Docket #1402 Date Filed: 02/27/2024

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.	

THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' MOTION TO COMPEL, OR IN THE ALTERNATIVE, MOTION *IN LIMINE* TO PRECLUDE THE DEBTOR AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS FROM OFFERING CERTAIN EVIDENCE AT THE HEARING ON THE RULE 9019 MOTION AND THE MOTION TO DISMISS

[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.

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INTRODUCTION

1. The Debtor has asserted that the "9019 Motion and the Motion to Dismiss are just two sides of the same coin."[2] In the Debtor's MTD Opposition, the Debtor lays out its case-in-chief in support of its Rule 9019 Motion[3] and in opposition to the Motion to Dismiss.[4]

2. The Debtor's MTD Opposition now makes plain what the Official Committee of Tort Claimants ("TCC") expected following the Debtor's and Official Committee of Unsecured Creditors' ("UCC") respective representatives' depositions in light of the tactics that the Debtor and the UCC employed at those depositions.

3. At the hearing on the Motions, the Debtor and the UCC intend to trumpet the headline testimony of their key witnesses: that each thinks the proposed settlement set forth in the Rule 9019 Motion (the "Settlement") is a good deal and that the investigations the Debtor and the UCC undertook to get to the Settlement were thorough.

4. But when the TCC attempted to discover ***why*** the Debtor and the UCC think the Settlement is fair and reasonable, ***what they investigated*** and ***what analysis they rely on*** to support their view that the settlement is fair and reasonable, the Debtor and the UCC systematically shielded the TCC from discovering that information by dubious assertions of attorney-client privilege, attorney work product, and mediation privileges. It does not work that way.

5. The Debtor and the UCC cannot offer evidence that the Settlement is fair and reasonable on the basis that they allegedly conducted investigations, learned and analyzed facts

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[2] *Debtor's Objection to Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case* [Dkt. No. 1385] (the "Debtor's MTD Opp.").

[3] *Joint Motion for Entry of an Order (I) Authorizing and Approving the Settlement By and Among the Debtor, the UCC, and the Parties to the Settlement Agreement and (II) Granting Related Relief* [Dkt. No. 1259] (the "Rule 9019 Motion").

[4] *Motion of the Official Committee of Tort Claimants and Certain Tort Claimants for Structured Dismissal of Chapter 11 Case* [Dkt. No. 1260] (the "Motion to Dismiss" and together with the Rule 9019 Motion the "Motions").

from those alleged investigations, and their witnesses—based on those alleged investigations and analyses—think the deal is fair and reasonable and should thus be approved (the ***sword***) while simultaneously blocking the TCC—and this Court—from discovering what investigations and analyses they did and why, based on the facts they learned from those investigations and analyses conducted, they think the settlement is fair and reasonable on privilege grounds (the ***shield***).

6. It is now clear from the Debtor's and the UCC's objections to the Motion to Dismiss that they will do just that at the hearing on the Motions—*i.e.*, have their key witnesses testify about their positive views of the settlement based on alleged investigations and analyses about which counsel to the Debtor and UCC previously instructed the same witnesses not to answer a multitude of basic questions. This motion to compel or, in the alternative, motion *in limine* is necessary and compelled by the Debtor's and the UCC's conduct.

BACKGROUND

7. The Debtor's and the UCC's case-in-chief in support of the Rule 9019 Motion and in opposition to the Motion to Dismiss will be the testimony of three witnesses: (1) Mr. Barton, in-house counsel to a member of the UCC; (2) Mr. Dundon of Dundon Advisers LLC, the UCC's financial advisor; and (3) Mr. Perry, the Debtor's Chief Restructuring Officer ("CRO").

8. In response to Rule 30(b)(6) deposition notices, the UCC designated Mr. Barton and Mr. Dundon to testify on behalf of the UCC, and the Debtor designated Mr. Perry to testify on behalf of the Debtor. Each of these witnesses claims to support the Rule 9019 Motion and testified that the UCC's and Debtor's respective investigations that form the foundation for the Settlement were thorough. At deposition, however, each witness was instructed not to answer the TCC's questions that sought to discover what investigations and analyses were conducted and why they believe the Settlement is fair and reasonable.

9. The Debtor's MTD Opposition block quotes from Mr. Barton's deposition testimony where he testified that the Rule 9019 Motion "is the fruit of an extensive and lengthy and hard fought investigation" that "follows not one but two mediations where we achieved a fantastic result for creditors and, yeah, it's a very well-supported motion."[5]

10. The Debtor's MTD Opposition similarly block quotes from Mr. Dundon's testimony where he testified that he "believe[s] that we got what we needed" from the investigation in order to assess the Settlement.[6] Mr. Perry's testimony is also block quoted to the effect that he had all the information he needed from the investigation to assess potential claims to be settled.[7]

11. Clearly, the Debtor and the UCC plan to champion the headline testimony offered by these witnesses at the hearing on the Motions despite the fact that, as recognized by the United States Trustee, the tort claimants represented by the TCC "comprise a sizeable majority of the general unsecured creditors," and they **unequivocally do not** support the Settlement.[8]

12. The problem is that this headline testimony offered by Mr. Barton, Mr. Dundon, and Mr. Perry to the effect that each thinks the investigation was thorough and the Settlement is a good deal is not enough: the Debtor and the UCC need ***evidence*** showing ***what*** they investigated

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[5] Debtor's MTD Opp. at ¶ 45 (quoting Barton Tr. 208:15-209:10). The TCC submits that the first mediation was tainted by the undisclosed relationship between Judge Jones and Mr. Freeman (counsel for YesCare). Just after it was formed, the TCC was invited to attend the second mediation but could not "meaningful participate" (*id.* at ¶ 44) because the TCC had not yet been afforded access to the data room. At the second mediation, the Debtor and the UCC put the TCC in a room and then cut a deal around the TCC, which deal is objectively terrible for the tort claimants. The Settlement attempts to settle the tort claimants' claims out from under them, with the lion's share of proceeds of that Settlement being used to pay off the holders of Non-Personal Injury Claims. The Settlement is not the product of good faith negotiations. Since the TCC was formed, the Debtor and the UCC have acted in bad faith and with the intent of causing harm to the tort claimants in this case.

[6] *Id.* ¶ 114 (quoting Dundon Tr. 141:17-23).

[7] *Id.* ¶ 113 (quoting Perry Tr. 120:14-18, 252:6-10).

[8] *The United States Trustee's Objection to the Joint Motion for an Order (I) Authorizing and Approving the Settlement By and Among the Debtor, the UCC, and the Parties to the Settlement Agreement and (II) Granting Related Relief* [Dkt. No. 1380] (the "UST Rule 9019 Objection") ¶ 1.

and ***why*** their analysis of the facts learned from their investigation leads them to think the Settlement is fair and reasonable. Conclusory statements are insufficient.

13. Indeed, as the Debtor has extolled, "facts matter."[9] The facts that matter here are those that support the Debtor's and the UCC's witnesses' headline testimony that the investigation was thorough and that the settlement is fair and reasonable. But when the TCC at depositions tried to discover what was investigated, what analysis was done, or what conclusions were reached that lead the Debtor and the UCC to conclude the settlement they seek to have approved by this Court is fair and reasonable, the witnesses were systematically and repeatedly instructed not to answer the TCC's questions. The instructions invariably (and improperly) asserted the shields of attorney-client privilege, attorney work product, and mediation privilege.

14. For example, the first paragraph of the Rule 9019 Motion touts that the UCC's and the Debtor's "thorough investigations of various claims and causes of action" included "multiple depositions and witness interviews."[10] The natural questions that arise include: who did the Debtor and the UCC interview, and what did they learn from these interviews?

15. At deposition,[11] the TCC asked Mr. Barton to "just identify who was – who was interviewed as referenced in this paragraph 1," but the UCC's counsel objected to that basic question on privilege and work product grounds and instructed Mr. Barton not to answer.[12]

16. TCC counsel sought clarification of this instruction, leading to the following exchange among counsel to the TCC and counsel to the UCC:

> MR. MOXLEY [counsel to the TCC]: The motion itself touts that witness interviews occurred. But when I ask the witness to identify

[9] Debtor's MTD Opp. ¶ 6.

[10] Rule 9019 Motion ¶ 1.

[11] Examples are set forth herein, but the Court is respectfully referred to Annex I attached hereto which provides a chart cataloguing the repeated and specific instances where the Debtor and the UCC instructed their witnesses not to answer a wide variety of the TCC's questions grounded in baseless assertions of privilege.

[12] Barton Tr. 140:3-12.

> who was interviewed, the instruction is not to answer that question on the grounds of privilege and work product. Do I have that right?
>
> MR. ZLUTICKY [counsel to the UCC]: You do have that correctly.[13]

17. The TCC was stonewalled at deposition when it asked if the UCC "consider[ed] any financial statements in connection with its evaluation of those claims"—Mr. Barton was instructed not to answer that basic factual question.[14] Similarly, Mr. Barton was instructed not to answer whether the UCC's financial advisor presented "any findings to the UCC members with respect to the work that it, the Dundon firm, undertook" in connection with the investigation.[15]

18. Mr. Barton testified that the UCC had "done an analysis" of the value of the avoidance claims that could be brought in connection with the divisional merger and that are being released under the proposed settlement, but when asked the simple question "what does that analysis show?", he was instructed not to answer the question.[16] Mr. Barton was also instructed not to answer what the UCC determined the personal injury tort claims in this case are worth in the aggregate—a critical issue concerning the fairness of the proposed Settlement.[17]

19. Mr. Perry was similarly instructed not to answer basic questions, to the point that when the TCC asked Mr. Perry whether the Debtor undertook "an investigation into successor liability claims," Mr. Perry answered: [redacted][18]

[13] *Id.* at 146:5-13.
[14] *Id.* at 220:12-25.
[15] *Id.* at 165:19-166:6.
[16] *Id.* at 194:2-195:3.
[17] *Id.* at 282:15-283:3 and 285:5-17.
[18] Perry Tr. 234:19-235:1.

20. Similarly, Mr. Perry was permitted to testify that the Debtor has conducted [redacted] of the tort claims on a [redacted] but when asked to describe [redacted] he was instructed not to answer on privilege grounds.[19] Thus, the TCC learned that the Debtor—apparently—investigated successor liability claims and analyzed tort claims, but the results of the investigation and the conclusions of the analysis were shielded from discovery on the grounds of dubious privilege assertions. Mr. Perry was not even permitted to testify as to what role he played in shaping the investigation:

[redacted]

21. Incredibly, Mr. Perry was even forbidden from answering what claims are being settled by the Settlement the Rule 9019 Motion seeks approval of—the most fundamental of questions at issue on the Rule 9019 Motion. Specifically, the TCC sought to discover whether the Debtor and the UCC agree on what claims are and are not being released under the Settlement Agreement attached as Exhibit 1 to the Rule 9019 Motion (the "Settlement Agreement").

22. TCC counsel asked Mr. Perry if a personal injury tort claim based on successor liability will be released if this Settlement Agreement is approved, and that question led to the following exchange among respective counsel to the TCC, the UCC, and the Debtor, which again concluded with Debtor's counsel instructing Mr. Perry not to answer the question:

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[19] *Id.* at 269:9-270:3.

[20] *Id.* at 94:12-20; *see id.* at 107:4-16 (Mr. Perry instructed not to answer what role he played in determining what documents would be requested as part of the investigation).

23. The Rule 9019 Motion asks the Court to approve a Settlement Agreement that involves all of the Debtors' assets. The Debtor here does **not have any assets** other than the causes

[21] *Id.* at 224:10-225:17.

of action released by the Settlement. As the Debtor represented to nine United States Senators, its "only real assets" are "potential causes of action against third parties[,]" and, in fact, the Debtor's only assets other than cash advanced by M2 LoanCo, LLC are the causes of action that it holds against third parties.[22] The Motion is a watershed event in that, like a section 363 motion that seeks approval of a sale of substantially all of a debtor's assets, it is purporting to settle and liquidate what is in substance **all of the Debtor's assets**.

24. In the Rule 9019 Motion, the Debtor and the UCC tout their "lengthy, thorough investigations of various claims and causes of action belonging to the Debtor's bankruptcy estate[.]"[23] The TCC attempted to discover what that investigation included, specifically, what was done to investigate the claims, who was interviewed, what documents were considered, what the factual bases are for the conclusions that were reached.

25. But as the examples set forth above and catalogued in **Annex I** attached hereto reflect, the Debtor and the UCC blocked the TCC from this basic discovery. In response to straightforward questions concerning the investigation they tout in the Rule 9019 Motion and that their witnesses were permitted to testify to at a high level was "thorough," the Debtor and the UCC repeatedly invoked the attorney-client privilege, the attorney work product doctrine, and the mediation privilege in instructing witnesses not to answer deposition questions that barely scratched the surface beyond the witnesses' headline views. Similar assertions of privilege were made in response to straightforward written discovery requests, as well.

26. The Debtor and the UCC refused to produce or answer questions on the analyses that they prepared that allegedly support the Settlement, they refused to answer deposition

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[22] **Exhibit A**, *Letter from Debtor to U.S. Senators* (November 15, 2023), at 14.

[23] Rule 9019 Motion ¶ 1.

questions and requests for admission and interrogatories aimed at discovering the scope of the Settlement (*i.e.*, what claims are and are not being released if the Rule 9019 Motion is granted and the Settlement is approved), and they systematically instructed their witnesses not to answer questions at deposition regarding the investigation that they purport to have undertaken.

27. This is a classic and impermissible use of these privileges as both a ***sword*** and ***shield***—a tactic that is universally condemned and almost never rewarded for the obvious reason that rewarding such misconduct would only encourage more misconduct.

28. The UCC's and the Debtor's witnesses were perfectly willing to testify that they think the settlement is a good, well-supported deal, and the witnesses offered extremely high-level explanations regarding the analyses that purportedly support this conclusion. In some instances, they were permitted simply to testify that "certain analysis" of an issue was done, but beyond that any questions concerning what the analysis entailed or what conclusions were reached from the analysis were improperly said by counsel to be off limits on privilege grounds.

29. But the second that the TCC attempted to scratch the surface and uncover what facts and evidence the Debtor and the UCC relied upon in concluding the Settlement is a good deal, the attorneys repeatedly stepped in and instructed their respective witnesses not to answer questions. Often ***both*** counsel to the Debtor ***and*** counsel to the UCC would each object to the same question and seek to reinforce the other's instruction not to answer.

30. The Rule 9019 Motion contains a high-level overview of the four avoidance actions that the Debtor and the UCC allegedly investigated.[24] Beyond conclusory statements in the Rule 9019 Motion that there was a "thorough" investigation that involved reviewing documents,

[24] *Id.* ¶ 27.

depositions and interviews,[25] the Rule 9019 Motion is devoid of ***any actual evidentiary support*** filed with it in the form of declarations that detail, for example, the scope of the investigation, analyses conducted, and conclusions reached.

31. The Rule 9019 Motion does not disclose the scope of the alleged investigation, what documents the Debtor and the UCC considered, or what evidence the Debtor and the UCC believe supports the fairness of the proposed settlement. The Debtor seems to rely on the Second Amended Disclosure Statement, which was filed on October 27, 2023, to support its claims that the Settlement is fair and reasonable.[26] But this is a document that they created.

32. The Debtor and the UCC apparently believe that they can come before the Court, proclaim in conclusory fashion, as they do in the Rule 9019 Motion, that: (a) the settlement is in the best interest of creditors, (b) that they conducted an investigation, and (c) that they performed an analysis based on which they have determined the settlement is fair and reasonable.

33. But at deposition they steadfastly refused to allow their witnesses to answer any questions that would enable the TCC—or the Court—to understand what investigation occurred here, what their analyses of the facts they discovered showed, and *why* the settlement is (purportedly) fair and reasonable (it is not).

34. Given these tactics, the TCC respectfully submits that the Court has two options.

35. ***First***, the Court may, consistent with Rule 37 of the Federal Rules of Civil Procedure, applicable here pursuant to Rules 7037 and 9014 of the Federal Rules of Bankruptcy Procedure, compel the Debtor and the UCC to respond to the TCC's discovery efforts by ordering (a) that these depositions be retaken (at the Debtor's and UCC's expense), with the instruction that

[25] *Id.* ¶ 1.
[26] *Id.* ¶ 49.

the UCC and the Debtor cannot obstruct discovery with improper instructions not to answer and that the witnesses must answer the questions; (b) that the Debtor and the UCC produce the documents relied upon by the Debtor and the UCC in reaching the decision to pursue approval of the settlement; and (c) that the UCC and the Debtor respond to the TCC's requests for admission and interrogatories in a manner that would permit the TCC to understand their respective views on what claims are being settled under the Settlement Agreement attached to the Rule 9019 Motion.

36. ***Alternatively***, the TCC appreciates that the Court may be inclined to keep the current schedule and proceed with the hearing on the Motions scheduled to be held on March 1 and 5, 2024, and leave the Debtor and the UCC to meet their burden on the Rule 9019 Motion. If the Court is inclined to maintain the current schedule, the only other appropriate remedy is to preclude the Debtor and the UCC from offering testimony on topics about which they improperly instructed their respective Rule 30(b)(6) designees not to answer questions on the basis of the attorney-client privilege, work product doctrine, or mediation privilege.

37. The Debtor and the UCC cannot be permitted to wield the sword of those purported investigations and analyses after invoking these privileges to shield such information from the TCC during discovery. As the case law discussed below makes clear, when a party obstructs discovery and denies its adversary access to information on the basis of these privileges, the party cannot use the privileges as both a sword and shield. The Debtor and the UCC cannot offer into evidence testimony on the very issues that would have been disclosed to the TCC prior to the hearing on the Motions but for the improper instructions not to answer by counsel relying on an improper invocation of purportedly applicable privileges.

38. As detailed herein and in the attached Annex I, the instructions not to answer were so pervasive and systematic that the consequence of denying answers as to why and on the basis

of what analysis the Debtor and the UCC have concluded that the Settlement is fair and reasonable may very well be that there is nothing that the Debtor and the UCC can now offer into evidence in support of the Rule 9019 Motion as to why the Debtor and the UCC have concluded it is a fair and reasonable settlement. If that is the case, the Rule 9019 Motion must be denied (without wasting the Court's and the TCC's time) because the Debtor and the UCC bear the burden of proving that the Settlement is fair and reasonable.

39. Again, this is the only outcome consistent with case law here (other than the alternative outcome where the Court compels the parties to effectively undertake discovery again—this time with the Debtor and the UCC answering questions they should have answered the first time). As the Debtor's estate is administratively insolvent and there appear to be no funds to pay the professionals for the work that they have done preparing for the hearing on the Motions, the TCC respectfully requests that the Court bar the Debtor and the UCC from offering testimony and evidence in support of the Rule 9019 Motion as to all issues they systematically shielded from discovery prior to the hearing on the Motions.

ARGUMENT

I. Applicable Standards on the Motion to Compel

40. A discovering party is entitled to compel discovery of documents, answers, and testimony which "fall[] within the scope of discovery as provided by Rule 26," namely anything that is "relevant to any party's claim or defense and is proportional to the needs of the case." *In re Trevino*, 564 B.R. 890, 904-906 (Bankr. S.D. Tex. 2017) (quoting Fed. R. Civ. P. 26(b)(1)). A party may move to compel the production of documents, to compel a response to requests for admission or interrogatories, or to compel disclosure at a deposition. *Id.*

41. The Debtor and the UCC have asserted three privileges as the basis for instructions not to answer questions at deposition: (1) attorney-client privilege[27], (2) work-product doctrine[28]; and (3) mediation privilege.[29]

42. Facts uncovered by investigations are categorically not privileged from disclosure. *See, e.g.*, *S.E.C. v. Brady*, 238 F.R.D. 429, 443 (N.D. Tex. 2006) ("The Court notes that work product immunity only protects the documents and not the underlying facts[.]").

