Docket #1404 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,[1]	Case No. 23-90086 (CML)
Debtor.	Re Dkt. No. 1260

REPLY IN SUPPORT OF MOTION OF THE OFFICIAL COMMITTEE OF TORT CLAIMANTS AND CERTAIN TORT CLAIMANTS FOR STRUCTURED DISMISSAL OF CHAPTER 11 CASE

[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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The Official Committee of Tort Claimants, the estate fiduciary for tort claimants (the "TCC"), hereby submits its reply in support of its motion for structured dismissal of the above-captioned chapter 11 case (Dkt. No. 1260) (the "Motion").[2] In support of this Reply and the Motion, the TCC respectfully states as follows.

INTRODUCTION

1. Take a step back. At the time of the formation of the TCC, the estate "fiduciaries" were pursuing a chapter 11 plan that did the following things: (a) released non-debtors for all liabilities that they would otherwise owe to tort victims under state law if pursued absent the bankruptcy filing; (b) did so for a settlement price that cannot be adjudged as anything other than too cheap ($37 million) because it was later increased after a single extra day of mediation following criticism from the Court; (c) facially engaged in unfair discrimination towards tort victims by creating two trusts, and directing the lion's share of cash from the settlement as well as all other unliquidated estate assets towards the commercial creditors; and (d) deceived tort victims into thinking they could "opt-out" and pursue non-debtors for the harm caused to them instead of accepting some not understandable portion of an approximately $8 million fund (before dilution by trust administrative expenses). Those were the ***bankruptcy process*** facts that the TCC stepped into. Those facts demonstrate that the work done from case inception through TCC formation was at best flawed and at worst actively prejudicial to one of the most vulnerable populations in the country, which so happens to be the Debtor's largest creditor constituency.

[2] The TCC focuses this reply on the objections filed by the Debtor (Dkt. No. 1385) and The Unsecured Creditors' Committee (the "UCC") (Dkt. No. 1388, together with the Debtor's Objection, the "Objections"), while other objections to the Motion raise arguments similar to those raised by the Debtor and TCC.

2. The first hearing the TCC attended through counsel featured two incarcerated persons with claims against Corizon (and impliedly YesCare) who appeared to likely not have filed claims by the claims bar date. The TCC thinks it is very likely that the bar date, which is often unnecessary in bankruptcies featuring tort claims, did not capture the universe of incarcerated and formerly incarcerated people (and their families) who hold claims against the Debtor and non-debtors and deserve to be able to pursue compensation for those claims. The Debtor's objection ***highlights*** this injustice, purporting to identify a committee member (*i.e.*, a real person who sought to involve herself in this case and pursue justice) that ran afoul of the bar date.

3. Everyone knows what this case is and what it is about. It is about wealthy individuals and entities, all non-debtors, who manufactured the Debtor, and placed it into bankruptcy for the sole benefit of the true successor companies, which are not in bankruptcy. They did so to reap the rewards and profits of owning a company unhindered by pesky disfavored tort liability and other commercial liability. Mr. Lefkowitz and his accomplices—the very beneficial owners of this scheme—want to continue to pursue contracts like the one reached with Alabama—through YesCare—without paying for the harm YesCare (by its predecessors) caused to human beings across the country. The scheme requires bankruptcy stayed litigation against the Debtor's insiders and affiliates and because it gives them control over estate assets, their recovery and settlement. In bankruptcy, the non-debtors believe they can evade their own tort liability without the consent of the people they harmed and defrauded. If they are successful here, there is no reason to believe that they will not do it again—perhaps five years from now after more incarcerated individuals have died due to inadequate healthcare provided by YesCare.

4. The UCC should have sought dismissal of this case at the case's inception. There has always been clear path for higher and better recoveries for tort victims and other creditors if

this bankruptcy is dismissed. This bankruptcy is not a tool for equitable distribution. It is an artifice to accomplish the fraud. In cases where the bankruptcy is being used to perpetrate a fraud, the bankruptcy filing cannot be said to have a valid purpose. In such cases, courts have had no issue dismissing such cases as bad faith filings.

5. At bottom, the Debtor and the UCC oppose the Motion and dismissal with three arguments: (1) that the TCC has not established "cause" for dismissal of the case; (2) that the settlement embodied in their pending joint Rule 9019 Motion (the "Settlement" and the "Settlement Motion") is the best deal creditors could hope to receive and an appropriate foundation for prosecution of a chapter 11 plan; and (3) that dismissal of this case is not in the best interests of creditors. Each conclusion inverts the truth and is wrong on the facts, law, and circumstances of the case. The Motion should be granted.

REPLY

I. There is "Cause" to Dismiss the Case

A. This Case Was Filed to Gain an Unfair Litigation Advantage

6. The Objectors criticize the TCC for comparing this case to other Texas Two-Step bankruptcies, distinguishing those cases by arguing that this Debtor and its predecessor were in financial distress—the reverse finding that cratered the cases of *LTL Management* and *Aero*.[3] But financial distress is not the touchstone of "cause" for dismissal, and neither is the non-exclusive list of factors in 11 U.S.C. § 1112(b).[4] The touchstone is bad faith (or lack of good faith), lack of

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[3] *See* UCC Objection at p.2 ("The Debtor's bankruptcy filing does not constitute a bad-faith filing because both the Debtor and its predecessor entity were in financial distress, and the filing was prompted by an imminent threat of receivership."); *see id.* at ¶¶ 8, 48, 52-53.

[4] *See* Debtor Objection at ¶¶ 59-60 (discussing 11 U.S.C. § 1112(b)(4)(A)); UCC Objection at ¶¶ 61-67 (discussing the statutory factors).

valid reorganization purpose, and critically, whether the filing was made to gain an unfair litigation advantage.

7. There is no credible purpose for the filing of this case other than litigation targets attempting to shield future profits from defrauded creditors and victims by garnering insider leverage, control and compromise of derivative and purportedly derivative causes of action against themselves and other affiliated non-debtors.

8. The Objectors admit that there is no business to reorganize. *See* UCC Objection at ¶ 66 (standard is less applicable than in "a case with an operational entity that is attempting to reorganize and continue"); *id.* at ¶ 67 ("the concept of 'rehabilitation' applies more readily to an operational attempting to reorganize"); *id.* at ¶ 13 ([the Debtor] "is no longer operating"). The Debtor has no operations and it has no employees. The Debtor has no business assets or business prospects (which were all taken pre- and post-petition by Mr. Lefkowitz and YesCare affiliates).

9. As the Debtor and the UCC admit, the Debtor was placed in bankruptcy by Mr. Lefkowitz and his cohorts "left with only potential estate causes of action, tax refunds, and similar receivables" as assets to fund the cases. *See* Debtor Objection at ¶ 31. At inception it was apparent what this case was about—estate causes of action—obvious enough that even "[t]he UCC and its professionals ***recognized immediately*** that the primary assets of the estate were estate causes of action, rights to insurance proceeds, and rights to [ERCs] . . .") (emphasis added). UCC Objection at ¶ 12. With values ranging from $0 to approximately $10 million (for ERCs) and only Arizona Insurance providing any chance of coverage, those assets were known to be comparatively de minimis.

10. More importantly, the Debtor admits that "one of its ***primary reasons for filing*** of this case was "to maximize estate assets." Debtor Objection at ¶ 65 (emphasis added). But ERCs

are what they are—a governmental entitlement where the government determines the entitlement—and the Debtor knew that other than Arizona policies (which can be equally accessed outside of bankruptcy by eligible tort victims), its other insurance assets had prohibitively high under-funded self-insured retentions. These belie the fact that the only assets subject to "maximization" are causes of action that are determined to be derivative and estate property.

11. What are those? Well according to the Debtor, they include personal injury claims against the non-debtor insiders and affiliates on theories of successor liability and alter-ego. *See* Debtor Objection at ¶¶ 95-110.

12. By admission (and couched as value maximization), the Debtor here exists solely to obtain a release for the benefit of YesCare, CHS TX, Mr. Lefkowitz, and non-debtor entities owned and controlled by Mr. Lefkowitz. That is "one of [the Debtor's] primary reasons" for filing. No alternative explanation of the Debtor's view (maximizing insurance or ERCs is credible when viewed against the comparative import of alleged estate causes of action).

13. The Debtor, UCC, and Mr. Lefkowitz attempt to distract from this simply truth by stating that the threat of a state court receivership prompted the bankruptcy filing.[5] But this statement, if credited and true, requires a follow-up clause to demonstrate the *intent* behind the bankruptcy filing—a clause that the Debtor supplies and fits neatly with the foregoing: "Moreover . . . Missouri state court was on the verge of having a receiver appointed to ***take control of the Debtor's assets***. Thus, on or about February 13, 2023, the Debtor ***filed for chapter 11 to*** effectuate a more equitable distribution ***of its remaining assets***."

[5] *See* UCC Objection at ¶ 39 (receiver prompted filing).

14. But what are those remaining assets that needed to be controlled? The answer, according to the Debtor, is the estate causes of action.

15. Why was a receiver a threat? Because once imposed, it would not allow Mr. Lefkowitz to file for bankruptcy and seek releases of claims related to and arising from the fraudulent divisive merger. Mr. Lefkowitz simply could not afford to have an independent receiver control the causes of action against him and his non-debtor companies.

16. Stripping away the gloss, the Debtor's own statements about controlling the Debtor's assets demonstrate the sole purpose of this case is for the tortfeasor to try to gain control of the claims against YesCare and its non-debtor affiliates and insiders and extinguish those claims through a bad faith bankruptcy.[6] The provisions of the DIP Loan, as devised by Mr. Lefkowitz on behalf of M2 Loan Co., with its collateralization of estate claims, proposed releases of the very litigation targets that defrauded creditors, and nonexistent challenge provisions belie how the architect of the divisive merger and bankruptcy filing viewed the purpose of the filing.

17. Mr. Lefkowitz did **not** direct the filing of this case to achieve equity. This bankruptcy case reflects his disdain for the tort victims:

> Mr. Lefkowitz: "We're talking about – these tort claimants are criminals, right; they're in jail? Most of them are for fraud, for stealing, for deceiving. . . . So, these are criminals that file fictitious claims. Some of them are legitimate, like we said before. They're . . . all malpractice claims, they're all legitimate. But most of them is fictitious."

Deposition of Isaac Lefkowitz, Tr: 209: 20 – 210:4.

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[6] The Debtor's, the UCC's and Mr. Lefkowitz's contention that a potential receivership was a cause for the filing fits neatly into this contention. Again, what did Mr. Lefkowitz and the non-debtor affiliates fear? A true third-party pursuing claims related to the divisive merger (something a receiver could do). And what, again, estate property would be subject to maximization and any discretionary control? The estate causes of action.

18. Mr. Lefkowitz filed this case for control of derivative liability—*i.e.*, to try to wipe out the tort claims—and thereby protect his and his benefactors out-of-bankruptcy going concern: YesCare. This fact pattern fits squarely in what the Fifth Circuit has found to be bad faith and litigation advantage, full stop. No other additional arguments regarding administrative insolvency or otherwise need be considered. According to the Fifth Circuit, when "the only purpose of [a debtor's] [bankruptcy] filing] [is] to gain control of … state-court claims that [claimants] are prosecuting derivatively on [the debtor's behalf]" the bankruptcy petition is plainly filed to gain an unfair advantage in litigation, which constitutes bad faith and mandates dismissal.[7]

19. In *Antelope Technologies*, a debtor filed for bankruptcy to take control over certain derivative claims brought against the debtor's "management" and "insiders." 431 F. App'x at 273. One of the debtor's board members testified that a key motivation for the bankruptcy filing was that the lawsuits brought against these defendants were "derivative lawsuits," and it had been explained to him "by all the lawyers" that derivative claims would be considered "***assets owned*** by [the debtor]" in a bankruptcy proceeding. *In re Antelope Techs., Inc.*, No. 07-31159-H3-11, 2010 WL 2901017, at *9 (S.D. Tex. July 21, 2010) (emphasis added).

20. The debtor somehow managed to convince the Bankruptcy Court for the Southern District of Texas to confirm its chapter 11 plan (over the impacted claimants' objection), which plan released the derivative claims. 431 F. App'x at 273. The plan then went effective and was fully implemented. *Id*. But the confirmation order did not stand.

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[7] *In re Brazos Emergency Physicians Ass'n*, 471 F. App'x 393, 394 (5th Cir. June 22, 2012) (citing *In re Antelope Techs., Inc.*, 431 Fed. Appx. 272, 275 (5th Cir. June 24, 2011)); *accord Investors Group, LLC v. Pottorff*, 518 B.R. 380, 384 (Bankr. N.D. Tex. 2014).

