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

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

**YESCARE'S RESPONSE OPPOSING KOHCHISE JACKSON'S EMERGENCY MOTION TO ENFORCE THE INJUNCTION AGAINST INTERFERENCE WITH OPT-OUT RIGHTS AND CROSS-MOTION TO ENFORCE THE PLAN AND ENJOIN PLAINTIFF KOCHISE JACKSON FROM ARGUING THAT RELEASED PARTIES CAN BE LIABLE FOR THE DEBTOR'S ACTIONS UNDER ALTER EGO, FRAUDULENT TRANSFER, OR VEIL PIERCING**

The Court should deny Plaintiff Kohchise Jackson's emergency motion (Doc. 2304) because its premise is wrong. Plaintiff does ***not*** have standing to assert that CHS TX, Inc. ("CHS") can be liable for Corizon Health, Inc.'s conduct based on alter ego, fraudulent transfer, veil piercing, or similar claims because such claims are "Estate Causes of Action" that belong to the Debtor's Estate (now, the GUC Trustee under the effective Plan) and which are subject to the Estate Party Release. As discussed below, Plaintiff's classification as a Holder of Class 7 Opt-Out PI/WD Claims who can pursue "Released Parties" under "the doctrine of successor liability" does not give him standing to assert Estate Causes of Action that attack the propriety of the Divisional Merger and related transactions. Accordingly, Plaintiff's motion should be denied in its entirety.



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The Court should hold, consistent with the Plan, that Plaintiff, as a Holder of Class 7 Opt-Out PI/WD Claim, is enjoined from asserting alter ego, fraudulent transfer, veil piercing, or similar theories against the Released Parties.[1]

## FACTUAL BACKGROUND

Kochise Jackson is the Plaintiff in *Jackson v. Corizon Health, Inc. et al.,* Case No. 19-cv-13382 (E.D. Mich.). Plaintiff alleges that Corizon and Keith Papendick, M.D. violated Plaintiff's constitutional rights while Plaintiff was in prison from 2017-2019—years before CHS existed.

On July 20, 2022, Plaintiff filed a motion and 38 Exhibits in support of its argument under Fed. R. Civ. P. 25(c) seeking to substitute both YesCare Corp. and CHS "as party defendants in place of Corizon Health, Inc." (*Jackson* Doc. 77). The motion argued that YesCare Corp. and CHS "are alter-egos, successors, or mere continuations of Corizon Health, Inc." under Michigan law. (*Jackson* Doc. 77 ¶ 7). The accompanying brief argued at length that the Divisional Merger was "a fraudulent transfer," that "it cannot possibly constitute an arms-length sale of assts for fair value," that its purpose was "defrauding the unsecured creditors," that it "constitutes abuse of the corporate form," and that YesCare Corp. and CHS are alter-egos of Corzion and subject to veil-piercing because their "separate legal personalities serve no legitimate business purpose." (*Jackson* Doc. 77 at 15-39). Plaintiff also argued that YesCare Corp. and CHS should be liable under Michigan law because "the transaction was fraudulent," and "some of the elements of a

[1] The same dispute is at issue in *Tripati*, where several of the Defendants (including CHS) have respectively made the same arguments that CHS TX, Inc. is making here. The Court scheduled a hearing on that matter on July 10, 2025. The same issue also in dispute in another Class 7 opt-out case, *Windhurst*, where in advance of trial the state court plaintiff recently filed a motion under Arizona's equivalent to Rule 25(c) seeking to substitute CHS TX, Inc. and YesCare Corp. for the Debtor. Because this Court retained exclusive jurisdiction to decide disputes related to the Plan, CHS removed *Windhurst* to the District of Arizona and filed a pending Motion to Transfer the case to this Court in anticipation of filing a motion to dismiss in this Court.

purchase in good faith were lacking, or [] the transfer was without consideration and the creditors of the transferor were not provided for."

Apart from theories attacking the propriety of the Divisional Merger, the Plaintiff's motion also argued that Michigan law provides for successor liability if there "is an express or implied assumption of liability," "where the transactions amounts to a consolidation or merger," or "where the transferee corporation was a mere continuation of the old corporation." Plaintiff's motion argued the "mere continuation" theory "appears to be the most commonly applied" and focused on whether the entities "main corporate purpose was to conduct the same business." (*Jackson* Doc. 77 at 22-23). YesCare Corp. and CHS opposed the motion on all bases. (*Jackson* Doc. 83).

On November 11, 2022, the Magistrate Judge, applying Michigan law, found that CHS "is a mere continuation of pre-division Corizon," denied substitution of parties, added CHS as a separate defendant, and left Corizon in the case. (*Jackson* Doc. 89). The Report and Recommendation did not address any of the arguments that Plaintiff made that attacked the propriety of the Divisional Merger. The Magistrate Judge also denied the motion in its entirety as to YesCare Corp., finding that Plaintiff waived the "alter ego" argument because of "Jackson's Counsel's fundamental misunderstanding of alter ego liability." (*Id.* at 34).

