

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.)	
)	

**CERTIFICATE OF COUNSEL REGARDING
FIFTH INTERIM DIP ORDER (I) AUTHORIZING
DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND
(B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) MODIFYING THE AUTOMATIC STAY AND (IV) GRANTING RELATED RELIEF**

Pursuant to the *Procedures for Complex Chapter 11 Cases in the Southern District of Texas*, the undersigned counsel to the above-captioned debtor and debtor in possession (the “Debtor”) certifies as follows:

1. On January 16, 2024, the Debtor filed that certain *Motion for Entry of Fifth Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 1258] (the “Fifth Interim DIP Motion”).

2. The Motion was served on the Master Service List maintained in this chapter 11 case, as indicated in the *Certificate of Service* filed at Docket No. 1272.

3. The deadlines for parties to file responses to the relief requested in the Fifth Interim DIP Motion was Tuesday, February 6, 2024 (the “Objection Deadline”).

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.



4. On the Objection Deadline, the Official Committee of Tort Claimants (the “TCC”) filed its *Objection to the Debtor's Motion for Entry of Fifth Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 1332].

5. Counsel to the Debtor, the TCC, the DIP Lender, and the Official Committee of Unsecured Creditors (the “UCC,” collectively with the Debtor, the DIP Lender and the TCC, the “Parties”) have discussed the TCC’s objections to the Fifth Interim DIP Motion and have negotiated agreed-upon language to be included in the form of Order relating to the Fifth Interim DIP Motion.

6. A redline of the revised proposed form of agreed order, marked against the proposed order filed with the Fifth Interim DIP Motion, is attached hereto as **Exhibit A**. A clean version of the proposed form of order that the Parties request that the Court enter is also attached hereto.

7. Accordingly, the Debtor, the TCC, the UCC and the DIP Lender request that the Court consider the attached proposed form of order and enter same.

Respectfully submitted this 9th day of August 2024.

GRAY REED

By: /s/ Jason S. Brookner

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*Counsel to the Debtor
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Certificate of Service

I certify that on August 9th, 2024, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas to all parties authorized to receive electronic notice in this case.

/s/ Jason S. Brookner

Jason S. Brookner

Exhibit A

Redline of the Revised Proposed Order

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

In re:

TEHUM CARE SERVICES, INC.,¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**FIFTH INTERIM DIP ORDER (I) AUTHORIZING
DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND
(B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) MODIFYING THE AUTOMATIC STAY AND (IV) GRANTING RELATED RELIEF**

[Relates to ~~Dkt.~~Docket Nos. 185, 243, 476, 579, 993]
& 1258]

On March 15, 2023, the Debtor filed Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 185] (the "DIP Motion").

On March 22, 2023, the Court held a hearing and entered the Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) ~~Use~~ Cash Collateral, (II) Granting Liens and Providing Claims for Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 243] (the "First Interim DIP Order").

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.

On April 28, 2023, the Court held a hearing and entered the Second Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims for Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 476] (the “Second Interim DIP Order”).

On May 17, 2023, the Court held a hearing and entered the Third Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims for Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 579] (the “Third Interim DIP Order”).

On October 3, 2023, the Court entered the Fourth Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims for Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief [Docket No. 993] (the “Fourth Interim DIP Order” and, collectively, with the First Interim DIP Order, the Second Interim DIP Order, and the Third Interim DIP Order, the “Prior DIP Orders”).

~~Having considered~~ On January 16, 2024, the Debtor filed that certain Motion for Entry of Fifth Interim ~~Dip~~DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative

Expense Status, (III) Modifying the Automatic Stay and (IV) Granting Related Relief [Docket No. 1258] (the “Fifth Interim DIP Motion”);²

On February 6, 2024, the Official Committee of Tort Claimants (the “TCC”) filed its Objection to the Debtor’s Motion for Entry of Fifth Interim DIP Order [Docket No. 1258] (the “TCC DIP Objection”).

On August 9, 2024, the Debtor, the TCC, the Official Committee of Unsecured Creditors (the “UCC”), and M2 LoanCo, LLC, filed their joint certification of counsel (the “Joint Certification”), confirming that entry of this Order resolves the TCC DIP Objection.

Having considered the Fifth Interim DIP Motion and the Joint Certification, and finding that adequate notice of such ~~motion~~ Fifth Interim DIP Motion and Joint Certification has been provided and that good cause exists for entry of this Order, the Court hereby amends and supplements the Prior DIP Orders as follows:

~~1. The Milestone set forth in subparagraph (b) of Paragraph 15 of the First Interim DIP Order is revised to “no later than June 30, 2024, entry of the Final DIP Order.”~~

1. The TCC has withdrawn the TCC DIP Objection upon entry of this Order, solely to the extent that the relief herein is entered on interim basis. If the Debtor seeks a Final Hearing to consider entry of the Final DIP Order, all rights, objections, and other claims of the TCC and the UCC (each, an “Official Committee” and together, the “Official Committees”) are expressly preserved.

² Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the Fifth Interim DIP Motion or the Prior DIP Orders, as applicable.

2. As of the date of this Order, the Court has not ruled that the DIP Secured Parties are entitled to (a) waivers of the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshalling and other similar doctrines, and (b) payment of the DIP Obligations from the proceeds or property recovered (whether by judgment, settlement or otherwise) of (i) any avoidance actions brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law or foreign law equivalents (the “Avoidance Actions”) and (ii) any exercise of the Debtor’s rights under section 506(c) and 550 of the Bankruptcy Code (the “Recovery Actions”). For the avoidance of doubt, and notwithstanding any Prior DIP Order, including Paragraphs 3, 5, 6 and 7 of the First Interim DIP Order, including all subsections thereof, and any similar provisions in any Prior DIP Order, for the purposes of this Fifth Interim DIP Order and all Prior DIP Orders, the DIP Collateral does not include Avoidance Actions or Recovery Actions. The Debtor may seek to include the Avoidance Actions and Recovery Actions in the DIP Collateral upon entry of the Final DIP Order, subject to all parties-in-interest’s rights to object to the inclusion of such rights. All rights with respect to this matter are be preserved for all parties, including the Official Committees, the Debtor, and the DIP Secured Parties.

