

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

MOTION FOR RELIEF FROM THE AUTOMATIC STAY

THIS IS A MOTION FOR RELIEF FROM THE AUTOMATIC STAY. IF IT IS GRANTED, THE MOVANT MAY ACT OUTSIDE THE BANKRUPTCY PROCESS. IF YOU DO NOT WANT THE STAY LIFTED, IMMEDIATELY CONTACT THE MOVING PARTY TO SETTLE. IF YOU CANNOT SETTLE, YOU MUST FILE A RESPONSE AND SEND A COPY TO THE MOVING PARTY AT LEAST 7 DAYS BEFORE THE HEARING. IF YOU CANNOT SETTLE, YOU MUST ATTEND THE HEARING. EVIDENCE MAY BE OFFERED AT THE HEARING AND THE COURT MAY RULE.

REPRESENTED PARTIES SHOULD ACT THROUGH THEIR ATTORNEY.

THERE WILL BE A HEARING ON THIS MATTER ON JULY 16, 2024 AT 10:00 A.M. (CENTRAL STANDARD TIME) IN COURTROOM 401 AT 515 RUSK, HOUSTON, TEXAS 77002.

Antoinette Windhurst, individually and on behalf of the Estate of David Windhurst (collectively “Windhurst”), hereby moves this Court pursuant to 11 U.S.C. §362(d)(1) and Rule 4001(a), Fed.R.Bankr.P., for an order terminating the automatic stay to allow Windhurst to liquidate her claims in Arizona. Windhurst agrees to return to this Court

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.



and proceed through this Bankruptcy Proceeding to address all issues of collection as to the Debtor and/or property of the Estate.

This Court lacks jurisdiction to liquidate the Windhurst Claims, which seeks damages against the Debtor, along with various third parties, for personal injury and wrongful death. Whether now or later, the claims will eventually need to be liquidated before the Arizona Superior Court. Yet, the claims have been stayed now for more than a year and cause exists to grant relief from the automatic stay to allow the claims liquidation process to proceed.

I. Background Facts

On Christmas Day, 2016, David Windhurst died while he was incarcerated at the Arizona Department of Corrections. At the time, health care services were the responsibility of ADOC Health Services Contract Vendor, Corizon Health, Inc.

On December 22, 2017, Windhurst filed suit in the Superior Court for the State of Arizona, Pima County, Case No. C20175978, for wrongful death, medical malpractice, and Violations of the Adult Protective Services Act/A.R.S. §46-451 et. seq. (the “Windhurst Suit”) (See Exhibit A). The Windhurst Suit named the following parties as Defendants: the ARIZONA DEPARTMENT OF CORRECTIONS, a governmental entity; CHARLES RYAN, in his individual capacity as the Director of Arizona Department of Corrections; STATE OF ARIZONA, a governmental entity; CORIZON HEALTH, INC., a business domiciled in Arizona; and JOHN DOES and JANE DOES 1-10, married couples; ABC PARTNERSHIPS 11-20; and/or XYZ CORPORATIONS 21-30, fictitious entities. (the “Windhurst Defendants”).

Windhurst and the Debtor previously entered a Stipulation and Agreed Order Regarding Limited Relief from the Automatic Stay (DE 637). The Court approved the Stipulated Order to allow the fully briefed appeal to the Arizona Supreme Court to be decided. (DE 641).

On October 11, 2023, the Arizona Supreme Court ruled in favor of Windhurst's appeal and remanded the case back to Superior Court for further proceedings including a trial on the merits of the claims asserted. The automatic stay has prevented any subsequent proceedings in the case.

As the Court is aware, Corizon Health, Inc. no longer exists as a corporate entity. On or about May 5, 2022, various entities including Corizon Health, Inc. participated in a Divisional Merger whereby the company was split into two: 1) a "new" entity that would take on Corizon's operating assets and related liabilities and could continue as a going concern; and 2) a "remaining" entity that would continue to hold and wind-down Corizon's remaining, non-operating assets and liabilities. (See DE 1071, pg. 9-10) On June 1, 2022, the Debtor changed its name from Corizon Health, Inc. to Tehum Care Services, Inc. *Id.* The Windhurst claim, and all related liability was "transferred" to Tehum and is now part of this Bankruptcy Case.