21. On appeal, the District Court "vacated the [confirmation] order" and held that the chapter 11 petition was filed as a litigation tactic—*i.e.*, a scheme to gain control over the litigation against the insiders—and, therefore, was not "filed in good faith." *Id.*

22. On remand, the Bankruptcy Court dismissed the case as not having been "filed in good faith" based on, *inter alia*, the "terms of the proposed plan," which provided the litigation targets with releases. *Id.* The Court went so far as to describe the scheme to control the litigation and release the defendants as "illegal" and "unethical." *Antelope*, 2010 WL 2901017, at *5.

23. The parties who masterminded this failed scheme appealed this decision to the Fifth Circuit and argued that it was improper for the District Court and the Bankruptcy Court to have disturbed the terms of "[a] fully-implemented plan of reorganization" under the "equitable mootness" doctrine. 431 F. App'x at 274. But the Fifth Circuit rejected this argument. *Id.*

24. The Fifth Circuit held that there "is a compelling interest in refusing to apply equitable mootness" where, as here, "the petition was not filed in good faith." *Id.* Not even a confirmation order and a fully implemented plan can prevent parties who use bankruptcy to gain leverage in pending litigation from avoiding justice.

25. Here, the Debtor has admitted that it is not an "operating entity" and has no "active contracts." *See* Gray Reed Letter dated Nov. 15, 2023 (attached hereto as **Exhibit A**) at 5. The Debtor has no business to reorganize or rehabilitate. *See id.*[8] The "**only real assets** the Debtor

[8] The UCC reiterates its agreement that the Debtor has no business to reorganize or rehabilitate in its discovery responses. *See* **Exhibit B** (UCC responded "Admitted" to RFA No. 13 which asked that the UCC "Admit that the Debtor has no business to reorganize."); **Exhibit C** (UCC answered "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" in response to Interrogatory No. 10 which asked the UCC to "Identify the Debtor's business that needs to be rehabilitated.").

has are potential **causes of action** against third parties," which the Debtor is trying to control and settle for the benefit of its masters. Exhibit A at 14 (emphasis added).

26. As in *Antelope*, this means that the Debtor's petition was filed as a bad faith litigation tactic—*i.e.*, a scheme to gain control over the litigation against YesCare and its non-debtor affiliates and insiders. The Debtor here has no purpose other than arguing that the claims against its affiliates and insiders are "derivative" or "estate claims" (like the claims in *Brazos* and *Antelope*) and attempting to settle and release those claims out from under the victims.

27. But the tort victims here do not need or want the Debtor to settle their claims for them. Fifth Circuit precedent suggests that even if the proposed Settlement is approved and a plan that releases YesCare and its non-debtor affiliates and insiders from liability is confirmed and is fully implemented (*i.e.*, the Releases Parties part with their money and fund the Settlement), this case could still be dismissed, the confirmation order (along with the releases) vacated by the District Court, and YesCare, Mr. Lefkowitz, and others would then be held accountable for their conduct before State Courts and Federal District Courts.

B. No Other Purported Bankruptcy Purpose Can Be Credited or Cure the Bad Faith

28. The UCC fails to identify any valid reorganizational purpose in its objection, stating that preventing a receivership that could divest the Debtor of control over derivative claims is valid reorganizational purpose in and of itself. *See* UCC Objection at ¶ 50.

29. But, again while an imminent threat of receivership may indicate "financial distress" it does not address or wash a bankruptcy filing where the purpose of the filing was to otherwise control derivative causes of action and constitute a litigation tactic. The UCC's citation to *In re Nat'l Rifle Ass'n of Am. (N.R.A.)*, 628 B.R. at 270 simply demonstrates that an entity facing

an imminent receivership likely faces financial distress. It does not obviate the independent ground that bad faith can otherwise support dismissal.

30. The Debtor, but not the UCC, poses another proposed valid reorganizational purpose—the "equitable distribution among creditors[.]" *See* Debtor Objection at ¶ 64. But the Debtor (and the UCC) can hardly be said to be champions of equitable distribution as a co-proponent of the chapter 11 plans on file (that both say now will not be pursued). Those plans were facially unfairly discriminatory towards tort claimants, and to credit that argument now would be to ignore the reality of the last twelve months. More importantly, the Court must understand what is really going on here.

31. **First**, the concept of an equitable distribution in bankruptcy generally refers to the distribution of an estate's ***limited*** assets in a manner consistent with the Bankruptcy Code, where priority claims are paid before non-priority claims, and general unsecured claims receive the same ***percentage*** recovery of the remaining funds. Here, there is no limited fund. And to credit this purported justification for bankruptcy ignores that all creditors had equal access to full recovery in the civil justice system prior to the bankruptcy against non-debtors and the bankruptcy filing itself is and remains the conceived impediment to full recovery.

32. Various non-debtors face liability for the claims against the Debtor, including YesCare, CHS TX, Mr. Lefkowitz, and other non-debtor entities. There is no evidence that their assets are insufficient to pay the claims here in full.

33. Neither the Debtor nor the UCC, in the Rule 9019 Motion or in their Objections, nor in any discovery conducted to date have provided ***any evidence*** that creditors could not recover in full in the civil justice system against non-debtors. Thus, as a starting point, the equitable

distribution that would likely occur in the event of a dismissal would not presume a limited fund (or a fund limited to $30 or $40 million in distributable value).

34. **Second**, most of the claims here are unliquidated. There are multiple means of liquidating claims post-dismissal. Claims can be liquidated through voluntary settlements. YesCare, CHS TX, and Mr. Lefkowitz could enter into voluntary settlements with claimants that the claimants agree are fair and equitable.

35. Claims can also be liquidated in the tort system. This occurs through litigation with the judge or jury fixing the amount of the claim by a judgment. The aggregate liability, as a matter of basic math, is the total value of all voluntary settlements plus the total value of all judgments.

36. Again, there was no artificially capped fund prior to the bankruptcy case and there is no artificially capped fund in a dismissal. Thus, the payment of this aggregate liability would occur over time as claims are liquidated by settlement or judgment. This would be, by definition, an equitable distribution since all claimants would likely be paid in full (*i.e.*, receive the same percentage) based on the liquidated amount of their claims. The fact that some claimants may not be paid does not make this distribution inequitable. Our legal system affords claimants the right to seek recovery in the civil justice system. It does not guarantee them a successful result if they cannot meet their burden of proof.

C. Cause Exists Because this Case Circumvents the Bankruptcy Code's Procedural Safeguards

37. Neither the Debtor nor the UCC give any shrift in their Objections to the clear abusiveness of this bankruptcy case. This case circumvents the Bankruptcy Code's procedural safeguards. Depriving tort victims of their rights and claims against non-debtor entities is not a valid bankruptcy purpose. Allowing a business to pick and choose the similarly situated unsecured

creditors it pays in full is not consistent with the Bankruptcy Code. Allowing corporations to disadvantage disfavored creditors through the mere imposition of the delay of a bankruptcy filing is not consistent with the Bankruptcy Code. The corporate maneuvers that resulted in this bankruptcy case "circumvent the Code's procedural safeguards," *Czyzewski v. Jevic Holding Corp.*, 580 U.S. 451, 468 (2017), and undermine the Code's and Congress's careful balancing of interests.

38. To benefit from bankruptcy, a debtor is required to shoulder a host of obligations. A debtor must make disclosures of its creditors, assets and liabilities, income and expenditures, and the nature of its financial affairs. It must then, under Court supervision, agree to, and obtain confirmation of, a plan that meets a variety of substantive requirements to ensure that the plan is feasible, treats all the creditors' claims equitably, and generally leaves each class of creditors no worse off than it would be if the debtor were liquidated. Only with this sunlight and transparency can the purposes of "equitable" distribution be achieved if that purpose is to be credited.

39. Because only the Debtor has filed for bankruptcy, only the Debtor has taken on the obligations and duties that the Code requires. Neither YesCare nor CHS TX has made the financial disclosures required for a debtor, and neither has submitted itself to the supervision of the Bankruptcy Court to obtain relief under a feasible and equitable plan. At the same time, because of the divisive merger that left the Debtor with no assets other than its (now exhausted) rights under the Funding Agreement, the Debtor can only meet creditor demands through the proposed Settlement that affords non-debtor affiliates and insiders with a release—a release that attempts to extinguish the very claims that arise from the fraudulent divisive merger.

40. The corporate enterprise's strategy is to have YesCare and its affiliates fund settlement trusts for claimants as part of a plan (without providing any meaningful disclosure of

their own assets) and, in exchange, to seek releases preventing claimants from continuing to pursue their claims against non-debtors YesCare, CHS TX, and their non-debtor affiliates and insiders.

41. In short, through the divisive merger and subsequent bankruptcy, YesCare, CHS TX, and Mr. Lefkowitz himself seek to garner the benefits of bankruptcy—a stay and discharge that prevents tort claimants from pursuing litigation again them—without themselves shouldering its attendant obligations, undermining the framework established by the Bankruptcy Code. Mr. Lefkowitz's goal here is to forever silence the tort claimants and deprive them of their right to seek fair and equitable compensation before state and federal courts.

42. In addition, through the divisive merger, YesCare and CHS TX chose which subset of its creditors would be forced to deal with the delay and uncertainty of the bankruptcy process. That undermines the Code's priority scheme, "which ordinarily determines the order in which the bankruptcy court will distribute assets of the estate" and which provides that equity holders "receive nothing until all previously listed creditors have been paid in full." *Jevic,* 580 U.S. at 457. That scheme "constitutes a basic underpinning of business bankruptcy law" and "has long been considered fundamental to the Bankruptcy Code's operation." *Id* at 464-65.

43. Carving out a class of creditors—inmates and their families who often lack the financial resources needed to oppose these maneuvers and who may not enjoy public sympathy—also shows that the Debtor's petition was filed for tactical advantage in litigation. Again, filing for bankruptcy to gain a litigation advantage is not a proper bankruptcy purpose in the Fifth Circuit and elsewhere. *Little Creek Dev. Co. v. Commonwealth Mortg. Corp. (In Matter of Little Creek Dev. Co.)*, 779 F.2d 1068 (5th Cir.1986) (the seminal bad faith case, which opined, *inter alia*, that it is bad faith to file bankruptcy as a follow on to state court litigation); *accord Brazos*, 471 F. App'x at 394; *Antelope Techs.*, 431 F. App'x at 275; *Pottorff*, 518 B.R. at 384 (affirming dismissal

of chapter 11 case where case was filed "as a litigation tactic" and finding that filing for bankruptcy to gain a litigation advantage "on its own" is sufficient to warrant dismissal).

44. YesCare and CHS TX continue to satisfy their obligations to all the enterprise's creditors outside of bankruptcy, except for the liabilities they assigned to the Debtor. Those creditors, and those creditors alone, have now had their claims subjected to the burdens of bankruptcy. Through the divisive merger and bankruptcy filing, the YesCare and CHS TX have managed to put pressure on a targeted group.

45. Although the Debtor filed for bankruptcy, it has no ongoing business operations that might be protected by a bankruptcy filing, and its attempt to leverage bankruptcy's tools to protect third parties is not a valid bankruptcy purpose. A central purpose of chapter 11 is to allow a distressed business to "preserv[e] going concerns" while navigating financial hardship. *Bank Am. Nat'l Tr. & Sav. Ass'n v. 203 N LaSalle St. P'ship*, 526 U.S. 434, 453 (1999)).

46. As an entity created to file for bankruptcy, the Debtor has no going concern to preserve. The Debtor has no assets and no business to reorganize. Because Debtor has no going concern to preserve, this bankruptcy cannot further the reorganization purpose of chapter 11.

47. Moreover, the purpose of the Debtor's bankruptcy is **not** to protect creditors but to protect corporate affiliates and insiders who are not in bankruptcy. The divisive merger and bankruptcy petition were implemented to enable the Debtor to resolve the tort claims through a plan without subjecting the entire corporate enterprise to a bankruptcy proceeding. The Debtor's goal in this chapter 11 case is to consummate a plan that would permanently protect YesCare, CHS TX and their non-debtor affiliates and insiders from further litigation.

48. But the purpose of the Bankruptcy Code is to provide a mechanism for the adjustment of the debtor-creditor relationship, not to permit non-debtors—who do not themselves

shoulder the obligations of bankruptcy—to benefit from the Code's protections. 11 U.S.C. § 524(e) (providing that a discharge in bankruptcy generally "does not affect the liability of any" non-debtor for that debt). The Debtor's designed filing—designed **exclusively** to benefit non-debtor corporate affiliates and insiders—does not serve a valid bankruptcy purpose. On this basis alone, this case must be dismissed.

D. The Debtor Is Administratively Insolvent

49. Focusing on one of the non-exclusive "causes" for dismissal identified by the TCC, both the Debtor and UCC state that the Debtor is not administratively insolvent because the Settlement would cure any insolvency. *See* UCC Objection at ¶ 63 ("Here, the settlement outlined in the Rule 9019 Motion provides for payments by the settling parties which will ensure that all administrative claims would be paid in full once a plan is confirmed."); Debtor Objection at ¶ 60 ("The Settlement . . . will provide more than enough funds to pay allowed professionals in full[.]").[9] This is precisely the problem.