3. As of the date of this Order, the Court has not determined that any specific cause of action that may be asserted against M2 LoanCo, LLC, the DIP Agent, the DIP Secured Parties, the DIP Lenders, CHS TX, Inc., YesCare Corp., Geneva Consulting, or any of their current or former insiders or affiliates is a cause of action that is property of the Debtor’s estate under Section 541 of the Bankruptcy Code and applicable law. All rights with respect to this matter are preserved for all parties, including creditors, the TCC, the UCC, the Debtor, M2 LoanCo, LLC, the DIP

Agent, the DIP Secured Parties, the DIP Lenders, CHS TX, Inc., YesCare Corp., Geneva Consulting, or any of their current or former insiders or affiliates.

1.4. As a condition to having access to the DIP Facility and the use of Cash Collateral, the Debtor, the DIP Lender, and the UCC Official Committees have agreed to the following new Milestones:

- ~~(a) no later than January 18, 2024, filing of a 9019 Motion;~~
- ~~(b) no later than February 15, 2024, entry of an order granting the 9019 Motion;~~
- ~~(c) no later than March 15, 2024, filing of an amended Joint Plan and Disclosure Statement, consistent with the terms of an order granting the 9019 Motion; and~~
- (a) ~~(d) no~~ No later than August 15, 2024, (i) the filing of all previously un-filed monthly fee statements and interim fee applications through May 31, 2024, and (iii) entry of this Order;
- (b) No later than forty-five (45) days from the entry of this Order, the Debtor, UCC, and TCC shall file an amended joint plan of liquidation (as further described below, the “Joint Plan”), and a revised disclosure statement relating to the Joint Plan (the “Disclosure Statement”), with such Joint Plan and Disclosure Statement to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld;
- (c) No later than ninety (90) days from the entry of this Order, entry of order approving, conditionally or otherwise, the Disclosure Statement, with such order to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld;
- (d) No later than ~~June 30, 2024~~ two hundred (200) days from the entry of this Order, entry of an order confirming the Joint Plan~~-, with such order to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld; and~~
- (e) No later than two hundred and thirty (230) days from the entry of this Order, occurrence of the effective date of the Joint Plan.

5. The foregoing Milestones may be amended or waived by agreement of the DIP Lender and notice of such amendment or waiver will be filed with the Court. All other Milestones set forth in the DIP Documents ~~shall remain subject to approval at the~~ and the Prior DIP Order have not been approved and are of no force and effect; provided, however, the Debtor's and DIP Lender's right to seek approval of additional Milestones in a Final DIP Order after notice and a Final Hearing, ~~and all~~ are hereby preserved along with the rights of the Official Committees to object to such additional Milestones.

6. Unless otherwise agreed to by the Debtor, the Official Committees, and the parties to the mediated settlement (the "Settling Parties"), the Joint Plan will include, *inter alia*, the following terms:

- (a) The Joint Plan will include consensual third-party releases that are acceptable to the Settling Parties, the UCC, and the TCC. For the avoidance of doubt, the Joint Plan will not include any nonconsensual third-party releases or any releases that are determined by the Court to be unlawful under *Harrington v. Purdue Pharma L.P.*, 144 S.Ct. 2071 (2024).
- (b) All estate claims against the Settling Parties will be settled and released under the Joint Plan, provided, however, that the Joint Plan will include a true "opt-out" that allows claimants the ability to opt out of the settlement and, in return, retain rights they had prior to this bankruptcy case to pursue causes of action that invoke the doctrine of successor liability against YesCare, CHS TX, and any other successor entity.
- (c) The Joint Plan will not include any "gatekeeping mechanism," provided, however, that, if there is a dispute between a creditor and the Debtor or a released party as to whether a claim or cause of action alleged by a creditor against one or more of the released parties is a claim or cause of action that is property of the Debtor's estate and is released under the Joint Plan and the mediated settlement, a party to such dispute may file a motion with the Court seeking a determination as to whether such creditor's claims or

causes of action were released pursuant to the mediated settlement and the Joint Plan, and upon such motion, the Court shall have sole and exclusive jurisdiction to determine such dispute.

- (d) The Settling Parties will agree to release all claims against the Debtor's estate, including all amounts due and owing under the DIP Loan, and the Settling Parties will have no right to seek indemnification from any plan trusts and will not assert any claims against the plan trusts.
- (e) The "Settlement Payment" (\$50 million, with \$2 million paid on the Effective Date and \$48 million paid over 30 months with interest at 6.00% per annum on the unpaid balance), "net ERC Credits" and the proceeds of estate causes of action against non-released parties shall be split 50/50 between the Personal Injury Trust and the Non-Personal Injury Trust. The Settlement Payment and the net ERC Credits are "sacred funds" that cannot be reduced for any reason (including the payment of professional fees and expenses during the chapter 11 case). The releases and settlements under the Joint Plan shall become effective upon receipt of the final payment. The releases and settlements under the Joint Plan are void if the settlement payment is clawed back.
- (f) In the event the Settling Parties terminate the settlement prior to a confirmation hearing on the Joint Plan, the Settling Parties reserve and shall not be deemed to have waived or released any rights or claims, including with respect to the DIP Loan or any of the Settling Parties' proofs of claim filed in the bankruptcy case.

2.7. If the Joint Plan is confirmed and goes effective, there shall be no Final Hearing on the DIP Motion. If the Joint Plan is not confirmed within two hundred (200) days from the entry of this Order, the parties' rights ~~to object to any and all Milestones are preserved~~ are expressly preserved, including the Debtor's right to seek a Final Hearing on the DIP Motion.

3.8. Paragraph 18(a)(1)(A) of the First Interim DIP Order (as is modified by the DIP Orders) is modified as follows:

(a)

“(1)

(A) the Debtor or ~~the Creditors’~~an Official Committee has filed an adversary proceeding or motion on or before ~~June 30, 2024~~the earlier to occur of (i) twenty-eight (28) days after the entry of an order denying the confirmation of the Joint Plan, or (ii) March 31, 2025, which may be heard by the Court on an emergency basis; *provided* that ~~the Creditors’~~an Official Committee’s filing of a motion for derivative standing prior to the expiration of the Challenge Period (as defined below) shall toll the Challenge Period for the ~~Creditors’ Committee~~Official Committees, pending resolution of such motion; *provided, further* that, to the extent the Challenge Period has not already expired, the Challenge Period for the Debtor and the ~~Creditors’ Committee~~Official Committees shall expire on the Effective Date of the Joint Plan;”