Notably, the Divisional Merger was concealed from Windhurst, the Arizona Superior Court, and the Arizona Supreme Court, none of whom were timely informed that Corizon Health, Inc. no longer existed as a corporate entity, or that Tehum was now

the party in interest.² As a result, the Arizona Courts have yet to determine whether Windhurst has any **direct claims** under Arizona law against CHS TX, Inc., dba Yescare, M2 Loan Co, or any other related entity. The Debtor has also asserted claims against CHS TX, Inc. and M2 Loan Co., but has made clear that it does not intend to impair, prevent, or prejudice a claimant's direct claims against such entities. Windhurst believes direct claims exist under Arizona law, and intends to assert such claims when the stay lifts.

On February 13, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The automatic stay has prevented Windhurst from proceeding with its claims against the Debtor or from making progress toward liquidating its claim.

Although discovery is complete in the Windhurst state court proceeding, Courts in Pima County are scheduling trials a year or more from the trial scheduling hearing. It is not anticipated, even if relief were granted today, that trial would take place until mid-2025 at the earliest.

² Insurance defense counsel participated on behalf of "Corizon Health" in a Court sponsored mediation in June 2022, and argued to the Arizona Supreme Court June 28, 2022, appearing on both occasions on behalf of Corizon Health, Inc. but not disclosing that Corizon Health, Inc. ceased to be a corporate entity as of May 5, 2022, or that substantial assets were transferred to CHS Texas before such proceedings. To this day, a notice of change of proper party has not been filed.

II. Cause Exists to Grant Relief from the Automatic Stay

On the Petition Date, 11 U.S.C. §362 of the Bankruptcy Code imposed an automatic stay that prevented Windhurst from continuing the Windhurst Suit against the Debtor.

Section 362(d)(1) of the Bankruptcy Code provides that, upon request from a party in interest, the Court must grant relief from the automatic stay “for cause.” “Ultimately, the granting of relief from the automatic stay is left to the discretion of the Bankruptcy Court and decided on a case-by-case basis.” *In re Fowler*, 259 B.R. 856, 858 (E. D. Texas 2001).

The term “cause” is not defined in the Bankruptcy Code but is determined on a case-by-case basis. “Courts have used a broad range of factors in finding cause to grant relief including: the interests of judicial economy and the expeditious and economical resolution of litigation, whether litigation in another forum would prejudice the interests of other creditors; and the impact of the stay on the parties and the balance of harms.” *Hiller v. Hiller*, 2006 WL 8446271 (S.D. Texas 2006).

The primary purpose of the automatic stay is to protect the debtor and its estate from creditors. But granting stay relief, as requested in this Motion, does not put the Debtor or the Estate at any risk. Windhurst agrees that she will not pursue collection of any judgment against the Debtor, or against property of the Estate, without first returning to this Court and proceeding pursuant to the Bankruptcy process. Rather, Windhurst seeks relief simply to allow progress toward liquidating her claims, which this Court lacks jurisdiction to complete. (See 28 U.S.C. §157(b)(4)).

Windhurst's claims are very old from a judicial expediency perspective. The asserted tort occurred in 2016. The resulting litigation has been pending since 2017. The Debtors' insurer has been funding the defense, which obligation will continue whether liquidated now or later. And even if stay relief were granted today, trials are being scheduled for a year or more from the trial scheduling conference. It is likely that any trial to liquidate Windhurst's claims will take place in mid-2025, at the earliest. Forcing Windhurst to wait until conclusion of the Bankruptcy Case (which at this point is an indefinite amount of time) unfairly serves to delay her chance at liquidating her claims, and to seek recovery, including recovery from the other defendants who may be liable for her damages.

Because the claims must be liquidated in state court (whether now or later), leaving the stay in place only serves to delay justice to a woman widowed by the conduct of this Debtor. In effect, continuing the stay will force Windhurst to wait longer than other similarly situated creditors who will be entitled to payment upon a confirmed plan going effective. But Windhurst will need to wait a year or more beyond that date, to complete liquidation of her claim. Fairness justifies stay relief to avoid that unnecessary delay. Cause exists to lift the stay.

Whether stay relief is granted or not will not change where the case must be tried, or the related time, energy, and expense of a trial. Insurance is providing a defense to both the Debtor and to various third parties who are third party beneficiaries of the policy, so there is no economic cost to the Estate to liquidate the claims now versus later. Further, granting stay relief will not impose an undue burden on the Debtor because all

discovery has been completed, so the time, attention, and resources of the Debtor can remain committed to the bankruptcy case while awaiting trial. Granting stay relief will simply “start the clock running” toward a trial likely to occur more than a year from now. The only difference to all parties involved is whether the trial occurs a year from now, or even further into the future. The delay provides no benefit to the Debtor compared to waiting a year for trial, but the delay will cause harm to Windhurst and justifies relief from the stay.

