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

In re:	**Chapter 11**
TEHUM CARE SERVICES, INC.,	**Case No. 23-90086 (CML)**
Debtor.	

YESCARE'S REPLY TO THE OBJECTION OF STEPHEN J. HOWE, JAMONTE JAMAR FLETCHER, RILWAN AKINOLA, CHELSEA GILLIAM, KENNEDY HOLLAND AND CHLOE GREY TO THE OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES

The Omnibus Motion to Enjoin, ECF No. 2160, argued that plaintiffs who have active lawsuits against the Released Parties should be enjoined from further prosecuting those claims unless the Plan's Injunctions and Consensual Claimant Release terminate or become void (*i.e.*, staying, but not yet dismissing those actions). YesCare notes that enjoining plaintiffs from prosecuting claims against Released Parties absent an uncured Default is consistent with Art. IV. 10., which provides in parallel that the Trusts "shall forebear from asserting or prosecuting any Released Estate Causes of Action between the Effective Dates and the Final payment Date unless a Settlement Payment Default occurs and is not cured . . . ."

Stephen J. Howe, Jamonte Jamar Fletcher, Rilwan Akinola, Chelsea Gilliam, Kennedy Holland, and Chloe Grey (collectively, "Plaintiffs") are each currently or formerly incarcerated individuals who are pursuing claims pursuant to 42 U.S.C. § 1983 against YesCare, CHS TX, or former employees of the Debtor in various cases pending in the United States District Court for the District of Maryland. In their opposition to YesCare's Omnibus Motion to Enjoin, the

Plaintiffs argue that they should not be enjoined from prosecuting the claims against YesCare, CHS TX, and/or the Debtor's former employees in their respective actions because (1) Plaintiffs claim they did not receive adequate notice of the Plan terms and releases or their opt-out rights and (2) Plaintiffs claims against the former employees are not covered by the Channeling Injunction under the Plan. ECF No. 222285 at 2–3, 13–31. Alternatively, Plaintiffs argue that they should be permitted to opt-out of the Plan on an untimely basis because their failure to opt-out of the plan is attributable to "excusable neglect." *Id.* at 3, 31–33. As discussed below, the Court should reject Plaintiff's arguments because: (1) the defendants in each of Plaintiffs' lawsuits fall within the Plan's express definition of "Released Parties" and the Plaintiffs' claims are therefore subject to the Plan's injunctions, (2) Plaintiffs had notice and the opportunity to opt-out of the Consensual Claimant Release but did not do so, (3) Plaintiffs failed to raise their arguments opposing the effective Plan's opt-out mechanism prior to Confirmation, and (4) Plaintiffs' arguments opposing the Plan's opt-out mechanism are contrary to bedrock Fifth Circuit precedent that their brief inexplicably fails to mention.

I. Plaintiffs' Failure to Act with Notice of the Bankruptcy Precludes Their Notice Arguments

Plaintiffs each argue that their respective claims against the YesCare, CHS TX, and/or the Debtor's former employees (all "Released Parties" under the Plan) should not be enjoined under the Plan because they received inadequate notice of the bankruptcy proceedings and applicable deadlines. Plaintiffs are mistaken.

It has long been the rule in the Fifth Circuit that "[o]nce creditors know about the bankruptcy, then they must take steps to protect their rights." *In re Schepps Food Stores, Inc.,* 152 B.R. 136, 138 (Bankr. S.D. Tex. 1993); *Robbins v. Amoco Prod. Co.*, 952 F.2d 901 (5th Cir. 1992) (*reh'g denied* 1992) ("When the holder of a large, unsecured claim ... receives any notice ... that

its debtor has initiated bankruptcy proceedings, it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril.") (citation omitted); *Otto v. Texas Tamale Co.*, 219 B.R. 732, 740 (Bankr. S.D. Tex. 1998) (The failure to act by an individual who knows about a debtor's bankruptcy "is fatal to his claims.").