CHS filed an objection to the Magistrate's Report and Recommendation. (*Jackson* Docs. 92, 96). In response, Plaintiff again raised arguments that transactions involving CHS and Corzion constituted "constructive fraud," was an "unfair device to achieve an inequitable result," and tried to re-argue alter ego and fraudulent transfer. (*Jackson* Doc. 95). On February 19, 2025, the District Court sustained that part of the Report and Recommendation holding that CHS was a "mere continuation" of Corizon under Michigan law, denying substitution, and adding CHS TX, Inc. as

a separate party.[2] (*Jackson* Doc. 114). The District Court never held that CHS bears liability for Corzion's actions under any other theory.

Plaintiff never amended his Complaint to assert any allegations against CHS. Over CHS's objection to proceeding under such an unusual circumstance—and despite the fact that there cannot be a trial against the Debtor because of the permanent injunction—the District Court set trial as to all parties for August 18, 2025. (*Jackson* Doc. 119). In advance of the July 30, 2025, *motion in limine* deadline, CHS's counsel requested that Plaintiff stipulate that he would not introduce evidence or argument that CHS could be liable for Corizon's conduct based on alter ego, fraudulent transfer, veil piercing, or similar theories that attacked the propriety of the Divisional Merger and related transactions. Plaintiff refused to so stipulate. Plaintiff then filed the instant motion.

## ARGUMENT

The filing of a bankruptcy petition creates the estate that is comprised of, among other things, "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). The phrase "all legal or equitable interests of the debtor in property" has been construed broadly and includes "rights of action" such as claims based on state or federal law. *See Am. Nat'l Bank of Austin v. MortgageAmerica Corp. (In re MortgageAmerica Corp.)*, 714 F.2d 1266, 1274 (5th Cir. 1983). The bankruptcy trustee has exclusive standing to assert

[2] Although not directly at issue in the present motion, CHS vehemtely disputes that Michigan law applies to determine whether CHS TX, Inc. has "successor liability" for the Debtor's conduct. Texas law should apply to whether there is successor liability between two Texas corporations who entered a transaction under a Texas statute with a Texas choice of law clause. Both the Texas statute and common law reject successor liability absent an express assumption of liability. Here, Corizon expressly assumed the liability at issue, not CHS. Even if Michigan law did apply, Michigan would enforce Texas law because Michigan has a strong public policy against retroactively manufacturing fictional contracts that ignore an express choice of law clause because some other policy purpose might be at issue.

claims that belong to the bankruptcy estate. *See In re Educators Gr. Health Trust*, 25 F.3d 1281, 1284 (5th Cir. 1994).

Alter ego, fraudulent transfer, veil piercing, and similar theories that contest the propriety of pre-Petition transactions involving the division of corporate assets and liabilities (e.g., the Divisional Merger involving CHS and the Debtor) are actions that belong to the debtor's estate because they assert a generalized injury to the debtor's estate that ultimately affects all creditors and are not actions that only affect that creditor at issue personally. *See In re Schimmelpenninck*, 183 F.3d 347, 358 (5th Cir. 1999) (alter ego claim belongs to estate); *Cadle Co. v. Mims (In re Moore)*, 608 F.3d 253, 258–59 (5th Cir. 2010). These are claims that "the debtor could have raised the claim as of the commencement of the case." *In re Educators*, 25 F.3d at 1284 (citing *S.I. Acquisition, Inc. v. Eastway Delivery Serv., Inc. (In re S.I. Acquisition*), 817 F.2d 1142 (5th Cir. 1987); *In re MortgageAmerica*, 714 F.2d at 1275–77).

"To pursue a claim on its own behalf, a creditor must show this direct injury is not dependent on injury to the estate." *Matter of Buccaneer Res., L.L.C.,* 912 F.3d 291, 293–94 (5th Cir. 2019). Thus, "[i]f a cause of action alleges only indirect harm to a creditor (i.e., an injury which derives from harm to the debtor), and the debtor could have raised a claim for its direct injury under the applicable law, then the cause of action belongs to the estate." *In re Educators*, 25 F.3d at 1284 (citations omitted).

Consistent with this precedent, the Plan defines "Estate Causes of Action" as:

> (a) Causes of Action that prior to the Petition Date could have been asserted by the Debtor on its own behalf under applicable state law, including Causes of Action seeking to impose liability based on ***(i) the doctrine of successor liability***, ***or*** (ii) the doctrines of alter ego or veil piercing; (b) Causes of Action that seek to impose liability for a Claim against the Debtor on any non-Debtor based on a theory of liability that is not specific to one or more particular creditors and is common to all creditors of the Debtor and can be asserted by the Debtor under applicable state law; and (c) all other Causes of Action that are property of the Estate under the

> Bankruptcy Code, including any other form of derivative or vicarious liability for liabilities of the Debtor.