50. This is the first Texas Two Step where the debtor filed for bankruptcy without a funding agreement that provides for the payment of administrative claims. This has always been a key component of the Texas Two Step. Here, there is no comparable funding source to pay administrative claims. Instead, the Debtor was provided with an insider DIP Loan, which is the Debtor's only source of cash.

[9] Both the Debtor and UCC try to argue that without the Settlement, the estate is still solvent. *See* Debtor Objection at ¶ 60 ("TCC cannot show that the Debtor's other assets [other unliquidated assets, such as tax credits] and litigation assets would be insufficient to pay these administrative expenses."); UCC Objection at ¶ 63 ("the Estate expects to receive a tax refund in excess of $10 million"). But those assets collateralize the DIP Loan, which would be paid first, and frankly, administrative expenses will likely outstrip the approximately $10 million in value attributable to the ERCs.

51. Since the Debtor has no business and is an empty shell, the administrative claims here are the professional fees. As of January 31, 2024, the Debtor owed the following amounts to the Debtor's and the UCC's professionals: (1) $2,546,599.99 to Gray Reed; (2) $1,441,137.83 to Ankura Consulting; (3) $23,405.60 to Baker Hostetler; (4) $169,497.73 to KCC Consulting; and (5) approximately $600,000 to the UCC's professional. *See* **Exhibit D** at No. 1; **Exhibit E** at No. 1.

52. These amounts have grown given the litigation over the Rule 9019 Motion. The Debtor attempts to lay this at the feet of the TCC whose professionals have not been paid a single penny in this case under the Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses of Professionals [Dkt. No. 357] or otherwise. *See* Debtor Objection at ¶ 60 (professional fees are "skyrocketing ***only*** because of the TCC's litigation contrivances.").

53. In fact, by seeking dismissal here, the TCC's professionals are unapologetically representing their client's best interests and the best interests of all tort victims in this case even if doing so here means that Mr. Lefkowitz can try to use this bankruptcy to prevent them from being compensated for their hard work and reimbursed for their out-of-pocket expenses.

54. The Debtor's attempt to blame the TCC is intended to mislead creditors. As described in TCC's Objection to Exclusivity (Dkt. No. 1303), following the Debtor's filing of the Settlement Motion, on January 16, 2024, the TCC offered to engage in further mediation.

55. The TCC also suggested the parties agree to a **two week stay of litigation and discovery** while mediation took place so that no estate resources were spent on discovery and trial preparation while mediation occurred. This stay could have been extended if the Debtor and the UCC had been willing to meet with the TCC. But the Debtor and UCC rejected this and other

proposals. The decision to reject mediation and try to jam through the Rule 9019 Motion was made by the Debtor and the UCC in the face of the TCC's efforts to conserve estate assets.

56. In any event, it is the TCC's view that there will be no funds to pay administrative claims unless the proposed insider Settlement is approved, and a plan is confirmed that affords Mr. Lefkowitz and YesCare with a complete release. As such, the Debtor presently lacks the ability to pay its debts as they become due, including the amounts that are presently due and owing to the TCC's professionals.

57. It is inappropriate and abusive for a bankruptcy to be structured so that estate professionals must advocate for an insider Settlement to be compensated. Mr. Lefkowitz could have elected to fund this case through a mechanism other than the DIP Loan. But he chose not to do so, leaving the Debtor with insufficient assets to continue in bankruptcy.

58. This is grounds to dismiss the Debtor's case for cause. *See* 11 U.S.C. § 1112(b)(1). Each day the Debtor—a shell with no business to rehabilitate—remains in bankruptcy it suffers a continuing loss or diminution to its estate.

II. The Settlement Is A Feature of Bad Faith Filing and Is Not The Best Result for Creditors

A. The Investigation and Its Conclusions Cannot be Trusted

59. Both Objectors raise their investigation into estate causes of action and the TCC's limited participation in any investigation or mediation to suggest that the Motion is unsupported. *See*, *e.g.*, Debtor Objection at ¶ 3 (The Motion "is unsupported by any facts or information that have not already been presented to the Court in one form or fashion over the last 12 months."); UCC Objection at ¶ 69-70 ("The Motion wholly ignores the UCC's investigation.").

60. The Debtor argues that the investigations and mediations were thorough, independent and make the Settlement supported by the Debtor's and UCC's business judgment."

Debtor Objection at ¶ 39; *see id.*, at ¶ 85 ("There cannot be any questions about the CRO's independence in this case."); UCC Objection at ¶ 72 ("UCC professionals and members have devoted countless hours to understanding, evaluating, and valuing the estate's causes of action . . . . The TCC's complete omission and implicit dismissal of this work is insulting, misleading, and represents a lack of disclosure as to key facts relevant to the Motion.").

61. But the mere fact of investigations by purported fiduciaries and mediated settlements has absolutely nothing to do with this Court's determination of whether the petition was filed in bad faith and should be dismissed for cause. If so, no case that passed the initial few weeks of case start up could ever be dismissed. More importantly, the investigations, mediations and conclusions therefrom actually support dismissal.

B. <u>The Investigations Were Flawed</u>

62. Twelve months into this case, neither the Debtor nor the UCC can tell the Court the value of the causes of action they are settling. This is true for the avoidance actions related to the divisive merger, a claim expressly settled in the Settlement Motion.[10]

63. 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 Settlement, but when asked the simple question "what does that analysis show?", he was instructed not to answer the question. *See* Barton Tr. 194:2-195:3.

10 [redacted]

64. What "investigation" into the value of the most important and valuable purported estate claims being settled in the Settlement is entirely obfuscated and unclear. The UCC did not investigate potential causes of action other than the actions described in the Motion.[11] The UCC did not believe that personal injury claims (to the extent asserted against parties like YesCare) are, in fact, being settled under the Settlement.[12] The bare minimum for valuing successor liability and alter ego claims would entail having a view on the size of liability owed to tort claimants. But when asked what any investigation into that issue showed, the UCC's designee was instructed not to answer. *See id.*, at Tr. 282:15-283:3 and 285:5-17.

65. The testimony shows that the investigation, months long as it was, was entirely inadequate. Either the UCC simply missed the ball or knew it had a serious issue in demonstrating the reasonableness of a Settlement that effectively releases valuable tort liability for next to nothing, while shifting any value that it did take on account of that tort liability, disproportionately to commercial creditors.

66. The Debtor also seems to argue that the Court should not view interactions, negotiations with, and settlements with Mr. Lefkowitz and non-debtor affiliates as "insider" dealings because the Debtor has worked through its CRO. *See* Debtor Objection at ¶ 85 (the CRO "was delegated 'sole decision-making authority for all restructuring matters, any matter where the

11 [redacted]

12 [redacted]

id. at 314:18 ("Q . . . Mr. Barton, would it surprise you if the claims asserted against YesCare by [personal] injury tort claimants . . . were viewed by one of the settling parties as being settled by the Settlement Agreement attached to the Rule 9019 Motion? . . . A. I think you know my answer. … [I]t would be a surprise to me if someone had that incorrect view, yes.").

Sole Director identified below has or may have a conflict [of] interest, and for such other matters as the Sole Director may otherwise delegate to the CRO. There cannot be any questions about the CRO's independence in this case.").

67. But from the TCC's perspective, there can be no question that the CRO is not independent. **First**, the CRO filed a declaration describing the fairness of the divisive merger that turned out to be inaccurate. That dalliance is described in other sealed filings. **Second**, the CRO, like other estate professionals, is paid at the behest of Mr. Lefkowitz and the DIP Lender. As noted above, payment of professional fees and expenses in this case was structured to hinge on reaching a deal with non-debtor insiders for releases. **Third**, and perhaps most importantly, the CRO's firm Ankura was a prepetition professional of the Debtor involved in pre-merger and therefore pre-bankruptcy decision making. The extent of that work and when it began and concluded is murky, but doubtless Ankura is interested in receiving exculpation as an estate professional under a plan that embodies the Settlement. Mr. Perry is **not** an independent CRO. His support for the Settlement shows his true colors and his willingness to support a Settlement that harms creditors.

C. The Mediations Support Dismissal

68. There has been no light shed on the first global mediation supervised by Judge Jones with the participation of Ms. Freeman on behalf of non-debtor insiders. The Debtor did not allow the TCC to discover what opinions, if any, Judge Jones offered regarding the merits of claims advanced against YesCare (who, at the time, was represented by Ms. Freeman). However, of course, both the Debtor and UCC believed that the settlement amount reached during that mediation (approximately $37 million, over time) was the best deal they could achieve—otherwise they would not have settled.

69. But, a few months later, after the conflict issues surrounding the former mediator and YesCare's counsel were disclosed, after only ***one day*** of additional mediation a new deal was struck, that deal was revised to include a higher settlement figure that would be paid up-front instead of over time. Once the settling defendants lost the benefit of having Judge Jones of the mediation, they suddenly made several million more dollars appear overnight and agreed to pay them in lump. That plain fact demonstrates that their ability to pay has never been tested. There is no evidence that the settling defendants cannot pay the full value of claims that they would be forced to defend, including tort claims, in the civil justice system absent the bankruptcy.

70. Given the conflicts that plagued the first mediation, the UCC and the Debtor cannot credibly rely on the first mediation to support the Settlement or any argument that they are acting in a manner consistent with their business judgment. To support their position, the Debtor and the UCC must rely on the second mediation.

71. But, as the Debtor and the UCC not admit, they put the TCC in a room at the second mediation and then cut a deal around the TCC, which deal is objectively terrible for the tort claimants. *See* Debtor Objection at ¶ 44 ("The TCC 'attended' the Second Global Mediation but did not actively or meaningfully participate."); UCC Objection at ¶ 32 ("While it attended and participated in the Second Global Mediation, the TCC did not accept nor reject the settlement agreed upon at the Second Global Mediation.").

72. The UCC and the Debtor attempt to malign the TCC by arguing that it did not "meaningfully participate in the second mediation. *See id*. But the TCC had recently formed and had not been granted access to the documents available to the Debtor and the UCC. It would have been irresponsible for the TCC to have been formed and then immediately make settlement demands without the benefit of adequate information and real diligence. These facts do not support

characterizing the TCC's behavior as bad faith. The TCC should not be faulted for its conducted. Rather, it should be praised for acting as a real fiduciary in this case.

73. The Settlement that the Debtor and the UCC reached 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 (*i.e.*, the UCC's favored constituency). 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. There is no aspect of the mediation here that supports the Settlement or a finding that the Debtor or the UCC have acted in good faith.

III. The Motion to Dismiss Would Have Been Appropriate on Day One of TCC Formation

74. The UCC states the "TCC threatened to move to dismiss the case if the UCC did not delay seeking approval of the settlement," implying that the Motion is unfounded or lacked appropriate investigation. UCC Objection at ¶ 32; *see id.* at ¶¶ 67-68 ("C. The Motion is Rife With Reckless, Misleading and False Statements, as the TCC Chooses to Inflame Rather than Inform and Attack on Margins Rather than the Merit.").

75. But the facts that support dismissal here were set forth in the Debtor's and the UCC's Second Amended Disclosure Statement that was filed before the TCC was formed. These facts include:

(a) The Debtor's predecessor was looted by Mr. Lefkowitz and other non-debtors prior to the divisive merger.

(b) The Debtor was formed as a result of the Divisive Merger.

(c) The Debtor was not allocated any operational assets or go-forward business assets.

(d) All productive assets were allocated to CHS TX (and ultimately YesCare).

(e) The Debtor's funding agreement was exhausted prior to the bankruptcy filing.

(f) Mr. Lefkowitz, M2 Loan Co. and other non-Debtors sought releases for all liability related to the divisive merger from the inception of the case, including through the DIP Loan.

(g) Those parties were seeking to cut off successor liability, alter ego claims, and other similar theories through the proposed Chapter 11 Plan.[13]

76. These facts support the conclusion that this case was engendered by fraud and an attempt to shield future profits from tort victims and unsecured creditors. These facts support the conclusion that every creditor had a clear path to recovery in the civil justice system against non-debtor affiliates and insiders. These facts support the conclusion that this bankruptcy is being used as a vehicle to try to cram down a cheap settlement on victims while taking away their actual rights to have jury hold tortfeasors and fraudsters to account. These facts support the conclusion that the bankruptcy estate professionals were pursuing a path and a chapter 11 plan that unfairly discriminated against tort victims and would deceive them into believing that their rights to pursue non-debtors to pay for their injuries under state law were being preserved under that plan.

