

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

In re:

TEHUM CARE SERVICES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-90086 (CML)

Related Dkt. Nos. 1739, 1740 & 1741

**NOTICE OF FILING CHANGED PAGES OF THE JOINT  
CHAPTER 11 PLAN OF THE TORT CLAIMANTS' COMMITTEE,  
OFFICIAL COMMITTEE OF UNSECURED CREDITORS, AND DEBTOR AND  
RELATED DISCLOSURE STATEMENT**

**PLEASE TAKE NOTICE THAT** as discussed at the hearing before the U.S. Bankruptcy Court for the Southern District of Texas, held on November 13, 2024, attached hereto as Exhibit A are the changed pages of the *Joint Chapter 11 Plan of the Tort Claimants' Committee, Official Committee of Unsecured Creditors, and Debtor*.

**PLEASE TAKE NOTICE THAT** as discussed at the hearing before the U.S. Bankruptcy Court for the Southern District of Texas, held on November 13, 2024, attached hereto as Exhibit B are the changed pages of the *Disclosure Statement for Prepackaged Chapter 11 Plan of Reorganization of the Debtor*, dated November 13, 2024 (together with exhibits thereto).

Respectfully submitted this 13th day of November, 2024.

/s/ Eric R. Goodman

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Eric R. Goodman (*pro hac vice*)

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Gerard T. Cicero (*pro hac vice*)

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- and -

*/s/ Michael W. Zimmerman*

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**Certificate of Service**

The undersigned hereby certifies that, on the 13th day of November 2024, he caused a true and correct copy of the foregoing document to be served on all parties who have subscribed for electronic notice via the Court's CM-ECF Notification System.

/s/ Eric R. Goodman

Eric R. Goodman

# **EXHIBIT A**

102. “*GUC Trust Beneficiaries*” means the Holders of Channeled GUC Trust Claims whose Claims are to be resolved by the GUC Trust under the Plan.

103. “*GUC Trust Documents*” means, collectively, (a) the GUC Trust Agreement, (b) the Confirmation Order, and (c) any other agreements, instruments, and documents governing the establishment, administration, and operation of the GUC Trust, as the same may be amended or modified from time to time in accordance with the terms thereof.

104. “*GUC Trustee*” means the trustee of the GUC Trust, who shall be selected by the UCC, in consultation with the Debtor, and who shall be named in the Plan Supplement, and is thereafter subject to the provisions of the GUC Trust Agreement.

105. “*Holder*” means any Person or Entity holding a Claim or an Interest.

106. “*Impaired*” means, with respect to a Class of Claims or Interests or a Claim or Interest, a Class of Claim or Claim or Interest or an Interest that is “impaired” within the meaning of sections 1123(a)(4) and 1124 of the Bankruptcy Code.

107. “*Indirect Claims*” means, collectively, Indirect GUC Claims and Indirect PI/WD Claims.

108. “*Indirect GUC Claim*” means a Claim against the Debtor for contribution, indemnification, reimbursement, or subrogation of any entity that is liable with the Debtor on a GUC Claim held by another creditor, whether contractual or implied by law and whether in the nature of or sounding in contract, tort, warranty, statute, common law, or any other theory of law or equity whatsoever.

109. “*Indirect PI/WD Claim*” means a Claim against the Debtor for defense, contribution, indemnification, reimbursement, or subrogation of any entity that is liable with the Debtor on a PI/WD Claim held by another creditor, whether contractual or implied by law and whether in the nature of or sounding in contract, tort, warranty, statute, common law, or any other theory of law or equity whatsoever.

110. “*Indirect Claimant*” means the Holder of an Indirect Claim.

111. “*Initial Settlement Amount*” is defined in Article IV.B.1.

112. “*Injunctions*” means the Insurance Entity Injunction, and any other injunctions entered by the Bankruptcy Court in connection with Confirmation of the Plan.

113. “*Insider*” means an “insider” as defined in section 101(31) of the Bankruptcy Code.

114. “*Installment Settlement Payment*” is defined in Article IV.B.1.

115. “*Insurance Action*” means a GUC Insurance Action or a PI/WD Insurance Action, as the context may require.

116. “*Insurance Action Recoveries*” means the right to receive the proceeds or benefits of any Insurance Action.