The Debtor is not an operating entity. This is a liquidation of various claims and estate property. There is no good justification as to why Windhurst should be forced to wait further before liquidating her claims. Clearly, she cannot be paid until her claims are liquidated, and it would be unfair to force her to wait until after the Bankruptcy has concluded knowing that a trial in Pima County will take another year or more to occur. Windhurst’s right to expediency weighs strongly in favor of the grant of stay relief.

This Debtor has already enjoyed more than a year of the benefit of the automatic stay. Forcing Windhurst to continue waiting serves no good purpose, and unfairly causes harm and prejudice to her. The several Plans filed by the Debtors (since abandoned) all contemplated that creditors would not be entitled to payment until all disputed claims were liquidated. That process, by its nature in Pima County, Arizona, takes quite a long time. There is no just reason to further delay starting the liquidation process, which no doubt must be either completed now or at a later date.

The request from Windhurst does not harm the Debtor, or any other creditors. Windhurst agrees that she may not proceed to collect against the Debtor or any property

of the Estate without first returning to this Court. Windhurst is not seeking permission to collect on any judgment obtained against the debtor or assets of the Estate, or even to collect from insurance policies that may be property of the Estate. Rather, Windhurst seeks relief from the stay simply to liquidate the personal injury and wrongful death claims asserted against the Debtor and various non-Debtor third parties. That claim liquidation is outside the jurisdiction of this Court and should be allowed to proceed.

WHEREFORE, Windhurst respectfully requests the Court grant her Motion and issue an order terminating the automatic stay (attached hereto as Exhibit B) so that Windhurst may liquidate her claims as to all defendants, before the Superior Court in Pima County, Arizona. After liquidation of her claims, Windhurst will return to the Bankruptcy Court with regard to any collection against the Debtor or against Property of the Estate.

DATED: May 28, 2024

MESCH CLARK ROTHSCHILD

By: /s/Frederick J. Petersen
Frederick J. Petersen
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individually and as Personal
Representative of the Estate of
David Windhurst, deceased

CERTIFICATE OF CONFERENCE

Pursuant to BLR 4001-1(a)(1), the undersigned hereby certifies that counsel for Movant has conferred by email with Debtor's counsel, Jason S. Brookner, Esq., regarding this matter and that the parties have been unable to reach an agreement. Undersigned provided a copy to Debtor's counsel on May 23, 2024. Debtor's counsel acknowledged receipt and suggested there was no potential to resolve by stipulation.

/s/Frederick J. Petersen

Frederick J. Petersen

CERTIFICATE OF SERVICE

I certify that on May 28, 2024, I caused a copy of the foregoing document to be served (a) by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all parties authorized to receive electronic notice in this case, and (b) via electronic mail (where available) on the following parties listed below.

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/s/Frederick J. Petersen

Frederick J. Petersen

Exhibit A

FILED
TONI L. HELTON
CLERK, SUPERIOR COURT

12/22/2017 1:57:29 PM

BY: ALAN WALKER
DEPUTY

Case No. C20175978
HON. LESLIE MILLER

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ARIZONA SUPERIOR COURT

PIMA COUNTY

10 ANTOINETTE WINDHURST, a
11 single/widowed woman on behalf of
12 herself and as Personal Representative of
13 the Estate of her deceased husband,
14 DAVID WINDHURST,
15 Plaintiffs,

15 -vs-

16 ARIZONA DEPARTMENT OF
17 CORRECTIONS, a governmental entity;
18 CHARLES RYAN, in his individual
19 capacity as the Director of Arizona
20 Department of Corrections; STATE OF
21 ARIZONA, a governmental entity;
22 CORIZON HEALTH, INC., a business
23 domiciled in Arizona; and JOHN DOES
24 and JANE DOES 1-10, married couples;
25 ABC PARTNERSHIPS 11-20; and/or
26 XYZ CORPORATIONS 21-30, fictitious
27 entities,
28 Defendants.

No.

COMPLAINT
(Wrongful Death; Medical
Malpractice; Adult Protective Service
Act/A.R.S. §46-451, et seq.)