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[13] The Debtor argues that the Motion should be denied because it does not, in their view contain adequate disclosure. *See* Debtor Objection at 79-80 (stating as an example that the TCC did not disclose that certain of its members are not creditors and that not all tort victims have access to insurance). But as addressed herein, these points are meaningless. First, as addressed in footnote 11, creditors allocated to CHS TX are creditors here to the extent their rights to pursue successors are being settled and released. Second, access to insurance is only one available source of recovery upon dismissal. The Motion goes through great length to show that dismissal provides alternative sources of recovery. The UCC similarly argues that portions of the Motion are misleading or do not provide adequate disclosure. *See*, *e.g.,* UCC Objection at ¶ 87 (taking issue with characterization of the DIP Loan). Even if there was inadvertent mischaracterization, the underlying points still stand: Mr. Lefkowitz and others created a deeply insolvent made for bankruptcy debtor, requiring a DIP Loan. The terms of the DIP Loan itself demonstrate that it was intended to be used as a tool for insider control, regardless of when it was negotiated.

77. Further, the TCC **did review** the documents that were made available to it. As part of this review, the TCC located, among other things, the White & Case Memorandum, the Divisive Merger Documents, and the March 17, 2023 Letter from FTI. These documents, combined with the Debtor's and the UCC's representations in their Second Amended Disclosure Statement, are more than adequate to support the TCC's pre-filing obligations and substantiate the factual allegations made in the Motion.

78. The Motion could have been filed upon the TCC's appointment and should have been filed by the UCC months ago. But the TCC nonetheless still gave the Debtor and the UCC an opportunity to prove that their settlement made sense.

79. The TCC was formed on November 20, 2024, and agreed to engage in mediation. The TCC attended a one-day mediation on December 14, 2023, and sought to obtain information that it could use to make a settlement demand. But the information the TCC sought still has **not** been produced. Specifically, the TCC has sought disclosure regarding YesCare's financial condition and ownership structure. Again, the TCC cannot—consistent with its fiduciary obligations—make proposals regarding the settlement of claims worth at least $135 million (based on the Debtor's and the UCC's calculations) without adequate information.

80. Rather than produce the requested information, the Debtor, the UCC, and YesCare have elected to play games. In December of 2024, the Debtor and the UCC informed the TCC that the TCC would have access to all documents that were available to the Debtor and the UCC. The TCC hired Province, LLC ("Province") as its financial advisor on December 19, 2023, to assist it with, among other things, reviewing documents in the Debtor's and the UCC's data room.

81. On January 2, 2024, Province emailed the Debtor and the UCC and informed them that Province had reviewed documents in the data room had only located **two** financials for

YesCare: a *single balance sheet* showing the allocation of assets and liabilities as of the date of the divisive merger and *FTI's fairness opinion*. *See* Email from M.Atkinson to L. Webb (Jan. 2, 2024) attached hereto at **Exhibit F**.

82. The Debtor's counsel responded that day and represented that "the Debtor does not have any YesCare financials post-DM [divisive merger], other than the balance sheet showing the allocation of assets and liabilities as of the DM, which we previously provided you. I [Ms. Webb] reached out to counsel for YesCare, and YesCare indicated that they will not produce any financial information other than the balance sheet referenced above." *See* Email from L.Webb to Mr. Atkinson (Jan. 2, 2024) attached hereto at **Exhibit G**.

83. As of January 2, 2024, the TCC understood—***based on the representations made to it by the Debtor's counsel***—that the Debtor did **not** have any post- divisive merger financials for YesCare other than an unaudited balance sheet, which meant that the Debtor had failed to perform any meaningful investigation prior to negotiating a settlement.

84. This was horrifying to the TCC, as it suggested that the Debtor had negotiated a settlement with YesCare without almost no information. Unbeknownst to the TCC at the time it filed its Motion, the Debtor and the UCC had somehow managed to shield key documents from the TCC in the data room. These documents were produced to the TCC on January 30, 2024, after the TCC filed its Motion and after the Debtor and the UCC filed their Rule 9019 Motion.

85. This supplemental production included, among other things, ***unaudited*** YesCare financial statements dated after the divisive merger and a letter from FTI dated March 17, 2023, [redacted]. Rather than undermining the TCC's views regarding dismissal, the supplement production strengthened it.

86. But the TCC never closed the door to mediation. On January 16, 2024, after the UCC and the Debtor filed their Rule 9019 Motion and the TCC filed its Motion, the TCC offered to engage in further mediation. Again, the TCC also suggested that the parties agree to a two-week stay of litigation and discovery while mediation takes place. The Debtor and the UCC flatly rejected this offer. Even so, the TCC ***always*** kept the door open. The TCC's conduct does not reflect a lack of good faith. Rather, it is the Debtor and the UCC that have consistently acted with malice toward the TCC and its constituency in this case.

IV. The Settlement Reflects a Faustian Bargain And Support for It Are Just Headlines

87. At its core, the Settlement is a Faustian bargain. The Debtor and the UCC are attempting to trade the tort claims (*i.e.*, the wrongful death and personal injury claims held by those who were injured and the families of those who died) for $40 million in cash, which they will then use to pay off the holders of Non-Personal Injury Claims. This is not only wrong under the Bankruptcy Code, but it is immoral.

88. Here, the face value of the tort claims asserted against the Debtor is approximately $775 million. As the United State Trustee points out, the tort victims and their claims represent the "sizeable majority" of the Debtor's general unsecured creditors. *See* UST's Objection to Settlement Motion, at ¶ 1 (Dkt. No. 1380). Based on the Debtor's own approximation of tort liability included in their liquidation analyses within their Second Amended Disclosure Statement could be as high as $50, $60 or $70 million. Under the Debtor's view of estate property, the tort claims are the most valuable portion of estate assets. The tort claims based on the doctrines of successor liability and alter ego are the key drivers to the Settlement.

89. YesCare and non-debtor affiliates and insiders want these tort claims released and are paying for their release. These non-debtor parties would never allow the $40 million settlement

payment to be made solely to resolve four avoidance actions described in the Rule 9019 Motion. These non-debtor parties would never agree to that result. They want to avoid juries hearing from the mothers and fathers of deceased victims and from issuing judgments.

90. The Settlement, at its core, seeks to monetize the approximately $775 million in tort claims. But most of the proceeds of the Settlement will **not** be paid to the victims whose rights are being settled out from under them. If the past provides any guide of the future, most of the proceeds of the Settlement will be diverted to the UCC's favored constituency, the holders of commercial claims. The Debtor, YesCare, Mr. Lefkowitz and the non-debtor defendants all get what they want—releases from tort liability. The UCC receives what it wants for commercial creditors who control the UCC. But their winnings come at the expense of the tort victims who see their ability to pursue their claims in the civil justice system eliminated for some portion of the estate settlement.

91. The Debtor and UCC oppose dismissal because this bargain is a "fantastic result" ***for them***. Debtor Objection at ¶¶ 39-40 ("The Settlement is a 'Fantastic Result for Creditors.'"); UCC Objection at ¶ 113 ("a clear path to a settlement which would bring in approximately $55 million for its creditors."). But it is not a fantastic result for the tort victims—a plain and simple truth for everyone watching this case.

92. Furthermore, the Debtor and UCC's witness statements as to the benefits of the Settlement are just headlines. Neither were permitted to provide testimony regarding the analysis of reasonableness of the Settlement. To the TCC's knowledge, no written analysis exists or was ever generated. Settlements in bankruptcy cannot be approved based on headlines and cannot be approved at trial when the analysis behind those headlines could not be tested in discovery.

93. The Settlement may provide less than $12 million to all tort victims. It may provide substantially less when accounting for the administration of a trust. The Settlement if fully consummated through a plan could wipe out all tort claimants' ability to recover for the harm caused to them or their family members in the civil justice system. The Settlement is an abomination, and its existence is not a fact that can support maintaining the case.

94. Further, when viewed in relation to all creditors in this case, the settlement is inadequate and illusory. Under the Settlement, less than $40 million will be available to pay Personal Injury Claims and Non-Personal Injury Claims with a face value of approximately $914 million. If the Court's adopts the Debtor's and the UCC's back-of-the-napkin analysis of the claims, the value of the claims based on the doctrine of successor liability (to the extent considered an estate cause of action) are worth between $135 million to $187 million. The windfall that Mr. Lefkowitz and YesCare are attempting to reap from this case is unconscionable.

95. The Settlement is illusory. The Settlement will only be funded if this Court approves nonconsensual third-party releases that forever bar the tort claimants from seeking compensation for their injuries before state and federal courts.

96. If successful, YesCare's bankruptcy scheme would mean that any tortfeasor could assign the liabilities it does not want to pay to a new "debtor" with no actual business, the creation of which triggers various state law remedies, put that new "debtor" into bankruptcy, and then use that bankruptcy to forever extinguish the disfavored liabilities without the claimants' consent (thus barring the victim's from having access to our judicial system). It will not work. The Bankruptcy Code cannot be used to wipe out personal injury and wrongful death claims in this manner.

97. No tort claimants have ever been paid out of a Texas Two Step bankruptcy until **after** the case is dismissed. The Debtor's and the UCC's quixotic support for Mr. Lefkowitz's and

YesCare's scheme to wipe aways their own liability through a manufactured bankruptcy reflects a profound misunderstanding as to how a Texas Two Step works. There is no pot of gold at the end of this rainbow. Claimants will not be paid quickly. The misguided pursuit of a fictious settlement is what fuels this bankruptcy strategy and harms creditors.

98. Upon dismissal, Mr. Lefkowitz and YesCare will be free to enter into settlements with creditors, including those members of the UCC who are apparently willing to throw in the towel and settle for whatever Mr. Lefkowitz is willing to pay them. Creditors who reject what they offer will be free to pursue their claims in the tort system. Our state and federal courts exist to provide victims with a means by which they can seek compensation. Bankruptcy was not designed to give a tortfeasor the ability to shut the doors of our nation's state and federal courts on tort victims and deny them the right to seek justice.

V. Dismissal Is In the Best Interests of Creditors

A. The TCC Is the Voice for the Sizeable Majority of the Debtor's General Unsecured Creditors

99. The Debtor and the UCC argue that the TCC represents the interest of a subgroup of the tort claimants and is opposed to a settlement that would be beneficial to all creditors. *See*, *e.g.*, Debtor Objection at n.2 ("Of the Six TCC members, three do not hold claims against the Debtor.")[14]; UCC Objection at ¶ 110 ("Though the TCC claims its members 'exemplify the tort

[14] The TCC is perplexed by this argument raised by both the UCC and Debtor. The TCC believes that the Debtor, the UCC and the non-debtor released parties will take the position that the two members (and other similar creditors allocated to CHS TX) are barred from pursuing claims against YesCare under successor theories (based on the victim's status as creditors and victims of pre-divisive merger Corizon), should they wish to pursue YesCare (for example to bolster their ability to collect) if the Settlement is approved. That result appears to fit with what the TCC believes the Debtor and UCC believe is part of estate property—that notwithstanding a claimant not being a direct creditor of the Debtor, its state law successor remedies as a personal injury victim of the debtor's predecessor are, on the instant of the petition date, stripped from the claimant and converted to estate property. If the Debtor and

claims' in this case, each of the three actual tort claimants on the TCC [is an Arizona tort claimant].") This is only an unfounded and insulting attempt to impugn the TCC and insinuate that its members are unable to carry out their fiduciary duties to all tort victims. The TCC disputes the insinuation.

100. But for the UCC's insinuations in the Motion, the TCC would not raise the following with the Court. The TCC understands that the UCC's counsel has been contacting tort victims and attempting to garner their support for the Rule 9019 Motion and in many instances has falsely described the relief sought in the Motion. Given that the Rule 9019 Motion is ***in effect*** the critical piece of any chapter 11 plan, the TCC finds this behavior unseemly and close to if not over the line of illegal plan solicitation.

101. In any event, the UCC must be blind. *Since* filing the Motion, numerous tort claimants have filed joinders to or otherwise expressed their heartfelt gratitude for the Motion and the TCC's advocacy in this case.[15] The Motion is supported by amici who are devoted to advocating on behalf of incarcerated and formerly incarcerated persons. *See Motion for Leave to File Amici Curiae Brief in Support of the Official Committee of Tort Claimants' Motion for Structured Dismissal of Chapter 11 Case* (filed by ACLU National Prison Project, Center for Constitutional Rights, Public Justice, Rights Behind Bars) (Dkt. No. 1393).

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the UCC do believe that, then all victims of pre-divisive merger conduct, whether allocated to CHS TX or to the Debtor are creditors of the Debtor. If the Debtor does not believe it is settling the successor and alter ego rights of claimants who were allocated to CHS TX under the divisive merger, then the distinction between the two simply highlights the manifest injustice that the divisive merger and subsequent bankruptcy filing had in picking and choosing favored and disfavored creditors.

[15] *See* Dkt Nos. Dkt. No. 1305, 1367, 1348, 1345, 1331, 1305, 1389, 1283, 1329, 1340, 1331, 1337, 1305.