Each of the Plaintiffs received publication notice of the bankruptcy proceedings and relevant deadlines, which this Court ***has already held*** to be adequate and compliant with the Bankruptcy Code. The Notice of Deadlines for the Filing of Proofs of Claim was published in The New York Times on May 8, 2023, and in The Wall Street Journal on May 9, 2023, *see* ECF No. 610, and Notice of Deadlines for the Filing of Proofs of Claim was also published in the Prison Legal News in the June 2023 issue, *see* ECF No. 658. Publication notice in the Prison Legal News was placed in the December 2024 issue, which notice provided detailed information regarding the procedures and deadlines for casting votes to accept or reject the Plan and warned in bold:

> 4. **The Plan proposes certain releases and injunctions in furtherance of the Plan. For the specific terms and conditions of all the releases and injunctions provided for in the Plan, and the precise scope of the Claims and Demands to be channeled, please refer to the specific terms of the Plan, which can be obtained as described below.**

and

> **OBJECTIONS NOT TIMELY FILED AND SERVED IN SUCH MANNER MAY NOT BE CONSIDERED BY THE BANKRUPTCY COURT AND MAY BE DEEMED OVERRULED WITHOUT FURTHER NOTICE.**

See ECF No. 1863, Exhibit A. In its March 3, 2025 Confirmation Order, this Court "found that notice of the Confirmation Hearing and the opportunity for any party in interest to object to Confirmation have been adequate and appropriate as to all parties affected or to be affected by the Plan and the transactions contemplated thereby." ECF No. 2014 at 6. The Court also held that solicitation of votes on the Plan, including through Publication, was "appropriate and satisfactory" and "in compliance with the Bankruptcy Code." ECF No. 2014 at 6 (Section G, ¶ 10).

Moreover, as the Plaintiffs' own opposition admits, many of them received actual notice of the bankruptcy proceedings with more than adequate time to take steps to protect their rights, and yet Plaintiffs each failed to do so. As the Fifth Circuit held in *In re Sam*, 894 F.2d 778 (5th Cir. 1990), the policy behind the notice rules is "satisfied when the creditor has actual knowledge of the case in time to permit him to take steps to protect his rights." "[I]nadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect." *Pioneer Brunswick Assoc. Ltd. Partnership*, 507 U.S. 380, 395 (1993). Further, as the court held in *Unit Corp. v. Gilmore*, No. 4:21-CV-435, 2002 WL 956226, *7-8 (S.D. Tex. Mar. 30, 2022), a party with knowledge of a bankruptcy cannot assume that he need not take any action and is not excused for failing to check the bankruptcy court's docket to apprise himself of notices.

Here, Plaintiffs not only had a duty to act, but the Bankruptcy Code also *required* them to act once they knew about the bankruptcy to protect their rights. Pursuant to Fed. R. Bankr. P. 3003(c), unscheduled creditors "MUST FILE" a Proof of Claim: "any creditor . . . whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule." A creditor "who fails to do so shall not be treated as a creditor with respect to such a claim for the purposes of voting and distribution." *Id.*; *see also Sequa Corp. v. Christopher*, 28 F.3d 512 (5th Cir. 1994) ("We have concluded that it does not offend due process to view actual notice of a debtor's bankruptcy to a prepetition creditor as placing a burden on the creditor to come forward with his claim."). Each Plaintiff's "own failure" to act is relevant to their lack of notice argument. *Thornton v. Seadrill Ltd.*, 626 B.R. 422, 430 (S.D. Tex. 2021).

Indeed, Plaintiffs' own papers admit that Plaintiffs Fletcher . . . received *actual* notice of the bankruptcy proceedings and yet none of them took any steps whatsoever to protect their rights

with respect to their claims. The opposition states that Mr. Fletcher had actual knowledge of the bankruptcy proceedings as early as November 22, 2023, over a year prior to the Confirmation Hearing, when a Suggestion of Bankruptcy and Notice of Automatic Stay was filed in his case. *See* ECF No. 2285 at 19. Plaintiff Akinola had actual knowledge even earlier, when a Suggestion of Bankruptcy was filed in his action on February 21, 2023. *Id.* at 20. Plaintiffs Gilliam, Grey, and Holland had actual knowledge of the bankruptcy as early as May 8, 2023 when a Suggestion of Bankruptcy was filed in their collective action. *Id.* at 22. Further, while Plaintiff Howe argues that he did not receive actual knowledge of the bankruptcy proceedings until receiving YesCare's letter in April 2025, the docket in his case reflects that he was actually informed of the Debotor's bankruptcy proceedings at least as early as August 6, 2024 by way of reference in CHS TX's Motion to Dismiss filed in that action. *See Howe v. Wexford Health Sources, Inc.*, Case 1:24-cv-00653-GLR, ECF No. 39-1 at 4, n.1 ("Corizon Health Inc., is the parent company of Defendant CHS TX, Inc. Corizon is currently engaged in bankruptcy proceedings, which triggered an automatic stay to all lawsuits pursuant 11 U.S.C. § 362.").