117. “*Insurance Company*” means any insurance company, insurance syndicate, coverage holder, insurance broker or syndicate insurance broker, guaranty association, or any other Entity that has issued, or that has any actual, potential, demonstrated, or alleged liabilities, duties, or obligations under or with respect to, any Insurance Policy.

118. “*Insurance Coverage Defense*” means all defenses at law or in equity that any Insurance Company may have under applicable law or under any Insurance Policy to provide insurance coverage ~~to or for~~ for a defense or to perform any other action arising out of or related to PI/WD Claims, Indirect PI/WD Claims, GUC Claims or

Indirect GUC Claims or in response to a PI/WD Insurance Action, except for (a) any defense that the PI/WD Insurance Assignment or the GUC Insurance Assignment is invalid or unenforceable or otherwise breaches the terms of such coverage; ~~and/or~~ (b) any defense that the ~~drafting, proposing, confirmation, or consummation of the Plan~~ Debtor filed for bankruptcy and/or the discharge or release of the Debtor from liability for any Claims pursuant to the Plan; ~~in any of, breaches the terms of such coverage; or that either of~~ the foregoing (a) through (b), operates to, or otherwise results in, the elimination of or the reduction in any obligation such Insurance Company may have under rights assigned to the PI/WD Trust or the GUC Trust, including in providing coverage for liabilities assumed by the PI/WD Trust or the GUC Trust that were or are liabilities of the Debtor.

119. “*Insurance Policy*” means any insurance policies issued prior to the Effective Date to the Debtor or under which the Debtor has sought or may seek coverage.

120. “*Insurance Proceeds*” means any proceeds recovered under the Insurance Policies.

121. “*Interim Compensation Order*” means the *Amended Agreed Order Establishing Procedures for Interim Compensation and Reimbursement of Expenses for Professionals* [Docket No. 1646].

122. “*Interest*” means any equity security, as defined in section 101(16) of the Bankruptcy Code.

123. “*IRS*” means the Internal Revenue Service.

124. “*Lien*” has the meaning set forth in section 101(37) of the Bankruptcy Code.

125. “*Local Bankruptcy Rules*” means the Bankruptcy Local Rules of the United States Bankruptcy Court for the Southern District of Texas as now in effect or hereafter amended.

126. “*Mediator*” means Judge Christopher S. Sontchi (ret.) in his capacity as a Court-appointed mediator in the Chapter 11 Case.

127. “*Non-Released Parties*” means (a) James Gassenheimer, Charles Gassenheimer, James Hyman, Michael Flacks, and Flacks Group LLC, and, as appropriate, their predecessors, successors, assigns, and present and former shareholders, members, Affiliates, subsidiaries, employees, agents, brokers, adjusters, managing agents, claims gents, underwriting agents, administrators, officers, directors, trustees, partners, attorneys, financial advisors, accountants, and consultants, each in their capacities solely as such; (b) any Entity co-liaible with one or more Released Parties, including a Governmental Unit, on any Claim; and (c) any PI/WD Insurance Company and GUC Insurance Company.

128. “*Opt-Out GUC Claim*” means a GUC Claim asserted by GUC Claimant that opts out of the Consensual Claimant Release and, by doing so, irrevocably elects to pursue its GUC Claim in the Civil Justice System with no right to return to or recover from the GUC Trust.

129. “*Opt-Out Insured PI/WD Claim*” means a PI/WD Claim asserted by a PI/WD Claimant who elects on his or her Ballot to pursue his or her PI/WD Claims in the Civil Justice System for the purpose of pursuing a recovery from one or more PI/WD Insurance Companies, subject to the right to return to and recover from the PI/WD Trust under and in accordance with the PI/WD Trust Distribution Procedures, and who does not opt out of the Consensual Claimant Release.

130. “*Opt-Out PI/WD Claim*” means a PI/WD Claim asserted by a PI/WD Claimant who opts out of the Consensual Claimant Release and who, by doing so, irrevocably elects to pursue his or her PI/WD Claim in the Civil Justice System with no right to return to or recover from the PI/WD Trust.