102. In recent months, multiple United States Senators, including Richard Durbin (D-Illinois), Sheldon Whitehouse (D-Rhode Island), and Josh Hawley (R-Missouri) have publicly called on Courts to reject the Texas Two Step.[16] On January 31, 2024, Senator Elizabeth Warren sent to letter to the U.S. Trustee questioning whether the UCC is "adequately representing the interests of victims" in this case and praising the TCC for "powerfully representing the victims of Corizon's alleged wrongdoing." *See* **Exhibit H**. Republicans and Democrats disagree on many things, but they agree that the Texas Two Step is abusive.

103. The Debtor and the UCC appear to live in an echo chamber, with each feeding off the other's alternative reality where tort victims somehow want to have their rights sold out from under them, with the proceeds of that sale going to pay off other creditors. Most tort victims abhor this result and would prefer that Mr. Lefkowitz and YesCare **not** be permitted to shield their profits from the tort victims. The TCC has and will continue to advocate for what is in the best interest of the tort victims in this case.

B. Dismissal Will Result in Equitable Distributions to Claimants.

104. The Debtor and UCC argue that only the Settlement provides a "clear path" to recovery for creditors and for an "equitable distribution."[17] And, that dismissal will revert creditors back to a "race to the court house."[18] In sum, they argue that the approval of the

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16 https://www.judiciary.senate.gov/press/releases/durbin-whitehouse-hawley-call-on-supreme-court-to-reject-georgia-pacifics-bankruptcy-maneuver-to-evade-accountability-to-hundreds-of-thousands-of-asbestos-victims

17 *See* UCC Objection at ¶ 65 ("$55 million settlement . . . provides a clear path for creditors to access significant recoveries."); Debtor Objection at ¶ 67 ("secured a $55 million Settlement which provides the foundation for fair and equitable distributions to creditors.").

18 *See* Debtor Objection at ¶ 7 ("To the contrary, creditors would be left in a free-for-all-race-to-the-courthouse to get whatever assets or insurance proceeds can be seized, if any.").

Settlement and the confirmation of a plan is necessary for there to be an equitable distribution to claimants. This is incorrect.

105. The concept of an equitable distribution in bankruptcy generally refers to the distribution of an estate's ***limited*** assets in a manner consistent with the Bankruptcy Code, where priority claims are paid before non-priority claims, and general unsecured claims receive the same ***percentage*** recovery of the remaining funds. Here, there is not a limited fund.

106. Similarly, the "race to the courthouse" only matters in ***limited*** asset scenarios. Where there are not limited assets (and there has been no evidence adduced to determine that YesCare, et al. including beneficial owners have limited assets), then what the Debtor and UCC are describing is ordinary course civil litigation.

107. There does not need to be an "MDL," as the Debtor suggests to protect the several hundred tort claimants and commercial creditors. *See* Debtor Objection at ¶ 7 ("Also unlike every other case discussed in the Motion to Dismiss, dismissal of this case will not return claimants to a multi-district litigation (MDL) panel to ensure consistent results.").

108. Various non-debtors face liability for the claims against the Debtor, including YesCare, CHS TX, Mr. Lefkowitz, and other non-debtor entities. There is no evidence that their assets are insufficient to pay the claims here in full. Thus, as a starting point, the equitable distribution that would likely occur in the event of a dismissal would not presume a limited fund (or fund limited to $40 million). Likewise, access to the Debtor's insurance will not be the limit for any creditor's recovery, just one source.

109. Upon dismissal, creditors will return to the civil justice system. There they will liquidate claims through litigation with the judge or jury fixing the amount of the claim by a

judgment or by voluntary settlement. The aggregate liability, as a matter of basic math, is the total value of all voluntary settlements plus the total value of all judgments.

110. Again, there is no artificially capped fund in a dismissal. Thus, the payment of this aggregate liability would occur over time as claims are liquidated by settlement or judgment. This would be, by definition, an equitable distribution since all claimants would likely be paid in full (*i.e.*, receive the same percentage) based on the liquidated amount of their claims.

111. The fact that some claimants may not be paid does not make this distribution inequitable. Our legal system affords claimants the right to seek recovery in the tort system. It does not guarantee them a successful result if they cannot meet their burden of proof. The YesCare/Debtor/UCC distribution scheme, to the extent such a thing even exists, is different.

112. **First**, under the Debtor's and the UCC's plan, the claimants' aggregate recovery would be limited to the total amount of the settlement, less payment of priority claims and trust administrative fees. Thus, a bankruptcy settlement would start with a limited fund—a fraction of the value available to pay claims if this case is dismissed and no plan is confirmed.

113. **Second**, the claims would be liquidated by a set of procedures that makes a trustee (perhaps the UCC's counsel) the sole arbitrator of values. While this process may work out for Non-Personal Injury Claimants and some Personal Injury Claimants (*i.e.*, ones who may recovery nothing in the tort system, but may recover $5,000 under the Debtor's and the UCC's plan), but it would harm most Personal Injury Claimants (*i.e.*, ones that would recover millions of dollars in the tort system but may recover a tiny fraction of that amount under the plan).

114. What the Debtor and the UCC are saying is that if the case is dismissed, claimants will recover what they will recover in the tort system. But that is how our judicial system works. Our judicial system utilizes voluntarily negotiated settlements, judges, and juries to decide these

issues, not a trustee. For the majority of the tort victims, this is a far better outcome compared to what the proposed Settlement and plan offer. YesCare and Mr. Lefkowitz prefer a bankruptcy settlement because it would cost them less. But from the perspective of the tort claimants with compensable claims, this is a bad thing.

VI. The Proposed Structured Dismissal Is Consistent with the Bankruptcy Code

115. The Debtor argues that the structured dismissal requested in the Motion is a "sub rosa plan." *See* Debtor Objection at ¶ 69-70 ("The TCC's Motion Must Be Denied As an Improper Sub Rosa Plan."). The thrust of the argument appears to suggest the TCC is seeking to advantage tort claimants over other creditors as part of the dismissal. *See* Debtor Objection at ¶ 76 ("The improper "priority skipping" and redistribution of assets rejected in *Jevic* is exactly what the TCC proposes to do through its Motion to Dismiss, plus more.")

116. This argument misapprehends and misrepresents the structured dismissal, which is intended to ensure that section 349(b)(3) of the Code is actually effectuated by dismissal. *See* 11 U.S.C. § 349(b)(3) (which provides that dismissal of a chapter 11 case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under [title 11].").

117. The primary objective of the proposed structured dismissal is to make it clear that any rights or legal doctrines that may have been taken from the claimants (commercial or tort victims) due to the commencement of the Debtor's case under section 541 of the Bankruptcy Code or otherwise, are being returned to the claimants so that they can pursue litigation against responsible parties. The grant of standing and abandonment back to all creditors, is just that, applicable to ***all creditors*** and not simply tort victims. It should be clear to the claimants that their

rights (to the extent impaired by the bankruptcy case) have been restored and that they are free to pursue their claims in the tort system.

118. The other objective is to address the filing final fee application and the allowance of claims for compensation held by estate professionals. The TCC requests an orderly process to resolve administrative matters in connection with the dismissal of the case. These procedures are consistent with the Bankruptcy Code and procedures implemented by other Courts that have dismissed Texas Two Step bankruptcies for cause. *See e.g. In re Aearo Tech. LLC*, No. 22-02896, 2023 WL 3938436 (Bankr. S.D. Ind. June 9, 2023); *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023); *In re LTL Mgmt., LLC*, 652 B.R. 433 (Bankr. D.N.J. 2023).

CONCLUSION

119. The Motion should be granted.

Dated: February 27, 2024
New York, New York

/s/ Eric R. Goodman

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EXHIBIT A

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

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CONFIDENTIAL TREATMENT REQUESTED

November 15, 2023

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The Honorable Bernard Sanders
United States Senate
332 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

The Honorable Cory A. Booker
United States Senate
717 Hart 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.

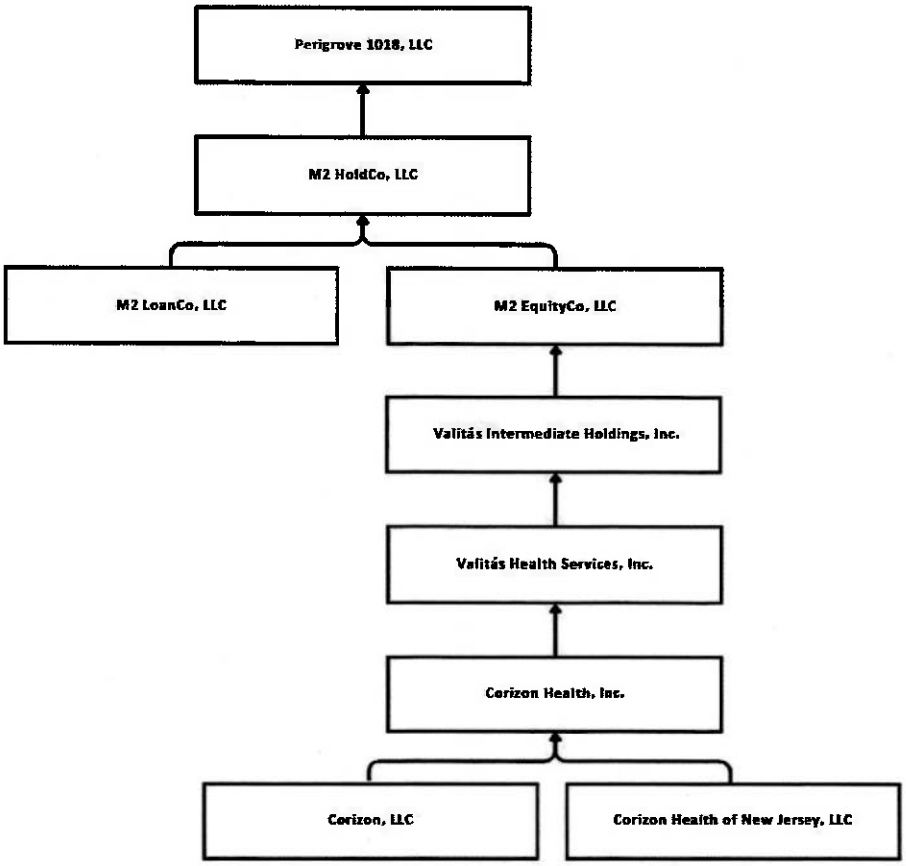
Despite the above, amounts available under the Funding Agreement or otherwise advanced by M2 LoanCo proved insufficient for TCS to satisfy its liabilities under the Divisional Merger.

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.

***

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

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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Zachary Hemenway (S.D. Tex. Bar No. 3856801)
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EXHIBIT C

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.

***

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***

Nicholas Zluticky (S.D. Tex. Bar No. 3846893)
Zachary Hemenway (S.D. Tex. Bar No. 3856801)
1201 Walnut, Suite 2900
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nicholas.zluticky@stinson.com
Zachary.hemenway@stinson.com
COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

EXHIBIT D

February 2, 2024 Official Committee of Unsecured Creditors' Answers to Official Committee of Tort Claimants' Second Set of 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' SECOND SET OF 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 SECOND SET OF INTERROGATORIES

1. Identify the amount of fees and expenses owed to each of the UCC's professionals engaged in connection with this Chapter 11 Case as of the date of Your answer to this interrogatory.

[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 object to this request as it is irrelevant to the approval of the 9019 Motion, which is the basis upon which these Interrogatories were served. The UCC further objects as the term "owed" is vague in the context of a bankruptcy and procedures relating to approval of professional compensation. Without waiving the foregoing, the UCC's professionals are currently owed approximately $600,000.

AS TO ANSWERS:

DATED: Feb. 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*
Nicholas Zluticky (S.D. Tex. Bar No. 3846893)
Zachary Hemenway (S.D. Tex. Bar No. 3856801)
1201 Walnut, Suite 2900
Kansas City, MO 64106
Telephone: (816) 842-8600
nicholas.zluticky@stinson.com
Zachary.hemenway@stinson.com
COUNSEL FOR THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS

EXHIBIT E

February 2, 2024 Debtor's Responses to the Official Committee of Tort Claimants' Second Set of 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' SECOND SET OF 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. Identify the amount of fees and expenses owed to each of the Debtor's professionals engaged in connection with this Chapter 11 Case as of the date of Your answer to this interrogatory.

RESPONSE:

Although the Court has entered no interim or final order awarding fees on a final basis, the Debtor estimates based on invoices and monthly statements received as of the date of this response: (1) Gray Reed has incurred $2,546,599.99 in estimated fees and expenses that remain unpaid as of January 31, 2024; (2) Ankura Consulting has incurred $1,441,127.83 in estimated fees and expenses that remain unpaid as of January 31, 2024; (3) Baker Hostetler has incurred $23,405.60 in estimated fees and expenses that remain unpaid as of January 31, 2024; (4) KCC Consulting has

[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.

incurred $169,497.73 in estimated fees and expense that remain unpaid as of January 31, 2024; and (5) various ordinary course professionals who may be owed small amounts of fees or expenses, the invoices for whom may not have been received yet by the Debtor.