4.9. The Approved Budget is attached hereto as **Exhibit 12**. Consistent with the terms and conditions of the Mediation Settlement Term Sheet, the Interim DIP Loan is hereby increased by ~~\$5,000~~14,500,000 (the “Fourth Interim Draws”), from \$8,407,900 to ~~\$13,407~~22,907,900, and the DIP Lender agrees to advance the Fourth Interim Draws, subject to compliance with the terms, conditions, and covenants set forth in this Order and as ~~more fully~~ described in the Approved Budget and the DIP Documents (as modified herein), on the following timelines and conditions:

(a) ~~\$2,000~~400,000.00 to be advanced to the Debtor on or before ~~January 18~~the later of (i) August 15, 2024, to be held by the Debtor in trust for or (ii) three (3) business days from the ~~benefit of the DIP Lender and subsequently released to the Debtor upon~~ entry of this Order;

~~(b) \$2,000,000.00 to be advanced to the Debtor on February 20, 2024 (the “February Advance”); provided, however, that the DIP Lender’s obligation to fund the February Advance shall not become due until either:~~

- ~~(i) the Bankruptcy Court has entered an order approving the 9019 Motion; or~~
- ~~(ii) the TCC has agreed in writing not to object to the Court's approval of the 9019 Motion; *provided, further*, that that if neither of the foregoing conditions has occurred by February 19, 2024, the February Advance shall become due within 72 hours of either condition referenced above being met; and~~
- ~~(e) **\$1,000,000.00** to be advanced to the Debtor on April 18, 2024 (the "April Advance"); *provided, however*, that the DIP Lender's obligation to fund the April Advance shall not become due until either: (i) the Bankruptcy Court has entered an order approving the 9019 Motion; or (ii) the TCC has agreed in writing not to object to the Court's approval of the 9019 Motion; *provided, further*, that that if neither of the foregoing conditions has occurred by April 18, 2024, the April Advance shall become due within five (5) business days of either condition referenced above being met.~~
- (b) **\$2,400,000.00** to be advanced to the Debtor on or before September 15, 2024;
- (c) **\$2,400,000.00** to be advanced to the Debtor on or before October 15, 2024;
- (d) **\$2,400,000.00** to be advanced to the Debtor on or before November 15, 2024;
- (e) **\$2,400,000.00** to be advanced to the Debtor on or before December 15, 2024; and
- (f) **\$2,500,000.00** to be advanced to the Debtor on the date of entry of an order confirming the Joint Plan.

10. Notwithstanding anything to the contrary in any Prior DIP Order, provided the Debtor is not in default under the DIP Documents or this Order, the DIP Lenders are obligated to make the Fourth Interim Draws on the dates set forth in this Order.

5.11. The defined terms “Interim DIP Loan” and “Initial Advance” (as defined in the DIP Credit Agreement) are hereby amended to include the \$2,000,000 advanced under the First Interim DIP Order, the \$750,000 Second Interim Draw advanced under the Second Interim DIP Order, the \$5,657,900 Third Interim Draw under the Fourth Interim DIP Order, and the ~~\$5,000,000 Fourth Interim Draws advanced hereunder~~ 14,500,000 Fourth Interim Draws advanced hereunder. The “Commitment Amount” (as defined in the DIP Credit Agreement) is hereby increased from \$10,000,000 to \$22,907,900. For the avoidance of doubt, to the extent that the Approved Budget exceeds the Commitment Amount, the inclusion of the Approved Budget shall not be deemed to be an agreement from the DIP Lender to increase the Commitment Amount above \$22,907,900.

12. ~~Upon receipt of~~ Subsections (z) - (bb) in Section 7.1 of the ~~payment reflected in~~ DIP Credit Agreement are replaced with the following:

“(z) the withdrawal of the Joint Plan (as defined in the *Fifth Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* (the “Fifth Interim Order”)).

(aa) the Borrower’s filing or material modification of the Joint Plan (as defined in the Fifth Interim Order) in a manner materially inconsistent with the terms of the Mediation Settlement Term Sheet (as defined in the Fifth Interim Order).

(bb) entry of an order denying confirmation of the Joint Plan or denying approval of the related disclosure statement.”

13. Paragraph 19 of the First Interim DIP Order, including all subsection thereof, and any similar provisions in any Prior DIP Order are inapplicable with respect to allowed fees and expenses incurred prior to the date of this Order and paid pursuant to the Fourth Interim Draws.

14. Notwithstanding anything to the contrary in Paragraph 32 of the First Interim DIP Order, from and after the entry of this Order, the Debtor, with the consent of the TCC and UCC, is hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Budget to Sigma RM, LLC, Sigma RM, LLC or DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Interim DIP Order, provided, however, that notice of any material modification or amendment to the DIP Documents shall be ~~deemed to waive all further claims, administrative or otherwise,~~ provided (which may be provided through electronic mail) to the U.S. Trustee, which shall have five (5) days from the date of such notice within which to object, in writing, to the modification or amendment, in which case such modification or amendment shall only be permitted pursuant to an order of the Court.

15. Paragraph 35 of the First Interim DIP Order is modified as follows:

Additional DIP Lenders. For purposes of the Interim DIP Order and the Interim DIP Loan, M2 LoanCo, LLC shall be the only DIP Lender.

16. The Debtor, the Official Committees, and the DIP Secured Parties are authorized to take all actions necessary or appropriate to implement the terms of this Order.

17. The Debtor is hereby authorized and directed, subject to the terms and conditions of this Fifth Interim DIP Order, to use all Cash Collateral in accordance with the Approved Budget, provided that, except on the terms and conditions of this Fifth Interim DIP Order, the Debtor shall

be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

6.18. The defined term “Approved Budget” as used in this Fifth Interim DIP Order and any Prior DIP Orders or the DIP Documents, is hereby modified to expressly include fees and expenses of any estate professionals (whether the Debtor’s, the UCC’s, or the TCC’s) accrued through May 31, 2024 that is approved for payment under: (a) the *Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 357], as amended [Docket No. 1646], and as may be further amended from time to time (the “Interim Compensation Order”); (b) any order approving an application requesting interim allowance of compensation for services rendered ~~during this chapter 11 case~~ and the reimbursement of expenses incurred; or (c) any order approving an application requesting final allowance of compensation for services rendered and the reimbursement of expenses incurred.

19. The Approved Budget for professional fees and expenses accrued after May 31, 2024, shall be the budget attached hereto as **Exhibit 1**. The post May 31, 2024 budget allocates \$1.6 million to the TCC’s estate professionals, \$1.05 million to the UCC’s estate professionals, and \$500,000 to the Debtor’s estate professionals.³ For the avoidance of doubt, the Approved Budget shall not be binding on the Court, which shall determine the final allowance of all estate professional fees and expenses in accordance with the Bankruptcy Code and applicable law. The

³ The TCC’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other TCC professionals in their sole discretion. The UCC’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other UCC professionals in their sole discretion. And the Debtor’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other Debtor professionals in their sole discretion.