131. “*Opt-Out Indirect Claim*” means an Indirect Claim asserted by Indirect Claimant that opts out of the Consensual Claimant Release and, by doing so, irrevocably elects to pursue its Indirect Claim in the Civil Justice System with no right to return to or recover from the Trusts.

132. “*Opt-Out Release Form*” means the form approved by the Bankruptcy Court for opting out of the Consensual Claimant Release. Claimants may vote to accept the Plan on a Ballot and, at the same time, elect to opt out of the Consensual Claimant Release.

133. “*Ordinary Course Professional*” means a Professional employed by the Debtor pursuant to the Ordinary Course Professionals Order.

134. “*Ordinary Course Professionals Order*” means the *Amended Order (I) Authorizing the Retention and Compensation of Certain Professionals Utilized in the Ordinary Course of Business and (II) Granting Related Relief* [Docket No. 638].

135. “*Other Priority Claim*” means any Claim other than an Administrative Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a) of the Bankruptcy Code, to the extent such Claim has not already been paid during the Chapter 11 Case.

136. “*Other Secured Claim*” means any Secured Claim, other than a DIP Claim.

137. “*Other Secured Claims Reserve*” means a reserve established by the Debtor on the Effective Date to be used to pay Holders of all Other Secured Claims, to the extent the same have not been paid prior to the Effective Date.

138. “*Payment Agreement*” means the Payment Agreement for Insurance and Risk Management Services dated January 1, 2012, by and between National Union Fire Insurance Company of Pittsburgh, PA and the Debtor that was allocated to CHS, TX, Inc. along with certain collateral to secure the obligations thereunder, pursuant to the Plan of Divisional Merger.

139. “*Person*” has the meaning set forth in section 101(41) of the Bankruptcy Code and includes any individual, corporation, general or limited partnership, limited liability company, joint venture, estate, trust, benefit plan, unincorporated organization, business, syndicate, sole proprietorship, association, organization, labor union or other entity, or governmental unit.

140. “*Petition Date*” means February 13, 2023, the date on which the Debtor commenced the Chapter 11 Case.

141. “*PI/WD*” means personal injury or wrongful death.

142. “*PI/WD Claim*” means any unsecured Claim against the Debtor that is attributable to, arises from, is based upon, relates to, or results from an alleged personal injury tort or wrongful death claim within the meaning of 28 U.S.C. § 157(b)(2)(B), including any PI/WD Claim against the Debtor regardless of whether such Claim is alleged to have been allocated to CHS TX, Inc. or YesCare Corp. under the Plan of Divisional Merger. The term PI/WD Claim does not include Indirect PI/WD Claims.

143. “*PI/WD Claimant*” means the Holder of a PI/WD Claim.

144. “*PI/WD Data Records*” means all files, documents, and information which the Debtor or a Settling Party has acquired, and which contain evidence potentially related to PI/WD Claims, Indirect PI/WD Claims, or Retained PI/WD Trust Causes of Action, including all documents reflecting insurance retention, expense costs and/or deductibles regarding PI/WD Claims.

145. “*PI/WD Data Transfer*” means the transfer of the PI/WD Data Records to the PI/WD Trust so as to enable the recipient to have full access and utilization of the Data Records to the same extent available to the transferor.

146. “*PI/WD Insurance Action*” means any claim, Cause of Action, or right of the Debtor, under the laws of ~~any~~ the applicable jurisdiction, against any Insurance Company, arising from or related to a PI/WD Insurance

negotiation, settlement, and resolution of any Claims and Interest under the Plan shall not operate to excuse any Party from its obligations under any contracts, Insurance Policies, or other agreements, notwithstanding any terms of such contracts, Insurance Policies or agreements or provisions of non-bankruptcy law.