Having received more than adequate notice of the bankruptcy proceedings in advance of Confirmation Hearing, the Plaintiffs waived any objection to the opt out mechanism or Consensual Claimant Release by not raising it prior to confirmation. *In re Bludworth Bond Shipyard, Inc.*, 93 B.R 520, 521 (Bankr. S.D. Tex. 1988) ("Failure on the part of a party in interest to file an objection to confirmation prior to the deadline fixed by the court results in waiver of the right to object.").[1]

[1] "Once creditors know about the bankruptcy, then they must take steps to protect their rights." *In re Schepps Food Stores, Inc.*, 152 B.R. 136, 138 (Bankr. S.D. Tex. 1993); *Robbins v. Amoco Prod. Co.*, 952 F.2d 901 (5th Cir. 1992) (reh'g denied 1992) (once a party received notice, "it is under constructive or inquiry notice that its claim may be affected, and it ignores the proceedings to which the notice refers at its peril.") (citation omitted); *Otto v. Texas Tamale Co.*, 219 B.R. 732,

II. Plaintiffs are Consensual Claimants for the Purposes of the Plan and Their Claims Against the Released Parties Should be Enjoined

Consequently, Plaintiffs' argument opposing the opt-out mechanism on the basis of their alleged lack of notice should fare no better. The Fifth Circuit has long endorsed the use of consensual third-party releases with an opt out mechanism, including after the Supreme Court's opinion in *Purdue Pharma*. *See In re Robertshaw US Holding Corp*., 662 B.R. 300, 323 (Bankr. S.D. Tex. 2024) ("Hundreds of Chapter 11 cases have been confirmed in this District with consensual third-party releases with an opt-out."); *In re Pipeline Health Sys., LLC*, No. 22-90291, 2025 WL 686080, at *4 (Bankr. S.D. Tex. Mar. 3, 2025) ("Opt-out procedures are a proper means to obtain consent to third-party releases in a Chapter 11 plan."); *In re GOL Linhas Aereas Inteligentes S.A.*, No. 24-10118 (MG), 2025 WL 1466055, at *20 (Bankr. S.D.N.Y. May 22, 2025) ("Courts in the Fifth Circuit have long allowed releases via opt-outs, and they continue to do so post-*Purdue*.").

Incredibly, Plaintiffs' brief fails to acknowledge controlling Fifth Circuit precedent or the "hundreds of Chapter 11 cases" in this Circuit that have used an opt-out mechanism referred to in *Robertshaw*. *Robertshaw*, 662 B.R. 300, 323 ("what constitutes consent, including opt-out features and deemed consent for not opting out, has long been settled in this District."). Plaintiffs' reliance on a few out-of-Circuit cases, *In re Smallhold, Inc.*, 665 B.R. 704 (Bankr. De. Del. Sept 25, 2024), *Patterson v. Mahwah Bergen Retail Grp., Inc., 636 B.R. 641 (E.D. Va. 2022)*, and *In re Tonawanda Coke Corp.*, 662 B.R. 220 (Bankr. W.D.N.Y. 2024), is misplaced because these cases conflict with Fifth Circuit precedent to the extent they question an opt-out mechanism. As the

740 (Bankr. S.D. Tex. 1998) (The failure to act by an individual who knows about a debtor's bankruptcy "is fatal to his claims").

bankruptcy court explained in *In re Spirit Airlines, Inc.*, 668 B.R. 689, 715 (Bankr. S.D.N.Y. 2025) (upholding consensual third-party releases with an opt out mechanism), "the *Smallhold* court's default theory cannot be reconciled with the approach of the Fifth Circuit on this issue; the Fifth Circuit has never permitted the grant of nonconsensual third-party releases in bankruptcy cases, but courts in that Circuit have routinely allowed consensual releases using an opt-out mechanism before *Purdue Pharma*."