43. Moreover, the attorney-client privilege, work product doctrine, and mediation confidentiality can all be waived if a party places at issue the very information that party seeks to shield from discovery. The privileges are waived where the party holding that privilege either

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[27] As a threshold matter, the "Fifth Circuit has defined attorney-client privileged communications as: (1) communications made to a lawyer; (2) for the primary purpose of securing either a legal opinion or legal services, or assistance in some legal proceeding; and (3) with the intent to remain confidential." *In re McDowell*, 483 B.R. 471, 481 (Bankr. S.D. Tex. 2012) (quoting *United States v. Robinson*, 121 F.3d 971, 974, 976 (5th Cir. 1997)).

[28] The work product doctrine applies to protect from disclosure upon a party's meeting of their burden of proof to show that "(1) the materials [are] documents or tangible things, (2) the materials [were] prepared in anticipation of litigation or for trial . . . (3) the materials [were] prepared by or for a party's representative; and (4) . . .[for] opinion work-product . . . the material contains the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party." *Id.* (quoting *Ferko v. National Ass'n for Stock Car Auto Racing, Inc.*, 219 F.R.D. 396, 400 (E.D. Tex. 2003)).

[29] The Debtor and the UCC generally invoke a "mediation privilege" which presumptively means the confidentiality order of the Court related to the "protection of information disclosed at Mediation[.]" *See Second Amended Stipulation and Agreed Order Regarding Appointment of Judge Christopher S. Sontchi (Ret.) as Mediator and Governing Related Mediation Procedures* [Dkt. No. 1158] (the "Second Mediation Order"), at 1(d). No generalized "mediation privilege" is recognized by the Fifth Circuit or this Court. *See e.g. Washington-St. Tammany Elec. Coop., Inc. v. Louisiana Generating, L.L.C.*, No. CV 17-405-JWD-RLB, 2019 WL 1950394, at *6 (M.D. La. May 1, 2019) ("The Fifth Circuit has not recognized an implied settlement privilege under the federal common law."); *Performance Aftermarket Parts Group, Ltd., v. TI Gr'p Auto. Sys, Inc.*, 2007 WL 1428628, at *3 (S.D. Tex. May 11, 2007) (rejecting the idea of a "settlement negotiations" privilege); *see also In re Lake Lotawana Cmty. Improvement Dist.*, 563 B.R. 909, 923 (Bankr. W.D. Mo. 2016) (collecting cases and noting that only the Second Circuit has adopted a general mediation privilege). The Bankruptcy Court's Complex Case Procedures do provide that "[n]o person may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the mediation effort" and "[w]ithout limiting the foregoing, the parties are bound by (i) Fed. R. Evid. 408." Complex Case Proc. However, Fed. R. Evid. 408 does not create a privilege from discovery. *See, e.g., Hyde & Hyde, Inc. v. Mount Franklin Food, LLC*, No. EP-11-CA-08-FM, 2012 WL 12862826, at *2 (W.D. Tex. Jan. 6, 2012) (ordering production of settlement communications). The Second Mediation Order specifically states that "[i]nformation otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a Party in the Second Mediation." *Id.*; *see also Stipulation and Agreed Order Regarding Appointment of a Mediator and Governing Related Mediation Procedures* [Dkt. No. 603] (the "First Mediation Order") at 1(c) (*accord*).

selectively discloses information subject to that privilege or places the privileged information at issue. *See, e.g.*, *In re Myers*, 382 B.R. 304, 307 (Bankr. S.D. Miss. 2008) (holding that the debtor waived the attorney-client privilege as to schedules because the debtor pled reliance on his attorney's advice to defend one of the claims during a deposition); *In re Wilkerson*, 393 B.R. 734, 746 (Bankr. D. Colo. 2007) (holding debtor waived the attorney-client privilege by placing confidential information disclosed to her counsel at issue when asserting a good faith defense); *Boy Scouts of America and Delaware BSA LLC*, Case No. 1:20-bk-10343, Dkt. No. 6798 (Bankr. D. Del. 2021) (ordering the production of mediation communications because "debtors want to use the fact of mediation as evidence of good faith . . . it cannot be the case that if a party is relying on the very fact of mediation to meet its standard of proof, that discovery is prohibited regarding the *bona fide* of the mediation" and "debtors do not suggest that evidence with respect to the negotiation of the trust distribution procedure is otherwise available from another source outside the mediation process").

44. The "assertor of the privilege has the burden of proving that the privilege was not waived[.]" *In re McDowell,* 483 B.R. at 491. That burden is not discharged by "mere conclusory or ipse dixit assertions, for any such would foreclose meaningful inquiry into the existence of the relationship, and any spurious claims could never be exposed." *In re Bonanno,* 344 F.2d 830, 833 (2d Cir. 1965); *see also In re McDowell*, 483 B.R. at 482 ("Blanket and conclusory assertions of privilege do not satisfy a claimant's burden.").

45. Analysis performed by advisors is subject to disclosure where the analysis goes to the heart of the claims at issue. *See, e.g.*, *In re Anadarko Petroleum Corp. Sec. Litig*., No. 4:20-CV-00576, 2023 WL 2733401, at *4 (S.D. Tex. Mar. 31, 2023), *reconsideration denied*, No. 4:20-CV-00576, 2023 WL 4308750 (S.D. Tex. June 30, 2023) (requiring production of privileged

documents where the party "inject[ed] the contents of a privileged communication into [the] litigation either by making the content of the communications a factual basis of a claim or defense[,]" where the party put at issue in deposition "the privileged matters underlying the internal investigation conducted by Norton Rose on behalf of the" party's audit committee); *Conoco Inc. v. Boh Bros. Const. Co.*, 191 F.R.D. 107, 118–19 (W.D. La. 1998) (ruling that "analysis of [party's] attorneys regarding the basis of [party's] liability and the reasonableness of the amount paid in settlement . . . are at issue and that [party] needs the information sought to determine whether the settlement was reasonable . . . and has shown a compelling need and no alternative means of obtaining this information. Therefore, this court finds that [party's] immunity under the work-product doctrine for its attorney work product, whether ordinary or opinion, has been waived."); *Noble Energy, Inc. v. Prospective Inv. & Trading Co.*, No. 09-CV-00748, 2011 WL 13262046, at *5 (W.D. La. Jan. 6, 2011) (ordering the production of settlement communications and documents where the party withholding documents "b[ore] the burden of proving the reasonableness of its settlement" because "it most certainly puts the privilege at issue and entitles" the other party to "discovery of those documents"); *In re Kidder Peabody Sec. Litig.*, 168 F.R.D. 459, 470 (S.D.N.Y. 1996) (holding that the party waived privilege as to an investigative report and the underlying interview documents where the party "would use the substance of the documents as a sword while at the same time invoking the privilege as a shield to prevent disclosure of the very materials that it has repeatedly invited the courts to rely upon. This it cannot do.").

II. Motion *in Limine* Standard

46. It is well established that a party—like the Debtor and the UCC—may **not** offer testimony or evidence at a hearing on issues on which it refused to testify at deposition based on the attorney-client privilege, the work product doctrine, or the mediation privilege. *See, e.g.*, *Willy v. Admin. Review Bd.*, 423 F.3d 483, 497 (5th Cir. 2005) ("a party may not use privileged

information both offensively and defensively at the same time[,] . . . [i]n other words, when a party entitled to claim [a] privilege uses confidential information against his adversary (the sword), he implicitly waives its use protectively (the shield) under that privilege"); *Nguyen v. Excel Corp.*, 197 F.3d 200, 207 n.18 (5th Cir. 1999) ("In accord with this principle is a client's inability to, at once, employ the privilege as both a sword and a shield. Attempts at such improper dual usage of the privilege result in waiver by implication."); *League of United Latin Am. Citizens v. Abbott,* No. EP21CV00259DCGJESJVB, 2023 WL 8880313, at *10 (W.D. Tex. Dec. 21, 2023) ("The idea behind this partial waiver equals full waiver rule is that a party should not be able to use the privilege to selectively disclose portions of communications or documents but withhold others in a way that favors them."); *In re Anadarko Petroleum Corp. Sec. Litig.*, 2023 WL 2733401, at *3 ("Important here is the concept of waiver of privilege due to use of privileged information as both *a sword and a shield."*); *Jolivet v. Compass Grp. USA, Inc.*, 340 F.R.D. 7, 20 (N.D. Tex. 2021) ("courts generally recognize that a privilege cannot be used simultaneously as both a sword and a shield").

47. A party uses privilege as a sword and a shield where it relies on the privileged information to prove a legal claim, without allowing discovery into the veracity of that proof. *See, e.g.*, *In re Itron, Inc.,* 883 F.3d 553, 564–65 (5th Cir. 2018) (noting that "discovery into attorney-client communications" is allowed "after the plaintiff *relied* on those communications" and "manifest unfairness refers only to the type of unfairness that results when a party invokes privileged communications while denying its adversary access to the same"); *Conkling v. Turner*, 883 F.2d 431, 435 (5th Cir. 1989) (affirming order obligating party to answer interrogatories which required disclosure of attorney-client privilege and work product information because the party affirmatively relied upon knowledge obtained to assert defense to statute of limitations).

48. The Court is entitled to sanction such abuse of the discovery process by precluding testimony about the issues shielded from discovery. *See*, *e.g.*, *In re Lopez*, No. 09-70659, 2015 WL 7572097, at *13 (Bankr. S.D. Tex. Nov. 24, 2015) (precluding a witness' testimony on certain issues as a sanction for that party shielding discovery of those issues) (citing Fed. R. Civ. P. 37(b)(2); Fed. R. Bankr. P. 7037).

49. The Bankruptcy Court's decision in *In re Residential Cap., LLC*, 491 B.R. 63, 72 (Bankr. S.D.N.Y. 2013), is instructive. In *Residential Cap.*, an official committee sought "the production of all documents bearing on the evaluation, negotiation, and approval of the RMBS Trust Settlement, including any documents communicating legal advice, analysis of claims, or analysis of potential liabilities[.]" *Id.* at 65. The debtors in that case produced a privilege log and opposed producing any such documents based on privilege but committed that the debtors would not offer any evidence of reliance on advice of counsel in seeking approval of the settlement. *Id.*

50. The Court instructed the debtors' counsel that "[y]ou're going to have a real problem if you're going to assert privilege with respect to communications from counsel ***that form any part of the basis for directors approving the settlement***." *Id.* at 66 (emphasis added). In fact, during the deposition of the Debtors' CEO counsel "consistently invoked the attorney-client privilege, instructing the witness not to answer numerous questions about legal advice he received regarding the negotiation and drafting" of the settlement, including, the CEO's understanding of the legal defenses available to defeat the claims encompassed by the settlement, and communications with counsel concerning the Debtors' potential liability for certain claims. *Id.*

51. The Court held that "after having asserted the attorney-client privilege throughout discovery, the Debtors cannot now introduce the substance of whatever advice it sought and received in order to demonstrate that it exercised proper business judgment in approving the []

Settlement, even for the purpose of rebutting a 'due care' challenge." *Id.* at 72. The Court barred the Debtor's sword and shield use of the privilege instructions and disallowed the use of the evidence at the Rule 9019 hearing.

III. The Debtor and the UCC Should be Compelled to Comply with Discovery Obligations or be Barred from Introducing into Evidence That Which They Shielded from Discovery

52. Here, the Debtor and UCC ask this Court to approve the Settlement as "fair and equitable."[30] In support of that approval, the Debtor and the UCC urge the Court to make four key findings:

(1) find that the "terms and conditions" of the Settlement "including the total consideration to be realized by the Debtor pursuant thereto, is fair and reasonable, and the transactions are in the best interest of the Debtor, its creditors, and its estate" (Proposed Order [Dkt. 1259] ¶ A);

(2) find that they "have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for entering into the Settlement Agreement" (*id.*);

(3) find that the "entry into the Settlement Agreement reflects the Debtor's and the UCC's exercise of prudent business judgment consistent with their fiduciary duties" (*id.*); and

[30] In the Rule 9019 Motion, the UCC and the Debtors ask the Court to approve the Settlement as "fair and equitable" and asks the Court to evaluate: "(1) the probability of success in the litigation, with due consideration for the uncertainty in fact and law, (2) the complexity and likely duration of the litigation and any attendant expense, inconvenience and delay, and (3) all other factors bearing on the wisdom of the compromise." Rule 9019 Motion ¶ 61. The Debtors and the UCC urge the Court to consider "factors bearing on the wisdom of the compromise" including "(a) the paramount interest of creditors with proper deference to their reasonable views; and (2) the extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion." *Id.* ¶ 62.

(4) find that "the Settlement Agreement has been negotiated by the Debtor, the UCC and the Settlement Parties . . . in good faith, at arm's length, and without collusion or fraud" (*id.* ¶ B).

53. The Debtor and the UCC cannot now be permitted to put on evidence at the hearing on the Rule 9019 Motion in support of these requested findings when they systematically shielded the TCC from discovering that very evidence in discovery. The TCC has used every discovery method at its disposal and has been denied answers to those questions at every turn.

54. Even if the Debtor and the UCC had not waived all claimed privileges by putting their investigations at the heart of the relief sought in the Rule 9019 Motion, documents, communications, and testimony related to the UCC and the Debtor's alleged investigation, including their advisors' analysis of the facts discovered in the investigation of the Settlement would still be discoverable.

55. Evidence otherwise protectable under the work product doctrine is discoverable if there is a substantial or compelling "need for the information and an inability to obtain the substantial equivalent without undue hardship" then they are discoverable. *S.E.C. v. Brady*, 238 F.R.D. at 443 (quoting *In re Int'l Systems & Controls Corp. Sec. Litig.*, 693 F.2d 1235, 1240 (5th Cir.1982)). Substantial or compelling need can be shown by the importance of the information. *See, e.g.*, *In re Int'l Sys. & Controls Corp. Sec. Litig.*, 693 F.2d at 1241 ("Some cases have found substantial need by emphasizing the importance of the documents themselves. One common justification for discovery is the claim which relates to the opposite party's knowledge that can only be shown by the documents themselves.").

56. Here, what claims are being released by the Settlement Agreement that is the subject of the Rule 9019 Motion are of paramount importance.[31] Equally important is the Debtor's and UCC's understanding of what is being settled and what investigation each party did to evaluate those claims.[32] Where, as here, the Debtor and UCC refused to answer any questions related to their investigation of the successor liability claims and the results of that investigation, documents and testimony which is otherwise privileged or protected by the work product doctrine are discoverable when they are the "most probative, if not the only" evidence of a claim at issue. *See, e.g.*, *In re Mongelluzzi*, 568 B.R. 702, 715 (Bankr. M.D. Fla. 2017) (requiring production of privileged documents to the trustee because they were "most probative, if not the only evidence of [parties'] knowledge, intent, and state of mind" essential to the analysis of the good faith defense to a fraudulent transfer claim).

57. The Debtor and UCC have offered no cogent explanation as to how these privileges can shield from production the broad categories to which the parties have applied it—*i.e.*, the scope of the investigation, the process of the investigation, the facts uncovered by the investigation, the analysis as a result of that investigation, and the conclusions reached from the investigation.

58. The TCC has sought the production of documents and communications to answer these questions and was denied.[33] The TCC sought answers to these questions through

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[31] *See, e.g., In re JNS Aviation, LLC*, 350 B.R. 283, 293 (Bankr. N.D. Tex. 2006) (denying motion to approve settlement "as a resolution of the fraudulent transfer claims" where settlement also included "veil piercing theories" due to "confusion between the parties concerning what they are settling").

[32] *See, e.g., In re Ditech Holding Corp.*, 606 B.R. 544, 625 (Bankr. S.D.N.Y. 2019) (holding that the debtor failed to meet its burden of showing that a settlement was "fair and equitable" where the debtor "did not analyze the claims" or "otherwise attempt to place a value" on the claims that were the subject of the settlement).

[33] *See* **Exhibit B**, Debtor's Responses to TCC's Requests for the Production of Documents Concerning Rule 9019 Motion, at Nos. 2, 7, 8, and 9; **Exhibit C**, UCC's Responses to TCC's Requests for the Production of Documents Concerning the Rule 9019 Motion, at Nos. 2, 6, 7, 8, and 9. The Debtor in response to the TCC's Request for Production No. 2 requesting production of "[a]ll documents You intend to use, introduce, or admit into evidence, or otherwise rely on for any purpose at the hearing on the Motion[,]" the Debtor confirmed that it "will produce responsive documents." While the Debtor did not specifically object to production of any documents responsive

interrogatories and requests for admission and was denied.[34] And the TCC sought answers to these questions through depositions of the Debtor's Rule 30(b)(6) witness (Mr. Perry), and the UCC's Rule 30(b)(6) witnesses (Messrs. Barton and Dundon), and each witness was instructed by counsel not to answer relevant questions on dubious assertions of attorney-client privilege, mediation privilege, and work product doctrine. *See* Annex I.

59. The UCC and the Debtor request the Court to make specific **factual** findings, and yet, they offer no **evidence** in support of those factual findings in their Rule 9109 Motion, and they have thwarted the TCC's discovery attempts to identify evidence in support of or relevant to those factual findings at each turn.

60. The Debtor and the UCC should be compelled to (1) produce documents and communications related to the Debtor's and UCC's investigation of the successor liability and alter ego claims; (2) answer the TCC's requests for admission and interrogatories related to the successor liability and alter ego claims; and (3) hold their respective Rule 30(b)(6) depositions again, with the Debtor and the UCC to bear the respective costs for the necessity of re-deposing these witnesses.

61. The Debtor and the UCC's investigations are highly relevant to the Court's adjudication of the Rule 9019 Motion. In the Rule 9019 Motion, the Debtor and UCC tout their "lengthy, thorough investigations of various claims and causes of action belonging to the Debtor's bankruptcy estate[.]" *See* Rule 9019 Motion ¶ 1. But the Debtor and the UCC each precluded

to this Request, the Debtor has clearly withheld documents and communications that its own Rule 30(b)(6) witness relied upon to prepare for his deposition on the basis of privilege. *See* Perry Tr. 53:15-61:9.

[34] *See, e.g.*, **Exhibit D**, Debtor's Responses to the TCC's Requests for Admission Concerning the Rule 9019 Motion, at Nos. 5, 6, 7, 8, and 9; **Exhibit E**, UCC's Responses to the TCC's Requests for Admission Concerning the Rule 9019 Motion, at Nos. 5, 6, 7, 8, 9, 10, 11, and 12; **Exhibit F**, Debtor's Responses to the TCC's Interrogatories Concerning the Rule 9019 Motion, at Nos. 3, 4, and 5; **Exhibit G**, UCC's Responses to the TCC's Interrogatories Concerning the Rule 9019 Motion, at Nos. 3, 4, 5, and 6.

discovery into the scope and process of their respective investigations. That information is relevant and not privileged.

62. Despite multiple colloquies, correspondence among the parties, and a meet and confer among counsel to the TCC, UCC, and Debtor on February 26, 2024, the Debtor and UCC remain unable to articulate a sufficient privilege basis for the withholding of such fundamental factual information. The Debtor and the UCC, for example, obstructed their witnesses from answering straightforward questions regarding the process of the investigations including: who performed the investigation (*see* [redacted]); who reviewed documents uncovered by the investigation (*see* Barton Tr. 138:11-21); which witnesses were interviewed (Barton Tr. 140:3-12; 146:5-13); and what types of documents were considered (Barton Tr. 220:12-25). The Debtor and UCC instructed their witnesses not to answer questions regarding the scope of the investigation. *See, e.g.*, [redacted]); Barton Tr. 217:8-17 (instructing not to answer questions regarding whether any interviews were conducted of individuals involved with the divisional merger); Barton Tr 251:4-252:5 (instructing witness not to answer questions regarding whether the UCC investigated the Released Parties' ability to make settlement payments provided for in the Settlement Agreement).

63. Counsel even refused to allow the Debtor and UCC witnesses to answer whether they performed an investigation of the personal injury claimants' successor liability and alter ego causes of action against the Released Parties. The TCC asked the basic question of [redacted] Mr. Perry was instructed not to answer that question based on the attorney-client privilege and work-product doctrine. Perry Tr. 190:24-191:6.