*K. Injunction against Interference with Opt-Out Rights*

As of the Effective Date, neither YesCare Corp., CHS TX, Inc. nor any other alleged successor entity may assert in any litigation involving an Opt-Out GUC Claim, an Opt-Out PI/WD Claim, or an Opt-Out Indirect Claim in the Civil Justice System that such Claims, to the extent asserted against YesCare Corp., CHS TX, Inc., or any other successor based on the doctrine of successor liability are barred, released, discharged, or impaired by the Confirmation Order, the Plan, or the Estate Release. The right to assert such Claims based on the doctrine of successor liability has been received or retained by the Holders of such Claims under Article III.D, and the Holders of such Claims shall have a Claim against Debtor solely to the extent necessary to preserve and enforce such right. Subject to the foregoing, YesCare Corp.'s, CHS TX, Inc.'s, or any other alleged successor entity's claims, rights, and defenses to any action brought by the Holder of an Opt-Out GUC Claim, an Opt-Out PI/WD Claim, or an Opt-Out Indirect Claim in the Civil Justice System are expressly preserved under the Plan, including the rights of YesCare Corp., CHS TX, Inc., or any other alleged successor entity to contest liability for Opt-Out GUC Claims, Opt-Out PI/WD Claims, or Opt-Out Indirect Claims and to argue that they are not liable as successors to the Debtor based on the facts of the underlying action and/or the requirements for imposing successor liability under applicable law.

*L. Insurance Provision*

Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the Confirmation of the Plan, any order or opinion entered on appeal from the Confirmation Order, or any valuation of Claims (either individually or in the aggregate) in the Chapter 11 Case shall, with respect to any Insurance Company (including a PI/WD Insurance Company or a GUC Insurance Company): (i) constitute any adjudication, judgment, trial, hearing on the merits, finding, conclusion, other determination establishing the coverage obligation of any such Insurance Company for any Claim; or (ii) limit the right of any such Insurance Company to assert any Insurer Coverage Defense; *provided, however*, that with respect to (i) and (ii), (y) the transfer of rights to the PI/WD Trust pursuant to the PI/WD Insurance Assignment and the transfer of rights to the GUC Trust pursuant to the GUC Insurance Assignment shall be valid and enforceable, and (z) the discharge or release of the Debtor or any Released Party from any Claims or Causes of Action under the Plan shall not affect the liability of any such Insurance Company. The establishment of any claim in litigation against the PI/WD Trust in its capacity as the Debtor's representative shall be deemed the establishment of a claim against the Debtor ~~for the purpose of triggering under~~ any available Insurance Policy.

*M. Claim Over*

The Estate Party Settlement is a good faith settlement that bars any Cause of Action by a non-Released Party against any Released Party for contribution, for indemnification, or otherwise seeking to recover any amounts paid by or awarded against that non-Released Party and paid or awarded to any Consenting Claimant by way of settlement, judgment, or otherwise on any claim that would be a Released Claim were such non-Released Party a Released Party to the extent that a good-faith settlement has such an effect in accordance with applicable law.

*N. Retention of Liability*

Nothing in the Plan, the Plan Documents, the Confirmation Order, any finding of fact and/or conclusion of law with respect to the Confirmation of the Plan, or any order or opinion entered on appeal from the Confirmation Order, shall constitute any adjudication, judgment, trial, hearing on the merits, finding, conclusion, or other determination establishing that any non-Released Party shall not be deemed to be (i) liable with the Debtor by reason of any theory of law or equity or (ii) liable (or continue to be liable) for their respective liabilities to any holder of a Claim by reason of any theory of law or equity. Neither the Plan nor the Plan Documents shall in anyway reduce,

# **EXHIBIT B**

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This ongoing litigation and potential exposure ultimately led the Debtor to conclude a chapter 11 process was necessary to maximize and expedite creditor recoveries.

### III. The Debtor's Chapter 11 Case

The Debtor's Chapter 11 Case was commenced by the filing of a voluntary chapter 11 petition on February 13, 2023 (the "Petition Date").<sup>2</sup> The Chapter 11 Case is pending before the Honorable Christopher M. López in the United States Bankruptcy Court for the Southern District of Texas.

#### A. Post-Filing Activities.

##### 1. The DIP Motion and the DIP Orders.

As of the Petition Date, the Debtor had no cash on hand and because it was no longer an operating entity, had no means to obtain additional revenues. The Debtor was not allocated any tangible real property under the divisional merger and, as of the Petition Date, though the Debtor was the beneficiary under the Funding Agreement, it did not appear that any additional amounts were available thereunder.<sup>23</sup> As a result, the Debtor was left with only potential Estate causes of action, tax refunds and similar receivables as potential collateral for post-petition financing.