DIP Lender, the Debtor, and the Official Committees reserve all rights with respect to final fee applications.

20. As a condition to the DIP Lender agreeing to make the Fourth Interim Draws, all estate professionals shall, simultaneously with the submission of any interim or final fee application, provide each other and counsel to the DIP Lender with the following: (a) for law firms, electronic versions of any billing information in unedited LEDES™ (Legal Electronic Data Exchange Standard) file format; and (b) for non-law firms, electronic versions of any billing information in Excel format, containing, at a minimum, the following fields for fees: invoice number, matter name, date, timekeeper name, timekeeper position/title, hourly rate, hours, fees, task description; and the following fields for expenses: invoice number, matter name, date, name of timekeeper who incurred expense, expense category, unit cost, number of units, expense total, expense description.

21. The Debtor is hereby authorized and directed to use all cash on hand, including the Fourth Interim Draws made hereunder, to pay outstanding United States Trustee quarterly fees, any fees due to the Debtor's Notice Agent, and fees and expenses of estate professionals, in accordance with the Approved Budget attached hereto as **Exhibit 2**, provided, however, that at least one (1) business day prior to any disbursement made pursuant to this Order and the Approved Budget, the Debtor shall provide written notice of such proposed disbursements to the financial advisors for the TCC and the UCC. Nothing herein shall modify or abridge the rights of any party to object to any final fee applications submitted by any estate professional. To the extent that the Court disallows payment of any fees and expenses of estate professionals set forth in the Approved Budget, and that such order or orders by the Court cause on a final basis the total amount of allowed

administrative expenses to be less than the Commitment Amount, then (i) if the Joint Plan has been confirmed and gone effective, 90 percent (90%) of the difference between the Commitment Amount and the total amount of allowed administrative expenses shall be promptly returned to the DIP Lender, or (ii) if confirmation of the Joint Plan has been denied, then 100 percent (100%) of the difference between the Commitment Amount and the total amount of allowed administrative expenses shall be promptly returned to the DIP Lender. Nothing in the terms of the Joint Plan or any order confirming the Joint Plan shall modify the rights of the DIP Lender in the preceding sentence.

22. In addition to the foregoing the following limitations and directions on and to the Debtor shall be applicable. Within three (3) business days of the entry of this Order, the Debtor is authorized and directed to use its cash on hand to make payments in accordance with **Exhibit 2**, the Approved Budget, and the terms of this Order. Once in possession any of the Fourth Interim Advances, the Debtor is directed to make payments within three (3) business days in accordance with the Approved Budget and the terms of this Order. The Debtor shall allocate and pay funds from any and all of the Fourth Interim Advances as follows and in strict compliance with the following priority waterfall, where each preceding category must be paid in full prior to remitting payment for the successive category:

- (a) **First**, towards unpaid, allowed⁴ out-of-pocket expenses of all estate professionals through May 31, 2024;

⁴ The term “allowed” as used herein includes fees and expenses approved for payment under (a) the Interim Compensation Order, (b) any order approving an application requesting interim allowance of compensation for services rendered and the reimbursement of expenses incurred, or (c) any order approving an application requesting final allowance of compensation for services rendered and the

- (b) *Second*, towards the unpaid, allowed fees of the UCC's and the TCC's professionals accrued through May 31, 2024, each of which shall be paid so that after receipt of payment each such UCC and TCC professional's payment percentage for fees incurred since its respective date of retention through May 31, 2024 is the same (until such UCC's and TCC's professionals are paid in full through May 31, 2024);
- (c) *Third*, towards the payment of unpaid allowed fees of KCC accrued through May 31, 2024;
- (d) *Fourth*, towards the unpaid, allowed fees of the Debtor's professionals (other than KCC) accrued through May 31, 2024 until the amount of such unpaid fees is \$1.97 million;
- (e) *Fifth*, towards the unpaid, allowed out-of-pocket expenses and fees of KCC and the TCC's and the UCC's professionals from June 1, 2024 through the Effective Date of any Plan, paid so that after receipt of payment KCC and each such UCC and TCC professional's payment percentage for expenses and fees incurred from June 1, 2024 through the Effective Date of any Plan is the same (until KCC and the TCC's and the UCC's professionals are paid in full for their post-June 1, 2024 fees and expenses); and
- (f) *Sixth*, towards the remaining, unpaid, allowed fees of the Debtor's professionals (other than KCC) through the Effective Date of any Plan.

7.23. In the event of any inconsistency between the provisions of this Fifth Interim DIP Order and any Prior DIP Orders or the DIP Documents, the provisions of this Order shall govern.

All other terms and provisions of the Prior DIP Orders shall remain the same and in full force and effect unless otherwise modified by this Order.

8.24. The Court retains jurisdiction and authority over the implementation and interpretation of this Order.

reimbursement of expenses incurred; provided, however, that any professional fees or expenses disallowed on a final basis shall not be considered "allowed."

Signed: _____, 2024

Christopher M. López
United States Bankruptcy Judge

Exhibit-1

Approved Budget [for Professional Fees and Expenses \(Post May 31, 2024\)](#)

Exhibit 2

Approved Budget

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

In re:

TEHUM CARE SERVICES, INC.,¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**FIFTH INTERIM DIP ORDER (I) AUTHORIZING
DEBTOR TO (A) OBTAIN POSTPETITION FINANCING AND
(B) USE CASH COLLATERAL, (II) GRANTING LIENS AND PROVIDING
CLAIMS WITH SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS,
(III) MODIFYING THE AUTOMATIC STAY AND (IV) GRANTING RELATED RELIEF**

[Relates to Docket Nos. 185, 243, 476, 579, 993 & 1258]

On March 15, 2023, the Debtor filed *Debtor's Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 185] (the "DIP Motion").

On March 22, 2023, the Court held a hearing and entered the *Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims for Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief* [Docket No. 243] (the "First Interim DIP Order").

On April 28, 2023, the Court held a hearing and entered the *Second Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral,*

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.

(II) *Granting Liens and Providing Claims for Superpriority Administrative Expense Status*, (III) *Modifying the Automatic Stay*, (IV) *Scheduling a Final Hearing*, and (V) *Granting Related Relief* [Docket No. 476] (the “Second Interim DIP Order”).