64. In the alternative, the TCC makes this motion *in limine* to bar the Debtor and the UCC from presenting evidence at the hearing on the Motions of (1) their "thorough" investigation concerning any aspects of which they instructed their witnesses not to answer questions about, (2) the conclusions reached in their investigation about which they instructed their witnesses not to answer questions about, and (3) the basis for any opinions that the settlement is fair, reasonable, and equitable to the estate and its creditors to the extent they instructed their witnesses not to answer questions about.

CONCLUSION

65. For the foregoing reasons, the TCC's motion to compel should be granted and an order issued that compels (1) the production of documents and communications related to the Debtor and UCC's investigation of the successor liability and alter ego claims; (2) answers to the TCC's requests for admission and interrogatories related to the successor liability and alter ego claims; (3) the opportunity to re-depose the Debtor and the UCC on questions they previously improperly instructed their witnesses not to answer; and (4) imposition of sanctions in the form of costs for having to re-depose these witnesses.

66. In the alternative, if the Court does not order the production of this discovery, the TCC seeks an order barring the Debtor and the UCC from presenting evidence at the hearing on the Motions of (1) their investigation, (2) evidence uncovered through that investigation, (3) any analysis of the facts they discovered in the course of their investigations, and (4) their opinions that the settlement is fair, reasonable, and equitable to the estate and its creditors.

Dated: February 27, 2024
New York, New York

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CERTIFICATE OF COMPLIANCE WITH FED. R. CIV. P. 37(a)(2)(A)

I, Eric R. Goodman, certify that the TCC has in good faith met and conferred with the UCC and the Debtor prior to the filing of the instant motion. Among other communications on these issues, on February 15, 2024, I sent a letter to counsel for the UCC demanding appropriate responses to discovery. On February 24, 2024, I sent a letter to counsel for the Debtor demanding appropriate responses to discovery. The TCC, UCC, and the Debtor met and conferred on these issues on February 26, 2024.

ANNEX I

A. Mr. Barton's (UCC Designee) Deposition

On February 14, 2024, the TCC deposed Mr. Barton, one of the UCC's Rule 30(b)(6) designees. *See* Barton Tr. attached as **Exhibit H**. At deposition, Mr. Barton was instructed not to answer the following questions based on the attorney-client privilege, the work product doctrine, and/or mediation privilege:

i. The Process of the UCC's Investigation:

Question	Instruction or Refusal to Answer
Q: "Okay. Were the UCC members ever shown any documents that were reviewed as part of the investigation?" Tr. at 138:11-13.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by attorney-client privilege and information protected by the work-product doctrine. You are instructed not to answer that question." Tr. at 138:14-21.
Q: "And, Mr. Barton, can you just identify who was – who was interviewed as referenced in this paragraph 1?" Tr. at 140:3-5.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by attorney-client privilege and information protected by the work-product doctrine. You are instructed not to answer that question." Tr. at 140:6-12.
Mr. Moxley: "My question, counsel, is – asks the witness who was interviewed as part of the investigation, and the motion itself references there were interview done. Will you allow the witness to identify who was interviewed?" Tr. 140:21-141:4.	Mr. Zluticky: "No." Tr. 141:16.
Mr. Moxley: "On the basis of which privilege?" Tr. 141:17-18.	Mr. Zluticky: "Work-product doctrine and attorney-client privilege. I'm instructing him not to answer." Tr. 141:19-22.
Mr. Moxley: Okay. Just so the record –" Tr. 141:23-24.	Mr. Zluticky: "The record is clear. Your exact question I'm objecting to, and I'm instructing the witness not to answer that exact question you just asked." Tr. 141:25-142:5.
Mr. Moxley: "The motion itself touts that witness interview occurred. But when I ask the witness to identify who was interviewed, the	Mr. Zluticky: "You do have that correctly." Tr. 146:13.

Question	Instruction or Refusal to Answer
instruction is not to answer that question on the grounds of privilege and work product. Do I have that right?" Tr. at 146:5-11.	
Q: "Mr. Barton, did the UCC conduct any interview regarding the individuals involved with the Divisional Merger?" Tr. 217:8-10.	Mr. Zluticky: "Object to the form of the question. Objection. This asks for information protected by the attorney-client privilege and work-product. I'm instructing the witness not to answer the question." Tr. 217:11-17.
Q: "Okay. Mr. Barton, again with the potential claims and causes of action that may arise from the transactions involved in the divisional Merger, in connection with those potential claims, sir, and the UCC's investigation of those claims, did the UCC consider any financial statements in connection with its evaluation of those claims?" Tr. 220:12-20.	Mr. Kaufman: "Objection." Mr. Zluticky: "Object to form. Objection. This calls for information protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question." Tr. 220:21-25.
Q: "Okay. What, if any, investigation did the UCC undertake to determine whether or not YesCare and the other M2 parties have the ability to make the payments contemplated by section 4 in the Settlement Agreement?" Tr. 251:4-8.	Mr. Zluticky: "Object to form." Mr. Kaufman: "Objection. Mr. Zluticky: "Objection to the extent that this calls for information protected by attorney-client privilege and information protected by the work-product doctrine. Also to the extent that this is arising out of or related to mediation communication. So if you can answer the question while not invading all of those privileges, you should answer the question." Mr. Kaufman: "Hold on. Sorry, David. For the Debtor, we just join all those objections." A: I don't think there's any response I could give that doesn't disclose attorney-client communications." Tr.251:9-252:5.

ii. <u>What Facts were Uncovered in the UCC's Investigation:</u>

Question	Instruction or Refusal to Answer
Q: "In your last answer, the 'documents reflecting the value of YesCare,' what documents do you have in mind, sir?" Tr. 252:18-20.	A: "Documents that were –" Mr. Zluticky: "Object to form. Objection to the extent that this calls for information protected by attorney-client privilege or the work-

	product doctrine. If you can answer the question without revealing information protected by attorney-client privilege or the work-product doctrine, you can answer the question." A: "We got these documents through the investigation work that has been going on over the last year." Tr. 252:21-253:7.
Q: "Right. You know, you said – you said 'these documents' What I'm trying to understand, sir, are there particular documents that you have in mind in your answer?" Tr. 253:12-17.	Mr. Zluticky: " Well, so I am going to object to that question, and I'm going to object because it does ask for information that's protected by the attorney-client privilege and the work-product doctrine, seeking the mental impressions of counsel. And I'm going to instruct the witness not to answer the question." Tr. 253:18-254:2.
Q: "Okay. Mr. Barton, noting that written objection [of the UCC to the TCC's Request for Admission No. 3], does the UCC know one way or another whether or not YesCare is solvent?" Tr. 302:13-15.	Mr. Zluticky: "Objection. Object to form. Objection. This asks for attorney-client privileged information and information protected by the work product doctrine. I'm instructing the witness not to answer this question and, by the way, don't waste my time. Like, any time you are asking about a legal conclusion, guess what, it's a work product. So, like, we can go through each one, but it's going to be the same instruction every time. So instruct you not to answer." Mr. Kaufman: "Hold on. I just want to second that objection." Tr. 302:16-303:7.

iii. <u>What Analysis Was Conducted of those Facts:</u>

Question	**Instruction or Refusal to Answer**
Q: "Did – considering the investigation and work undertaken by the Dundon firm, did the Dundon firm present any findings to the UCC members with respect to the work that it, the Dundon firm, undertook?" Tr. 165:19-23.	Mr. Zluticky: "Objection. Calls for information that may violate attorney-client privilege and information protected by the work-product doctrine. I'm instructing the witness not to answer." Tr. 165:24:166:6.
Q: "So we noticed that there's not a – there's not a chart or a table with respect to the Divisional Merger potential avoidance actions and no stated dollar amount is listed there. Do you know why that is?" Tr. 193:7-12.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. And I'm instructing the witness not to answer." Tr. 193:12-19.

Question	Instruction or Refusal to Answer
	Mr. Kaufman: "Debtor joins the objection."
Q: "Mr. Barton, does the UCC have a view as to the monetary amount of the potential value of the avoidance transact—the avoidance claims that could be brought in connection with the Divisional Merger?" Tr. 194:2-6. Q: I am not. Please exclude the mediation piece. Mr. Barton, go ahead." Q: "Okay. And what is that – what does that analysis show?" Tr. 194:19-20.	Mr. Zluticky: "Object to form." Tr. 194:7. Mr. Kaufman: "Object to form. And I'll also assert the mediation privilege to the extent you're getting into discussion that occurred at mediation." Tr. 194:8-12. A: "We've done an analysis of that value." Tr. 194:17-18. Mr. Zluticky: "Object to form. Objection. This calls for information that's protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question." Tr. 194:21-195:3.
Q: "Was the analysis that was performed by Dundon with respect to the value of the potential avoidance actions related to the Divisional Merger transactions, was that. . .analysis prepared after an investigation into that issue?" Tr. 196:2-11.	Mr. Zluticky: "Object to form. Objection. This calls for information that's protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question. My apologies for interrupting you earlier." Tr. 196:12-20. Mr. Kaufman: "The Debtor joins the objection."
Q: "Okay. And to the UCC – again, without asking you to tell me what the conclusion as or invading any attorney work product at all – that's not the intent – did Dundon reach a conclusion as to what value Dundon ascribed to the potential avoidance actions related to the Divisional Merger transactions?" Tr. 198:13-20.	Mr. Zluticky: "Object to form. Objection. This calls for information that's protected by the attorney-client privilege and the work-product doctrine. The witness already testified that Dundon's analysis was prepared in consultation with Stinson. It is privileged. I'm instructing the witness not to answer." Mr. Kaufman: "The Debtor will join the objection, and also add, we have asserted the mediation privilege." Tr. 198:21-199:8.
Q: "What can you tell me about that analysis, sir?" Tr. 281:19-20.	A: "The UCC has done an analysis of claims, including Personal Injury Claims." Tr. 281:17-18. Mr. Zluticky: "Objection. I'm objecting to the form of the question, and I'm objecting to the extent that it seeks information protected by attorney-client privilege the work-product

Question	Instruction or Refusal to Answer
	doctrine. If you can answer the question without invading the attorney-client privilege or the work-product doctrine, you can answer the question." Tr. 281:21-282:6. A: "I can't comment on the nature of that analysis without disclosing attorney-client communications." Tr. 282:8-10.

iv. What Conclusions were Reached from those Facts:

Question	Instruction or Refusal to Answer
Q: "And what conclusions did the UCC reach from that investigation into claims against M2 Loanco?" Tr. 151:5-8.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by attorney-client privilege or work product doctrine. If you can answer that question without revealing information protected by the attorney-client privilege or the work-product doctrine, you should answer the question." Tr. 151:8-18. A: "We – as we've laid out in the pleadings in support of this settlement, yes, we identified transfers we believe are fraudulent from the Debtor to M2 Loanco." Tr. 151:22-25.
Q: "The question is, has the UCC identified potential specific defenses that Geneva may have, other than the one you mentioned, with respect to meeting the burden of proving the claim? Any other specific defenses" Tr. 162:3-7.	Mr. Zluticky: "Same objection. Same instruction. To the extent that you can answer this without revealing information protected by the attorney-client privilege nor work product doctrine, you should answer the question." Tr. 161:8-15. A: "I don't think I can provide any non-privileged response to that answer – to that question." Tr. 161:17-19.
Q: "Okay. So with respect to the work that the Dundon firm performed – that the Dundon firm performed on behalf of the UCC and its instruction, is there anything that you can share with me that does not involve privileged information with respect to conclusions that the Dundon firm reached?" Tr. 166:14-20.	A: "Yeah, so let me –" Tr. 166:21. Mr. Zluticky: "Object to form. Objection to the – David, object to form. Objection. This calls for information that's protected by attorney-client privilege and work product. I'm instructing the witness not to answer the question." Tr. 166:22-167:5.

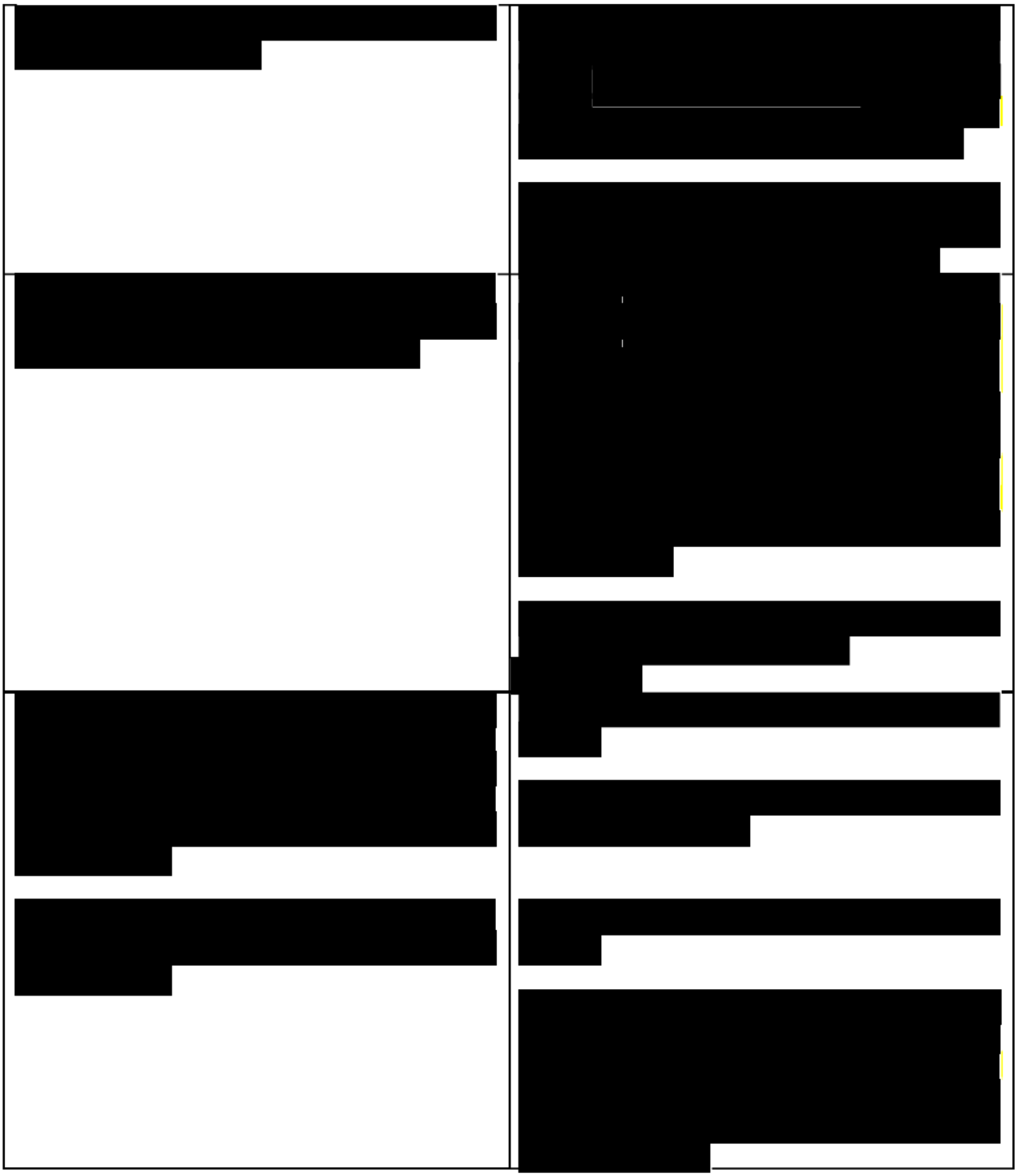
Question	Instruction or Refusal to Answer
	Mr. Kaufman: "The Debtor joins the objection. And – well, I'll leave it there." Tr. 167:6-8.
"Q: Mr. Barton, did the UCC rely on the analysis of the value of the Divisional Merger potential causes of action in determining whether or not to support the Rule 9019 Motion?" Tr. 200:5-9.	Mr. Zluticky: "Object to form. Objection. This calls for information that's protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question." Mr. Kaufman: "The Debtor joins, and also adds the mediation privilege." Tr. 200:10-18.
Q: "What I'm trying to understand is whether or not there is anything other than the advice you got from Dundon and Stinson and that you heard at the mediation that the UCC relied on in determining to support the Settlement and to file the 9019 Motion?" Tr. 204:12-18.	Mr. Zluticky: "Objection to form." Mr. Kaufman: "Objection." Mr. Zluticky: "Object to form. Objection. This calls for information that's protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question. You can ask you question a different way, by the way in which you asked it violates privilege and work product and I'm instructing the witness not to answer." Mr. Kaufman: "So joined and assert the mediation privilege." Tr. 204:19-205:9.
Q: "Can you tell me what the personal injury tort claims are worth in the aggregate?" Tr. 282:15-17.	Mr. Zluticky: "Object to the form of the question. Objection. This seeks information that's protected by the attorney-client privilege or the work-product doctrine. I'm instructing the witness not to answer the question." Mr. Kaufman: "The Debtor joins the objections." Tr. 282:18-283:3.
Q: "Mr. Barton, what was the analysis of the value of the personal injury tort claims in the analysis that you just referenced?" Tr. 285:5-8.	Mr. Zluticky: "Object to form. Objection. This seeks information that's protected by the attorney-client privileged and/or the work-product doctrine and I'm instructing the witness not to answer the question." Mr. Kaufman: The Debtor joins those objections." Tr. 285:9-17.

B. Mr. Perry's (Debtor) Deposition

On February 16, 2024, the TCC deposed Mr. Perry, the Debtor's CRO and Rule 30(b)(6) designee. *See* Perry Tr. attached as **Exhibit I**. Mr. Perry was instructed not to answer the following questions based on the attorney-client privilege, the work product doctrine, and/or mediation privilege:

i. Whether the Debtor Investigated Successor Liability and Alter Ego Claims:

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]



ii. **The Process of the Debtor's Investigation:**

Question	Instruction or Refusal to Answer

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]
	[redacted]

iii. **What Facts were Uncovered in the Debtor's Investigation:**

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]
	[redacted]
[redacted]	[redacted]
	[redacted]

Question	Instruction or Refusal to Answer
	[redacted]

iv. **What Analysis Was Conducted of those Facts:**

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

v. **What Conclusions were Reached from those Facts:**

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

vi. **Whether the Successor Liability or Alter Ego Claims Are Released by the Settlement:**

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

vii. **What Consideration Was Paid by the Released Parties for the Release of the Successor Liability and Alter Ego Claims:**

Question	Instruction or Refusal to Answer
[redacted]	[redacted]

Question	Instruction or Refusal to Answer
[redacted]	[redacted]
[redacted]	[redacted]

C. Mr. Dundon's (UCC) Deposition

On February 20, 2024, the TCC deposed Mr. Dundon, one of the UCC's Rule 30(b)(6) designees. *See* Dundon Tr. attached as **Exhibit J**. At deposition, Mr. Dundon was instructed not to answer the following questions based on the attorney-client privilege, the work product doctrine, and/or mediation privilege:

Question	Instruction or Refusal to Answer
Q: "Okay. Paragraph 1 of the motion describes the 'lengthy, thorough investigations of various claims and causes of action belonging to the Debtor's bankruptcy estate,' correct?" Tr. 53: 10-14.	Mr. Kaufman: Objection to form. Tr. 53: 15. A: Yes, those words are there. Tr. 53: 16.
… Q: "Did you review it before it was filed?" Tr. 54:6-7.	A: "I reviewed the substance of what was in there. I don't know that I reviewed certain substance. I don't know that I reviewed the text before it was filed. I may have." Tr. 54: 8-12
Q: "When you say you reviewed certain substance of it, what are you referring to?" Tr. 54: 13-14.	Mr. Zluticky: "Objection to the form. It calls for information by the attorney-client privilege or the work-product doctrine. Instructing the witness not to answer. I further object to the form of the question." Tr. 54: 15-21. Mr. Kaufman: "The Debtor objects to the form of the question. And, Cameron, so we can

Question	Instruction or Refusal to Answer
Mr. Moxley: "Of course. I think there was an instruction not to answer that question, so there's no pending question. Well, let me ask. Mr. Dundon, I take it you'll follow counsel's instruction not to answer the question, correct?" Tr. 55: 8-13.	avoid this going forward, can you clarify, when you're asking him 'you,' if you're asking Mr. Dundon personally or the UCC?" Tr. 54: 22-25; Tr. 55: 1-4. A: "I intend to do so if I can." Tr. 55: 11-13.
Mr. Moxley: "I'm going to note the TCC's objection to the manner in which the UCC has designated two witnesses on the same topic and not allowed us to understand which portions of Topic 1 Mr. Dundon is here to testify about." Tr. 60 6-13.	Mr. Zluticky: "You asked him the same question you asked David Barton, I'm objecting, I'm instructing him not to answer. It's that simple." Tr. 60: 17-23. Mr. Kaufman: "The Debtor joins the objection." Tr. 60: 24-25.
Q: "Mr. Dundon, are you planning on offering any testimony at the hearing in support of the [settlement] motion?" Tr. 139: 11-13.	Mr. Zluticky: "Objection to the form of the question. Objection to the extent that it seeks information protected by the attorney-client privilege or work-product doctrine. And instructing the witness not to answer the question." Tr. 139: 14-20. Mr. Kaufman: "The Debtor joins the objection and appreciates the instruction." Tr. 139: 21-23.
Q: "Mr. Dundon, will you offer any opinions at the hearing on the value of Personal Injury Claims?" Tr. 139: 25; 140: 1-3.	Mr. Zluticky: "Objection to form of the question. Objection to the extent that it seeks information protected by the attorney-client privilege or work-product doctrine. And instructing the witness not to answer the question." Tr. 140: 4-10. Mr. Kaufman: "The Debtor joins the objection and appreciates the instruction of counsel." Tr. 140: 11-13.
Q: "Mr. Dundon, will you offer any testimony at the hearing as to the value of the avoidance claims in support of the motion?" Tr. 140: 15-18.	Mr. Zluticky: "Objection to the form of the question. Objection. This seeks information that's protected by the attorney-client privilege and of the work-product doctrine. I'm instructing the witness not to answer the question." Tr. 140: 19-141:1-2.