Plan, Art. I, ¶ 77. Thus, the Plan expressly separates, distinguishes, and treats differently, on one hand, "the doctrine of successor liability," and on the other hand, "the doctrines of alter ego and veil piercing" and other claims that are common to all creditors (and "all other Causes of Action that are Property of the Estate…").

That distinction is critical. Holders of Class 7 Opt-Out PI/WD Claims like Plaintiff can proceed "based on the doctrine of successor liability" but are otherwise not permitted to assert "Estate Causes of Action." Plan, Art. III.F.7(a).[3] That means they cannot assert alter ego, veil piercing, fraud, or other claims against the Debtor that are common to all creditors. Indeed, other than "the doctrine of successor liability" carveout, Estate Causes of Action relating to the Divisional Merger and related transactions are all expressly part of the Estate Release resulting from the Estate Party Settlement, and include Estate Causes of Action:

- "based on or relating to, or in any manner arising from any act, omission, transaction, event, or other circumstance taking place or existing on or before the Effective Date in connection with or related to the Debtor, the Estate, their respective current or former assets and properties"

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[3] The section provides in full:

*Treatment*: On the Effective Date (or as soon as reasonably practicable thereafter), each Holder of an Opt-Out PI/WD Claim shall retain or receive, in full and final satisfaction of such Claim, the claims or theories of recovery or remedies based on the doctrine of successor liability that such Holder held and could have asserted against YesCare Corp., CHS TX, Inc., or any other alleged successor entity immediately prior to the Petition Date as part of or in connection with its PI/WD Claim and that became, as of the Petition Date, part of the claims or theories of recovery or remedies that could have been asserted by the Debtor as an Estate Cause of Action. ***Except for the foregoing, Holders of an Opt-Out PI/WD Claims may not assert any Estate Causes of Action*** to the extent that (a) such Estate Cause of Action is settled and released under the Plan pursuant to the Estate Release or (b) such Estate Cause of Action is a Retained Estate Cause of Action that is transferred to the Trusts under the Plan. Consistent with the foregoing, each Holder of an Opt-Out PI/WD Claim may elect to pursue recovery on account of its PI/WD Claim from any of the Released Parties. Holders of Opt-Out PI/WD Claims shall not receive, and shall have no right to receive, a Distribution from the PI/WD Trust.

- "the Plan of Divisional Merger"
- "the Payment Agreement"
- "the business or contractual arrangements between one or both of the Debtor and any Released Party"
- "the restructuring of any Claim or Interest that is treated by the Plan before or during the Chapter 11 Case"
- "any related agreements, instruments, and other documents created or entered into before or during the Chapter 11 Case or the negotiation, formulation, preparation, or implementation thereof"
- "any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing."

Plan, Art. IV.B.9.

Despite the Plan, Plaintiff argues at page 2 of his motion that he can pursue fraud, alter ego, and veil piercing theories because Michigan law includes allegations that "the transaction was fraudulent," and "some of the elements of a purchase in good faith were lacking, or where the transfer was without consideration and the creditors of the transferor were not provided for" under a broad "successor liability" rubric. The Court should reject this argument for two related reasons.

***First***, that argument obviously puts nomenclature over substance. The substance of "the transaction was fraudulent," or lack of consideration, theories are Estate Causes of Action that attack the propriety of the Divisional Merger, belong to the Estate, and are part of the Estate Party Release.

***Second***, Michigan law does not control the definitions of "Estate Causes of Action" or "the doctrine of successor liability" under the Plan. ***The Plan*** controls the definition of "Estate Causes of Action," which makes the express distinctions between "successor liability" and fraud or abuse of corporate form-based theories discussed above. And even if those express distinctions were not

already made, under the Plan, Texas law expressly applies to the "rights, obligations, construction, and implementation" of the Plan. Plan, Art. I.D. Texas's "successor liability" law does not recognize alter ego, fraudulent transfer, or veil piercing theories. "Texas law holds that absent an express assumption of liability, an entity that acquires another's assets is not a successor and cannot be held liable for a liability that is not expressly assumed." *Stegall v. Casillas,* No. 2:16-CV-381, 2016 WL 6397668, at *4 (S.D. Tex. Oct. 28, 2016). As such, it does not matter the appellation umbrella that Michigan uses to cover theories why one corporation might be liable for another corporation's conduct. What matters is that the Plan does not allow Plaintiff to pursue the substance of the arguments he wants to put in front of a jury.