Respectfully submitted this 2nd day of February, 2024.

GRAY REED

By: */s/ Jason S. Brookner*

Jason S. Brookner
Texas Bar No. 24033684
Aaron M. Kaufman
Texas Bar No. 24060067
Lydia R. Webb
Texas Bar No. 24083758
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1300 Post Oak Boulevard, Suite 2000
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Telephone: (713) 986-7127
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Email: jbrookner@grayreed.com
akaufman@grayreed.com
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acarson@grayreed.com

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 F

January 2, 2024 Email from M. Atkinson to Debtor's Counsel

From: Michael Atkinson
To: Lydia Webb; Russell Perry; Aaron Kaufman; Steven Petrocelli; Dylan Frankl; Scott Rinaldi
Cc: Molton, David J.; Goodman, Eric R.; Cicero, Gerard T.; Michael Zimmerman; Jason Crockett; James Bland; Michael Russano; Jason S. Brookner; Amber M. Carson; Emily Shanks; Nicholas Zluticky (nicholas.zluticky@stinson.com); Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com); Turner, Anna J.
Subject: Re: [EXT] Tehum - Introduction + Initial Requests
Date: Tuesday, January 2, 2024 11:51:29 AM
Attachments: image002.png
image003.png

Hi Lydia,

Happy new year and thank you for sharing these materials with us. We have looked through these materials and dug through the dataroom but, aside from materials as of the 2022 divisive merger [e.g., the balance sheet you provided (DEBTOR623237), fairness opinion (DEBTOR002239), etc.], have been unable to locate financials for YesCare. Specifically, I am interested in monthly or quarterly financial statements since the divisive merger, management projections of the YesCare business (including by entity as applicable), and all YesCare budgets, capital plans, and strategic plans. If those have been produced, could you please point me to them? Or, if they have not bene produced, could you please share them with me?

Also, I would appreciate a response to my email from 12/27 below about what the fields in DEBTOR005878, DEBTOR005884, DEBTOR005880, and DEBTOR0058799 mean.

Thank you.

Michael
Michael Atkinson
Principal

From: Lydia Webb <lwebb@grayreed.com>
Sent: Thursday, December 28, 2023 7:53:32 PM
To: Russell Perry <Russell.Perry@ankura.com>; Michael Atkinson <MAtkinson@provincefirm.com>; Aaron Kaufman <akaufman@grayreed.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
Cc: Molton, David (External) <DMolton@brownrudnick.com>; Goodman, Eric R. <EGoodman@brownrudnick.com>; Cicero, Gerard T. <GCicero@brownrudnick.com>; Michael Zimmerman <mz@berryriddell.com>; Jason Crockett <JCrockett@provincefirm.com>; James (JEB) Bland <jbland@provincefirm.com>; Michael Russano <Michael.Russano@ankura.com>; Jason S. Brookner <jbrookner@grayreed.com>; Amber M. Carson <acarson@grayreed.com>; Emily Shanks <eshanks@grayreed.com>; Nicholas Zluticky (nicholas.zluticky@stinson.com) <nicholas.zluticky@stinson.com>; Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com) <zachary.hemenway@stinson.com>; Turner, Anna J. <anna.turner@stinson.com>

Subject: RE: [EXT] Tehum - Introduction + Initial Requests

EXTERNAL EMAIL

Michael, please see attached, per Russell's email below.

Lydia Webb
Partner
Tel 469.320.6111 | Fax 469.320.6880 | Cell 214.577.2828 | lwebb@grayreed.com
Dallas Office: 1601 Elm St., Suite 4600 | Dallas, TX 75201
Houston Office: 1300 Post Oak Blvd., Suite 2000 | Houston, TX 77056
grayreed.com | Connect with me on LinkedIn

GRAY REED

From: Russell Perry <Russell.Perry@ankura.com>
Sent: Wednesday, December 27, 2023 11:13 PM
To: Michael Atkinson <MAtkinson@provincefirm.com>; Aaron Kaufman <akaufman@grayreed.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
Cc: Molton, David (External) <DMolton@brownrudnick.com>; Goodman, Eric R. <EGoodman@brownrudnick.com>; Cicero, Gerard T. <GCicero@brownrudnick.com>; Michael Zimmerman <mz@berryriddell.com>; Jason Crockett <JCrockett@provincefirm.com>; James (JEB) Bland <jbland@provincefirm.com>; Michael Russano <Michael.Russano@ankura.com>; Jason S. Brookner <jbrookner@grayreed.com>; Amber M. Carson <acarson@grayreed.com>; Lydia Webb <lwebb@grayreed.com>; Emily Shanks <eshanks@grayreed.com>; Nicholas Zluticky (nicholas.zluticky@stinson.com) <nicholas.zluticky@stinson.com>; Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com) <zachary.hemenway@stinson.com>; Turner, Anna J. <anna.turner@stinson.com>
Subject: [EXTERNAL] RE: [EXT] Tehum - Introduction + Initial Requests

Hi Michael, thanks for the follow up. Per debtor's counsel, a handful of the documents requested last Friday are being provided tomorrow via email once they are bates cataloged.

Summary of files that will be provided:

- 1.2. NewCo and RemainCo balance sheet at the DM
- 6.2. SOFA / SOAL in excel (zip file)
- 2.7, 6.1, 6.3, 6.4. Initial Liquidation Analysis (LA), Settlement Split Calculation, Adjusted

Claims Register, ERC detail and support, and the DIP Budget referenced in the LA (all in excel)

- 6.3. IRS POC (can also be found on the claims register)

As for your additional request below, we'll pull the files (I believe you're referencing loss run reports) and revert back with responses.

Thanks,
Russell

Russell Perry
817.797.3943 Mobile | 214.200.3699 Office
russell.perry@ankura.com

From: Michael Atkinson <MAtkinson@provincefirm.com>
Sent: Wednesday, December 27, 2023 4:33 PM
To: Aaron Kaufman <akaufman@grayreed.com>; Russell Perry <Russell.Perry@ankura.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
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Subject: Re: [EXT] Tehum - Introduction + Initial Requests

Russell – I hope you had a good holiday weekend. Any update on the documents you mentioned you would send (**SOFA/SOALs, an adjusted claims register, the original liquidation analysis, and the DIP budget supporting the LA**)? I am particularly interested in any valuation of the GUCs and tort claims that support the proposed settlement(s) and allocation thereof between GUCs and torts.

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1. To clarify, these four files represent all pending and resolved claims is that right? Are there any additional, similar files beyond these four?
2. What is the difference between "Status" and "Sub Status"? For example, in DEBTOR005878,

claim/incident "2019-PL-11930" has a "Status" of "Open" but a "Sub Status" of "Dismissed." Could you please clarify the various possible inputs to both Status (Final, Open, Reopened) and Sub Status (Settled, Dismissed, Other, Verdict, Motion, Appeal, Open, Re-opened)?

3. Can you please clarify the meaning of the following columns:
    a. Incurred Indemnity – does this refer to settlement/judgment values against the Debtor, its predecessors, and/or current and former affiliates? If this represents something else please let me know and please point me to the document or documents that contains information as to settlements/judgments paid by the Debtor, its predecessors, and/or its current and former affiliates.
    b. Paid Indemnity
    c. O/S Indemnity – Outstanding indemnity? Is it the correct interpretation that where there is an O/S Indemnity that the claimant reached a resolution (verdict, judgment) pre-petition but was not actually paid that sum? If there is some other explanation, please elaborate.
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    e. Paid Expense
    f. O/S Expense
    g. Paid Recov
    h. Paid Total – confirming this is the sum of "Paid Indemnity" and "Paid Expense"?
4. Do you have date of resolution for the claims that were resolved? If so, could you please point me to that information?
5. Have you done any analysis as to which of these claims ultimately filed POCs? If so, could you please share it? We are doing our own analysis of this now but do not want to recreate the wheel if you have something off the shelf.

Thank you,

Michael

Michael Atkinson
Principal

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Sent: Friday, December 22, 2023 3:51 PM
To: Aaron Kaufman <akaufman@grayreed.com>; Russell Perry <Russell.Perry@ankura.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
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Subject: Re: [EXT] Tehum - Introduction + Initial Requests

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Additionally, many of my requests were based on the contents of the Disclosure Statement (e.g., supporting documentation to pre-petition transactions, materials concerning the proposed settlement(s) such as valuation analyses of the GUCs and medical malpractice claims that inform the proposed settlement allocation, etc.) but I appreciate you bringing that to my attention. I am certainly not looking to recreate the wheel but will have to develop an independent view of some of these issues.

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Subject: RE: [EXT] Tehum - Introduction + Initial Requests

EXTERNAL EMAIL

Adding UCC counsel here as well

Aaron Kaufman
Partner
Tel 469.320.6050 | Fax 469.320.6886 | akaufman@grayreed.com

1601 Elm St., Suite 4600 | Dallas, TX 75201
grayreed.com | Connect with me on LinkedIn

GRAY REED

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Subject: [EXTERNAL] RE: [EXT] Tehum - Introduction + Initial Requests

Hi Michael, thanks for reaching out. I'm adding the Ankura team to this email.

Have you crossed referenced your request to the current data room run by counsel? Or have you yet to be admitted? That is the main data room. Extensive financial, insurance, and legal documents that should cover your sections 1 – 5.

As for section 6, we will prepare supporting files and send your way. Will include the SOFA/SOALs, an adjusted claims register, the original liquidation analysis, and the DIP budget supporting the LA (all in excel).

I would also encourage you to download and review the most recent disclosure statement (DS). The most recent draft includes a voluminous discussion of the history of the entities, the investigation that was conducted, and detailed information on the liquidation analysis.

Will start sending over files via email this afternoon / weekend.

Thanks,
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Subject: [EXT] Tehum - Introduction + Initial Requests

Hi Russell,

As you may know, I was retained as FA to the TCC. I look forward to working with you on this case.

As an initial matter, I have attached some initial documentation requests that I would appreciate your help with. I would also appreciate getting access for the below individuals to any dataroom(s) that may exist.

- Jeb Bland – jbland@provincefirm.com
- Byron Groth – bgroth@provincefirm.com
- Mitchell Boal – mboal@provincefirm.com

Thank you and Happy Holidays.

Michael

PROVINCE
LinkedIn

Michael Atkinson
Principal
d: (443) 225-4549
c: (443) 854-2412

EXHIBIT G

January 2, 2024 Email from Debtor's Counsel to M. Atkinson

From:	Lydia Webb
To:	Michael Atkinson; Russell Perry; Aaron Kaufman; Steven Petrocelli; Dylan Frankl; Scott Rinaldi
Cc:	Molton, David J.; Goodman, Eric R.; Cicero, Gerard T.; Michael Zimmerman; Jason Crockett; James Bland; Michael Russano; Jason S. Brookner; Amber M. Carson; Emily Shanks; Nicholas Zluticky (nicholas.zluticky@stinson.com); Zachary H. Hemenway - Stinson LLP (zachary.hemenway@stinson.com); Turner, Anna J.
Subject:	RE: [EXT] Tehum - Introduction + Initial Requests
Date:	Tuesday, January 2, 2024 8:49:12 PM
Attachments:	image002.png image003.png

Hi Michael – the Debtor does not have any YesCare financials post-DM, other than the balance sheet showing the allocation of assets and liabilities as of the DM, which we previously provided you. I reached out to counsel to YesCare, and YesCare indicated that they will not produce any financial information other than the balance sheet referenced above. If you have further questions or requests related to YesCare, please contact Melissa Hayward to discuss.

Best,
Lydia

From: Michael Atkinson <MAtkinson@provincefirm.com>
Sent: Tuesday, January 02, 2024 10:51 AM
To: Lydia Webb <lwebb@grayreed.com>; Russell Perry <Russell.Perry@ankura.com>; Aaron Kaufman <akaufman@grayreed.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
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Subject: [EXTERNAL] Re: [EXT] Tehum - Introduction + Initial Requests

Hi Lydia,

Happy new year and thank you for sharing these materials with us. We have looked through these materials and dug through the dataroom but, aside from materials as of the 2022 divisive merger [e.g., the balance sheet you provided (DEBTOR623237), fairness opinion (DEBTOR002239), etc.], have been unable to locate financials for YesCare. Specifically, I am interested in monthly or quarterly financial statements since the divisive merger, management projections of the YesCare business (including by entity as applicable), and all YesCare budgets, capital plans, and strategic plans. If those have been produced, could you please point me to them? Or, if they have not bene

produced, could you please share them with me?

Also, I would appreciate a response to my email from 12/27 below about what the fields in DEBTOR005878, DEBTOR005884, DEBTOR005880, and DEBTOR0058799 mean.

Thank you.