Question	Instruction or Refusal to Answer
	Mr. Kaufman: "The Debtor joins the objection and appreciate the instruction of counsel." Tr. 141:3-5.

i. **The Process of the UCC's Investigation:**

Question	Instruction or Refusal to Answer
Q: "Do you have any understanding, Mr. Dundon, of whether or not the analysis that Dundon Advisors undertook with respect to the value of assets that were transferred to yesCare as part of the Divisional Merger were ever communicated to the UCC in written form?" Tr. 68: 14-20. Q. "And when they were communicated in oral form, who relayed that oral communication to the UCC?" Tr. 68: 22-24.	A: "I don't recall that they were." Tr. 68: 21. Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege or the work-product doctrine. I instruct the witness not to answer the question." Tr. 68: 25-69: 2-7.
Q: " Are you able today to identify for me who it was that the UCC interviewed in connection with verifying the – or independently attempting to verify the information on the YesCare financial statements?" Tr. 74: 7-12.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. Instructing the witness not to answer the question" Tr. 74: 13-19. Mr. Kaufman: "I also object to form and I also would assert the mediation privilege." Tr. 74: 20-22.

i. **What Facts Were Uncovered by the Investigation:**

Question	Instruction or Refusal to Answer
Q: "Mr. Dundon, what's the basis for your statement that the debt had been equitized?" Tr. 90: 3-5.	Mr. Zluticky: "Objection to the extent it calls for information protect by attorney-client privilege or the work-product doctrine. And further, objection to the extent that it calls for information protected by mediation privilege." Tr. 90: 6-12.

Question	Instruction or Refusal to Answer
	Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciate counsel's instruction." Tr. 90: 16-18. A: "I do not believe I can answer the question under those circumstances." Tr. 90: 22-24.
Q: "What inaccurate information did the UCC believe that FTI was relying on?" Tr. 113: 21-22.	Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege and information protected by the work-product doctrine. Further objection to the extent that it calls for information protected by the mediation privilege. If you can answer the question without invading those privileges, you can answer the question" Tr. 113:23-114: 10. Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciates counsel's instruction." Tr. 114:11-13. A: "As I said, the balance sheets that reflected that debt as debt were inaccurate." Tr. 114: 15-16.
Q: "How does the UCC know that they were inaccurate?" Tr. 114: 17-18.	Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. Further objection to the extent that it seeks information protected by mediation privilege. If you can answer the question without invading those privileges, you can answer the question." Tr. 114: 19-115:5. Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciates counsel's instruction." Tr. 115:6-8. A: "I don't believe I can answer that question without invading those privileges." Tr. 115:10-11.

Question	Instruction or Refusal to Answer
Q: "Are you able to tell me, sir, what the accurate information is that FTI should have relied on?" Tr. 115: 12-15.	Mr. Zluticky: "Same objection. Objection to form. Objection to the extent that it seeks information protected by the attorney-client privilege or the work-product doctrine. Further objection to the extent that it seeks information protected by the mediation privilege. If you can answer the question without invading those privileges, you should answer the question." Tr. 115:15-25. Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciates counsel's instruction." Tr. 116: 2-4. A: "Other than to repeat that they should have seen a balance sheet without the debt that we've been discussing listed as debt, or the purported debt we've been discussing listed as debt, I can't further answer without invading the mediation privilege or the other privileges mentioned by counsel." Tr. 116: 5-12.

ii. **What Analysis was Conducted:**

Question	Instruction or Refusal to Answer
Q: "Does Dundon advisers have any writing that sets forth its market multiple valuation analysis?" Tr. 75: 8-10.	Mr. Zluticky: "Object to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. Objection to the extent that it calls for information protected by the mediation privilege. I'm instructing the witness not to answer." Tr. 75: 11-20. Mr. Kaufman: "The Debtor joins the mediation privilege objection and instruction." Tr. 75: 21-23.
Q: "Is Dundon Advisers' DCF analysis set forth in writing?" Tr. 79: 14-15.	Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege or the work-product doctrine. Objection to the extent that it calls for information protected by a mediation privilege. Instructing the witness not to answer the question." Tr. 79: 16-25

Question	Instruction or Refusal to Answer
	Mr. Kaufman: "The Debtor joins the mediation privilege and instruction." Tr. 80: 2-4.
Q: "Okay. So you mentioned that FTI assumes that the purportedly assumed debt of $100 million was valued and enforceable as secured debt as an erroneous assumption. Were there any other erroneous assumptions that you identified in FTI's opinion?" Tr. 105:3-9.	Mr. Zluticky: "Objection to form. Objection to the extent that calls for information that's protected by the attorney-client privilege or the work-product doctrine. Further objection to the extent that it calls for information protected by mediation privilege." Tr. 105:10-17. Mr. Kaufman: "Debtor joins." Tr. 105: 21. A: "I cannot answer the question without invading those privileges." Tr. 105:23-24.
Q: "Mr. Dundon, has the UCC undertaken any analysis of the aggregate personal injury tort claim liability in this case?" Tr. 141: 24-25; 142: 1-2.	Mr. Zluticky: "Objection to the form of the question. Objection to the extent that it seeks information protected by the attorney-client privilege or the work-product doctrine. In addition, this is outside the scope of the 30(b)(6) and so my witness isn't prepared to testify about this." Tr. 142: 3-11. Mr. Kaufman: "Same objections from the Debtor." Tr. 142: 12-13.
Q: "Was it Dundon Advisers, sir, that valued the Personal Injury Claims in the aggregate in this case?" Tr. 146: 8-10.	Mr. Zluticky: "Objection to form. Objection. This calls for information protected by the attorney-client privilege and the work-product doctrine. I'm instructing the witness not to answer the question." Tr. 146: 11-17. Mr. Kaufman: "The Debtor objects to the form of the question." Tr. 146:18-19.
Q: "Mr. Dundon, as the UCC's designee on Topic 1, are you able to tell me whether or not an individual claim-by-claim assessment of the personal injury tort claims was undertaken by the UCC?" Tr. 148: 20-24.	Mr. Zluticky: "Objection to the form. Objection to the extent that it calls for information protected by the attorney-client privilege or the work-product doctrine. If you can answer that question without invading those privileges, you can answer the question." 148: 25; 149: 1-8. A: "I cannot answer that question without invading the privileges." Tr. 149:10-11.

iii. What Conclusions were Reached from those Facts:

Question	Instruction or Refusal to Answer
Q: "Mr. Dundon, does the UCC know whether or not the Debtor agrees that the estimated value of the assets that were transferred to YesCare as part of the Divisional Merger is somewhere between 0 and $75 million?" Tr. 95:21-96:1-2.	Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information that's protected by attorney-client privilege and the work-product doctrine. Further objection because this is seeking information that was a communication protected by mediation privilege, and on that basis I'm instructing the witness not to answer the question." Tr. 96: 12-21. Mr. Kaufman: "Thank you, Nick. The Debtor joins the mediation privilege objection and appreciates that instruction." Tr. 96: 23-25.
Q: "Mr. Dundon, are the UCC's views as to the value of the avoidance claims that are being settled based on information learned during mediation?" Tr. 99: 20-23.	Mr. Zluticky: "Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege or the work-product doctrine. Dutther objection to the extent that it calls for information that's protected by the mediation privilege. And I'm instructing the witness not to answer the question." Tr. 99: 24-100:9. Mr. Kaufman: "The Debtor joins the mediation privilege objection and also appreciates the instruction." Tr. 100:10-12.
Q: "Does the UCC believe that creditors would have been better off had the Divisional Merger not occurred?" Tr. 101: 21-23.	Mr. Zluticky: "Objection to form. Objection to the extent that calls for information that's protected by the attorney-client privilege or the work-product doctrine. I'm going to instruct the witness not to answer the question" Tr. 101:24-102:5.
Q: "Mr. Dundon, why was the debt unenforceable?" Tr. 105:25-106:2.	Mr. Zluticky: "Same objection this is just the same way of asking the prior question. So I'm objecting to the extent that it's protected by the attorney-client privilege and the work-product doctrine. Further objection to the extent that it's information protected by the mediation privilege." Tr. 106:3-12. Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciates counsel's instruction." Tr. 106:16-18.

Question	Instruction or Refusal to Answer
	A: "I can not answer the question without invading those privileges." Tr. 106:20-21.
Q: "Without invading those privileges, Mr. Dundon, are you able to share with me what evidence you saw that led to the conclusion that the debt was unenforceable?" Tr. 106:22-25. Mr. Moxley: "You can answer the question, sir." Tr. 107:20.	Mr. Zluticky: "Again, object to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. And to the extent that it's information protected by the mediation privilege." Tr. 107:2-8. Mr. Kaufman: "The Debtor joins the mediation privilege objection and appreciates counsel's instruction." Tr. 107:12-14. A: "I cannot answer the question without invading those privileges." Tr. 107: 21-22.
Q: "Okay. And just so I understand, why was that? You started to mention, I think in your last answer, some of the reasons that it may be unenforceable, but why was it enforceable"? Tr. 111: 23-112:3.	A: "I -- I –" Tr. 112: 4. Mr. Zluticky: "Whoa, whoa. Stop, stop, stop, stop, stop. Objection to form. Objection to the extent that it calls for information protected by the attorney-client privilege and the work-product doctrine. Further objection to the extent that it seeks information protected by the attorney-client privilege. I'm instructing the witness not to answer the question." Tr. 112:5-16. Mr. Kaufman: "The Debtor objects to the waste of estate resources on the fourth time you've tried to get around this instruction." Tr. 112:17-20.
Q: "Mr. Dundon, are the UCC's views with respect to the strength of the potential claims that arise from the Divisional Merger transactions in any way informed by any comments that former mediator Judge Jones may have made to the UCC's representatives outside of mediation?" Tr. 131: 7-13.	Mr. Zluticky: "Objection to form. Objection to the extent that it seeks information protected by the mediation privilege. He was the mediator. Every communication he gave was under the protection of the mediation privilege. I'm instructing the witness not to answer the question." Tr. 131: 14-22. Mr. Kaufman: "The Debtor joins the objection and the instruction." Tr. 131:23-24.

EXHIBIT A

November 15, 2023 Letter from Debtor to the U.S. Senate

GRAY REED

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DALLAS | HOUSTON | WACO

CONFIDENTIAL TREATMENT REQUESTED

November 15, 2023

The Honorable Elizabeth Warren
United States Senate
309 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Mazie K. Hirono
United States Senate
109 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard Blumenthal
United States Senate
706 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Bernard Sanders
United States Senate
332 Dirksen Senate Office Building,
Washington, D.C. 20510

The Honorable Cory A. Booker
United States Senate
717 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Richard J. Durbin
United States Senate
711 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Jeffrey A. Merkley
United States Senate
531 Hart Senate Office Building
Washington, D.C. 20510

The Honorable Ron Wyden
United States Senate
221 Dirksen Senate Office Building
Washington, D.C., 20510

The Honorable Peter Welch
United States Senate
SR-124 Russell Senate Office Building
Washington, D.C. 20510

Re: *October 24, 2023, Letter to YesCare Corporation and Tehum Care Services, Inc.*

Dear Senator Warren, Senator Durbin, Senator Hirono, Senator Merkley, Senator Blumenthal, Senator Wyden, Senator Sanders, Senator Welch, and Senator Booker:

On behalf of Tehum Care Services, Inc. ("TCS," "Tehum," or the "Debtor"), this letter responds to yours of October 24, 2023 (the "Letter"), in which you raised questions relating to

Corizon Health, Inc.'s 2022 divisional merger and TCS's subsequent chapter 11 filing. We provide information herein responsive to your Letter to the extent such is available to TCS. Our understanding is that YesCare will be submitting its own response to your Letter (via counsel) that provides additional information specific to YesCare.

As you know, TCS filed for chapter 11 on February 13, 2023, in the U.S. Bankruptcy Court for the Southern District of Texas Houston Division (the "Bankruptcy Court"), under Case No. 23-90086 (the "Chapter 11 Case"). The Honorable Christopher M. López is presiding over the Chapter 11 Case.

The Office of the United States Trustee (the "U.S. Trustee"), an arm of the Department of Justice, appointed an Official Committee of Unsecured Creditors (the "Committee") in the Chapter 11 Case. An official committee's charge is to act as a fiduciary and represent the interests of all unsecured creditors in a chapter 11 case. Here, the Committee's membership is diverse and includes two individuals who assert personal injury claims based on alleged inadequate care provided by Corizon prior to the divisional merger.

On October 27, 2023, TCS and the Committee filed their Second Amended Disclosure Statement [Chapter 11 Case Docket No. 1071] (the "Disclosure Statement") accompanying their Second Amended Joint Chapter 11 Plan [Chapter 11 Case Docket No. 1072] (the "Joint Plan"), which embody a global settlement reached at mediation over three days in August 2023 (the "Global Settlement"). For your convenience and reference, a copy of the Disclosure Statement (to which the Joint Plan is an exhibit) is enclosed herewith. The docket of the Chapter 11 Case and two related adversary proceedings are also available for free at our claims agent's website (https://www.kccllc.net/Tehum) should you wish to peruse the filings in the Chapter 11 Case. Although many of the questions in your Letter are answered in the Disclosure Statement, we nonetheless attempt herein to provide fulsome responses to your inquiries.

Before answering your specific questions directly, we want to address the introductory paragraphs of your Letter. First, as will be discussed more fully below, all creditors and potential creditors have received (among other things) notice of the Chapter 11 Case and notice of the last date to file claims against TCS. Following approval of the Disclosure Statement, all creditors will also receive a copy of the Disclosure Statement, the Joint Plan and—if appropriate under the terms of our Joint Plan—a Ballot and and/or an Opt-Out Form. Such notice will be provided as required by Bankruptcy Rules 2002 and 3017. TCS has abided, and will continue to abide, by its duties as a debtor in possession and has complied, and will continue to comply, with each applicable Bankruptcy Rule and each applicable provision of the Bankruptcy Code. And if there is any lapse in compliance (which there has not been and which we do not anticipate will be the case), then either the Committee, the U.S. Trustee, the active creditors in the case, or a combination of those parties, will bring the matter to the Debtor's attention and as necessary, to the attention of the Bankruptcy Court.

Second, TCS believes it is using the bankruptcy process exactly for its intended purpose: to marshal and liquidate the Debtor's available assets and causes of action against third parties, maximize the value of such assets and causes of action, and ratably and equitably distribute the

proceeds of such assets and causes of action to creditors holding valid claims against TCS. Outside of chapter 11, as you know, each creditor (many of whom are incarcerated and without easy access to counsel or the court systems) would be left to his or her own devices in the proverbial "race to the courthouse," facing years of expensive litigation with an uncertain outcome, and potentially with conflicting, varying and inconsistent results among various federal and state courts throughout the country. The collective nature of the chapter 11 process is the best mechanism to centralize all claims and disputes against TCS, through oversight by the Bankruptcy Court, review by the U.S. Trustee, and the participation and input of the Committee and all other creditors, many of whom have been active throughout the chapter 11 process, individually and through counsel.

The job of a committee in chapter 11 is to act as a fiduciary for all unsecured creditors and represent their collective interests as a group. Here, the Committee's composition of seven creditors is a cross-section of claim holders: five Committee members are trade creditors, and two Committee members are formerly incarcerated personal injury claimants. The Committee and its counsel have been extremely active in the Chapter 11 Case and, in tandem with counsel to TCS, have spent several months investigating TCS, YesCare, other entities, and the circumstances surrounding the divisional merger. After months of investigations and a subsequent mediation sanctioned by the Bankruptcy Court, the parties reached an agreement to resolve the bankruptcy estate's claims against various third parties (including YesCare). The Global Settlement has been incorporated into—and forms the basis for—the Joint Plan. The initial three-day mediation in August was conducted by Judge David R. Jones, who has since resigned his position.

We are aware of the concerns that have been raised in the Chapter 11 Case due to the undisclosed relationship between Judge Jones and the Houston attorney who had been representing YesCare. As a result, in order to maintain the integrity of the process and ensure no questions remain looming over the Global Settlement, the Debtor, the Committee, and the other settling parties are preparing to embark upon a second mediation on November 27, 2023, with former Chief U.S. Bankruptcy Judge Christopher S. Sontchi (Bankr. D. Del.) as mediator. A copy of the stipulation that was just signed today appointing Judge Sontchi [Chapter 11 Case Docket No. 1109], is also enclosed for your convenience.

Finally, it is worth noting the TCS case is manifestly different from the other pending divisional merger chapter 11 cases, such as 3M, Johnson & Johnson and others: unlike those cases where there are tens of thousands of claimants and MDL panels for the various personal injury lawsuits, here there are only several hundred pending lawsuits and no singular MDL or similar forum in which to pursue recoveries against TCS. Unlike the other divisional merger cases, where illness from direct or indirect exposure to asbestos or talc or other substances could take years or decades to manifest, the claims here are for medical malpractice or insufficient treatment or the like and presumably now—more than 18 months after Corizon ceased operating—are all known. Unlike the other divisional merger cases where there is a funding agreement and other assets that are sufficient to pay claims in full, the funding agreement here was limited to $15 million and has been exhausted. There are also other differences between the TCS Chapter 11 Case and the mass tort divisional merger cases, placing the TCS case in a far different category.

General Background and History

The Debtor was formerly known as Corizon Health, Inc. and will be referred to as "Corizon" for events occurring prior to the May 5, 2022, divisional merger (the "Divisional Merger").

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.

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 secured debt, it began to market itself for potential acquisition by companies interested in "distressed" investments.

In June 2020, the Flacks Group acquired Corizon. 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 (discussed below).

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 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.

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. 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.[1] 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.

[1] The Committee believes the Debtor's estate may have claims against the Flacks Group and Michael Flacks related to its spin-off of PharmaCorr. Those claims, if any, are not intended to be released as part of the Global Settlement or the Joint Plan.

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. Rather than directly acquiring the operating companies or M2 LoanCo and M2 HoldCo, Perigrove 1018 acquired the entirety of the Corizon operation.