(Jury Trial Requested)

(Honorable _____)

Plaintiffs, for their complaint, allege as follows:

1 **THE PLAINTIFFS**

2 1. David Windhurst (“David”), age 56 (DOB: 6/24/1960) died on December 25,
3 2016, in Pima County, Arizona.

4 2. Antoinette Budnick Windhurst was married to David Windhurst at the time of
5 David’s death on December 25, 2016.

6 3. On December 6, 2017, the Maricopa County Superior Court in Case No.
7 PB2017-001475 appointed Antoinette Windhurst as Personal Representative of David
8 Windhurst’s estate.

9 4. At the time of his death, David Windhurst was a resident of Pima County,
10 Arizona, residing in the Arizona State Prison Complex in Tucson (“ASPC-T”).

11 **THE DEFENDANTS**

12 5. Defendant Charles Ryan is the Director of the Arizona Department of
13 Corrections.

14 6. Defendant Charles Ryan is a resident of Maricopa County, Arizona.

15 7. Defendants State of Arizona and the Arizona Department of Corrections are
16 governmental entities that provided healthcare to David Windhurst either through direct
17 employment of medical clinical personnel and/or through its contract with Corizon Health,
18 Inc. and/or contracts with other healthcare providers.

19 8. Defendant Corizon Health, Inc., conducted business in Arizona and provided
20 healthcare to David Windhurst through its agents and employees.

21 **JURISDICTION**

22 9. The substantial majority of the events giving rise to this Complaint occurred in
23 Pima County, Arizona.

24 10. This matter exceeds the applicable compulsory arbitration limits such that it is
25 not subject to compulsory arbitration.

26 11. Plaintiffs have a legal right to a jury trial if this case is not resolved or

1 disposed of by motion.

2 12. This Court has personal and subject matter jurisdiction over this matter.

3 13. Venue is proper in this county.

4 **GENERAL ALLEGATIONS**

5 14. In 2016, David Windhurst was an inmate at the Arizona Department of
6 Corrections (“ADOC”), Inmate #288503.

7 15. He was housed at the Arizona State Prison Complex in Florence (“ASPC-F) in
8 the beginning of the year and ASPC-T in the latter part of the year.

9 16. At the time of his incarceration, David Windhurst was medically fragile,
10 having a high thoracic spinal cord injury with bilateral above-the-knee limb amputation,
11 with his left hip having been fully disarticulated (amputation through the hip joint).

12 17. At the time of his incarceration, David Windhurst had multiple complex
13 medical issues including, but not limited to, pressure ulcer wound care/management with a
14 history of chronic pressure ulcers in his perineum and sacral areas; suprapubic catheter care,
15 infectious prevention and management; Type I diabetes mellitus (insulin dependent);
16 anemia; hypertension; chronic kidney disease; chronic pan, neuropathy; alterations in bowel
17 function due to multiple skin flap procedures resulting in the relocation of his rectum;
18 muscle spasms; and hypothyroidism.

19 18. Consistent with the ADOC Department Manual, Chapter 1100, the ADOC
20 assumed responsibility for the delivery of “appropriate and uninterrupted healthcare” for
21 David Windhurst to manage these various complex chronic conditions.

22 19. On February 6, 2016, the ADOC received a Critical Urine Culture Result of
23 David Windhurst, which was positive for MRSA, Methicillin Resistant Staphylococcus
24 Aureus.

25 20. Despite this Critical Urine Culture result, Defendants’ agents and/or
26 employees ignored the signs and symptoms and denied and/or delayed David Windhurst

1 from getting appropriate medical treatment.

2 21. It was not until February 27, 2016, over 21 days later, when David
3 Windhurst's medical condition was critical that Defendants' employees and/or agents
4 addressed his acute medical condition.

5 22. It was at this time that he was transported to Mountain Vista Medical Center
6 in Phoenix.

7 23. When David Windhurst arrived at Mountain Vista Medical Center on
8 February 27, 2016, he was severely septic and in acute respiratory and renal failure from
9 MRSA.

10 24. At the time, he was intubated and placed on a ventilator.

11 25. David Windhurst remained at Mountain Vista Medical Center from February
12 27, 2016, to April 7, 2016, in the Intensive Care Unit for nearly his entire hospitalization.

13 26. Because he was so clinically deteriorated prior to the hospital transfer, he was
14 unable to be weaned from the ventilator and had a tracheotomy tube placed on March 13,
15 2016.