On May 17, 2023, the Court held a hearing and entered the *Third Interim DIP Order* (I) *Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral*, (II) *Granting Liens and Providing Claims for Superpriority Administrative Expense Status*, (III) *Modifying the Automatic Stay*, (IV) *Scheduling a Final Hearing*, and (V) *Granting Related Relief* [Docket No. 579] (the “Third Interim DIP Order”).

On October 3, 2023, the Court entered the *Fourth Interim DIP Order* (I) *Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral*, (II) *Granting Liens and Providing Claims for Superpriority Administrative Expense Status*, (III) *Modifying the Automatic Stay*, (IV) *Scheduling a Final Hearing*, and (V) *Granting Related Relief* [Docket No. 993] (the “Fourth Interim DIP Order” and, collectively, with the First Interim DIP Order, the Second Interim DIP Order, and the Third Interim DIP Order, the “Prior DIP Orders”).

On January 16, 2024, the Debtor filed that certain *Motion for Entry of Fifth Interim DIP Order* (I) *Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral*, (II) *Granting Liens and Providing Claims with Superpriority Administrative Expense Status*, (III) *Modifying the Automatic Stay and (IV) Granting Related Relief* [Docket No. 1258] (the “Fifth Interim DIP Motion”).²

² Capitalized terms used but not defined herein are given the meanings ascribed to such terms in the Fifth Interim DIP Motion or the Prior DIP Orders, as applicable.

On February 6, 2024, the Official Committee of Tort Claimants (the “TCC”) filed its Objection to the Debtor’s Motion for Entry of Fifth Interim DIP Order [Docket No. 1258] (the “TCC DIP Objection”).

On August 9, 2024, the Debtor, the TCC, the Official Committee of Unsecured Creditors (the “UCC”), and M2 LoanCo, LLC, filed their joint certification of counsel (the “Joint Certification”), confirming that entry of this Order resolves the TCC DIP Objection.

Having considered the Fifth Interim DIP Motion and the Joint Certification, and finding that adequate notice of such Fifth Interim DIP Motion and Joint Certification has been provided and that good cause exists for entry of this Order, the Court hereby amends and supplements the Prior DIP Orders as follows:

1. The TCC has withdrawn the TCC DIP Objection upon entry of this Order, solely to the extent that the relief herein is entered on interim basis. If the Debtor seeks a Final Hearing to consider entry of the Final DIP Order, all rights, objections, and other claims of the TCC and the UCC (each, an “Official Committee” and together, the “Official Committees”) are expressly preserved.

2. As of the date of this Order, the Court has not ruled that the DIP Secured Parties are entitled to (a) waivers of the provisions of section 506(c) of the Bankruptcy Code and the equitable doctrine of marshalling and other similar doctrines, and (b) payment of the DIP Obligations from the proceeds or property recovered (whether by judgment, settlement or otherwise) of (i) any avoidance actions brought pursuant to chapter 5 of the Bankruptcy Code or section 724(a) of the Bankruptcy Code or any other avoidance actions under the Bankruptcy Code or applicable state law or foreign law equivalents (the “Avoidance Actions”) and (ii) any exercise of the Debtor’s rights under section 506(c) and 550 of the Bankruptcy Code (the “Recovery”).

Actions”). For the avoidance of doubt, and notwithstanding any Prior DIP Order, including Paragraphs 3, 5, 6 and 7 of the First Interim DIP Order, including all subsections thereof, and any similar provisions in any Prior DIP Order, for the purposes of this Fifth Interim DIP Order and all Prior DIP Orders, the DIP Collateral does not include Avoidance Actions or Recovery Actions. The Debtor may seek to include the Avoidance Actions and Recovery Actions in the DIP Collateral upon entry of the Final DIP Order, subject to all parties-in-interest’s rights to object to the inclusion of such rights. All rights with respect to this matter are be preserved for all parties, including the Official Committees, the Debtor, and the DIP Secured Parties.

3. As of the date of this Order, the Court has not determined that any specific cause of action that may be asserted against M2 LoanCo, LLC, the DIP Agent, the DIP Secured Parties, the DIP Lenders, CHS TX, Inc., YesCare Corp., Geneva Consulting, or any of their current or former insiders or affiliates is a cause of action that is property of the Debtor’s estate under Section 541 of the Bankruptcy Code and applicable law. All rights with respect to this matter are preserved for all parties, including creditors, the TCC, the UCC, the Debtor, M2 LoanCo, LLC, the DIP Agent, the DIP Secured Parties, the DIP Lenders, CHS TX, Inc., YesCare Corp., Geneva Consulting, or any of their current or former insiders or affiliates.

4. As a condition to having access to the DIP Facility and the use of Cash Collateral, the Debtor, the DIP Lender, and the Official Committees have agreed to the following new Milestones:

- (a) No later than August 15, 2024, (i) the filing of all previously unfiled monthly fee statements and interim fee applications through May 31, 2024, and (iii) entry of this Order;
- (b) No later than forty-five (45) days from the entry of this Order, the Debtor, UCC, and TCC shall file an amended joint plan of liquidation (as further described below, the “Joint Plan”), and a revised disclosure statement relating to the Joint Plan (the “Disclosure Statement”), with such Joint Plan and Disclosure

Statement to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld;

- (c) No later than ninety (90) days from the entry of this Order, entry of order approving, conditionally or otherwise, the Disclosure Statement, with such order to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld;
- (d) No later than two hundred (200) days from the entry of this Order, entry of an order confirming the Joint Plan, with such order to be approved by the DIP Lender and settlement parties, which approval shall not be unreasonably withheld; and
- (e) No later than two hundred and thirty (230) days from the entry of this Order, occurrence of the effective date of the Joint Plan.

5. The foregoing Milestones may be amended or waived by agreement of the DIP Lender and notice of such amendment or waiver will be filed with the Court. All other Milestones set forth in the DIP Documents and the Prior DIP Order have not been approved and are of no force and effect; provided, however, the Debtor's and DIP Lender's right to seek approval of additional Milestones in a Final DIP Order after notice and a Final Hearing, are hereby preserved along with the rights of the Official Committees to object to such additional Milestones.