Plaintiff's reliance on *Highland Capital Mgmt. L.P. v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 585 (5th Cir. 2008) does not help him. That case does not involve successor liability, alter ego, veil piercing, or any similar issues. In *Highland Capital*, unsecured bondholders sued a consulting firm that provided false oil reserve estimates. *Id*. at 585. The Fifth Circuit held that bondholders who alleged they relied on those estimates which induced them to buy or refrain from selling notes on the secondary market did not hold a claim that was derivative of a claim against the debtor's estate and was a claim that the debtor "could not have asserted the claims that the commencement of the bankruptcy case." *Id*. at 587. The *Highland Capital* case actually makes CHS's argument in contrasting its facts with claims that do belong to the estate. The Fifth Circuit recognized that "[a] typical fraudulent transfer claim is perhaps the paradigmatic example of a claim that is 'general' to all creditors . . . in bankruptcy such a claim is usually brought by the trustee, for the benefit of all creditors." *Id*. at 598, n. 9. The Court also mentioned "the existence of separate corporate entities that are a sham" in the same context. *Id*.; *see also Gigi's Cupcakes, LLC v. 4 Box LLC*, No. 3:17-CV-3009-B, 2019 WL 1767003, at *3

(N.D. Tex. Apr. 22, 2019) (fraudulent transfer claim belongs to the estate because plaintiffs "have alleged no specific conduct on FundCorp's or Food Business's part that is personal to or directed at them.")

## CONCLUSION

For all the reasons stated herein, the Court should deny Kohchise Jackson's Emergency Motion and hold that Holders of Class 7 Opt-Out PI/WD Claim like Plaintiff are enjoined from taking any action to assert or pursue arguments that Released Parties are liable for the Debtor's conduct based on alter ego, fraudulent transfer, veil piercing, or similar theories that attack the propriety of the Divisional Merger or related transactions.

Respectfully submitted,

By: */s/ Trevor W. Carolan*

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***CHS TX, INC. d/b/a YESCARE***

**CERTIFICATE OF SERVICE**

I do hereby certify that on the 3rd 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 to the attorneys for Kohchise Jackson as follows:

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

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

**[PROPOSED] ORDER GRANTING CHS TX, INC.'S CROSS-MOTION TO ENFORCE THE PLAN AND ENJOIN PLAINTIFF KOCHISE JACKSON FROM ARGUING THAT RELEASED PARTIES CAN BE LIABLE FOR THE DEBTOR'S ACTIONS UNDER ALTER EGO, FRAUDULENT TRANSFER, OR VEIL PIERCING**

**THIS MATTER** coming before the Court upon Plaintiff Kohchise Jackson's Emergency Motion to Enforce the Injunction Against Interference with Opt-Out Rights (Doc. 2304), CHS TX, Inc.'s Response and Cross-Motion to Enforce the Plan (Doc. ___), and the Court having reviewed the Motions, Exhibits, and any Response thereto, and being otherwise fully advised in the premises, with good cause having been shown, hereby finds that:

1. Plaintiff Kochise Jackson's motion is **DENIED** in its entirety.
2. CHS TX, Inc.'s cross-motion is **GRANTED**.

**IT IS HEREBY ORDERED** that Plaintiff, as a Holder of a Class 7 Opt-Out PI/WD Claim, whether by himself or through his counsel, is restrained and enjoined from asserting, pursing, or arguing any claim, cause of action, or legal theory that seeks to hold any Released Party, including CHS TX, Inc., liable for the Debtor's conduct (inclusive of Corizon Health, Inc.'s conduct), based on alter ego, veil piercing, fraudulent transfer or any similar claim, cause of action, or theory based on or relating to, or in any manner arising from any act, omission, transaction, event, or other

circumstance taking place or existing on or before the Effective Date in connection with or related to the Debtor, the Estate, their respective current or former assets and properties, the Plan of Divisional Merger, the Payment Agreement, the business or contractual arrangements between one or both of the Debtor and any Released Party, the restructuring of any Claim or Interest that is treated by the Plan before or during the Chapter 11 Case, any related agreements, instruments, and other documents created or entered into before or during the Chapter 11 Case or the negotiation, formulation, preparation, or implementation thereof, any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Effective Date related or relating to the foregoing.

**IT IS HEREBY FURTHER ORDERED** that this Order is intended to confirm the existing rights, obligations, construction, and implementation the Plan. Noting in this Order is intended to or shall change, modify, expand, alter, or otherwise impact the Plan in any way.

**IT IS HEREBY FURTHER ORDERED** that CHS TX, Inc. shall promptly cause this Order to be filed on the docket and served in all cases involving Holders of Class 7 Opt-Out PI/WD Claims.

**IT IS HEREBY FURTHER ORDERED** that this Court shall retain exclusive jurisdiction over all disputes arising from or related to this Order, including its subject matter, which is within the Court's continued retention of exclusive jurisdiction as set forth in the Confirmation Order and Plan.

_____
Hon. Christopher M. Lopez
United States Bankruptcy Judge