The fact that consensual third-party releases with an opt out mechanism are so common in the Fifth Circuit (and elsewhere) eliminates *Smallwood*'s concern that claimants might not expect that their rights against third parties (all of whom here are closely related to the Debtor and/or the bankruptcy proceeding) might be released in the Plan. Further, any concern about expectations related to the Plan is particularly unfounded in this proceeding because the Consensual Claimant Release was prominently referenced and repeated throughout the Plan for anyone to see, both mailed and publication notices expressly warned about the Plan's release, *see* ECF No. 1863 at 4 (Exhibit A), and all any plaintiff had to do was follow simple directions if they wanted to opt-out to preserve their claims or request additional information or documentation. Plaintiffs' arguments that they did not timely file Proof of Claim forms nor moved to file untimely claims, despite each having adequate notice of the bankruptcy proceedings as noted above, does nothing to help them. In the Fifth Circuit, "even if a party did not receive the opt out form—because [t]he[y] did not file a proof of claim—does not change the result here. A creditor cannot appeal from a confirmation order, even if the plan contains third party releases, if they were provided the relevant notices, but failed to file a proof of claim, appear in a bankruptcy proceeding, or object to the plan." *In re Pipeline*, 2025 WL 686080, at *4.

Further, Plaintiffs' reliance on out-of-Circuit case law for the assertion that third-party releases are unenforceable absent the express consent of the creditor is misplaced. Rather, the courts in this Circuit have found an objecting party to have consented to the Plan where, as here, they were notified of the bankruptcy proceedings, failed to file proof of claim, and also failed to object to the Plan at any point prior to its confirmation. *See, e.g.*, *Cole v. Nabors Corp. Servs., Inc. (In re CJ Holding Co.)*, No. H-18-3250, 2019 U.S. Dist. LEXIS 21199, at *20 (S.D. Tex. Feb. 8, 2019); *see also E. Liberty St. Owner LLC v. 1903P Loan Agent, LLC*, 2024 N.Y. Slip Op 33897(U), ¶ 4 (Sup. Ct.) (specifically noting that *unlike* New York, courts in the Southern District of Texas hold that failing to opt-out validly releases claims in a bankruptcy proceeding).

Nor is there merit to the Plaintiffs' argument that they should be released from the Channeling Injunction of the Plan simply because their claims are asserted against the Released Parties instead of the Debtor. This narrow view of what it means to hold a "Claim" under the Code has no merit for all of the reasons explained in the Motion to Enjoin, at Arg. § III, namely, that "Claim" for purposes of the Code is to be given "the broadest possible definition" to include any possible or potential claim regardless of whether it was asserted. Pursuant to the Plan, a "Holder" of a Claim means "any Person or Entity holding a Claim . . . ." ECF No. 2014 at 71 (Art. I, ¶ 105). Plaintiffs who could or did assert injuries arising from conduct that could be attributable to the Debtor are Holders of a "PI/WD Claim," which is defined as:

> 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.

Id. at 74 (Art. I, ¶ 142). Holders of PI/WD Claims who did not opt out became a "Consenting PI/WD Claimant." *Id.* at 67 (Art. I, ¶ 45). Consenting PI/WD Claimants have their claims "channeled" into a PI/WD Trust and are subject to the Channeling Injunction. *Id.* (Art.I, ¶ 45); *Id.*

at 95, (Art. IV.D) ("All Channeled PI/WD Trust Claims shall be subject to the Channeling Injunction."). Pursuant to Art. III.F.6(a)(i), "[e]xcept as provided in the Plan, Holders of Channeled PI/WD Claims shall be enjoined from prosecuting any outstanding . . . Claims against the Released Parties in any forum whatsoever, including any state, federal, or non-U.S. court." *Id.* at 87.

Any § 1983 claim adequately alleging a failure to provide necessary medical care inherently implicates a potential negligence claim against the Debtor (the entity retained to provide that care) based on the same facts. As detailed in Plaintiffs' opposition, each Plaintiff plainly asserts claims based on § 1983 (in addition to other claims) against YesCare, CHS TX, and former employees of the Debtor, *i.e.*, Released Parties under the Plan. ECF No. 2285 at 1–12. As Holders of Claims seeking recovery for personal injuries, Plaintiffs cannot avoid the Channeling Injunction. Accordingly, the Plaintiffs should be enjoined from further prosecuting her claims against the Released Parties because they are Consensual Claimants for purposes of the Plan and therefore subject to the Plan's Channeling Injunction.

CONCLUSION

For all the reasons stated herein and in YesCare's Omnibus Motion to Enjoin Plaintiffs From Prosecuting Cases Against Released Parties, ECF No. 2160, the Court should grant the Omnibus Motion to Enjoin, including as to Plaintiffs Stephen J. Howe, Jamonte Jamar Fletcher, Rilwan Akinola, Chelsea Gilliam, Kennedy Holland, and Chloe Grey.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do hereby certify that on the 1st day of July, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served using the CM/ECF system. In addition, a true and correct copy has been electronically mailed or mailed via first class US mail to the following:

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