6. Unless otherwise agreed to by the Debtor, the Official Committees, and the parties to the mediated settlement (the "Settling Parties"), the Joint Plan will include, *inter alia*, the following terms:

- (a) The Joint Plan will include consensual third-party releases that are acceptable to the Settling Parties, the UCC, and the TCC. For the avoidance of doubt, the Joint Plan will not include any nonconsensual third-party releases or any releases that are determined by the Court to be unlawful under *Harrington v. Purdue Pharma L.P.*, 144 S.Ct. 2071 (2024).
- (b) All estate claims against the Settling Parties will be settled and released under the Joint Plan, provided, however, that the Joint Plan will include a true "opt-out" that allows claimants the ability to opt out of the settlement and, in return, retain rights they had prior to this bankruptcy case to pursue causes of action that invoke the

doctrine of successor liability against YesCare, CHS TX, and any other successor entity.

- (c) The Joint Plan will not include any “gatekeeping mechanism,” provided, however, that, if there is a dispute between a creditor and the Debtor or a released party as to whether a claim or cause of action alleged by a creditor against one or more of the released parties is a claim or cause of action that is property of the Debtor’s estate and is released under the Joint Plan and the mediated settlement, a party to such dispute may file a motion with the Court seeking a determination as to whether such creditor’s claims or causes of action were released pursuant to the mediated settlement and the Joint Plan, and upon such motion, the Court shall have sole and exclusive jurisdiction to determine such dispute.
- (d) The Settling Parties will agree to release all claims against the Debtor’s estate, including all amounts due and owing under the DIP Loan, and the Settling Parties will have no right to seek indemnification from any plan trusts and will not assert any claims against the plan trusts.
- (e) The “Settlement Payment” (\$50 million, with \$2 million paid on the Effective Date and \$48 million paid over 30 months with interest at 6.00% per annum on the unpaid balance), “net ERC Credits” and the proceeds of estate causes of action against non-released parties shall be split 50/50 between the Personal Injury Trust and the Non-Personal Injury Trust. The Settlement Payment and the net ERC Credits are “sacred funds” that cannot be reduced for any reason (including the payment of professional fees and expenses during the chapter 11 case). The releases and settlements under the Joint Plan shall become effective upon receipt of the final payment. The releases and settlements under the Joint Plan are void if the settlement payment is clawed back.
- (f) In the event the Settling Parties terminate the settlement prior to a confirmation hearing on the Joint Plan, the Settling Parties reserve and shall not be deemed to have waived or released any rights or claims, including with respect to the DIP Loan or any of the Settling Parties’ proofs of claim filed in the bankruptcy case.

7. If the Joint Plan is confirmed and goes effective, there shall be no Final Hearing on the DIP Motion. If the Joint Plan is not confirmed within two hundred (200) days from the entry of this Order, the parties’ rights are expressly preserved, including the Debtor’s right to seek a Final Hearing on the DIP Motion.

8. Paragraph 18(a)(1)(A) of the First Interim DIP Order (as is modified by the DIP Orders) is modified as follows:

“(1)(A) the Debtor or an Official Committee has filed an adversary proceeding or motion on or before the earlier to occur of (i) twenty-eight (28) days after the entry of an order denying the confirmation of the Joint Plan, or (ii) March 31, 2025, which may be heard by the Court on an emergency basis; *provided* that an Official Committee’s filing of a motion for derivative standing prior to the expiration of the Challenge Period (as defined below) shall toll the Challenge Period for the Official Committees, pending resolution of such motion; *provided, further* that, to the extent the Challenge Period has not already expired, the Challenge Period for the Debtor and the Official Committees shall expire on the Effective Date of the Joint Plan;”

9. The Approved Budget is attached hereto as **Exhibit 2**. Consistent with the terms and conditions of the Mediation Settlement Term Sheet, the Interim DIP Loan is hereby increased by **\$14,500,000** (the “Fourth Interim Draws”), from \$8,407,900 to \$22,907,900, and the DIP Lender agrees to advance the Fourth Interim Draws, subject to compliance with the terms, conditions, and covenants set forth in this Order and as described in the Approved Budget and the DIP Documents (as modified herein), on the following timelines and conditions:

- (a) **\$2,400,000.00** to be advanced to the Debtor on or before the later of (i) **August 15, 2024** or (ii) three (3) business days from the entry of this Order;
- (b) **\$2,400,000.00** to be advanced to the Debtor on or before September 15, 2024;
- (c) **\$2,400,000.00** to be advanced to the Debtor on or before October 15, 2024;
- (d) **\$2,400,000.00** to be advanced to the Debtor on or before November 15, 2024;
- (e) **\$2,400,000.00** to be advanced to the Debtor on or before December 15, 2024; and
- (f) **\$2,500,000.00** to be advanced to the Debtor on the date of entry of an order confirming the Joint Plan.

10. Notwithstanding anything to the contrary in any Prior DIP Order, provided the Debtor is not in default under the DIP Documents or this Order, the DIP Lenders are obligated to make the Fourth Interim Draws on the dates set forth in this Order.

11. The defined terms “Interim DIP Loan” and “Initial Advance” (as defined in the DIP Credit Agreement) are hereby amended to include the \$2,000,000 advanced under the First Interim DIP Order, the \$750,000 Second Interim Draw advanced under the Second Interim DIP Order, the \$5,657,900 Third Interim Draw under the Fourth Interim DIP Order, and the \$14,500,000 Fourth Interim Draws advanced hereunder. The “Commitment Amount” (as defined in the DIP Credit Agreement) is hereby increased from \$10,000,000 to \$22,907,900. For the avoidance of doubt, to the extent that the Approved Budget exceeds the Commitment Amount, the inclusion of the Approved Budget shall not be deemed to be an agreement from the DIP Lender to increase the Commitment Amount above \$22,907,900.

12. Subsections (z) - (bb) in Section 7.1 of the DIP Credit Agreement are replaced with the following:

“(z) the withdrawal of the Joint Plan (as defined in the *Fifth Interim DIP Order (I) Authorizing Debtor to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Liens and Providing Claims With Superpriority Administrative Expense Status, (III) Modifying the Automatic Stay and (IV) Granting Related Relief* (the “Fifth Interim Order”)).

(aa) the Borrower’s filing or material modification of the Joint Plan (as defined in the Fifth Interim Order) in a manner materially inconsistent with the terms of the Mediation Settlement Term Sheet (as defined in the Fifth Interim Order).

(bb) entry of an order denying confirmation of the Joint Plan or denying approval of the related disclosure statement.”

13. Paragraph 19 of the First Interim DIP Order, including all subsection thereof, and any similar provisions in any Prior DIP Order are inapplicable with respect to allowed fees and expenses incurred prior to the date of this Order and paid pursuant to the Fourth Interim Draws.