Michael

Michael Atkinson
Principal

From: Lydia Webb <lwebb@grayreed.com>
Sent: Thursday, December 28, 2023 7:53:32 PM
To: Russell Perry <Russell.Perry@ankura.com>; Michael Atkinson <MAtkinson@provincefirm.com>; Aaron Kaufman <akaufman@grayreed.com>; Steven Petrocelli <Steven.Petrocelli@ankura.com>; Dylan Frankl <Dylan.Frankl@ankura.com>; Scott Rinaldi <Scott.Rinaldi@ankura.com>
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Subject: RE: [EXT] Tehum - Introduction + Initial Requests

EXTERNAL EMAIL

Michael, please see attached, per Russell's email below.

Lydia Webb
Partner
Tel 469.320.6111 | Fax 469.320.6880 | Cell 214.577.2828 | lwebb@grayreed.com
Dallas Office: 1601 Elm St., Suite 4600 | Dallas, TX 75201
Houston Office: 1300 Post Oak Blvd., Suite 2000 | Houston, TX 77056
grayreed.com | Connect with me on LinkedIn

GRAY REED

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Subject: [EXTERNAL] RE: [EXT] Tehum - Introduction + Initial Requests

Hi Michael, thanks for the follow up. Per debtor's counsel, a handful of the documents requested last Friday are being provided tomorrow via email once they are bates cataloged.

Summary of files that will be provided:

- 1.2. NewCo and RemainCo balance sheet at the DM
- 6.2. SOFA / SOAL in excel (zip file)
- 2.7, 6.1, 6.3, 6.4. Initial Liquidation Analysis (LA), Settlement Split Calculation, Adjusted Claims Register, ERC detail and support, and the DIP Budget referenced in the LA (all in excel)
- 6.3. IRS POC (can also be found on the claims register)

As for your additional request below, we'll pull the files (I believe you're referencing loss run reports) and revert back with responses.

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5. Have you done any analysis as to which of these claims ultimately filed POCs? If so, could you please share it? We are doing our own analysis of this now but do not want to recreate the wheel if you have something off the shelf.

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Adding UCC counsel here as well

Aaron Kaufman
Partner
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- Jeb Bland – jbland@provincefirm.com
- Byron Groth – bgroth@provincefirm.com
- Mitchell Boal – mboal@provincefirm.com

Thank you and Happy Holidays.

Michael

PROVINCE

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Michael Atkinson
Principal
d: (443) 225-4549
c: (443) 854-2412

EXHIBIT H

January 31, 2024 Letter from U.S. Senator Elizabeth Warren to the United States Trustee

ELIZABETH WARREN
MASSACHUSETTS

COMMITTEES:
BANKING, HOUSING, AND URBAN AFFAIRS
ARMED SERVICES
FINANCE
SPECIAL COMMITTEE ON AGING

United States Senate

UNITED STATES SENATE
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January 31, 2024

Tara Twomey
Director, Executive Office for United States Trustees
U.S. Department of Justice
441 G Street, NW, Suite 6150
Washington, D.C. 20530

Kevin M. Epstein
U.S. Trustee for the Southern and Western Districts of Texas
Office of the United States Trustee
515 Rusk Street, Suite 3516
Houston, TX 77002

Dear Director Twomey and Mr. Epstein:

I am writing regarding the Chapter 11 bankruptcy proceedings of Tehum Care Services (Tehum), a company that was formerly part of the prison health care servicer Corizon Health (Corizon). Corizon has used the Texas Two-Step maneuver explicitly to evade its liabilities owed to its many creditors. On January 16, 2024, Corizon announced an agreement on a new bankruptcy plan that, if confirmed, will deny Corizon's creditors, including incarcerated individuals, adequate restitution for the company's serious harms.[1]

I was encouraged to see the U.S. Trustee for the Southern District of Texas file an objection to the debtor's prior disclosure statement and bankruptcy plan.[2] The objection rightly challenged many troubling elements of the plan put forward, including:

- the expedited nature of the plan,[3]
- the improper relationship between the mediator of bankruptcy plan negotiations and the attorney representing YesCare Corporation (YesCare),[4]
- the lack of adequate justification for the plan (e.g., inadequate legal justification for third-party releases, reduction of claims),[5]
- the coercive third-party releases,[6] and
- the gate-keeper and injunction provisions included in the plan, which shift jurisdiction of potential criminal complaints against YesCare and Tehum to bankruptcy court.[7]

[1] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 19-21, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[2] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, https://www.kccllc.net/tehum/document/23900862310130000000000001.
[3] *Id.*, pp. 4-5.
[4] *Id.*, p. 5.
[5] *Id.*, pp. 7-8.
[6] *Id.*, pp. 10-11, 13-16.
[7] *Id.*, pp. 10-13.

I thank you for your efforts thus far, and encourage you to continue to fulfill the mission of the U.S. Trustee's Office to promote the integrity of the bankruptcy system. To do so, I ask that you (1) promptly assess the merits of joining the motion for structured dismissal filed by the Tort Claimants' Committee (TCC);[8] (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases (among other issues); and (3) continue to ensure victims are adequately represented and provided proper notice.

The U.S. Trustee Should Assess the Merits of Joining the TCC's Motion for Structured Dismissal of the Bankruptcy

On January 16, 2024, the TCC filed a motion to dismiss Corizon's bankruptcy as a bad-faith attempt to defraud creditors, many of whom faced serious injury or death due to Corizon's services.[9] I encourage you to promptly review the motion and join it if you find the motion meritorious. The TCC's motion argues persuasively that bankruptcy is not the appropriate venue for dealing with Corizon's harms, and that the purpose of the bankruptcy is not to fairly compensate all creditors but to transfer value from victims to investors.[10]

Corizon has expressly used this bankruptcy to evade liability. On October 25, 2023, Senator Durbin and I, along with a number of our colleagues, wrote to YesCare and Tehum seeking information on the financial actions taken by Corizon leadership before filing for bankruptcy and expressing concern that Corizon knowingly has used the "Texas Two-Step" maneuver to attempt to evade the countless wrongful death, medical malpractice, and other tort claims against it — principally to the detriment of incarcerated creditors harmed by Corizon.[11] Indeed, evading liability appears to have been Corizon's goal from the moment it came under new ownership in December 2021.[12] Isaac Lefkowitz was an owner of the private equity firm that took over Corizon,[13] and is reported to have mentioned the Texas Two-Step to Corizon's lawyers as a way to "force plaintiffs into accepting lower settlements."[14]

[8] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[9] *Id.*, pp. 2-3.
[10] *Id.*, p. 2.
[11] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.
[12] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, August 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.
[13] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[14] Wall Street Journal, "Prison Health Contractor Expands Texas Two-Step Bankruptcy Tactic," Andrew Scurria and Akiko Matsuda, September 19, 2023, https://www.wsj.com/articles/prison-health-contractor-expands-texas-two-step-bankruptcy-tactic-acac4928.

Facing mounting debts and liabilities stemming from inadequate provisions of health care services and mismanagement, Corizon reincorporated the company from Delaware to Texas on April 28, 2022 and executed a divisional merger just five days later, splitting assets and liabilities between two new companies: (1) CHX TX, with the assets and revenue of Corizon, existing today under the name "YesCare"; and (2) Corizon, a shell company holding most of the original company's liabilities, later becoming "Tehum."[15] Unsurprisingly, the limited assets transferred to Tehum "proved insufficient for [the company] to satisfy its liabilities," and Tehum filed for bankruptcy less than one year later, on February 13, 2023.[16]

Between Lefkowitz's takeover of Corizon and the bankruptcy filing, Corizon ensured Tehum kept all of Corizon's lawsuits, claims, liabilities, costs, expenses, and losses arising prior to, at, or after the date of the two-step — including liabilities related to any lawsuits in connection to the two-step or any settlement, as well as debts owed to any vendor or service provider.[17] Meanwhile, YesCare received the company's assets, including: almost all of the cash in Corizon's bank accounts; all of Corizon's real estate assets, leases, equipment, and inventory; all of Corizon's insurance policies under which Corizon may be entitled to rights or benefits; all assets from employee benefit plans and $17.5 million in cash collateral for worker compensation programs; and all of Corizon's trademarks and other intellectual property (among other assets).[18] In sum, more than $170 million went to YesCare,[19] and at least $30 million went to entities affiliated with Lefkowitz's private equity firm (including M2 LoanCo and Geneva Consulting).[20] All in all, Corizon transferred at least $200 million to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.[21]

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[15] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, August 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.

[16] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 5-6, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[17] *Id*., pp. 12-13.

[18] Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, pp. 6-7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[19] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/.

[20] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p.13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

[21] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

Federal bankruptcy law states that a bankruptcy trustee may avoid any transfer of an interest of the debtor in property that was made within two years before the date of the filing of the bankruptcy petition if the debtor (a) made such transfer with intent to hinder, delay, or defraud potential creditors, or (b) "received less than a reasonably equivalent value in exchange for such transfer or obligation" and met one or more other characteristics.[22] State law additionally provides a mechanism to challenge fraudulent transfers made within four years of the bankruptcy filing.[23] The transfers from Corizon to YesCare and other entities, which Corizon appears to have used to shield assets from victims' reach, warrant serious examination under 11 U.S.C. 548 and other fraudulent transfer provisions.

In addition, key details about Corizon's assets and corporate ownership have never been disclosed. As noted above, in October 2023, Senator Durbin and I wrote to Tehum and YesCare seeking information about the bankruptcy and about the companies' structure and ownership.[24] The companies' responses failed to answer key questions about the bankruptcy.[25]

I encourage you to work to uncover the key facts needed to understand the bankruptcy filing. For example, the identity of other investors in the private equity firm that acquired Corizon in December 2021 is still not publicly known, as is whether they or their affiliated companies received assets prior to the bankruptcy filing.[26] Also unknown is the ownership structure of YesCare, which YesCare inexplicably claims is unknown even to the company itself.[27] This is concerning given YesCare's involvement in negotiating Tehum's bankruptcy plan, which includes generous releases of YesCare from liability.[28] If Tehum's owner, Mr. Lefkowitz, is also a partial or full owner of YesCare, his dual ownership of both Corizon's bankrupt and financially healthy

[22] 11 U.S.C. 548.
[23] Tex. Bus. & Comm. Code 24.005; Tex. Bus. & Comm. Code 24.010.
[24] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.
[25] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf; Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[26] Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 7, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[27] Letter from YesCare Corp. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 3, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20YesCare%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.
[28] Audio Recording from Status Conference, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), December 18, 2023, https://www.kccllc.net/tehum/document/23900862312180000000000002; Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, https://www.kccllc.net/tehum/document/23900862401160000000000004.

halves bolster the case that the companies are not in fact distinct and that Tehum "is a legal fiction created to perpetrate an obvious fraud."[29]

The companies' ownership structures are significantly related to the question of whether Tehum fraudulently transferred assets to YesCare and whether the company should be in bankruptcy at all. Tehum has alleged the company is in financial distress, even while there are indications that YesCare and Tehum are under common ownership: the holding companies that own YesCare and Tehum share the same business address, and Mr. Lefkowitz and other individuals have held significant positions or otherwise been affiliated with both companies.[30] Further, YesCare has claimed Corizon's operating history to assert to prospective clients that YesCare, a company formed less than two years ago, has "40 years of experience as the leading provider of correctional healthcare."[31] As I wrote to Tehum and YesCare,[32] the assurances of "corporate separateness" between YesCare and Tehum[33] are a plainly unconvincing attempt to shelter assets and avoid adequately compensating victims. Even a federal judge in the Eastern District of Michigan has found that YesCare's subsidiary "CHS TX is a mere continuation of pre-division Corizon . . . . Evidently, CHS TX picked up right where Corizon left off. Indeed, CHS TX holds itself out to clients as Corizon's successor."[34]

Corizon's bankruptcy is premised on the fact that it does not have sufficient resources to pay victims and other creditors. The links between Corizon and YesCare accentuate questions about whether the company should even be in bankruptcy proceedings, and further highlight the insufficiency of the bankruptcy plan's proposed offer to victims.

From the time Corizon executed its division merger to today, this bankruptcy plan has served no legitimate reorganizational purpose. By design, Tehum will not return to being a prison health care provider and will not be able to give victims the restitution they deserve. As argued in the TCC's motion for structured dismissal, victims' most direct path to meaningful recovery is through the tort system, after dismissal of this bankruptcy case.[35] That way, victims would be able to "assert

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[29] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, https://www.kccllc.net/tehum/document/23900862401160000000000005.

[30] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8.

[31] Business Insider, "Hidden investors took over Corizon Health, a leading prison healthcare company. Then they deployed the Texas Two-Step," Nicole Einbinder and Dakin Campbell, Aug. 21, 2023, https://www.businessinsider.com/corizon-health-bankruptcy-yescare-texas-two-step-law-2023-8; YesCare Corp., "About YesCare," https://www.yescarecorp.com/about.