On March 15, 2023, the Debtor filed its *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"). The DIP Motion set forth the terms of a senior secured loan facility in an aggregate principal amount of up to \$10,000,000 (the "DIP Facility") funded by LoanCo.

On March 22, 2023, the Bankruptcy 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"), which has been amended and supplemented pursuant to Docket No. 476 (the "Second Interim DIP Order"), Docket No. 579 (the "Third Interim DIP Order") Docket No. 993 (the "Fourth Interim DIP Order"), and Docket No. 1669 (the "Fifth Interim DIP Order," and together with the First Interim DIP Order, Second Interim DIP Order, Third Interim DIP Order, and Fourth Interim DIP Order, the "DIP Orders").

<sup>2</sup> On February 14, 2023, the Debtor also filed a voluntary chapter 11 petition in the U.S. Bankruptcy Court for the Western District of Missouri, Case No. 23-40176-can11, which was administratively closed on March 2, 2023. The same day, February 14, 2023, the Debtor removed a pending lawsuit filed by plaintiffs The Curators of The University of Missouri and Capital Region Medical Center against the Debtor, CHS TX, Inc, and YesCare Corp.

<sup>23</sup> The Debtor's professionals conducted an analysis of the amounts distributed pursuant to the Funding Agreement and determined that LoanCo funded at least \$15 million to the Debtor's costs of operation and certain liabilities that arose prior to the divisional merger.

On September 5, 2023, the Bankruptcy Court held a hearing on the Trustee Motion. During the hearing, the UCC opposed the Trustee Motion. After considering the evidence and arguments of counsel, the Bankruptcy Court found that cause did not exist to appoint a chapter 11 trustee and denied the Motion. *See* Docket No. 932.

## 5. The Initial Mediations.

On May 22, 2023, the Bankruptcy Court entered its *Stipulation and Agreed Order Regarding Appointment of a Mediator and Governing Related Mediation Procedures* [Docket No. 603] (the “Mediation Order”). The Mediation Order appointed the Honorable David R. Jones, then a current United States Bankruptcy Judge for the Southern District of Texas (“Judge Jones”), to mediate, among other things, (i) the releases sought in connection with the DIP Facility, (ii) the maximization of assets to be distributed through a chapter 11 plan, (iii) the Estate’s claims against Debtor affiliates and related third parties, and (iv) the relief requested in the Adversary Complaint and Adversary Stay Motion. The Mediation Order also ordered the Debtor to invite its liability insurance carriers to participate in mediation(s).

In the first eight months of the case, the UCC and the Debtor participated in three (3) separate mediations pursuant to the Mediation Order, each as described below.

### (a) The LSA Mediation.

On July 13 and 14, 2023, Judge Jones conducted a mediation between the Debtor, the UCC, and Lone Star Alliance, Inc. (“LSA”).

### (b) The First Mediation.

On August 21, 22 and 23, 2023, Judge Jones conducted a mediation between the Debtor, the UCC, YesCare, its wholly owned subsidiaries (including CHS TX, Inc.), Geneva, Perigrove 1018, Perigrove, HoldCo, LoanCo, and PharmaCorr LLC.<sup>34</sup> This mediation focused on resolving the Estate’s claims against these affiliate entities and certain related parties and individuals, including claims relating to the transfers referenced in Article II.C above, as well as claims relating to or arising out of the divisional merger. The mediation resulted in a settlement which was ultimately abandoned by the Parties.

### (c) The Lexington Mediation.

On September 28, 2023, the Debtor, the UCC, and Lexington Insurance Company (“Lexington”) participated in a mediation before Judge Jones. The goal of the mediation was to reach an agreed-upon path to maximize the insurance proceeds available for claims that fall within the Debtor’s professional liability policies issued by Lexington.

On October 7, 2023, as a result of a recently filed lawsuit, the *Wall Street Journal* published a story in which Judge Jones confirmed that he has been in a long-term romantic relationship with a lawyer who represented YesCare at the mediation. This relationship was not disclosed to the Debtor or the UCC and the Debtor and the UCC were unaware of this relationship prior to the article’s publication. Shortly after the *Wall Street Journal* story, Judge Jones resigned his position.

<sup>34</sup> YesCare, Geneva, Perigrove 1018, Perigrove, HoldCo, LoanCo, and PharmaCorr LLC are collectively referred to herein as the “Settling Parties.”