As of December 7, 2021, Perigrove 1018 owned or controlled Corizon and all its owners and affiliates, 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.

In May 2022, the Debtor and several affiliates, including Corizon, LLC, Valitás Health, and Corizon Health of New Jersey, LLC (collectively, the "Merger Entities") executed a corporate reorganization through two merger transactions under the Texas Business and Organization Code ("TBOC"): first, a combination merger, whereby the Merger Entities merged in a combination merger, and then the Divisional Merger whereby CHS TX, Inc. ("CHS") was formed and various assets and liabilities were allocated to CHS on the one hand and TCS on the other. In connection with the Divisional Merger, M2 LoanCo and TCS agreed to a funding agreement (the "Funding Agreement") pursuant to which M2 LoanCo would pay or cause to be paid funding to TCS up to an aggregate cap of $15 million for payment of TCS's costs of operations and certain liabilities that arose prior to the Divisional Merger.

Pursuant to the Divisional Merger, TCS remained in existence and was allocated and remained vested with all inactive and expired customer contracts, as well as all historical liabilities related to such contracts. In return, TCS was released from its secured debt obligations to M2 LoanCo, which were allocated to the entity that became YesCare. As part of the Divisional Merger, TCS was also allocated $1 million in cash, as well as the right to draw on the $15 million Funding Agreement.

Upon the Divisional Merger, TCS ceased to be an operating entity with active contracts or medical service providers. Though TCS had been allocated cash, rights under the Funding Agreement, and rights under available insurance policies, its liabilities exceeded these assets. Between May 2022 and February 2023, TCS attempted to wind down its remaining business and resolve its liabilities out of court.

The Debtor and the Committee each investigated whether TCS received the full benefit of the $15 million allocated to it under the Funding Agreement to satisfy claims. The Debtor and Committee have reviewed extensive documentation produced in the litigation to verify these payments. According to these records, the Debtor and the Committee have confirmed that M2 LoanCo advanced at least $15 million to legitimate third party creditors to satisfy liabilities allocated to TCS under the Divisional Merger. M2 LoanCo asserts that it advanced a total of $39 million, leaving an outstanding balance of approximately $24 million owing back to M2 LoanCo.

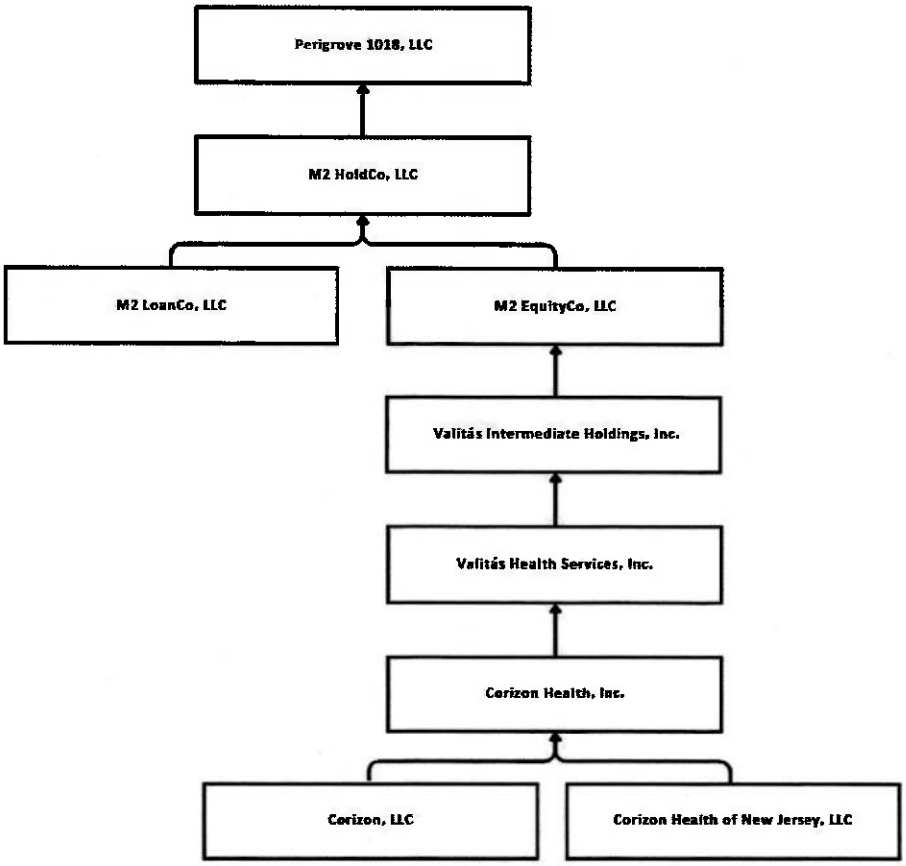
Despite the above, amounts available under the Funding Agreement or otherwise advanced by M2 LoanCo proved insufficient for TCS to satisfy its liabilities under the Divisional Merger.

Thus, TCS concluded a chapter 11 process was necessary to effectuate a more equitable distribution of its remaining assets. The Chapter 11 Case was commenced on February 13, 2023.

Responses to Specific Inquiries

1. Please provide a full description of YesCare and Tehum's leadership and stakeholder structure, as well as the leadership and ownership of all of the entities' parent companies, and YesCare's latest corporate governance plan. In your response, please include the identities of each natural person that directly or indirectly holds an equity interest in Perigrove 1018 LLC and/or YesCare Holdings LLC, and the size of the membership interest(s) held by that natural person.

A corporate structure chart showing Corizon's ownership pre-Divisional Merger is as follows:



This organizational chart remained unchanged following the Divisional Merger, other than the Merger Entities (*i.e.*, Corizon, LLC, Valitás Health, and Corizon Health of New Jersey, LLC) merged into Corizon Health, Inc., and that entity was renamed TCS.

Following the Divisional Merger, Isaac Lefkowitz became the sole director of TCS, and TCS had no officers until February 13, 2023, when Russell Perry of Ankura Consulting Group LLC was appointed as Chief Restructuring Officer. Pursuant to the corporate resolutions attached to TCS's chapter 11 bankruptcy petition (also enclosed for convenience), Mr. Perry has sole decision-making authority over all restructuring matters, and any matters where Mr. Lefkowitz has a conflict of interest (which includes all matters involving the Divisional Merger, YesCare, Perigrove 1018 or the other related entities).

We believe that Perigrove 1018, LLC is a private equity fund owned by several individuals, none of whom owns more than 10% of the company. Isaac Lefkowitz is one of the investors in Perigrove 1018. Additional information regarding Perigrove 1018's ownership structure is not publicly available.

YesCare is the proper party to provide information regarding its leadership and stakeholder structure.

2. In a 2023 deposition, Tehum director Isaac Lefkowitz admitted to owning a stake in Perigrove, the private equity firm that took over Tehum. What role does Mr. Lefkowitz currently play within YesCare, Tehum, or any entities related to YesCare or Tehum?

As stated above, Mr. Lefkowitz serves as the sole director of the Debtor. According to Mr. Lefkowitz, following Perigrove's 1018's December 2021 acquisition of Corizon (now TCS), and until TCS's bankruptcy filing on February 13, 2023, he oversaw every aspect of Corizon's operations and finances. As also stated above, Russell Perry of Ankura Consulting Group LLC serves as the Debtor's Chief Restructuring Officer, with sole authority for all restructuring matters and any matters where a conflict of interest may exist.[2]

YesCare is the proper party to provide information regarding Mr. Lefkowitz's at YesCare.

3. How many claims against Corizon, Tehum, YesCare, or any affiliated entities were enjoined following Tehum's motion to extend and enforce the automatic stay?

On March 3, 2023, the Bankruptcy Court entered its *Order Regarding Debtor's Emergency Motion to Extend and Enforce the Automatic Stay* [Chapter 11 Case Docket No. 118] (the "March 3 Stay Order"). According Exhibit 1 to the March 3 Stay Order, the extended stay applied to 39 separate lawsuits through May 18, 2023.[3] On March 23, 2023, the Debtor commenced Adversary Proceeding No. 23-3049 in the Bankruptcy Court (the "Adversary") and filed an emergency motion in the Adversary seeking to further extend the stay previously granted by the Bankruptcy Court.[4] On May 18, 2023, the Bankruptcy Court entered an order extending the stay as to 34

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[2] *See* Tehum Care Services Bankruptcy Petition [Chapter 11 Case Docket No. 1]; *see also* Disclosure Statement, Schedule 4 (pages 78–79 of 177).

[3] The list includes claims that were not yet lawsuits, as well as singular claims filed in multiple venues.

[4] *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) an Extension of the Automatic Stay to Certain Non-Debtors,*

lawsuits until August 10, 2023.[5] The Debtor subsequently entered into stipulations with certain plaintiffs, allowing them to proceed with their litigation under the circumstances set forth in the stipulations.[6]

a. ***The estimated number of claims that will be affected by Tehum's bankruptcy filing.***

The various prepetition lawsuits and claims asserted against TCS generally fall into three categories: (a) vendor and service provider lawsuits or obligations, typically asserting breach of contract claims for unpaid invoices; (b) professional liability lawsuits or obligations, typically asserting medical malpractice and related claims; and (c) employment lawsuits or obligations, asserting employment discrimination or similar claims.

The Debtor's claims and noticing agent maintains a website (https://www.kccllc.net/Tehum), which shows that 742 claims have been filed against the Debtor, many of which are duplicates. We have conducted a preliminary analysis of these claims in order to classify them for treatment under the Joint Plan, which has revealed that about half (approximately 220 claims) are "Class 4 Non-Personal Injury Claims" and the other half (approximately 224 claims) are "Class 5 Personal Injury Claims."

The Joint Plan is attached as an exhibit to the Disclosure Statement. As required by the Bankruptcy Code and prevailing case law, the Disclosure Statement (among other things) summarizes the Joint Plan, the treatment of each class of claims thereunder and the expected/potential recoveries to each class of claims. The Disclosure Statement further contains a liquidation analysis (pursuant to section 1129(a)(7) of the Bankruptcy Code, also known as the "best interests test") to show that the Joint Plan will provide a greater distribution to creditors than they would receive if the Debtor was liquidated under chapter 7 of the Bankruptcy Code.

The best interests test is discussed at page 4 of the Disclosure Statement, and the liquidation analysis is annexed to the Disclosure Statement as Schedule 1. Pages iv and v of the Disclosure Statement also summarize the options afforded to holders of personal injury claims and general unsecured claims. As reflected therein, the Debtor and the Committee estimate that holders of non-personal injury claims could receive a recovery of between 19.9% and 35.3% on their claims under the Joint Plan, depending upon the final amount of all claims that are ultimately allowed. The Debtor and the Committee also estimate that personal injury claimants could receive a

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or in the Alternative, (II) a Preliminary Injunction Related to Such Actions, In re Tehum Care Services, Inc. [Adversary Docket No. 1]; and *Debtor's Motion for an 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, In re Tehum Care Services, Inc.* [Adversary Docket No. 2].

[5] *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, In re Tehum Care Services, Inc.* [Adversary Docket No. 43].

[6] *See, e.g.*, Chapter 11 Case Docket Nos. 237, 463 & 578; Adversary Docket Nos. 41 & 68.

recovery of between 18.1% and 37.7% on their claims under the Joint Plan, depending on ERC funding, insurance payouts and potential payments from third parties.

The Joint Plan contains seven classes of claims and interests, which are discussed in greater detail in Section IV of the Disclosure Statement (pages 23-28), but can be summarized as follows:

- Holders of claims in Classes 1 are priority creditors and will be paid in full upon the allowance of such claims. Pursuant to the Bankruptcy Code, these creditors do not get to vote to accept or reject the Joint Plan because they are unimpaired and deemed to accept the Joint Plan.

- Holders of claims in Class 2 are secured creditors and will be paid in full upon the allowance of such claims. Pursuant to the Bankruptcy Code, these creditors do not get to vote to accept or reject the Joint Plan because they are unimpaired and deemed to accept the Joint Plan.

- Holders of claims in Classes 3 are "Convenience Claims" in the amount of $5,000 or less, and the Joint Plan will pay these claims in full within 30 days of the Joint Plan becoming effective. While these creditors will be made whole, they are still impaired under the Bankruptcy Code, and so such creditors may cast votes to accept or reject the Joint Plan.

- Classes 4 and 5 are impaired by the Joint Plan and will be allowed to vote to accept or reject the Joint Plan. The recoveries to creditors in these classes is discussed above.

- Holders of claims in Class 6 are "Indemnification Claims," which include co-defendants and other third parties who claim a right to reimbursement or indemnification from the Debtor. These claims are impaired and entitled to vote to accept or reject the Joint Plan. Claims in this will be treated either as personal injury or non-personal injury claims, depending upon the underlying claim from which the indemnification claim arose, subject to the requirements of section 509 of the Bankruptcy Code, and as described more fully at page 27 of the Disclosure Statement.

- Class 7 is comprised of equity interests in the Debtor, which will be cancelled upon the effective date of the Joint Plan. Pursuant to the Bankruptcy Code, because holders of equity interests will neither receive nor retain any property under the Joint Plan, they are deemed to reject the plan and are not entitled to vote to accept or reject the Joint Plan.

The Joint Plan also offers creditors in Classes 4 and 5 the option for a one-time settlement and immediate distribution of $5,000.00 in full and final satisfaction of the claim in question. This mechanism is described more fully at pages iv–v and 26–27 of the Disclosure Statement. It is the Debtor and the Committee's belief that a significant number of claimants will choose to accept this

offer. To be clear, however, claimants have sole discretion to accept (or not) the $5,000.00 settlement offer. Claim holders who wish to negotiate for a higher settlement amount or have their day in court may do so but must follow the procedures set forth in the Joint Plan.

The Disclosure Statement contains a user-friendly flow chart at Schedule 3 that summarizes the choices available to creditors.

b. ***The number of claims related to each of the following categories and the aggregate settlement amount for each: medical malpractice, employment, and contract breach.***

The answer to this request is contained within the other responses herein.

c. ***A list of all claims by creditors and the status of those claims.***

The claims register is available at our claims agent's website, here: https://www.kccllc.net/tehum/register. The Debtor has not yet begun to object to claims; instead, objections to claims will be the province of either the Personal Injury Trustee or the Liquidation Trustee under the Joint Plan, following the Joint Plan's effective date.

4. Please provide a list of the entities and individuals that were involved in negotiating the global settlement filed September 29, 2023. In addition, please describe the role of Elizabeth Freeman in the negotiations, and list the individuals at YesCare and Tehum that were aware of Ms. Freeman's romantic relationship with Judge David Jones, who mediated the negotiations.

The following entities and individuals attended the August 2023 mediation that resulted in the Global Settlement:

- The Debtor
  - The Debtor's Chief Restructuring Officer, Russell Perry of Ankura Consulting Group, and certain other Ankura representatives; and
  - Counsel to the Debtor, Gray Reed, through Jason Brookner, Amber Carson, Aaron Kaufman, and Lydia Webb.

- YesCare
  - Former counsel for YesCare Corp., Elizabeth Freeman;
  - [redacted]

- The Official Committee of Unsecured Creditors
  - The Committee members are: Rachell Garwood (as a representative of a putative class), Latricia Revell, St. Luke's Health System, Ltd., Capital Region Medical Center, Maxim Healthcare Staffing Serv., Inc., Saint Alphonsus Health System, Inc., and Truman Medical Center, Inc. The members attended the

mediation virtually other than Committee Chair, David Barton, who attended the mediation in person;
- Counsel to the Committee, Stinson LLP, through Nicholas Zluticky and Zachary Hemenway; and
- Dundon Advisors as financial advisor to the Committee, through Matthew Dudon and Heather Barlow.

- M2 LoanCo, LLC; M2 Holdco, LLC; Perigrove 1018, LLC; Perigrove LLC; Geneva Consulting, LLC; and PharmaCorr, LLC
  - Melissa S. Hayward as counsel to each of the listed entities; and
  - Isaac Lefkowitz as a representative of each of the listed entities.

YesCare's involvement in the mediation (through its above-listed former counsel and business representatives) was minimal. YesCare merely provided information to the Debtor or Judge Jones upon request, and otherwise did not participate in any substantive mediation discussions. Further, none of the mediation parties were aware of Judge Jones's relationship with Ms. Freeman until after the filing of the initial Joint Plan on September 29, 2023.

The primary participants over the three days of hard-fought negotiations were: (a) the Committee, the Debtor, and their respective counsel, on one side; and (b) Mr. Lefkowitz and Ms. Hayward, for the other mediation parties, on the other side. YesCare's counsel did not represent Mr. Lefkowitz or the other Settlement Parties, which (as stated above) were represented by separate counsel. Judge Jones, as mediator, pushed both sides aggressively and eventually, the Global Settlement was agreed to by all parties. While disappointed by the lack of disclosure regarding their relationship, neither the Debtor nor the Committee believe that any potential conflict associated with the relationship between Judge Jones and Ms. Freeman impacted the negotiations or the Global Settlement in any way.[7] Nevertheless, as discussed above, in the interest of removing any uncertainty, the parties have agreed to re-mediate all issues before Judge Sontchi. Neither Judge Jones nor Ms. Freeman will participate in the second mediation.

5. With regard to Corizon's use of the divisional merger process to separate its assets from its liabilities:

a. What was the rationale for determining which assets it would transfer or assign to Tehum and which it would shield from the reach of creditors through YesCare?

This is a matter appropriately addressed by YesCare.

[7] *See also* Disclosure Statement at 19.

b. ***What was the total value of Corizon's assets at the time of the divisional merger?***

As discussed above, before the transaction between the Flacks Group and Perigrove 1018 to transfer ownership of Corizon, management for the company was contemplating a chapter 11 bankruptcy filing. Although the company did not secure a formal valuation of its assets prior to this December 2021 transaction or the subsequent May 2022 Divisional Merger, the circumstances leading up to both transactions demonstrate that Corizon was likely insolvent by a significant margin.

As discussed in greater detail in the Disclosure Statement and above, the Flacks Group acquired Corizon as a distressed asset in June 2020. At the time of the Flacks Group's acquisition, the company was obligated to third party institutional lenders for over $100 million on account of secured funded debt dating back to at least 2017.[8] The Flacks Group failed to improve Corizon's financial position prior to December 2021, when it decided to transfer ownership to Perigrove 1018 rather than filing for bankruptcy. During this intervening period from June 2020 through December 2021, Corizon lost its three major customers and was facing increasing tort liabilities.

c. ***Please list all of the assets that were transferred to YesCare/CHS TX, Inc. and their cumulative value (excluding any liens on the assets).***

YesCare is the proper part to address this inquiry.

d. ***Please list all of the liabilities that were transferred to Corizon, later Tehum, and their cumulative value.***

The Divisional Merger documents are a matter of public record and were attached to the Debtor's Schedules of Assets in the Chapter 11 Case. As set forth therein, the following liabilities remained with the Debtor upon consummation of the Divisional Merger: (i) any lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with the contracts remaining at Corizon or the services provided thereunder whether arising prior to, at or after the effective date of the merger; (ii) any deferred payment obligations, lawsuits, claims, liabilities, costs, expenses or losses arising from, related to, or in connection with any employee, contractor or consultant terminated by any entity involved in the divisional merger prior to the merger's effective date, in each case, including severance and similar obligations, except for Corizon's obligations under the 401k plan or COBRA health insurance; (iii) obligations under any long term incentive plans of Corizon; (iv) any liabilities, costs, expenses or losses arising from, related to, or in connection with any person's or entity's lawsuits or claims in connection with the merger or related transactions, including any alleged breach of duties by the board or managers of any entity involved in the divisional merger; (v) all liabilities and obligations of every kind and character to the extent arising from, related to or in connection with assets of the remaining Corizon entity, whether arising before, at or after the effective date of the merger; (vi) all liabilities and obligations of every kind and character owed to any vendor or service provider in connection with any assets

[8] *See* Disclosure Statement at 5.

of the remaining Corizon entity or YesCare, in each case, arising prior to the effective date of the merger; (vii) all liabilities of Corizon not allocated to YesCare; (viii) all liabilities and obligations under the AZ Policies and NewCo Insurance Policies for deductibles, retentions, premium adjustments, retroactively rated premiums or other self-insurance features incurred or paid on account of any liabilities or assets of the remaining Corizon entity; and (ix) any settlement payment obligations of Corizon relating to lawsuits, claims, liabilities, costs, expenses, relating to or in connection with the contracts remaining with Corizon.