14. Notwithstanding anything to the contrary in Paragraph 32 of the First Interim DIP Order, from and after the entry of this Order, the Debtor, with the consent of the TCC and UCC, is hereby authorized, without further order of this Court, to enter into agreements with the DIP Secured Parties providing for any consensual non-material modifications to the Approved Budget or DIP Documents, or of any other modifications to the DIP Documents necessary to conform the terms of the DIP Documents to this Interim DIP Order, provided, however, that notice of any material modification or amendment to the DIP Documents shall be provided (which may be provided through electronic mail) to the U.S. Trustee, which shall have five (5) days from the date of such notice within which to object, in writing, to the modification or amendment, in which case such modification or amendment shall only be permitted pursuant to an order of the Court.

15. Paragraph 35 of the First Interim DIP Order is modified as follows:

Additional DIP Lenders. For purposes of the Interim DIP Order and the Interim DIP Loan, M2 LoanCo, LLC shall be the only DIP Lender.

16. The Debtor, the Official Committees, and the DIP Secured Parties are authorized to take all actions necessary or appropriate to implement the terms of this Order.

17. The Debtor is hereby authorized and directed, subject to the terms and conditions of this Fifth Interim DIP Order, to use all Cash Collateral in accordance with the Approved Budget, provided that, except on the terms and conditions of this Fifth Interim DIP Order, the Debtor shall be enjoined and prohibited from at any time using the Cash Collateral absent further order of the Court.

18. The defined term “Approved Budget” as used in this Fifth Interim DIP Order and any Prior DIP Orders or the DIP Documents, is hereby modified to expressly include fees and expenses of any estate professionals (whether the Debtor’s, the UCC’s, or the TCC’s) accrued through May 31, 2024 that is approved for payment under: (a) the *Order Establishing Procedures*

for Interim Compensation and Reimbursement of Expenses for Professionals [Docket No. 357], as amended [Docket No. 1646], and as may be further amended from time to time (the “Interim Compensation Order”); (b) any order approving an application requesting interim allowance of compensation for services rendered and the reimbursement of expenses incurred; or (c) any order approving an application requesting final allowance of compensation for services rendered and the reimbursement of expenses incurred.

19. The Approved Budget for professional fees and expenses accrued after May 31, 2024, shall be the budget attached hereto as **Exhibit 1**. The post May 31, 2024 budget allocates \$1.6 million to the TCC’s estate professionals, \$1.05 million to the UCC’s estate professionals, and \$500,000 to the Debtor’s estate professionals.³ For the avoidance of doubt, the Approved Budget shall not be binding on the Court, which shall determine the final allowance of all estate professional fees and expenses in accordance with the Bankruptcy Code and applicable law. The DIP Lender, the Debtor, and the Official Committees reserve all rights with respect to final fee applications.

20. As a condition to the DIP Lender agreeing to make the Fourth Interim Draws, all estate professionals shall, simultaneously with the submission of any interim or final fee application, provide each other and counsel to the DIP Lender with the following: (a) for law firms, electronic versions of any billing information in unedited LEDES™ (Legal Electronic Data Exchange Standard) file format; and (b) for non-law firms, electronic versions of any billing information in Excel format, containing, at a minimum, the following fields for fees: invoice

³ The TCC’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other TCC professionals in their sole discretion. The UCC’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other UCC professionals in their sole discretion. And the Debtor’s professionals may allocate unused portions of their budget indicated on Exhibit 1 to other Debtor professionals in their sole discretion.

number, matter name, date, timekeeper name, timekeeper position/title, hourly rate, hours, fees, task description; and the following fields for expenses: invoice number, matter name, date, name of timekeeper who incurred expense, expense category, unit cost, number of units, expense total, expense description.

21. The Debtor is hereby authorized and directed to use all cash on hand, including the Fourth Interim Draws made hereunder, to pay outstanding United States Trustee quarterly fees, any fees due to the Debtor's Notice Agent, and fees and expenses of estate professionals, in accordance with the Approved Budget attached hereto as **Exhibit 2**, provided, however, that at least one (1) business day prior to any disbursement made pursuant to this Order and the Approved Budget, the Debtor shall provide written notice of such proposed disbursements to the financial advisors for the TCC and the UCC. Nothing herein shall modify or abridge the rights of any party to object to any final fee applications submitted by any estate professional. To the extent that the Court disallows payment of any fees and expenses of estate professionals set forth in the Approved Budget, and that such order or orders by the Court cause on a final basis the total amount of allowed administrative expenses to be less than the Commitment Amount, then (i) if the Joint Plan has been confirmed and gone effective, 90 percent (90%) of the difference between the Commitment Amount and the total amount of allowed administrative expenses shall be promptly returned to the DIP Lender, or (ii) if confirmation of the Joint Plan has been denied, then 100 percent (100%) of the difference between the Commitment Amount and the total amount of allowed administrative expenses shall be promptly returned to the DIP Lender. Nothing in the terms of the Joint Plan or any order confirming the Joint Plan shall modify the rights of the DIP Lender in the preceding sentence.

22. In addition to the foregoing the following limitations and directions on and to the Debtor shall be applicable. Within three (3) business days of the entry of this Order, the Debtor is authorized and directed to use its cash on hand to make payments in accordance with **Exhibit 2**, the Approved Budget, and the terms of this Order. Once in possession any of the Fourth Interim Advances, the Debtor is directed to make payments within three (3) business days in accordance with the Approved Budget and the terms of this Order. The Debtor shall allocate and pay funds from any and all of the Fourth Interim Advances as follows and in strict compliance with the following priority waterfall, where each preceding category must be paid in full prior to remitting payment for the successive category:

- (a) **First**, towards unpaid, allowed⁴ out-of-pocket expenses of all estate professionals through May 31, 2024;
- (b) **Second**, towards the unpaid, allowed fees of the UCC's and the TCC's professionals accrued through May 31, 2024, each of which shall be paid so that after receipt of payment each such UCC and TCC professional's payment percentage for fees incurred since its respective date of retention through May 31, 2024 is the same (until such UCC's and TCC's professionals are paid in full through May 31, 2024);
- (c) **Third**, towards the payment of unpaid allowed fees of KCC accrued through May 31, 2024;
- (d) **Fourth**, towards the unpaid, allowed fees of the Debtor's professionals (other than KCC) accrued through May 31, 2024 until the amount of such unpaid fees is \$1.97 million;
- (e) **Fifth**, towards the unpaid, allowed out-of-pocket expenses and fees of KCC and the TCC's and the UCC's professionals from June 1, 2024 through the Effective Date of any Plan, paid so that after receipt of payment KCC and each such UCC and TCC