**9. Potential  
Estate  
Causes of  
Action.**

As outlined in the UCC's and the Debtor's motion to approve the proposed settlement reached at the Second Mediation, the UCC and the Debtor identified four main potential Estate Causes of Action against the Released Parties:

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

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

Although M2 LoanCo disputes the Debtor's and the UCC's characterization of these transfers listed above,<sup>45</sup> the Debtor and the UCC believe the Estate could bring claims to avoid and recover these transfers as fraudulent transfers under 11 U.S.C. § 548 and applicable state fraudulent transfer statutes.

- **Avoidance Actions Against Geneva.** Perigrove 1018 acquired the equity ownership of the Debtor and M2 LoanCo from the Flacks Group in early December 2021, days before the Flacks Group had planned to commence a chapter 11 bankruptcy proceeding for the Debtor. Within days of such acquisition, Perigrove 1018 appointed one of its directors, Isaac Lefkowitz, as the decision-maker for all of the companies. Mr. Lefkowitz, in turn, caused the Debtor to enter into a "Consulting Agreement" with Geneva on or about December 8, 2021. The "Consulting Agreement" is between Valitäts Health Services, Inc. and Geneva Consulting, LLC. Mr. Lefkowitz signed the Consulting Agreement as the "Interim CEO" for Valitäts. A director listed on Perigrove's website signed the Consulting Agreement as "Director" of Geneva. Mr. Lefkowitz directed James Hyman, the then-CEO of Corizon Health, Inc., and Jeff Sholey, the then CFO of Corizon Health, Inc., to transfer substantial sums to Geneva under the Consulting Agreement. On December 8, 2021, the Debtor transferred \$3 million to Geneva, purportedly as a retainer required under the Consulting Agreement. The Debtor then transferred \$500,000 per month for the

<sup>45</sup> For example, M2 LoanCo contends that it transferred \$3.5 million and \$1.5 million to Corizon on March 23, 2023, and March 24, 2023, respectively, and those transfers are not accounted for as credits in the chart above.

may elect to opt-out of participating in the Estate Party Settlement and instead pursue their claims against YesCare Corp., CHS TX, Inc., or any other alleged successor entity under the doctrine of successor liability in the Civil Justice System.

Below is a summary of the key terms of the Estate Party Settlement:

- The Settlement Parties shall pay or cause to be paid to the PI/WD Trust and GUC Trust, as applicable, aggregate Cash in the amount of Fifty Million Dollars (\$50,000,000.00) (the “Settlement Payment”), with two million (\$2,000,000) to be paid on the Effective Date and the remaining Forty-Eight Million Dollars (\$48,000,000.00) paid in monthly installments over thirty (30) months with interest at 6.00% per annum.
- If the Settlement Parties fail to make the required payments on time, they receive a “grace period” of five business days to make the payment. If the Settlement Parties fail to make the payment after the “grace period” and that failure is not waived by both creditor trusts, the releases and injunctions contained in the Plan are terminated and void, meaning that creditors and the estate may bring claims against the Released Parties.
- The Settlement Payment will be allocated between the PI/WD Trust and the GUC Trust on a 50/50 basis and will be used to pay administration of those trusts and claims of unsecured creditors, meaning no funds from the Settlement Payment will be used to pay Administrative Claims, Professional Fee Claims, Priority Claims, or Secured Claims.
- The Settlement Parties have the option to terminate the settlement if more than 5% ~~of holders of PI/WD claims entitled to vote on the Plan elect to opt out of the release of claims against the Released Parties and in doing so give up their right to~~ in number of Voting PI/WD Claimants elect to opt out of the Consensual Claimant Release and who, by doing so, irrevocably elect to pursue their PI/WD Claims in the Civil Justice System with no right to return to or recover from the PI/WD Trust. Holders of PI/WD Claims who elect to pursue their PI/WD Claims in the Civil Justice System for the purpose of pursuing a recovery from one or more PI/WD Insurance Companies and who do not opt out of the Consensual Claimant Release shall not be considered “opt outs” for the purpose of calculating whether the participation percentage has been met..
- The Settlement Parties release and waive all claims and causes of action against the Debtor and its Estate upon the Effective Date, and the Settlement Parties and Released Parties release and waive all claims against creditors who do not opt out of the release and the Settlement upon the Final Payment Date.
- On the Final Payment Date, the Released Parties will receive the benefit of the Consensual Claimant Release (*i.e.*, the release being granted in favor of the Released Parties by claimants who do not opt-out of the Consensual Claimant Release), and the release of all Estate Causes of Action asserted against the Released Parties.
- Claimants who opt out will have the ability to assert claims against YesCare Corp., CHS TX, Inc., and other alleged successor entity based on the doctrine of successor liability. This is clearly set forth in Article III.D and Article IX.K of Plan. Claimants who opt-out, however, will not have the ability to assert Avoidance Actions, including fraudulent transfer claims, and other Estate Causes of Action against the Released Parties because those Causes of Action will be settled under the Estate Party Settlement.
- The Estate and all creditors who do not opt-out of the release and the Settlement agree to release all claims against the Released Parties once the Settlement Parties have fulfilled their obligations to pay the full settlement amount. The above description of the Estate Party Settlement is a summary only. The actual terms of the Plan control.