16 27. Additionally, for similar reasons, the deterioration or tracheotomy affected his
17 swallowing reflex and a feeding tube (PEG) was also placed.

18 28. On April 7, 2016, David Windhurst returned to the ADOC, and was placed in
19 the ASPC-T unit.

20 29. Sometime in June 2016, his feeding tube was removed and in July 2016 the
21 tracheotomy tube was removed.

22 30. In early September 2016, David Windhurst developed a rash on his chest and
23 shoulders.

24 31. No specialist skilled in complex disease management was consulted nor were
25 any labs ordered to assist in a differential diagnosis regarding the rash David Windhurst
26 developed in early September 2016.

1 32. By October 30, 2016, David Windhurst reported feeling that he had “bugs”
2 below his skin.

3 33. At this time, David Windhurst’s urine was described as light brown.

4 34. On November 10, 2016, a “lump” on the side of David Windhurst’s jaw was
5 described as a “tumor like, hard raised, red and painful” area, and David’s mental status was
6 described as confused.

7 35. On November 11, 2016, David’s urine tested positive via a urine dipstick for
8 blood, white blood cells and protein from a sample described as cloudy, brown/pink urine,
9 which was also described as dark-blood tinged urine.

10 36. Also on that day, David’s neck mass worsened.

11 37. Despite this, no lab studies to ascertain renal function or systemic infection
12 status were ordered.

13 38. No connection was documented to suggest nurses were seeing symptoms
14 consistent with renal failure and possible uremic pruritus.

15 39. No request for kidney or infectious disease specialist support was made.

16 40. On November 12, 2016, David complained of right ear pain and a lump on the
17 side of his jaw.

18 41. By November 14, 2016, David’s eardrum ruptured with malodorous/purulent
19 drainage and the lump was classified as lymphadenitis (swollen lymph node).

20 42. Despite the deterioration of David’s condition, no appropriate diagnostic tests
21 and/or referral to physician specialists were made or ordered.

22 43. Also on November 14, 2016, David was described as “very pale” with a
23 “glassy glaze” and “delusional.”

24 44. Despite David having an infected ear, infected lymph system, infected urine
25 and unexplained body rash, no recommendation for physician diagnosis or intervention was
26 made.

1 45. The nursing staff merely continued to document David’s decline without
2 appropriate intervention or advocacy.

3 46. In the early morning hours of November 15, 2016, David Windhurst’s further
4 clinical decline was noted as having decreased urine output, tea colored urine with signs and
5 symptoms of dehydration, low blood pressure and low sugar levels.

6 47. On the afternoon of November 15, 2016, David’s urine culture result showed
7 large amounts of particularly resistant bacteria named Pseudomonas Aeruginosa, often
8 associated with facility-acquired infections.

9 48. Despite the changes in David’s mental status, his chaotic blood sugars, his
10 need for IV fluids for poor intake and low urine output, no lab chemistry studies were
11 ordered, intake and output balances were not scrutinized, weights were not taken, and
12 specialists were not consulted.

13 49. David’s clinical presentation in November 2016 was nearly identical to that
14 experienced in February 2016 when David was diagnosed with acute respiratory failure and
15 severe sepsis.

16 50. On November 16, 2016, David’s blood sugar was dangerously low at 52
17 mg/dl.

18 51. After intervention, repeat blood sugars remained low at 55 mg/dl and 67
19 mg/dl.

20 52. Still no physician was called and no lab or other diagnostic tests were ordered.

21 53. At this time, David’s right neck mass was now described as “greatly
22 enlarged,” his lips were documented as “very dry” and his nurses continued to describe
23 David as “glassy eyed,” and his urine output was described as “yellow with brown/pink
24 clusters of tissue looking concretions.”

25 54. Despite this, nursing staff continued to morbidly document David’s clinical
26 decline rather than intervene on his behalf as would be expected and required in their well-

1 understood role as patient advocate.

2 55. By 12:55 a.m. on November 18, 2016, ADOC staff stated that David “was not
3 doing well,” “had a hard time swallowing,” and was “confused” with a slow reaction.

4 56. By 2:53 a.m. on November 18, 2016, David’s lungs were so full of fluid that
5 the nurse documented “[w]et rales were noted from the doorway.”

6 57. On November 18, 2016, between 12:55 a.m. and 5:34 a.m., nurses attempted
7 to reach the on-call Advanced Practice Registered Nurse (“APRN”) and physician six times,
8 without response.