6. Please list all of the assets that were transferred to affiliated entities other than YesCare/CHS TX, Inc. between December 1, 2021 and the date of Tehum's bankruptcy filing.

As detailed in Section III.B.2 of the Disclosure Statement (pages 15-17), the Debtor and the Committee identified approximately $31 million in funds transferred to entities affiliated with Perigrove 1018 and/or YesCare prior to the bankruptcy filing:

Transfers 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**

Transfers to Geneva Consulting

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**

Transfers to Amerisource Bergen to
Benefit PharmaCorr and Perigrove 1018 Related Parties

In addition to the $30 million identified above, the Debtor and the Committee identified additional sums, totaling approximately $956,700, paid to Amerisource Bergen, which they believe may have satisfied obligations of PharmaCorr. PharmaCorr and Perigrove 1018 dispute this characterization.

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

7. What is the total value of YesCare's current assets?

TCS is not the proper party to address this inquiry.

8. What is the total value of Tehum's current assets? Please include a full accounting of any funding agreement, lump sum payment, or other revenue stream provided to Tehum following the divisional merger process.

The only real assets the Debtor has are potential causes of action against third parties. As set forth at pages 14-21 of the Disclosure Statement, the Debtor and the Committee believe that the Global Settlement amount of $37 million is a reasonable and appropriate settlement of such causes of action that is in the best interests of creditors. The Debtor also potentially has so-called "chapter 5 causes of action" against the Flacks Group and a variety of third parties for prepetition transfers that are not otherwise covered by the Global Settlement. These include causes of action for preferential transfers under section 547 of the Bankruptcy Code. These potential causes of action, which the Committee believes could generate up to an additional $3 million in recoveries, will be transferred to the Liquidating Trust pursuant to the terms of the Joint Plan.

9. Please describe in detail all actions taken to provide notice of Tehum's bankruptcy filing to known and potential creditors.

The Debtor has provided all required notices to all required parties in interest pursuant to the provisions of the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules for the Southern District of Texas. This includes mailing and publication notices of the claims bar date, proof claim forms, notice of the Disclosure Statement hearing and the time to object. The Master Service List in the Chapter 11 Case is available here: https://www.kccllc.net/tehum/document/noticelist/1

The Debtor provided *actual notice* of the claims bar date and proof of claim forms via mail to all known creditors. *See* Chapter 11 Case Docket Nos. 558, 609, 625, 626, 651, 673, 674, 698, 701, 767, 771, 794, 861, 929, 972, 1005. In addition to direct mailings to known creditors, the

Debtor also provided publication notices in the *New York Times*, the *Wall Street Journal* and *Prison Legal News*. *See* Chapter 11 Case Docket Nos. 610 and 658. The form, manner and timing of these notices was provided after consultation with the Committee.

Although the Disclosure Statement has not yet been approved by the Bankruptcy Court for dissemination to creditors, the Debtor intends to provide the required notice pursuant to Bankruptcy Rules 2002 and 3017, and further proposes to give the same publication notice as outlined above. Moreover, although the Bankruptcy Code requires only 28-day notice to creditors before pursuing confirmation of a plan, the Debtor and the Committee are proposing to provide **60-day notice** to creditors so that all incarcerated persons and *pro se* claimants have an expanded time period to cast ballots and object to the Joint Plan.

Under the circumstances, we feel we have gone above and beyond to ensure that creditors have notice of the Chapter 11 Case and an opportunity to participate.

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This response letter contains sensitive data and information—including confidential and potentially proprietary information, and information that was otherwise marked "Confidential" or "Attorneys Eyes Only" as part of discovery in the Chapter 11 Case. As a result, the Debtor respectfully requests that such information be treated accordingly, and that it not be released to any third parties. Production of this information and data is not intended to constitute a waiver of the attorney-client, work product, or any other applicable rights or privileges in this or any other forum, and the Debtor reserves all rights in this regard.

Thank you for the opportunity to respond to your inquiries. If you have any further questions, or if you desire any further information, please let us know and we will do our best to respond in a timely and complete manner.

Respectfully submitted,

Jason S. Brookner

JSB/sg
Encls

cc: Russell Perry (Chief Restructuring Officer)

EXHIBIT B

Debtor's Responses to the Official Committee of Tort Claimants' Requests for Production Concerning the Rule 9019 Motion

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 RESPONSES TO THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' REQUESTS FOR THE PRODUCTION OF DOCUMENTS CONCERNING RULE 9019 MOTION

TO: The Official Committee of Tort Claimants, by and through their attorneys of record, David J. Molton, Eric R. Goodman, D. Cameron Moxley, Gerard T. Cicero, and Susan Sieger-Grimm, BROWN RUDNICK LLP, 7 Times Square, New York, New York 10036; and Michael W. Zimmerman, BERRY RIDDELL LLC, 6750 E. Camelback Rd., Suite 100, Scottsdale, Arizona 85251.

Pursuant to the Federal Rules of Civil Procedure 26 and 33, made applicable to this contested matter by Rules 7026, 7033, and 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor Tehum Care Services, Inc. (the "Debtor") hereby serves the following Responses to the Official Committee of Tort Claimants' Requests for the Production of Documents Concerning the Rule 9019 Motion.

RESPONSES TO REQUESTS FOR PRODUCTION

1. All Documents and Communications that support or refute Your responses to the RFAs or the Interrogatories.

RESPONSE:

Debtor objects to this Request as overbroad, unduly burdensome, and vague. Issuing a single request for production regarding all Documents either supportive of or refuting the responses to

[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.

seventeen separate interrogatories and twenty separate requests for admission is overly broad, unduly burdensome, and the type of "kitchen sink" request for production that is improper. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7*. The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284 (N.D.Tex.1988).").

2. All Documents You intend to use, introduce or admit into evidence, or otherwise rely on for any purpose at the hearing on the Motion.

RESPONSE:

The Debtor will produce responsive documents.

3. All Documents and Communications concerning or reflecting YesCare's financial condition, including but not limited to YesCare's audited or unaudited financial statements.

RESPONSE:

The Debtor objects to Request No. 3 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7*. The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284 (N.D.Tex.1988)." Requiring the Debtor to sift through all of its records and determine whether they may or may not reflect YesCare's financial condition either currently or at any time in the past would be unduly burdensome and require analysis of each document in the Debtor's possession from prior to the Divisional Merger. This would be an unjustified waste of estate resources and would ultimately only result in lower distributions to creditors. To the extent this Request seeks identification of relevant information, which remains unclear due to the breadth of the question, this Request is more appropriately directed to YesCare. Subject to the foregoing, the UCC has produced all

documents in either its or the Debtor's possession, custody, or control regarding YesCare. To the extent you believe there are specific documents that have not been produced, please identify them by narrow type or category.

4. All Documents and Communications concerning or reflecting any Released Party's financial condition, including but not limited to any Released Party's audited or unaudited financial statements.

RESPONSE:

The Debtor objects to Request No. 4 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7*. The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284 (N.D.Tex.1988)." Requiring the Debtor to sift through all of its records and determine whether they may or may not reflect any Released Party's financial condition either currently or at any time in the past would be unduly burdensome and require analysis of each document in the Debtor's possession from prior to the Divisional Merger. This would be an unjustified waste of estate resources and would ultimately only result in lower distributions to creditors. To the extent this Request seeks identification of relevant information, which remains unclear due to the breadth of the question, this Request is more appropriately directed to the Released Party for which you seek information. Subject to the foregoing, the UCC has produced all documents in either its or the Debtor's possession, custody, or control regarding YesCare. To the extent you believe there are specific documents that have not been produced, please identify them by narrow type or category.

5. All Documents that You have provided to experts and/or any financial advisor in connection with the Chapter 11 Case.

RESPONSE:

The Debtor objects to Request No. 5 as overly broad, unduly burdensome, and lacking relevance. Requesting "all" Documents provided to any expert and/or financial advisor lacks specificity and instead is the type of "kitchen sink" request designed to conduct a fishing expedition. Moreover, some of the documents provided to experts and/or financial advisors are subject to work-product and settlement privilege. The Debtor will not be producing any documents or communications that

are protected by the attorney-client privilege or work product privilege. *In re Royce Homes, LP*, 449 B.R. 709, 722 (Bankr. S.D. Tex. 2011) (citing *United States v. Neal*, 27 F.3d 1035, 1048 (5th Cir.1994)). This includes not only communications between counsel and the Debtor but those "materials prepared by an attorney in anticipation of litigation." *See In re McDowell*, 483 B.R. 471, 493 (Bankr. S.D. Tex. 2012). Each of the protected materials are documents prepared in anticipation of litigation by counsel and contains the mental impressions, conclusions, opinions, or legal theories of an attorney. The Debtor will not be producing any documents or communications protected under the settlement agreement privilege. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294–95 (5th Cir. 2010) (the protection "extends to legal conclusions, factual statements, internal memoranda, and the work of non-lawyers and lawyers alike so long as the communications were 'intended to be part of . . . negotiations toward compromise.'"); *see Washington v. Pacific Summit Energy LLC*, 4:20-CV-290, 2021 WL 229653 at *4 (S.D. Tex. Jan. 21, 2021) (The relevancy of settlement communications are "thought to be suspect" because of their inherent nature.). Further, it has been established that common interest communications "between or among parties concerning [a] mediation … on any mediation day" are protected. *In re Tribune Co.*, No. 08-13141, 2011 WL 386827 at *8 (Bankr. D. Del. February 3, 2011). Any documents created for the purpose of settlement communications, mediation, correspondence by or between the parties to mediation and/or the mediator are shielded from production. Moreover, the Debtor has previously produced hundreds of thousands of pages of documents in this case including detailed financial records. The production of additional documents is unduly burdensome, and this Request lacks the specificity for the Debtor to identify what—if anything—is being sought that has not previously been produced or is otherwise privileged. The Debtor will produce or re-produce all Documents it intends to rely on at the hearing on the Motion. If specific categories of Documents are sought which have or may have been provided to either experts or any financial advisor, the Debtor is willing to meet and confer on ways to identify such documents and narrow the request.

6. All of the Documents constituting the Debtor's "internal accounting records" as referenced in Paragraph 45 of the Motion as having been examined by the "UCC's financial adviser," and all other Documents referenced in Paragraph 45 of the Motion or that support or refute the assertions in Paragraph 45 of the Motion, which states: "When a company like the Debtor, and subsequently, CHS TX/YesCare, is awarded a contract, news coverage necessarily focuses on the gross amount that will be paid over the life of the contract, which can be substantial, because that is the only available public information associated with the contract. However, the costs of operations and meeting contractual obligations can be massive as well. The UCC's

financial adviser examined the company's internal accounting records and believes that, as of the relevant time period, the company had multiple contracts with lifetime payouts of tens of millions of dollars, but for which the company's operating margin was minimal or negative. The Debtor's investigations included similar findings."

RESPONSE:

The Debtor objects to Request No. 6 to the extent that it seeks any documents "that support or refute the assertions in Paragraph 45 of the Motion" as vague, confusing, and overbroad. The Debtor believes it has previously produced the documents referenced in Paragraph 45 of the Motion. The Debtor will re-produce the documents it intends to rely on at the hearing on the Motion.

7. All Documents Concerning Your evaluation and valuation of any Personal Injury Claims individually or the Personal Injury Claims collectively.

RESPONSE:

The Debtor objects to Request No. 7 to the extent that it seeks disclosure of attorney-client, work product, or settlement privileged documents and communications. The Debtor will not be producing any documents or communications protected under the settlement agreement privilege. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294–95 (5th Cir. 2010) (the protection "extends to legal conclusions, factual statements, internal memoranda, and the work of non-lawyers and lawyers alike so long as the communications were 'intended to be part of . . . negotiations toward compromise.'"); *see Washington v. Pacific Summit Energy LLC*, 4:20-CV-290, 2021 WL 229653 at *4 (S.D. Tex. Jan. 21, 2021) (The relevancy of settlement communications are "thought to be suspect" because of their inherent nature.). Any documents created for the purpose of settlement communications, mediation, correspondence by or between the parties to mediation and/or the mediator are shielded from production. The Debtor will not be producing any documents or communications that are protected by the attorney-client privilege or work product privilege. *In re Royce Homes, LP*, 449 B.R. 709, 722 (Bankr. S.D. Tex. 2011) (citing *United States v. Neal*, 27 F.3d 1035, 1048 (5th Cir.1994)). This includes not only communications between counsel and the Debtor but those "materials prepared by an attorney in anticipation of litigation." *See In re McDowell*, 483 B.R. 471, 493 (Bankr. S.D. Tex. 2012). Further, it has been established that common interest communications "between or among parties concerning [a] mediation … on any mediation day" are protected. *In re Tribune Co.*, No. 08-13141, 2011 WL 386827 at *8 (Bankr. D. Del. February 3, 2011). Each of the protected materials are documents prepared in anticipation of litigation by counsel and contains the mental impressions, conclusions, opinions, or legal theories of an attorney. The Debtor has previously produced its responsive, non-

privileged Documents and communications. The Debtor will re-produce the Documents it intends to rely on at the hearing on the Motion.

8. All Communications between You and the UCC concerning the Chapter 11 Plan, the Disclosure Statement, the Motion, or the Settlement Agreement, including any drafts or prior versions of the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement.

RESPONSE:

The Debtor objects to Request No. 8 because it seeks information protected by the common interest privilege and settlement privilege. The Debtor will not be producing any documents or communications protected under the settlement agreement privilege. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294–95 (5th Cir. 2010) (the protection "extends to legal conclusions, factual statements, internal memoranda, and the work of non-lawyers and lawyers alike so long as the communications were 'intended to be part of . . . negotiations toward compromise.'"); *see Washington v. Pacific Summit Energy LLC*, 4:20-CV-290, 2021 WL 229653 at *4 (S.D. Tex. Jan. 21, 2021) (The relevancy of settlement communications are "thought to be suspect" because of their inherent nature). Further, it has been established that common interest communications "between or among parties concerning [a] mediation … on any mediation day" are protected. *In re Tribune Co.*, No. 08-13141, 2011 WL 386827 at *8 (Bankr. D. Del. February 3, 2011). Any documents created for the purpose of settlement communications, mediation, correspondence by or between the parties to mediation and/or the mediator are shielded from production. The Debtor further objects to production of responsive documents under the Common Interest Doctrine which had been voluntarily disclosed to counsel for the UCC for the purpose of furthering a common legal interest including, for example, preparing joint motions and responding to objections and motions filed by the TCC. *See In re Whitcomb*, 575 B.R. 169, 173 (Bankr. S.D. Tex. 2017) (citing *In re Santa Fe Int'l. Corp.*, 272 F.3d 705, 710 (5th Cir. 2001)) and (*In re Auclair*, 961 F.2d 65, 69 (5th Cir. 1992)); *see also In re Maxus Energy Corp.*, 617 B.R. 806, 820 (Bankr. D. Del. 2020); *In re Leslie Controls, Inc.*, 437 B.R. 493, 502 (Bankr. D. Del. 2010).

9. All Communications between You and any Released Party concerning the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement, including any drafts or prior versions of the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement.

RESPONSE:

The Debtor objects to Request No. 8 because it seeks information protected by the common interest privilege and settlement privilege. The Debtor will not be producing any documents or

communications protected under the settlement agreement privilege. *Lyondell Chem. Co. v. Occidental Chem. Corp.*, 608 F.3d 284, 294–95 (5th Cir. 2010) (the protection "extends to legal conclusions, factual statements, internal memoranda, and the work of non-lawyers and lawyers alike so long as the communications were 'intended to be part of . . . negotiations toward compromise.'"); *see Washington v. Pacific Summit Energy LLC*, 4:20-CV-290, 2021 WL 229653 at *4 (S.D. Tex. Jan. 21, 2021) (The relevancy of settlement communications are "thought to be suspect" because of their inherent nature). Further, it has been established that common interest communications "between or among parties concerning [a] mediation … on any mediation day" are protected. *In re Tribune Co.*, No. 08-13141, 2011 WL 386827 at *8 (Bankr. D. Del. February 3, 2011). The Debtor further objects to production of responsive documents under the Common Interest Doctrine which had been voluntarily disclosed to counsel for the UCC or any Released Party for the purpose of furthering a common legal interest including, for example, preparing joint motions and responding to objections and motions filed by the TCC. *See In re Whitcomb*, 575 B.R. 169, 173 (Bankr. S.D. Tex. 2017) (citing *In re Santa Fe Int'l. Corp.*, 272 F.3d 705, 710 (5th Cir. 2001)) and (*In re Auclair*, 961 F.2d 65, 69 (5th Cir. 1992)); *see also In re Maxus Energy Corp.*, 617 B.R. 806, 820 (Bankr. D. Del. 2020); *In re Leslie Controls, Inc.*, 437 B.R. 493, 502 (Bankr. D. Del. 2010).

10. All transcripts of depositions, including any deposition exhibits, given by Isaac Lefkowitz, whether in his individual or in a representative capacity for any entity, since May 5, 2022 to the present.

RESPONSE:

The Debtor will produce responsive Documents.

GRAY REED

By: */s/ Jason S. Brookner*
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Counsel to the Debtor
and Debtor in Possession

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd day of February, 2024, a true and correct copy of the foregoing discovery was served via electronic mail to counsel for the responding party.

/s/ Jason S. Brookner
Jason S. Brookner

EXHIBIT C

UCC's Responses to the Official Committee of Tort Claimants' Requests for Production Concerning the Rule 9019 Motion

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.	

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' RESPONSES TO OFFICAL COMMITTEE OF TORT CLAIMANTS' REQUESTS FOR THE PRODUCTION OF DOCUMENTS CONCERNING THE RULE 9019 MOTION

GENERAL OBJECTIONS

1. The Official Committee of Unsecured Creditors (the "UCC") objects to the Requests, including any definitions and instructions therein, to the extent they seek to impose upon the UCC obligations exceeding or inconsistent with the UCC's obligations under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Local Rules, and/or any other applicable rule or court order.

2. The UCC objects to the Requests, including any definitions and instructions therein, to the extent they seek information that is publicly available, already in the TCC's possession, or readily available to the TCC from other sources. The UCC will not produce information that is already in The TCC's possession.

RESPONSES TO REQUESTS FOR PRODUCTION

1. All Documents and Communications that support or refute Your responses to the RFAs or the Interrogatories.

[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.

RESPONSE: The UCC objects to this Request to the extent it seeks the production of documents protected by the attorney-client privilege, work product doctrine or any other applicable privilege. The UCC has already produced substantial documents to the TCC responsive to this Request. To the extent the UCC has any additional Documents and Communications, the UCC will produce such items.

2. All Documents You intend to use, introduce or admit into evidence, or otherwise rely on for any purpose at the hearing on the Motion.

RESPONSE: The UCC is continuing to develop its strategy relating to the hearing on the Motion, but states that the UCC is in possession of all applicable Documents. The UCC will submit necessary exhibit lists in accordance with applicable rules. Any other applicable Documents not already in the possession of the TCC will be produced by the UCC.

3. All Documents and Communications concerning or reflecting YesCare's financial condition, including but not limited to YesCare's audited or unaudited financial statements.

RESPONSE: The UCC has already produced to the TCC all Documents and Communications responsive to this Request. To the extent the UCC has any additional Documents and Communications, the UCC will produce such items.

4. All Documents and Communications concerning or reflecting any Released Party's financial condition, including but not limited to any Released Party's audited or unaudited financial statements.

RESPONSE: The UCC has already produced to the TCC all Documents and Communications responsive to this Request.

5. All Documents that You have provided to experts and/or any financial advisor in connection with the Chapter 11 Case.

RESPONSE: The UCC objects to this Request to the extent it seeks the production of documents protected by the attorney-client privilege, work product doctrine or any other applicable privilege. Without waiving the foregoing, the UCC has already produced to the TCC all non-privileged Documents responsive to this Request.