⁴ The term "allowed" as used herein includes fees and expenses approved for payment under (a) the Interim Compensation Order, (b) any order approving an application requesting interim allowance of compensation for services rendered and the reimbursement of expenses incurred, or (c) any order approving an application requesting final allowance of compensation for services rendered and the reimbursement of expenses incurred; provided, however, that any professional fees or expenses disallowed on a final basis shall not be considered "allowed."

professional's payment percentage for expenses and fees incurred from June 1, 2024 through the Effective Date of any Plan is the same (until KCC and the TCC's and the UCC's professionals are paid in full for their post-June 1, 2024 fees and expenses); and

- (f) *Sixth*, towards the remaining, unpaid, allowed fees of the Debtor's professionals (other than KCC) through the Effective Date of any Plan.

23. In the event of any inconsistency between the provisions of this Fifth Interim DIP Order and any Prior DIP Orders or the DIP Documents, the provisions of this Order shall govern. All other terms and provisions of the Prior DIP Orders shall remain the same and in full force and effect unless otherwise modified by this Order.

24. The Court retains jurisdiction and authority over the implementation and interpretation of this Order.

Signed: _____, 2024

Christopher M. López
United States Bankruptcy Judge

Exhibit 1

Approved Budget for Professional Fees and Expenses (Post May 31, 2024)

TEHUM - POST-MAY 31, 2024 BUDGET

<i>\$ in 000s</i>	Total Budgeted Fees & Expenses (Post-5/31/24)
Gray Reed	300,000
BakerHostetler	-
Claims Agent	60,000
Ankura	140,000
Subtotal: Debtor	\$ 500,000
Stinson	850,000
Dundon	200,000
Subtotal: UCC	\$ 1,050,000
Brown Rudnick LLP	865,000
Berry Riddell LLC	185,000
MoloLamken	50,000
Gilbert	140,000
Province	360,000
Subtotal: TCC	\$ 1,600,000
UST Fees	150,000
Total	\$ 3,300,000

Exhibit 2

Approved Budget

TEHUM - PROFESSIONAL FEE PAYDOWN SCHEDULE

Note: After paying outstanding expenses of all professionals through May plus accrued unpaid UST Fees through May (Tier 1), the first payment in Tier 2 shall be to the TCC professionals in an amount equal to \$1.651mm so that after this payment, the TCC professionals' payment percentage is equal to the UCC professionals' payment percentage (36%) for fees incurred through May. Once the payment percentages are equalized between the TCC and UCC professionals in Tier 2, the TCC and UCC professionals shall be paid pro-rata until paid in full for accrued fees through May. For Tier 3, KCC accrued fees through May are paid in full. Next, as Tier 4, Debtor professional fees through May are paid until \$1.970m remains outstanding. For Tier 5, post-June 1, 2024 professional fees and expenses of KCC, TCC, and UCC professionals are paid pro rata until paid in full. For Tier 6, unpaid Debtor professional fees accrued through Effective Date are paid.

Note: Relies on Debtor estimates of certain professional fee accruals through May.

\$ in 000s	Immediate	August	September	October	November	December	Plan Confirmation	Total Payments	Remaining Balance	Total
Cash on the Balance Sheet	\$ 860	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 860	
DIP Proceeds	-	2,400	2,400	2,400	2,400	2,400	2,500	14,500		
Total	\$ 860	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,500	\$ 15,360		
Professional Fee & Expense Payments										
Tier 1 Expenses + UST - Through May	346	-	-	-	-	-	-	346	-	346
Tier 2 TCC Professional Accrued Fees - Through May	513	1,817	1,291	1,006	-	-	-	4,627	-	4,627
Tier 2 UCC Professional Accrued Fees - Through May	-	583	1,109	864	-	-	-	2,556	-	2,556
Tier 3 KCC (Claims Agent) Accrued Fees - Through May	-	-	-	329	-	-	-	329	-	329
Tier 4 Debtor Professional Accrued Fees (excl. KCC) Until \$1.970m Remain - Through May	-	-	-	201	2,400	202	-	2,803	-	2,803
Tier 5 UST Fees & Expenses - June-Effective Date	-	-	-	-	-	115	35	150	-	150
Tier 5 TCC Professional Accrued Fees & Expenses - June-Effective Date	-	-	-	-	-	1,230	370	1,600	-	1,600
Tier 5 UCC Professional Accrued Fees & Expenses - June-Effective Date	-	-	-	-	-	807	243	1,050	-	1,050
Tier 5 KCC Accrued Fees & Expenses - June-Effective Date	-	-	-	-	-	46	14	60	-	60
Tier 6 Remaining Debtor Professional Accrued Fees (excl. KCC)	-	-	-	-	-	-	1,838	1,838	572	2,410
Total	\$ 860	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,400	\$ 2,500	\$ 15,360	\$ 572	\$ 15,932
Remaining Proceeds	-	-	-	-	-	-	-	-	-	-

Memo: Payment Percentages

TCC Accrued Fees <u>through May</u>	11%	50%	78%	100%	100%	100%	100%
UCC Accrued Fees <u>through May</u>	36%	50%	78%	100%	100%	100%	100%
KCC Accrued Fees <u>through May</u>	65%	65%	65%	100%	100%	100%	100%
Debtor Accrued Fees (excl. KCC) <u>through May</u>	51%	51%	51%	53%	78%	80%	95%
TCC Accrued Fees <u>June-Effective Date</u>	0%	0%	0%	0%	0%	77%	100%
UCC Accrued Fees <u>June-Effective Date</u>	0%	0%	0%	0%	0%	77%	100%
KCC Accrued Fees <u>June-Effective Date</u>	0%	0%	0%	0%	0%	77%	100%
Debtor Accrued Fees (excl. KCC) <u>June-Effective Date</u>	0%	0%	0%	0%	0%	0%	76%
<u>ALL</u> TCC Fees	8%	37%	58%	74%	74%	94%	100%
<u>ALL</u> UCC Fees	28%	40%	62%	79%	79%	95%	100%
<u>ALL</u> KCC Fees	61%	61%	61%	94%	94%	99%	100%
<u>ALL</u> Debtor Fees (excl. KCC)	48%	48%	48%	50%	74%	76%	94%