9 58. At 5:34 a.m., the doctor working for Defendants did not come in and assess
10 David but merely ordered 40 mg of IVP Lasix for a patient whose last documented blood
11 pressure was 86/47.

12 59. On November 18, 2016, at 5:54 a.m. David coded.

13 60. At that time, he was transported to Banner University Medical Center – South
14 Campus (“BUMC”).

15 61. Upon arrival at BUMC, David was diagnosed with uroseptic shock, renal
16 failure, anemia and oropharyngeal (mouth and throat) ulcerations.

17 62. The cause of David’s sepsis was documented as probable from infected
18 urinary catheter or the decubitus ulcers. He was also diagnosed with bilateral pneumonia.

19 63. From November 18, 2016, to December 25, 016, David endured an extensive
20 hospital course at BUMC that included multiple ICU stays.

21 64. David was deemed clinically unable to undergo conscious sedation anesthesia
22 to have a feeding tube (PEG) tube placed again in his abdomen, thought to be related to his
23 previous protracted hospital stay for respiratory failure and severe sepsis.

24 65. On December 25, 2016, while still at BUMC, David Windhurst died
25 approximately one month before his scheduled release from the ADOC.

26

COUNT ONE

(WRONGFUL DEATH: A.R.S. §12-611, et seq.;
MEDICAL MALPRACTICE: A.R.S. §12-561, et seq.)

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4 66. Antoinette Windhurst is a wrongful death claimant pursuant to A.R.S. §12-
5 612(A).

6 67. Defendants have a non-delegable duty for the care, custody and control of
7 inmates within the Arizona State Prison Complex system.

8 68. Defendants' non-delegable duty includes adequate medical care.

9 69. Defendants also have a statutory duty to provide adequate medical care
10 pursuant to A.R.S. §31-201.01.

11 70. Defendants were required to provide care to David Windhurst commensurate
12 with what would be available in the community.

13 71. The standard of care required that David receive more than just monitoring of
14 his decline into severe sepsis from systemic and persistent mismanagement of his diabetes,
15 kidney disease, wound care, peptic ulcer disease and other chronic conditions.

16 72. Despite David's multiple and complex chronic conditions, Defendants
17 consistently and improperly delegated his care to family practice nurse practitioners with
18 limited oversight from family practice or necessary specialist physicians.

19 73. Defendants engaged in systematic repetitive negligent care.

20 74. Defendants had a duty to David, breached their duty, and caused David's
21 death by failing to provide appropriate assessment, intervention, and timely transfer to the
22 acute-care setting.

23 75. Defendants also consistently violated the Nurse Practice Act and Arizona
24 regulations requiring advanced practice registered nurses to refer a patient to a physician
25 and consult with other healthcare providers when a condition is beyond the APRN's
26 knowledge and experience in direct violation of A.R.S. §§32-1601 and 32-1606; and

1 Arizona Administrative Code R4-19-508.

2 76. Under A.R.S. §31-201.01, Charles Ryan was required to provide medical and
3 health services to prisoners.

4 77. The ADOC, through Charles Ryan, further promulgated a policy stating that
5 “the assistant director for ADC Health Services Contract Monitoring Bureau shall hold the
6 contract providing health services accountable to ensure all inmates are provided access to
7 scheduled and emergency (as needed) healthcare.” The policy also required that
8 “appropriate and uninterrupted healthcare be provided to inmates with chronic health
9 conditions.”

10 78. David Windhurst did not receive appropriate chronic healthcare
11 commensurate with his complex medical management needs. His various chronic conditions
12 collectively required consistent specialist oversight for safe management, which did not
13 occur.

14 79. David Windhurst never received an infectious disease specialist consult even
15 when experiencing a rash over 60% of his body, a ruptured eardrum and acute mass in the
16 area of his parotid gland, purulent drainage from his decubitus wounds, and significant
17 antibiotic resistant urine cultures.

18 80. David Windhurst was not even afforded regular face-to-face family practice
19 physician visits. Instead, his complex care was entirely mismanaged by nurses and family
20 nurse practitioners outside of the appropriate scope of practice.

21 81. Defendants failed to follow state law and its policies and procedures related to
22 inmate healthcare to ensure adequate healthcare and access to emergency healthcare for
23 David Windhurst. These failures fell below the standard of care.

24 82. Defendants are liable for the acts and omissions of their employees and/or
25 agents acting within the course and scope of their employment or contract.