[32] Letter from Senator Elizabeth Warren, Senator Dick Durbin, and colleagues to Corizon Health Inc. (YesCare Corp. and Tehum Care Services, Inc.), October 24, 2023, p. 4, https://www.warren.senate.gov/oversight/letters/senators-warren-durbin-lawmakers-call-on-corizon-health-inc-to-answer-for-abuse-of-bankruptcy-system-evasion-of-liability-after-years-of-corporate-wrongdoing.

[33] Response in Opposition to Plaintiff's Motion, Kelly v. Corizon Health, Inc., No. 2:22-cv-10589-MAG-DRG, 2022 WL 16575763 (E.D. Mich.), August 17, 2022, p. 24, https://s3.documentcloud.org/documents/23919673/yescare-corp-and-chs-tx-incs-response.pdf.

[34] Kelly v. Corizon Health Inc., No. 2:22-cv-10589, 2022 WL 16575763 (E.D. Mich.), November 1, 2022, p. *13, https://1.next.westlaw.com/Document/I9ae768f05a9411edbf39cf32a4dcbebd/View/FullText.html.

[35] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 23-26, https://www.kccllc.net/tehum/document/23900862401160000000000005.

claims against governmental entities and other parties who are co-liable with [Tehum and YesCare]."[36] The U.S. Trustee should carefully consider the merits of the TCC's motion for structured dismissal and support it if it agrees with the conclusions presented. YesCare and Mr. Lefkowitz do not deserve to reap the benefits of bankruptcy — including the "litigation holiday," — without actually filing for bankruptcy.[37] They must "return[] to the tort system [and] face[] the reality of litigation."[38]

The U.S. Trustee Should Challenge Any Plan that Includes Insufficient Recovery for Victims and Nonconsensual Non-Debtor Releases

The new plan provides plainly insufficient recovery for victims

The initial bankruptcy plan, mediated by Texas-based bankruptcy judge David Jones, proposed that YesCare and its backers pay a paltry $37 million to individuals and entities with claims against Corizon.[39] After Judge Jones resigned from his position following the exposure of his secret relationship with an attorney for YesCare, the parties agreed to restart the mediation and renegotiate the plan.[40] According to a motion filed under Rule 9019, this mediation has resulted in a new plan that would provide $54 million to victims, state agencies, and other creditors.[41] This number remains plainly insufficient to satisfy the thousands of debts against the company. Tehum currently owes $82 million to more than 1,000 creditors, and hundreds of victims seek more than $775 million in claims for alleged personal injury and wrongful death claims.[42]

The plan ensures that no creditor — whether a state agency, private company, or family member of a loved one who died in Corizon's care — would receive the full amount it is owed. Further, $54 million is a small fraction of the at least $200 million that Corizon transferred to YesCare and to entities affiliated with its private equity owner prior to declaring bankruptcy.[43]

The new plan contains unlawful nonconsensual non-debtor releases

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[36] *Id*, p. 26.
[37] *Id.*, p. 23.
[38] *Id*., p. 9.
[39] Reuters, "Prison healthcare company restarts mediation after bankruptcy judge Jones quits," Dietrich Knauth, November 14, 2023, https://www.reuters.com/business/healthcare-pharmaceuticals/prison-healthcare-company-restarts-mediation-after-bankruptcy-judge-jones-quits-2023-11-15/.
[40] *Id*.
[41] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 3, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[42] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 20, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[43] USA Today, "A prison medical company faced lawsuits from incarcerated people. Then it went 'bankrupt,'" Beth Schwartzapfel, September 19, 2023, https://www.usatoday.com/story/news/nation/2023/09/19/corizon-yescare-private-prison-healthcare-bankruptcy/70892593007/; Letter from Tehum Care Services, Inc. to Senator Elizabeth Warren, Senator Dick Durbin, and colleagues, November 15, 2023, p. 13, https://www.warren.senate.gov/imo/media/doc/2023.11.15%20Tehum%20Response%20to%20Senate%20Letter%20%5bRedacted%5d.pdf.

The new plan retains a coercive provision that pushes victims — including families of individuals who died in Corizon's care — to release from liability not just Corizon/Tehum but also several individuals and entities not party to the bankruptcy, including YesCare and Mr. Lefkowitz, in exchange for a small fraction of what they are owed.[44] The plan states that, in exchange for the $54 million collective payout, creditors would have to release from liability not only Tehum but also YesCare, M2 LoanCo, Geneva Consulting, and "certain related entities, directors, and employees," including Mr. Lefkowitz.[45] This does not afford creditors the opportunity to provide the "unambiguous and freely-given consent" required for provisions releasing non-debtors of liability.[46] As you noted in your earlier objection, this option to accept limited funds in exchange for sacrificing claims that could lead to true recovery is "no real choice, particularly in the context of the vulnerable creditor body in this case."[47]

Further, the broad releases of YesCare, Mr. Lefkowitz, and other non-debtor third parties from future liability likely violate bankruptcy law and Fifth Circuit precedent as nonconsensual non-debtor releases. As noted in the U.S. Trustee's objections to the September 2023 plan, which appears to contain non-debtor releases that are substantially similar to those in the January 2024 plan, "a bankruptcy court may not confirm a plan that provides non-consensual non-debtor releases."[48] By depriving victims and other creditors of a meaningful choice, YesCare and Mr. Lefkowitz are attempting to unlawfully shield themselves from liability and keep victims from exercising their legal rights. As a result of this and other harmful provisions, the U.S. Trustee concluded that the September 2023 plan was "patently unconfirmable" and must be rejected.[49] This recognition by the U.S. Trustee is consistent with the Trustee Program's efforts to fight similar nonconsensual non-debtor provisions in the Purdue Pharma bankruptcy plan.[50] Based on the details of the plan shared in the Joint Motion filed on January 16, 2024,[51] the new plan remains patently unconfirmable.

I was encouraged by your acknowledgment that the September 2023 plan was "patently unconfirmable" due in part to its attempt to coerce victims into accepting a minor one-time payment in exchange for signing away their legal rights.[52] The new plan's non-debtor releases

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[44] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 4-5, https://www.kccllc.net/tehum/document/2390086240116000000000004.
[45] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, pp. 3, 8-10, and 21.
[46] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 13, https://www.kccllc.net/tehum/document/2390086231013000000000001.
[47] *Id*., p. 14.
[48] *Id*.
[49] *Id*., pp. 10-11.
[50] CBS News, "Purdue Pharma bankruptcy plan that shields Sackler family faces Supreme Court arguments," Melissa Quinn, December 4, 2023, https://www.cbsnews.com/news/purdue-pharma-bankruptcy-supreme-court/.
[51] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, https://www.kccllc.net/tehum/document/2390086240116000000000004.
[52] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), October 13, 2023, p. 3, https://www.kccllc.net/tehum/document/2390086231013000000000001.

raise the same concerns.[53] I urge you to continue challenging these issues until they are completely resolved.

The U.S. Trustee Should Ensure Victims Are Adequately Represented & Given Sufficient Notice

The U.S. Trustee has been instrumental in this bankruptcy in protecting the rights of under-resourced victims and their families, including individuals currently incarcerated. In November 2023, you announced the formation of a six-member tort claimants' committee to ensure victims' interests are adequately represented.[54] This was a necessary step: the UCC's support for the deeply flawed initial bankruptcy plan has cast doubt on whether the UCC is adequately representing the interests of victims. The tort committee's motion requests the dismissal of Corizon's bankruptcy on the grounds that the bankruptcy was "a fraud from its inception,"[55] noting that victims "will recover substantially more in the tort system than YesCare . . . would ever contribute to this case."[56] It appears, therefore, that the tort committee is off to a promising start powerfully representing the victims of Corizon's alleged wrongdoing. I am optimistic about the tort committee's formation, but urge that you to remain vigilant to make sure victims' interests are properly represented. As the U.S. Trustee has observed,[57] incarcerated individuals without legal representation are inordinately vulnerable in these proceedings already — they lack access to up-to-date information on the bankruptcy and face unique barriers in participating in the proceedings. Should a settlement eventually be reached, I hope you continue to advocate that information disseminated to creditors be in language that is easy to understand.[58]

Relatedly, I encourage you to join the TCC in pushing for adequate notice to be provided to creditors, particularly vulnerable incarcerated creditors. The lack of sufficient notice (whether actual or constructive) exacerbates the existing issues with the proposed bankruptcy plan.

The U.S. Trustee is in a Unique Position to Safeguard the Bankruptcy System from Abuse

Americans rely on the U.S. Trustee Program to "promote the integrity and efficiency of the bankruptcy system for the benefit of *all* stakeholders."[59] The Trustee Program has the responsibility and power to view the bankruptcy system as a whole, assess systemic trends, and take forceful action in the interest of justice. Rarely is such action more important than when

[53] Joint Motion for Entry of an Order, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, Exhibit 1, pp. 5-6, https://www.kccllc.net/tehum/document/23900862401160000000000004.
[54] Bloomberg Law, "Prisoner Plaintiffs Get Committee in Medical Provider Bankruptcy," Alex Wolf, November 21, 2023, https://news.bloomberglaw.com/bankruptcy-law/prisoner-plaintiffs-get-committee-in-medical-provider-bankruptcy.
[55] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 35, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[56] *Id*., p. 47.
[57] Objection of the United States Trustee to Joint Emergency Motion, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), Sept. 29, 2023, pp. 2 and 5, https://www.kccllc.net/tehum/document/23900862310130000000000001.
[58] *Id*., p. 10.
[59] U.S. Department of Justice, "Executive Office for United States Trustees," https://www.justice.gov/doj/executive-office-united-states-trustees (emphasis added).

powerful corporations with well-resourced backers try to corrupt the bankruptcy process to deprive thousands of victims of the ability to achieve justice.

As the tort committee noted, "[t]his case gives bankruptcy a bad name."[60] I have no doubt that other corporations are watching to see whether Corizon and its allies will be able to successfully deploy the Texas Two-Step to shield their assets from the myriad legitimate claims they face. The U.S. Trustee's actions, together with those of the bankruptcy judge, are of crucial importance not just for this case but also for the future of the bankruptcy system. For these reasons, and as detailed above, I urge you to (1) promptly assess the merits of joining the motion for structured dismissal filed by the TCC; (2) oppose the new bankruptcy plan on the basis that it provides plainly insufficient recovery for victims and includes nonconsensual non-debtor releases; and (3) continue to ensure victims are adequately represented and provided proper notice.

In addition, to assist my office's oversight of Tehum's Chapter 11 bankruptcy, please answer the following questions by February 14, 2024:

1. How does the U.S. Trustee plan to monitor whether the UCC or tort committee is adequately representing the interests of incarcerated victims?
    a. Given Tehum's looming administrative insolvency and restrictions on the debtor-in-possession loan,[61] are there sufficient funds to pay the fees of TCC professionals?
2. Does the U.S. Trustee plan to challenge the new bankruptcy plan, consistent with its position against nonconsensual non-debtor releases?[62]
    a. If the U.S. Trustee does challenge the plan and the plan is nevertheless approved, does the U.S. Trustee plan to appeal that decision?
3. What actions will the U.S. Trustee take to determine the full ownership of Tehum and YesCare?
    a. What actions will the U.S. Trustee take to ascertain the role of Isaac Lefkowitz in the ownership of Tehum and YesCare?
4. If information about Tehum and YesCare's ownership continues to cast doubts upon claims of corporate separateness between Tehum and YesCare, under what circumstances would the U.S. Trustee move to:
    a. Dismiss Tehum's bankruptcy filing?
    b. Challenge the pre-bankruptcy transfers of funds from Tehum/Corizon to YesCare and other entities as fraudulent?
5. What actions will the U.S. Trustee take to determine Corizon's value at the time of the divisional merger?

[60] Motion for Structured Dismissal of Chapter 11 Case, In re Tehum Care Services, Inc., No. 23-90086 (CML) (Bankr. S.D. Tex.), January 16, 2024, p. 2, https://www.kccllc.net/tehum/document/23900862401160000000000005.
[61] *Id.*, pp. 17 ("Without the DIP loan, there is no funding for this case and no funding to pay professional fees"), 18 ("The DIP loan denies funding for any committee or estate party that challenges any of the prepetition transfers"), and 33 ("The Debtor has no means to generate positive cash flow and is now facing administrative insolvency").
[62] *See, e.g.*, Brief for the Petitioner, Harrington v. Purdue Pharma L.P., No. 23-124 (U.S.), September 20, 2023, pp. 19-48, https://www.supremecourt.gov/DocketPDF/23/23-124/280102/20230920205320537_23-124tsUnitedStates.pdf.

Thank you for your ongoing oversight of Corizon's bankruptcy on behalf of the public. I urge you to continue to closely scrutinize the developments in this case.

Sincerely,

Elizabeth Warren
United States Senator