**D. The PI/WD Trust.**

Holders of claims subject to resolution by the PI/WD Trust will receive distributions, if applicable, in accordance with the terms of the PI/WD Trust Agreement. A copy of the proposed PI/WD Trust Agreement is attached hereto as Exhibit C.

**1. PI/WD  
Trust  
Assets.**

On the Effective Date, the PI/WD Trust will be funded with (i) ~~twenty-three~~fifty percent (~~23~~50%) of the Cash from the Initial Settlement

**2. PI/WD  
Trust  
Claims  
Administra-  
tion  
Process.**

Holders of Allowed Personal Injury Claims will receive payment from the PI/WD Trust via a multi-step process set forth in the PI/WD Trust Agreement.

A Holder of a PI/WD Claim will have the opportunity on the Ballot to elect to receive an Expedited Distribution of \$5,000 in return for a full release of its Claim rather than participating in the entire claim valuation and distribution process outlined in the Plan and PI/WD Trust Documents. If a Holder of the Claim elects the Expedited Distribution, there are only two further steps in the process to receive payment. First, the PI/WD Trustee, who is in charge of the PI/WD Trust, will confirm whether the Holder of such a claim meets threshold eligibility requirements. These requirements include timely filing of a proof of claim without material defects, an attestation, and a determination that the claim has not been previously dismissed. Second, if the PI/WD determines the threshold requirements have been met, the Holder of the applicable Class 3 convenience claim will be required to execute an appropriate release. Upon execution of the release, the Holder of the claim will be entitled to receive the Expedited payment and will receive no further distribution on their claim.

If a Holder of a Channeled PI/WD Claim (Class 6) or a Channeled Indirect PI/WD Claim (subset of Class 9) does not choose to receive a \$5,000 Expedited Distribution, they will be required under the terms of the PI/WD Trust Documents to participate in a process for valuation of their claim to determine the Allowed Claim Amount for that claim. That process will be conducted as follows:

First, the PI/WD Trustee will determine whether threshold eligibility requirements have been met. As noted above, these requirements include timely filing of a proof of claim without material defects, an attestation, and a determination that the claim has not been previously dismissed. For Indirect Claims, additional eligibility requirements must be met. Those additional requirements include a determination that the claim is valid and not subject to disallowance under the Code or applicable law, and a showing that the Holder of the Indirect Claim has paid in full the liability or obligation of the PI/WD Trust to a claimant to whom the PI/WD Trust would have otherwise had a liability, that the claim is not subject to a valid defense, and that both the claimant who received the funds and the Holder of the Indirect Claim have or will have fully released the PI/WD Trust.

Next, the Holder of a claim will make a Trust Claim Submission, providing the PI/WD Trustee detailed information about the claim, including records and documents requested by the trustee and cooperation in any written or oral questions the trustee may have regarding the claim. A more detailed description of the Trust Claim Submission requirements is outlined in the next section. Other than claims where the Holder elects to receive an Expedited Distribution, no recovery will be provided to a Holder of a claim who does not submit a Trust Claim Submission. However, the PI/WD Trustee may waive the requirement to provide records or documents if doing so