26 83. Defendants, each of them, breached the applicable standard of care they owed

1 to David Windhurst by failing to provide adequate medical treatment to him.

2 84. Defendants, through their employees and/or agents, failed to exercise that
3 degree of care, skill and learning that would be expected under similar circumstances of a
4 reasonably prudent healthcare provider within this State in negligently monitoring,
5 evaluating, and treating David Windhurst.

6 85. Defendants' breach of the applicable standard of care directly and proximately
7 caused David Windhurst's death; and, thus, injury to Plaintiffs.

8 **COUNT TWO**

9 **(ADULT PROTECTIVE SERVICE ACT ["APSA"]: A.R.S. §46-451 et seq.)**

10 86. Plaintiffs allege and incorporate all prior paragraphs herein.

11 87. Defendants are each an enterprise, as defined by A.R.S. §46-455(Q), that
12 assumed a legal duty to provide care to David Windhurst.

13 88. David Windhurst was a "vulnerable adult" as defined by A.R.S. §46-
14 451(A)(9) when he was at the ASPC-F and ASPC-T in 2016.

15 89. David Windhurst was injured by Defendants' negligent acts or omissions.

16 90. Defendants were independently negligent and also derivatively negligent for
17 the acts of their employees and/or agents.

18 91. Injury to a vulnerable adult caused by negligent acts or omissions constitute
19 "abuse" under A.R.S. §46-451(A)(1)(b).

20 92. Antoinette Windhurst has standing to bring this APSA claim, pursuant to
21 A.R.S. §46-455(B) and A.R.S. §46-455(O).

22 93. Defendants' conduct here constitutes an "evil mind" pursuant to RAJI (Civil)
23 Personal Injury Damages 4, such that Plaintiff is entitled to punitive damages. See A.R.S.
24 §46-455(H)(4).

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COUNT THREE
(PUNITIVE DAMAGES)

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94. Plaintiffs allege and incorporate all prior paragraphs herein.

95. Defendant Ryan is an official policymaker responsible for promulgating appropriate policies and procedures at the ASPC-F and the ASPC-T.

96. Defendants operated the ASPC-F and the ASPC-T in a manner in which he knew or should have known that David Windhurst would suffer physical harm.

97. Defendants pursued a course of conduct knowing or having reason to know that it or they created a substantial risk of significant harm to David Windhurst so as to justify an award of punitive damages.

98. Defendants consciously and deliberately disregarded David Windhurst's interests and rights.

99. As a direct and proximate result of the aforementioned negligence, reckless and intentional acts, David Windhurst died.

WHEREFORE, Plaintiffs ask this Court to enter judgment in her favor and against Defendants as follows:

- a. For wrongful death damages recoverable by RAJI (Civil) 5th Personal Injury Damages 3, A.R.S. §§12-613, 46-455(H)(4), and applicable law;
- b. For all APSA damages recoverable by A.R.S. §46-455(H).
- c. For punitive damages pursuant to RAJI (Civil) 5th Personal Injury Damages 4, A.R.S. §46-455(H)(4), and applicable law.
- d. For costs in accordance with A.R.S. §§12-332 and 46-455(H)(4).
- e. For such other and further relief as the Court deems just and proper.

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Dated December 22, 2017.

MESCH, CLARK ROTHSCHILD, P.C.

By s/Michael J. Crawford
Michael J. Crawford
Attorneys for Plaintiffs

24V5300.DOCX

Exhibit B

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

TEHUM CARE SERVICES, INC.¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

ORDER GRANTING RELIEF FROM THE AUTOMATIC STAY

Upon the *Motion for Relief from the Automatic Stay* (DE ____) (the “Motion”) filed by Antionette Windhurst, individually and as Personal Representative of the Estate of David Windhurst (“Windhurst”); and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §1334; this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed and considered the Motion and the Debtor’s Objection (DE ____); and it appearing that notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having determined that the legal and factual basis of the Motion establish just cause for the relief granted herein, and good cause appearing,

IT IS HEREBY ORDERED granting the Motion.

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.

IT IS FURTHER ORDERED that Windhurst is granted leave to pursue liquidation of her claim, including against all defendants who may be liable for her damages before the Superior Court in Pima County, Arizona.

IT IS FURTHER ORDERED that Windhurst will return to the Bankruptcy Court with regard to any collection against the Debtor or against Property of the Estate after liquidation of her claim.

DATED: July ____, 2024

Christopher M. Lopez
United States Bankruptcy Judge