6. All of the Documents constituting the Debtor's "internal accounting records" as referenced in Paragraph 45 of the Motion as having been examined by the "UCC's financial adviser," and all other Documents referenced in Paragraph 45 of the Motion or that support or refute the assertions in Paragraph 45 of the Motion, which states: "When a company like the Debtor, and subsequently, CHS TX/YesCare, is awarded a contract, news coverage necessarily focuses on the gross amount that will be paid over the life of the contract, which can be substantial, because that is the only available public information associated with the contract. However, the costs of operations and meeting contractual obligations can be massive as well. The UCC's financial adviser examined the company's internal accounting records and believes that, as of the relevant time period, the company had multiple contracts with lifetime payouts of tens of millions of dollars, but for which the company's operating margin was minimal or negative. The Debtor's investigations included similar findings."

RESPONSE: The UCC objects to this Request to the extent it seeks the production of documents protected by the attorney-client privilege, work product doctrine or any other applicable privilege. Without waiving the foregoing, the UCC has already produced to the TCC all non-privileged Documents responsive to this Request.

7. All Documents Concerning Your evaluation and valuation of any Personal Injury Claims individually or the Personal Injury Claims collectively.

RESPONSE: The UCC objects to this Request to the extent it seeks the production of documents protected by the attorney-client privilege, work product doctrine or any other applicable privilege. The UCC further objects to the relevance of this Request in relation to the 9019 Motion, which is the subject of these Requests. Without waiving the foregoing, the UCC has already produced to the TCC all non-privileged Documents responsive to this Request.

8. All Communications between You and the Debtor concerning the Chapter 11 Plan, the Disclosure Statement, the Motion, or the Settlement Agreement, including any drafts or prior versions of the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement.

RESPONSE: The UCC objects to this request to the extent it seeks the production of documents protected by the attorney-client privilege, work product doctrine or any other applicable privilege. The UCC further objects as the Request seeks Documents and Communications subject to the common interest doctrine and/or subject to the confidential mediation applicable in this proceeding.

9. All Communications between You and any Released Party concerning the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement, including any drafts or prior versions of the Plan, the Disclosure Statement, the Motion, or the Settlement Agreement.

RESPONSE: The UCC objects to this Request as it seeks Documents and Communications subject to the confidential mediation applicable in this proceeding. Upon agreement by the TCC to keep such Documents and Communications subject to the confidential mediation process, the UCC will produce any such Documents and Communications.

10. All transcripts of depositions, including any deposition exhibits, given by Isaac Lefkowitz, whether in his individual or in a representative capacity for any entity, since May 5, 2022 to the present.

RESPONSE: The UCC has already produced to the TCC all Documents responsive to this Request.

DATED: February 2, 2024

STINSON LLP

By: */s Nicholas Zluticky*

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EXHIBIT D

Debtor's Responses to the Official Committee of Tort Claimants' Requests for Admission Concerning the Rule 9019 Motion

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 RESPONSES TO THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' REQUESTS FOR ADMISSION CONCERNING THE RULE 9019 MOTION

TO: The Official Committee of Tort Claimants, by and through their attorneys of record, David J. Molton, Eric R. Goodman, D. Cameron Moxley, Gerard T. Cicero, and Susan Sieger-Grimm, BROWN RUDNICK LLP, 7 Times Square, New York, New York 10036; and Michael W. Zimmerman, BERRY RIDDELL LLC, 6750 E. Camelback Rd., Suite 100, Scottsdale, Arizona 85251.

Pursuant to the Federal Rules of Civil Procedure 26 and 33, made applicable to this contested matter by Rules 7026, 7033, and 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor Tehum Care Services, Inc. (the "Debtor") hereby serves the following Responses to the Official Committee of Tort Claimants' Requests for Admission Concerning the Rule 9019 Motion.

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that CHS TX is solvent.

RESPONSE:

The Debtor cannot in good faith admit or deny whether CHS TX is solvent as of the date of this response.

[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. Admit that CHS TX is insolvent.

RESPONSE:

The Debtor cannot in good faith admit or deny whether CHS TX is insolvent as of the date of this response.

3. Admit that YesCare is solvent.

RESPONSE:

The Debtor cannot in good faith admit or deny whether YesCare is solvent as of the date of this response.

4. Admit that YesCare is insolvent.

RESPONSE:

The Debtor cannot in good faith admit or deny whether YesCare is insolvent as of the date of this response.

5. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are property of the Debtor's estate.

RESPONSE:

The Debtor objects to the generalized statement in RFA No. 5. Claims under the doctrine of successor liability are property of the Debtor's estate. *See S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1150 (5th Cir. 1987); *Schertz-Cibolo—Universal City v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010).

Without additional information, the Debtor cannot in good faith admit or deny whether a particular individual asserting a Personal Injury Claim may have a claim against any specific non-debtor parties under a "successor liability" theory that would or would not constitute property of the estate.

6. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are not property of the Debtor's estate.

RESPONSE:

The Debtor objects to the generalized statement in RFA No. 6. Claims under the doctrine of successor liability are generally considered property of the Debtor's estate. *See S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1150 (5th Cir. 1987); *Schertz-Cibolo—Universal City v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010).

Without additional information, the Debtor cannot in good faith admit or deny whether a particular individual asserting a Personal Injury Claim may have a claim against any specific non-debtor parties under a "successor liability" theory that would or would not constitute property of the estate.

7. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are property of the Debtor's estate.

RESPONSE:

The Debtor objects to the generalized statement in RFA No. 7. Claims under the doctrine of veil piercing are generally considered property of the Debtor's estate. *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 584; *see also Educators Grp. Health Tr. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284-85 (5th Cir. 1994) (claims were derivative where they asserted harms arising from harm to the estate); *In re Emoral Inc.*, 740 F.3d 875, 881 (3d Cir.2014), *cert. denied*, 574 U.S. 974 (2014) (explaining that claims are considered property of the estate where they are "generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors."). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010).

Without additional information, the Debtor cannot in good faith admit or deny whether a particular individual asserting a Personal Injury Claim may have a claim against any specific non-debtor parties under a "veil piercing" theory that would or would not constitute property of the estate.

8. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are not property of the Debtor's estate.

RESPONSE:

The Debtor objects to the generalized statement in RFA No. 7. Claims under the doctrine of veil piercing are generally considered property of the Debtor's estate. *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 584; *see also Educators Grp. Health Tr. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284-85 (5th Cir. 1994) (claims were derivative where they asserted harms arising from harm to the estate); *In re Emoral Inc*., 740 F.3d 875, 881 (3d Cir.2014), *cert. denied*, 574 U.S. 974 (2014) (explaining that claims are considered property of the estate where they are "generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors."). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010).

Without additional information, the Debtor cannot in good faith admit or deny whether a particular individual asserting a Personal Injury Claim may have a claim against any specific non-debtor parties under a "veil piercing" theory that would or would not constitute property of the estate.

9. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could not assert such Personal Injury Claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

RESPONSE:

The Debtor objects to the vague, compound and misleading manner in which this RFA No. 9 is phrased. Subject to the foregoing, RFA No. 9 is denied.

10. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could not assert such Personal Injury Claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

RESPONSE:

RFA 10 appears identical to RFA 9. *See* Response to RFA 9.

11. Admit that the M2 Parties will not fund the Settlement Payments if, after the Settlement Payments are made, holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could continue to assert such Personal Injury Claims against YesCare.

RESPONSE:

The Debtor cannot in good faith admit or deny what the M2 Parties will or will not do under hypothetical scenarios.

12. Admit that the M2 Parties will not fund the Settlement Payments if, after the Settlement Payments are made, holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could continue to assert such Personal Injury Claims against CHS TX.

RESPONSE:

The Debtor cannot in good faith admit or deny what the M2 Parties will or will not do under hypothetical scenarios.

13. Admit that the Debtor has no business to reorganize.

RESPONSE:

Denied.

14. Admit that following the Combination Merger and Divisional Merger, CHS TX held itself out as Corizon's successor.

RESPONSE:

The Debtor objects to the term "held itself out" as a vague and misleading phrase. The Debtor admits that certain former employees of Corizon may have disseminated various communications to certain customers after the Divisional Merger making general statements about YesCare and/or CHS TX following or in the lead up to the Divisional Merger. The Debtor cannot in good faith admit or deny such former employees' intent in disseminating such communications. For the avoidance of doubt, the Debtor denies any factual or legal significance of such communications.

15. Admit that following the Combination Merger and Divisional Merger, CHS TX continued the business enterprise of Corizon.

RESPONSE:

The Debtor objects to RFA No. 15 to the extent it refers to the vague, misleading, compound phrase "continued the business enterprise of Corizon," and denies that CHS TX "continued the business

enterprise of Corizon." The Debtor admits that CHS TX was allocated specific assets and liabilities under the Divisional Merger. The Debtor cannot in good faith admit or deny what CHS TX did with such assets and liabilities following the Divisional Merger. The Debtor specifically denies that an allocation of assets and liabilities under the Divisional Merger constitutes a continuation of Corizon's business or business enterprise.

16. Admit that following the Combination Merger and Divisional Merger, CHS TX continued the general business operations of Corizon.

RESPONSE:

The Debtor objects to the term "general business operations of Corizon" as vague, misleading, and a compound question. The Debtor admits that CHS TX was allocated specific assets and liabilities under the Divisional Merger. The Debtor cannot in good faith admit or deny what CHS TX did with such assets and liabilities following the Divisional Merger. The Debtor specifically denies that an allocation of assets and liabilities under the Divisional Merger constitutes a continuation of the general business of Corizon.

17. Admit that following the Combination Merger and Divisional Merger, CHS TX continued Corizon's business.

RESPONSE:

The Debtor objects to RFA No. 17 to the extent it refers to the vague, misleading, compound phrase "continued Corizon's business," and denies that CHS TX "continued Corizon's business." The Debtor admits that CHS TX was allocated specific assets and liabilities under the Divisional Merger. The Debtor cannot in good faith admit or deny what CHS TX did with such assets and liabilities following the Divisional Merger. The Debtor specifically denies that an allocation of assets and liabilities under the Divisional Merger constitutes a continuation of Corizon's business or business enterprise.

18. Admit that following the Combination Merger and Divisional Merger, CHS TX continued Corizon's business at the same physical locations as Corizon prior to the divisive merger.

RESPONSE:

The Debtor objects to RFA No. 18 to the extent it refers to the vague, misleading, compound phrase "continued Corizon's business," and denies that CHS TX "continued Corizon's business." The Debtor admits that CHS TX was allocated specific assets and liabilities under the Divisional Merger. The Debtor cannot in good faith admit or deny what CHS TX did with such assets and liabilities following the Divisional Merger. The Debtor specifically denies that an allocation of assets and liabilities under the Divisional Merger constitutes a continuation of Corizon's business. The Debtor admits that CHS TX offices were located in the same physical locations as Corizon prior to the divisional merger. The Debtor cannot admit or deny where YesCare currently offices.

19. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims will not be paid in full.

RESPONSE:

The Debtor objects to the phrase "paid in full" to the extent that it assumes that the amounts for which proofs of claim are filed are the amounts that will ultimately be settled or liquidated by a court of competent jurisdiction and allowed by the Bankruptcy Court as a Claim against the Debtor. Moreover, the Debtor objects to the generalized statement regarding the treatment of all Personal Injury Claims. The Debtor admits that the Plan does not propose to pay 100% of the asserted amounts of all filed claims based on the Liquidation Analysis, but, if approved, the Settlement Agreement is intended to generate sufficient proceeds to make it possible for Personal Injury Claimants to be paid in full under certain circumstances, or at least receive more than such Personal Injury Claimants would receive outside of bankruptcy in the absence of a global settlement.

20. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Non-Personal Injury Claims will not be paid in full.

RESPONSE:

The Debtor objects to the phrase "paid in full" to the extent that it assumes that the amounts for which proofs of claim are filed are the amounts that will ultimately be settled or liquidated by a court of competent jurisdiction and allowed by the Bankruptcy Court as a Claim against the Debtor. Moreover, the Debtor objects to the generalized treatment of claims. The Debtor admits that the Plan does not propose to pay 100% of the asserted amounts of all filed claims, but, if approved, the Settlement Agreement is intended to generate sufficient proceeds to make it possible for certain Non-Personal Injury Claimants to be paid in full under certain circumstances, or at least receive more than such Non-Personal Injury Claimants would receive outside of bankruptcy in the absence of a global settlement.

GRAY REED

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Counsel to the Debtor
and Debtor in Possession

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd day of February, 2024, a true and correct copy of the foregoing discovery was served via electronic mail to counsel for the responding party.

/s/ Jason S. Brookner
Jason S. Brookner

EXHIBIT E

Official Committee of Unsecured Creditors' Responses to Official Committee of Tort Claimants' Requests for Admission Concerning the Rule 9019 Motion

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.	

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' RESPONSES TO OFFICAL COMMITTEE OF TORT CLAIMANTS' REQUESTS FOR ADMISSION CONCERNING THE RULE 9019 MOTION

The Official Committee of Unsecured Creditors (the "UCC"), through its undersigned attorneys, serves these objections and responses to the Official Committee of Tort Claimants' (the "TCC") *Requests for Admission Concerning Rule 9019 Motion*. These responses and objections are served within the timeframe as agreed to between the UCC and TCC.

RESPONSES TO REQUESTS FOR ADMISSION

1. Admit that CHS TX is solvent.

RESPONSE: The UCC objects to Request No. 1 on the grounds it calls for a legal conclusion.

2. Admit that CHS TX is insolvent.

RESPONSE: The UCC objects to Request No. 2 on the grounds it calls for a legal conclusion.

3. Admit that YesCare is solvent.

RESPONSE: The UCC objects to Request No. 3 on the grounds it calls for a legal conclusion.

4. Admit that YesCare is insolvent.

[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.

RESPONSE: The UCC objects to Request No. 4 on the grounds it calls for a legal conclusion.

5. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are property of the Debtor's estate.

RESPONSE: The UCC objects to Request No. 5 on the grounds it calls for a legal conclusion.

6. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are not property of the Debtor's estate.

RESPONSE: The UCC objects to Request No. 6 on the grounds it calls for a legal conclusion.

7. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are property of the Debtor's estate.

RESPONSE: The UCC objects to Request No. 7 on the grounds it calls for a legal conclusion.

8. Admit that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are not property of the Debtor's estate.

RESPONSE: The UCC objects to Request No. 8 on the grounds it calls for a legal conclusion.

9. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022

could not assert such Personal Injury Claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests. The UCC further objects as Request No. 9 calls for a legal conclusion.

10. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could not assert such Personal Injury Claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests. The UCC further objects as Request No. 10 calls for a legal conclusion.

11. Admit that the M2 Parties will not fund the Settlement Payments if, after the Settlement Payments are made, holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could continue to assert such Personal Injury Claims against YesCare.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests. The UCC further objects as Request No. 11 calls for a legal conclusion. The UCC further objects as it lacks sufficient information and belief necessary to respond to this Request as it calls for speculation regarding the future actions of third parties.

12. Admit that the M2 Parties will not fund the Settlement Payments if, after the Settlement Payments are made, holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could continue to assert such Personal Injury Claims against CHS TX.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests. The UCC further objects as Request No. 12

calls for a legal conclusion. The UCC further objects as it lacks sufficient information and belief necessary to respond to this Request as it calls for speculation regarding the future actions of third parties.

13. Admit that the Debtor has no business to reorganize.

RESPONSE: Admit.

14. Admit that following the Combination Merger and Divisional Merger, CHS TX held itself our (sic) as Corizon's successor.

RESPONSE: Admit.

15. Admit that following the Combination Merger and Divisional Merger, CHS TX continued the business enterprise of Corizon.

RESPONSE: The UCC objects to this Request as the phrase "business enterprise" is vague and not defined, but to the extent a response is required, admit.

16. Admit that following the Combination Merger and Divisional Merger, CHS TX continued the general business operations of Corizon.

RESPONSE: The UCC objects to this Request as the phrase "general business operations" is vague and not defined, but to the extent a response is required, admit.

17. Admit that following the Combination Merger and Divisional Merger, CHS TX continued Corizon's business.

RESPONSE: The UCC objects to this Request as the phrase "continued Corizon's business" is vague and not defined, but to the extent a response is required, admit.

18. Admit that following the Combination Merger and Divisional Merger, CHS TX continued Corizon's business at the same physical locations as Corizon prior to the divisive merger.

RESPONSE: The UCC objects to this Request as the phrase "continued Corizon's business" is vague and not defined, but to the extent a response is required, admit.

19. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims will not be paid in full.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests.

20. Admit that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Non-Personal Injury Claims will not be paid in full.

RESPONSE: The UCC objects to this Request as it is irrelevant to the 9019 Motion, which is the basis for the service of the Requests.

DATED: February 2, 2024

STINSON LLP

By:*/s Nicholas Zluticky*

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EXHIBIT F

Debtor's Responses to the Official Committee of Tort Claimants' Interrogatories Concerning the Rule 9019 Motion

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 RESPONSES TO THE OFFICIAL COMMITTEE OF TORT CLAIMANTS' INTERROGATORIES CONCERNING THE RULE 9019 MOTION

TO: The Official Committee of Tort Claimants, by and through their attorneys of record, David J. Molton, Eric R. Goodman, D. Cameron Moxley, Gerard T. Cicero, and Susan Sieger-Grimm, BROWN RUDNICK LLP, 7 Times Square, New York, New York 10036; and Michael W. Zimmerman, BERRY RIDDELL LLC, 6750 E. Camelback Rd., Suite 100, Scottsdale, Arizona 85251.

Pursuant to the Federal Rules of Civil Procedure 26 and 33, made applicable to this contested matter by Rules 7026, 7033, and 9014 of the Federal Rules of Bankruptcy Procedure, the Debtor Tehum Care Services, Inc. (the "Debtor") hereby serves the following Responses to the Official Committee of Tort Claimants' Interrogatories Concerning the Rule 9019 Motion.

RESPONSES TO INTERROGATORIES

1. If RFA No. 1 is not admitted, identify the factual basis for Your assertion that CHS TX is insolvent.

RESPONSE:

The Debtor objects to Interrogatory No. 1 because it assumes that the response to RFA No. 1 must either be admitted or denied. As noted in response to RFA No. 1, the Debtor cannot in good faith admit or deny whether CHS TX is solvent as of the date of this response.

[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. If RFA No. 3 is not admitted, identify the factual basis for Your assertion that YesCare is insolvent.

RESPONSE:

The Debtor objects to Interrogatory No. 2 because it assumes that the response to RFA No. 3 must either be admitted or denied. As noted in response to RFA No. 3, the Debtor cannot in good faith admit or deny whether YesCare is solvent as of the date of this response.

3. If RFA No. 6 is not admitted, identify the factual basis for Your assertion that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are property of the Debtor's estate.

RESPONSE:

The Debtor has objected to the generalized nature of RFA No. 6, because the Fifth Circuit requires a case-by-case analysis of whether a particular claim against a particular third party constitutes property of the estate. "To pursue a claim on its own behalf, a creditor must show [its] injury is not dependent on injury to the estate." *See generally Bates v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293-94 (5th Cir. 2019) (citations omitted). In general, claims under the doctrine of successor liability are property of the Debtor's estate. *See S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition, Inc.)*, 817 F.2d 1142, 1150 (5th Cir. 1987); *Schertz-Cibolo—Universal City v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284 (5th Cir. 1994). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010). Because RFA No. 6 does not specify any particular claim, the Debtor objects to the generalized nature of this Interrogatory No. 3, as it would be overly burdensome on the Debtor to provide the factual bases for the Debtor's contention that successor liability theories are generally considered to be derivative, not direct claims. The Debtor reserves the right to analyze the merits of any particularized claim.

4. If RFA No. 8 is not admitted, identify the factual basis for Your assertion that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are property of the Debtor's estate.

