moore, J. Lucas, T. Currier, Moore's Federal Practice, para 0.407, at 286 (2nd ed. 1984)* provides in relevant part

- **"If it attempts to avoid, defeat, or evade a previously entered judicial decree.....or otherwise attempts to deny the prior decree's force and effect...in the context of an incidental proceeding NOT ESTABLISHED BY LAW for the purpose of attacking the decree's validity" (emphasis added)**

¶ The key is "established by law" and pursuant to *Foster v Lake Jackson, 28 F3d 425, 429 (5th Cir. 1994)* the right to independent action is established law, which does not set aside the judgment in the prior action.

A. THIS COURT HAS JURISDICTION AS THE CONDUCT OF DEFENDANTS ARE INEXTRICABLY ENTWINED

¶ The conduct of Defendants are inextricably entwined with the conduct of the Debtor *Fire Eagle LLC v Bischoff, 710 F.3d 299 (5th Cir. 2003).* They use the same modus operandi. *Howell Hydrocarbons v Adams, 897 F2d 183 (5th Cir. 1990)* Because of their identity of interests, combined with the cooperation agreements that they have entered into, they are named as parties. These Defendants were parties, to the spoliation claims in the District and Circuit Courts. Without their joinder, I cannot get complete relief, because, as the Debtor has filed for this bankruptcy, the Circuit Court and District courts have, as required by law, declined to hear my spoliation claims. *In re Lile 1998 Bankr. Lexis 399 (SD Tex 1989)* when the complaint is based on the same operative facts, they are intertwined.

B. COOPERATION AGREEMENT BY WEXFORD CONFERS JURISDICTION

¶ January 30, 2013 Mark Hale, the CEO of Wexford signed a contract in Pittsburgh, agreeing to cooperate with Corizon Health. This contract was scanned and signed on the same date by Denel Pickering for the ADCRR in Phoenix. Weber Gallagher, Jones Skelton, Struck and Gottfried were involved.

C. COOPERATION AGREEMENT BY CORIZON CONFERS JURISDICTION

¶ Steve Rector CEO of Corizon on July 20, 2018 signed an agreement to cooperate with Centurion in Brentwood, Tennessee and it was scanned and signed on the same date by Ken Sanchez in Phoenix for ADCRR. Struck, Renaud Drury, Quintairios Prieto and Gottfried were involved.

D. COOPERATION AGREEMENT BY CENTURION CONFERS JURISDICTION

¶ Steven H Wheeler, CEO of Centurion from Vienna, Virginia on May 25, 2019 signed a cooperation agreement agreeing to cooperate with Corizon. The document was cosigned in Arizona by Kenneth P. Sanchez, for ADCRR. Broening Oberg, Struck and Gottfried were involved.

E. COOPERATION AGREEMENT BY NAPHCARE CONFERS JURISDICTION

¶ Bradford McLane CEO Naphcare on May 24, 2022 signed in Alabama a document agreeing to cooperate with Centurion and on the same date it was scanned and signed by Kenneth P. Sanchez, ADCRR in Phoenix.

F. DEEMED TO HAVE ESTABLISHED PERSONAL JURISDICTION IS ESTABLISHED BY SPOLIATION

¶ The Supreme Court has held when documents have been destroyed, the Plaintiff has been deemed to have established personal jurisdiction. *Ins. Corp. v. Compagnie des Bauxites, 456 U.S. 694 (1982)* (affirming order that imposed sanction of deeming personal jurisdiction established) As Defendants destroyed evidence, jurisdiction is deemed to have been established.

CONCLUSION

¶ The motions to exceed page limits should be granted.

Respectfully submitted,

Anant Kumar Tripati 8/8/23

CERTIFICATE OF SERVICE

The Plaintiff hereby certifies that a true and correct copy of the foregoing document was served by the Court's CM/ECF system on all parties requesting notice/ all parties who have entered appearance.

8/8/23