RESPONSE:

The Debtor has objected to the generalized nature of RFA No. 6, because the Fifth Circuit requires a case-by-case analysis of whether a particular claim against a particular third party constitutes property of the estate. "To pursue a claim on its own behalf, a creditor must show [its] injury is

not dependent on injury to the estate." *See generally Bates v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293-94 (5th Cir. 2019) (citations omitted). In general, Claims under the doctrine of veil piercing are generally considered property of the Debtor's estate. *In re Seven Seas Petroleum, Inc.*, 522 F.3d at 584; *see also Educators Grp. Health Tr. v. Wright (In re Educators Grp. Health Tr.)*, 25 F.3d 1281, 1284-85 (5th Cir. 1994) (claims were derivative where they asserted harms arising from harm to the estate); *In re Emoral Inc*., 740 F.3d 875, 881 (3d Cir.2014), *cert. denied*, 574 U.S. 974 (2014) (explaining that claims are considered property of the estate where they are "generally available to any creditor, and recovery would serve to increase the pool of assets available to all creditors."). This is true even if outside the bankruptcy proceeding, a non-debtor was otherwise entitled to assert such claims. *See The Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 261 (5th Cir. 2010). Because RFA No. 8 does not specify any particular claim, the Debtor objects to the generalized nature of this Interrogatory No. 4, as it would be overly burdensome on the Debtor to provide the factual bases for the Debtor's contention that veil piercing theories are generally considered to be derivative, not direct claims. The Debtor reserves the right to analyze the merits of any particularized claim.

5. If RFA No. 10 is not admitted, identify the factual basis for Your assertion that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could assert such claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

RESPONSE:

The Debtor has objected to the vague, compound and misleading manner in which RFA No. 9 and its identical RFA No. 10 are phrased. By definition, Personal Injury Claims are Claims asserted against the Debtor. If an individual creditor believes it holds alternative remedies against non-debtor third parties *other* than Personal Injury Claims asserted against the Debtor, such creditor will have an opportunity to preserve its claim and have the Bankruptcy Court determine whether such claim does or does not constitute property of the estate. The Debtor is not seeking approval of non-consensual third-party releases.

6. If RFA No. 13 is not admitted, identify the factual basis for Your assertion that the Debtor has a business to reorganize.

RESPONSE:

The Debtor has described its assets and liabilities in its Chapter 11 Plan and Disclosure Statement. Orderly liquidations through a Chapter 11 Plan are considered a reasonable form of reorganization.

7. Identify the beneficial owners of YesCare.

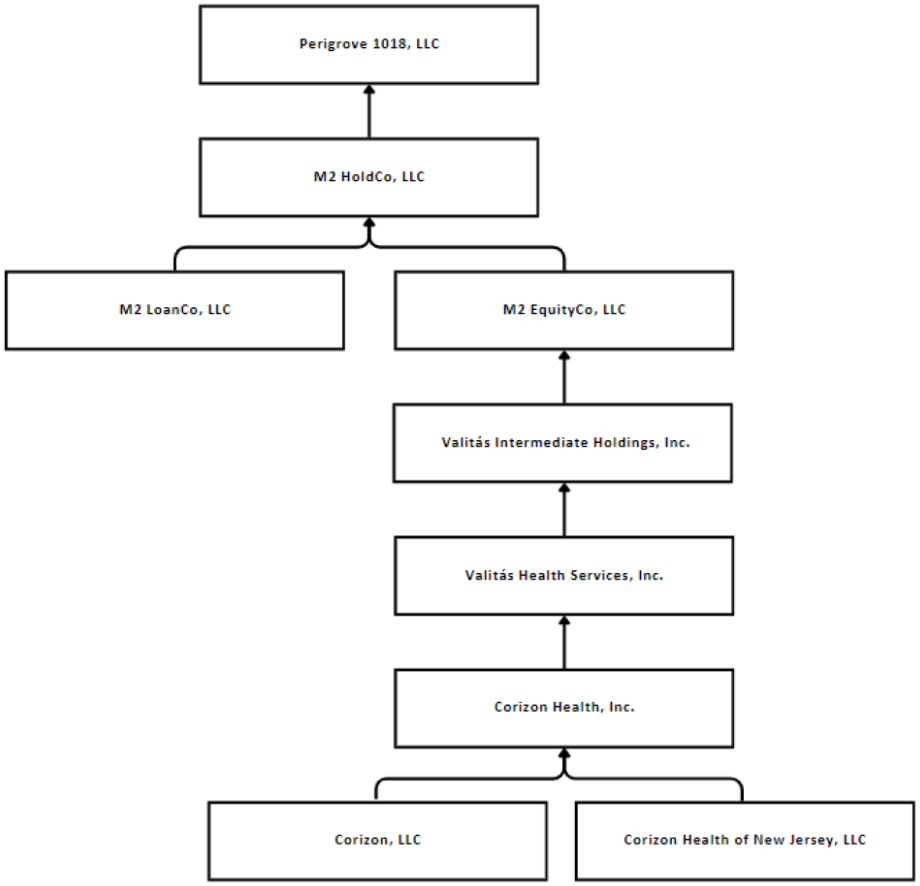
RESPONSE:

The Debtor objects to Interrogatory No. 7 as unduly burdensome as it seeks a sworn answer from the Debtor about the beneficial owners of third-parties. The Debtor has insufficient information to definitively identify the beneficial owners of YesCare as of the date of this response.

8. Identify the beneficial owners of Corizon prior to May 5, 2022.

RESPONSE:

On information and belief, as described more fully in the Disclosure Statement filed at Docket No. 1071, Perigrove 1018, LLC was the ultimate beneficial owner of Corizon prior to the Divisional Merger, as represented in the chart below:



9. Identify the Debtor's business that needs to be rehabilitated.

RESPONSE:

The Debtor objects to the use of the term "rehabilitated" in Interrogatory No. 9. The Debtor has described its assets and liabilities in its Chapter 11 Plan and Disclosure Statement. Orderly liquidations through a Chapter 11 Plan are considered a reasonable form of reorganization. If there is specific context for the term "rehabilitated" that you are referring to, the Debtor is willing to meet and confer and provide additional context.

10. Identify each of the Debtor's employees.

RESPONSE:

The Debtor objects to this Interrogatory No. 10 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7.* The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n,* 121 F.R.D. 284 (N.D.Tex.1988)." Subject to the foregoing, the Debtor has no full-time employees as of the date of this response.

11. Identify each of the Debtor's business assets.

RESPONSE:

The Debtor objects to this Interrogatory No. 11 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7.* The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n,* 121 F.R.D. 284 (N.D.Tex.1988)." Subject to the foregoing, the Debtor makes reference to the Disclosure Statement filed at Docket No. 1071, the Schedules of Assets and Liabilities filed at Docket Nos. 676 and 810. Moreover, the Debtor objects to the question to the extent that it asks the Debtor to "identify" any specific documents in

this case. The Debtor has produced hundreds of thousands of pages of documents, as have several other parties in this case, and requiring the Debtor to individually identify each is unduly burdensome, expensive, and a litigation tactic designed to increase costs. This type of identification is not a reasonable use of estate resources and all documents have been produced in word-searchable format so that the TCC can easily identify each.

12. Identify all financial information concerning YesCare that is in Your possession, custody, or control.

RESPONSE:
The Debtor objects to Interrogatory No. 12 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7*. The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n*, 121 F.R.D. 284 (N.D.Tex.1988)." Requiring the Debtor to sift through all of its records and determine whether they may or may not reflect YesCare's financial status either currently or at any time in the past would be incredibly burdensome and require analysis of each document in the Debtor's possession from prior to the Divisional Merger. This would be both incredibly burdensome and expensive and a waste of estate resources. To the extent this Interrogatory seeks identification of relevant information, which remains unclear due to the breadth of the question, this Interrogatory is more appropriately directed to YesCare. Subject to the foregoing, the UCC has produced all documents in either its or the Debtor's possession, custody, or control regarding YesCare. Moreover, the Debtor objects to the question to the extent that it asks the Debtor to "identify" any specific documents in this case. The Debtor has produced hundreds of thousands of pages of documents, as have several other parties in this case, and requiring the Debtor to individually identify each is unduly burdensome, expensive, and a litigation tactic designed to increase costs. This type of identification is not a reasonable use of estate resources and all documents have been produced in word-searchable format so that the TCC can easily identify each.

13. Identify the reasons why the Debtor undertook the Divisional Merger.

RESPONSE:

The Debtor objects to this Interrogatory No. 13 as vague, overly broad and burdensome, without any specificity regarding time periods. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7.* The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n,* 121 F.R.D. 284 (N.D.Tex.1988)." Subject to the foregoing, the UCC has produced all documents in either its or the Debtor's possession, custody, or control regarding YesCare. Moreover, the Debtor objects to the question to the extent that it asks the Debtor to "identify" any specific documents in this case. The Debtor has produced hundreds of thousands of pages of documents, as have several other parties in this case, and requiring the Debtor to individually identify each is unduly burdensome, expensive, and a litigation tactic designed to increase costs. This type of identification is not a reasonable use of estate resources and all documents have been produced in word-searchable format so that the TCC can easily identify each.

14. Identify any of the Released Parties that You believe to be insolvent.

RESPONSE:

The Debtor cannot in good faith identify which Released Parties may be solvent or insolvent as of the date of this response.

15. Identify the recovery that You believe holders of Personal Injury Claims will receive on account of such Personal Injury Claims if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered.

RESPONSE:

The Debtor objects to this Interrogatory No. 15 as overly broad and burdensome. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for

such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7.* The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n,* 121 F.R.D. 284 (N.D.Tex.1988)." Subject to the foregoing, the Debtor has identified a hypothetical liquidation analysis in the Disclosure Statement filed at Docket No. 1071, which was based on a gross settlement amount of $37 million. Under the improved settlement agreement attached to the Motion, recoveries for all creditors are projected to be higher than projected under the prior settlement. Such recoveries are dependent on information not presently known to the Debtor, such as the total administrative expenses that will need to be paid out of the settlement, the number of creditors who opt out of the settlement, and the final liquidation of Personal Injury Claims (including those that can or cannot be paid out of the Debtor's insurance policies). Additionally, under the present Plan, the Debtor cannot assume what elections any individual holder of a Personal Injury Claim will make. The Debtor and the UCC intend to file an amended plan following the approval of the Motion. They welcome the TCC's input regarding plan treatment and allocation of settlement proceeds.

16. Identify the recovery that You believe holders of Non-Personal Injury Claims will receive on account of such Non-Personal Injury Claims if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered.

RESPONSE:

The Debtor objects to this Interrogatory No. 15 as overly broad and burdensome. *Dondi Properties Corp. v. Commerce Sav. & Loan Ass'n*, 121 F.R.D. 284, 293 (N.D. Tex. 1988) ("Requests for production should not be excessive or designed solely to place a burden on the opposing party, for such conduct in discovery only increases the cost, duration, and unpleasantness of any case."); *In re Bradley*, 495 B.R. 747, 783 n.22 (Bankr. S.D. Tex. 2013) ("In 2001, the District Judges of the Southern District of Texas voted to adopt these Guidelines for Professional Conduct to be observed by all attorneys appearing before any district judge, bankruptcy judge, or magistrate judge presiding in the Southern District of Texas. *General Order 2001–7.* The guidelines are derived from the decision rendered in *Dondi Properties Corp. v. Commerce Savings and Loan Ass'n,* 121 F.R.D. 284 (N.D.Tex.1988)." Subject to the foregoing, the Debtor has identified a hypothetical liquidation analysis in the Disclosure Statement filed at Docket No. 1071, which was based on a gross settlement amount of $37 million. Under the improved settlement agreement attached to the Motion, recoveries for all creditors are projected to be higher than projected under the prior settlement. Such recoveries are dependent on information not presently known to the Debtor, such

as the total administrative expenses that will need to be paid out of the settlement, the number of creditors who opt out of the settlement, and the final liquidation of Non-Personal Injury Claims. The Debtor and the UCC intend to file an amended plan following the approval of the Motion. They welcome the TCC's input regarding plan treatment and allocation of settlement proceeds.

17. Identify any witnesses that You intend to call at the hearing to consider the Motion.

RESPONSE:

The Debtor has designated Russell Perry, the Debtor's Chief Restructuring Officer, as its designee under Rule 30(b)(6) for the TCC's deposition request. The UCC has identified two additional individuals who may be called in support of the Motion – Matt Dundon and David Barton. The Debtor does not presently intend to call other witnesses in support of the Motion but will file a witness list prior to the deadline under local rules to do so.

GRAY REED

By: */s/ Jason S. Brookner*
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Counsel to the Debtor
and Debtor in Possession

CERTIFICATE OF SERVICE

I do hereby certify that on the 2nd day of February, 2024, a true and correct copy of the foregoing discovery was served via electronic mail to counsel for the responding party.

/s/ Jason S. Brookner
Jason S. Brookner

EXHIBIT G

Official Committee of Unsecured Creditors' Answers to Official Committee of Tort Claimants' Interrogatories Concerning the Rule 9019 Motion

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.	

OFFICIAL COMMITTEE OF UNSECURED CREDITORS' ANSWERS TO OFFICAL COMMITTEE OF TORT CLAIMANTS' INTERROGATORIES CONCERNING THE RULE 9019 MOTION

GENERAL OBJECTIONS

1. The Official Committee of Unsecured Creditors (the "UCC") objects to the Requests, including any definitions and instructions therein, to the extent they seek to impose upon the UCC obligations exceeding or inconsistent with the UCC's obligations under the Federal Rules of Civil Procedure, Federal Rules of Bankruptcy Procedure, Local Rules, and/or any other applicable rule or court order.

2. The UCC objects to these Interrogatories to the extent they seek information subject to the attorney-client privilege or work product doctrine. In the event that any privileged or work product information is disclosed by the UCC in these answers, or in any documents which may be designated herein, such disclosure is inadvertent and does not constitute a waiver of any privilege.

ANSWERS TO INTERROGATORIES

1. If RFA No. 1 is not admitted, identify the factual basis for Your assertion that CHS TX is insolvent.

[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.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required.

2. If RFA No. 3 is not admitted, identify the factual basis for Your assertion that YesCare is insolvent.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required.

3. If RFA No. 6 is not admitted, identify the factual basis for Your assertion that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of successor liability are property of the Debtor's estate.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required.

4. If RFA No. 8 is not admitted, identify the factual basis for Your assertion that the Personal Injury Claims asserted against YesCare, CHS TX, and their non-debtor affiliates and insiders under the doctrine of veil piercing are property of the Debtor's estate.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required.

5. If RFA No. 10 is not admitted, identify the factual basis for Your assertion that if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered, the holders of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could assert such claims against YesCare, CHS TX, and their non-debtor affiliates and insiders.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required. Furthermore, the UCC objects as this Interrogatory seeks information beyond the scope of the 9019 Motion—the basis for which these Interrogatories were served—and seeks information regarding the Chapter 11 Plan that the UCC will not seek to confirm, as stated in open Court at prior hearings in this proceeding.

6. If RFA No. 12 is not admitted, identify the factual basis for Your assertion that the M2 Parties will fund the Settlement Payments if, after the Settlement Payments are made, holders

of Personal Injury Claims arising from conduct that occurred prior to May 5, 2022 could continue to assert such claims against CHS TX.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required. Furthermore, the UCC objects as this Interrogatory seeks information beyond the scope of the 9019 Motion—the basis for which these Interrogatories were served. Finally, the UCC cannot speculate as to the conduct of third parties based on the hypothetical propounded in this Interrogatory.

7. If RFA No. 13 is not admitted, identify the factual basis for Your assertion that the Debtor has a business to reorganize.

ANSWER: Based on the admission of RFA No. 13, no response required.

8. Identify the beneficial owners of YesCare.

ANSWER: The UCC objects to this request as the term "beneficial owners" is vague and undefined. Without limiting the foregoing, the UCC understands that YesCare Corp. is owned by YesCare Holdings, LLC and Sara Tirschwell.

9. Identify the beneficial owners of Corizon prior to May 5, 2022.

ANSWER: The UCC does not know the precise beneficial owners of Corizon, and states that all information held by the UCC relating to this inquiry is in the hands of the TCC through prior document production, and therefore such information is equally available to the TCC.

10. Identify the Debtor's business that needs to be rehabilitated.

ANSWER: The UCC is not aware of any business of the Debtor that needs to be rehabilitated, and this fact has been clear from the outset of this Chapter 11 proceeding.

11. Identify each of the Debtor's employees.

ANSWER: The UCC is aware that Mr. Russell Perry serves as the Chief Restructuring Officer of the Debtor, but is not aware of any other employees of the Debtor.

12. Identify each of the Debtor's business assets.

ANSWER: The UCC is aware of certain Employee Retention Credits and otherwise refers the TCC to the Debtor's *Schedules of Assets and Liabilities for Tehum Care Services, Inc. (Case No. 23-90086)* at Docket No. 481 for a detailed listing of the Debtor's assets.

13. Identify all financial information concerning YesCare that is in Your possession, custody, or control.

ANSWER: The UCC objects to this Interrogatory on the grounds that it is vague, ambiguous, overly broad, and unduly burdensome. The UCC directs the TCC to the documents previously produced in this case and documents produced in connection with the UCC's responses to the TCC's requests for production of documents served simultaneously with these Interrogatories.

14. Identify the reasons why the Debtor undertook the Divisional Merger.

ANSWER: This Interrogatory calls for speculation regarding the thinking of a third party and therefore the UCC cannot properly respond to this Interrogatory.

15. Identify any of the Released Parties that You believe to be insolvent.

ANSWER: The UCC objects to this Interrogatory as it requests a legal conclusion to which no response is required.

16. Identify the recovery that You believe holders of Personal Injury Claims will receive on account of such Personal Injury Claims if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered.

ANSWER: The UCC objects to this Interrogatory in that it seeks information beyond the scope of the 9019 Motion—the basis for which these Interrogatories were served—and seeks information regarding the Chapter 11 Plan that the UCC will not seek to confirm, as stated in open Court at prior hearings in this proceeding. The UCC further objects in that such Interrogatory is overly broad and unduly burdensome. Among other determining factors, there are hundreds of Personal Injury Claims, issues relating to insurance coverage, and a claimant's right to recover directly against non-debtor parties.

17. Identify the recovery that You believe holders of Non-Personal Injury Claims will receive on account of such Non-Personal Injury Claims if the Settlement Agreement is approved pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and an order confirming the Chapter 11 Plan is entered.

ANSWER: The UCC objects to this Interrogatory in that it seeks information beyond the scope of the 9019 Motion—the basis for which these Interrogatories were served—and seeks information regarding the Chapter 11 Plan that the UCC will not seek to confirm, as stated in open Court at prior hearings in this proceeding. The UCC further objects in that such Interrogatory is overly broad and unduly burdensome.

18. Identify any witnesses that You intend to call at the hearing to consider the Motion.

ANSWER: The UCC reserves the right to amend or supplement this response, but identifies the following witnesses that it presently plans to call as a witness in support of the Motion:

Matthew Dundon
Dundon Advisors, LLC, Financial Advisor to the UCC
Ten Bank Street, Suite 1100
White Plains, NY 10606

Mr. Dundon can be contacted through counsel for the UCC.

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David Barton
Chair of the UCC
St. Luke's Health System, Deputy General Counsel

Mr. Barton can be contacted through counsel for the UCC.

AS TO ANSWERS:

DATED: February 2, 2024

David Barton, in his capacity as Chair of the Official Committee of Unsecured Creditors

AS TO FORM AND OBJECTIONS:

DATED: February 2, 2024

STINSON LLP

By: */s* ***Nicholas Zluticky***

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EXHIBIT H

Deposition Transcript of Official Committee of Unsecured Creditors Committee 30(b)(b) Witness David Barton [Filed Under Seal]

EXHIBIT I

Deposition Transcript of Debtor's 30(b)(b) Witness Russell Perry [Filed Under Seal]

EXHIBIT J

Deposition Transcript of Official Committee of Unsecured Creditors 30(b)(6) Witness Matthew Dundon [Filed Under Seal]