

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
(Houston Division)**

United States Courts  
Southern District of Texas  
FILED

JUL - 8 2025

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In Re:

TEHUM CARE SERVICES, INC.,

Debtor.

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Chapter 11 Nathan Ochsner, Clerk of Court  
Case No. 23-90086 (CML)

**BRIEF IN SUPPORT OF  
OBJECTION TO FORMER MICHIGAN CORIZON EMPLOYEE'S MOTION AND CONCURRENCE  
IN YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFF'S FROM PROSECUTING  
CASES AGAINST RELEASED PARTIES**



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**STATEMENT OF ISSUES PRESENTED**

When a released party is a defendant in a § 1983 civil rights action and being sued in his "individual" capacity and not in his "official" capacity, is he entitled to the protections of the bankruptcy venue, forum, or jurisdiction?

DR. KEITH PAPENDICK STATES: YES

UNSECURED CREDITOR STATES: NO

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CASES AGAINST RELEASED PARTIES**

NOW COMES Unsecured Creditor, GORDON SCOTT DITIMER, proceeding in propria persona, who objects to the FORMER MICHIGAN CORIZON EMPLOYEE'S MOTION AND CONCURRENCE IN YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES (Motion and Concurrence), as filed by the HACKNEY ODLUM & DARDAS Law Firm (HOD). In support of his Objection, this Unsecured Creditor states as follows:

This Unsecured Creditor has not received a copy of the Omnibus Motion filed by YesCare, nor does he have access to said Omnibus Motion, and therefore, has no knowledge as to the content or the several request therein made, as referenced within the Motion and Concurrence.

This Unsecured Creditor has not received a copy of the confirmed Disclosure Statement, nor does he have access to said confirmed Disclosure Statement, and therefore, cannot confirm the references made regarding said

Disclosure Statement within the Motion and Concurrence.

This Unsecured Creditor has not received a copy of the confirmed Plan, nor does he have access to said confirmed Plan, and therefore, cannot confirm the references made regarding said Plan within the Motion and Concurrence.

Because this Unsecured Creditor has not received a copy of the Omnibus Motion filed by YesCare, or the confirmed Disclosure Statement, or the confirmed Plan, he is unable to file a proper objection to the Motion and Concurrence now before this Court.

In January of 2022, this Unsecured Creditor filed a § 1983 civil rights action against Corizon Health, Inc. (Corizon) and Dr. Keith Papendick (Papendick) in the United States District Court for the Western District of Michigan, and that action was assigned Case No. 1:22-cv-77. In that civil rights action, this Unsecured Creditor is suing Papendick in his "individual" or "personal" capacity only, and has made no claim against Papendick in his "official" or "professional" capacity.

Corizon created a shell company in the State of Texas, i.e., Tehum Care Services, Inc. (TCS), and on February 13, 2023, TCS filed a voluntary petition pursuant to Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532. That cause is pending in this Court, under Case No. 23-90086 (CML).

As a result of that bankruptcy, the CHAPMAN LAW GROUP (counsel for Corizon and Papendick) moved to withdraw from the case, and for a stay of the proceedings. That motion was granted, wherein a stay of 120-days was entered as to Papendick, and the case was administratively closed as to Corizon.

Prior to HOD having made an appearance as counsel for Papendick, this Unsecured Creditor did send a request to Jason S. Brookner (counsel for TCS), wherein he did inquire as to whether Corizon or TCS had indemnified Papendick.

To date, this Unsecured Creditor has not received a reply to his request.

To the best of this Unsecured Creditor's information, knowledge and belief, the protection of this venue and/or forum and/or jurisdiction does not extend to Papendick, however, because Jason S. Brookner did fail to timely respond to this Unsecured Creditor's inquiry as to the indemnification status of Papendick, this Unsecured Creditor did file an "Amended" Proof of Claim, to include Papendick, prior to the expiration date to do so.

On August 8, 2023, HOD made an appearance as counsel for Papendick in this Unsecured Creditor's 1983 civil action in the United States District Court for the Western District of Michigan, and the Honorable Robert J. Jonker did lift the stay on March 19, 2024.

In *Kentucky v. Graham*, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985), the Court sought to eliminate lingering confusion about the distinction between personal-capacity and official-capacity suits. The Court emphasized that official-capacity suits "generally represent only another way of pleading an action against an entity of which an officer is an agent." *Id.*, at 165 (quoting *Monell v. New York City Dept. of Social Services*, 436 U.S. 658, 690, n. 55, 98 S.Ct. 2018, 56 L.Ed.2d 611 (1978)). Suits against state officials in their official capacity therefore should be treated as suits against the State. 473 U.S., at 166. Because the real party in interest in an official-capacity suit is the governmental entity and not the named official, "the entity's 'policy or custom' must have played a part in the violation of federal law." *Id.* For the same reason, the only immunities available to the defendant in an official-capacity action are those that the governmental entity possesses. 473 U.S., at 167.

Personal-capacity suits, on the other hand, seek to impose individual

liability upon a government officer for actions taken under color of state law. Thus, "on the merits, to establish personal liability in a § 1983 action, it is enough to show that the official, acting under color of state law, caused the deprivation of a federal right." *Id.*, at 166. While the plaintiff in a personal-capacity suit need not establish a connection to governmental "policy or custom," officials sued in their personal capacities, unlike those sued in their official capacities, may assert defenses such a objectively reasonable reliance on existing law. *Id.*, at 166-167.

The Supreme Court's decision in *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 109 S.Ct. 2304, 105 L.Ed.2d 45 (1989), turned in part on these differences between personal-capacity and official-capacity actions. The principle issue in *Will* was whether States are "persons" subject to suit under § 1983. Section 1983 provides, in relevant part:

"Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured ...."

14. The Court held that interpreting the words "every person" to exclude the States accorded with the most natural reading of the law, with its legislative history, and with the rule that Congress must clearly state its intention to alter "the federal balance" when it seeks to do so. *Will*, *supra*, at 65 (quoting *United States v. Bass*, 404 U.S. 336, 349, 92 S.Ct. 515, 30 L.Ed.2d 488 (1971)).

The Court then addressed the related question whether state officials, sued for monetary relief in their official capacities, are persons under § 1983. The Court held that they are not. Although "state officials literally are persons," an official-capacity suit against a state officer "is not a suit



against the official but rather is a suit against the official's office. As such, it is no different from a suit against the State itself." 491 U.S., at 71 (citation omitted).

Will itself makes clear that the distinction between official-capacity suits and personal-capacity suits is more than "a mere pleading device." Ibid. State officers sued for damages in their official capacity are not "persons" for purposes of the suit because they assume the identity of the government that employs them. Ibid. By contrast, officers sued in their personal capacity come to court as individuals. A government official in the role of personal capacity defendant thus fits comfortably within the statutory term "person." Cf.

Should Papendick seek to overcome this distinction between official and personal capacity suits by arguing that state officials may not be liable in their personal capacity for actions taken in their official capacity, it should be noted that the United States Supreme Court finds that argument both unpersuasive as an interpretation of § 1983 and foreclosed by their prior decisions.

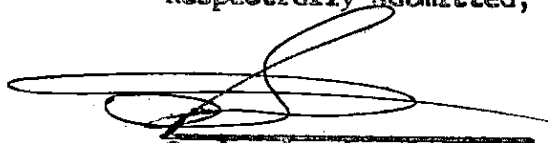
Through § 1983, Congress sought "to give remedy to parties deprived of constitutional rights, privileges and immunities by an official's abuse of his position." *Monroe v. Pape*, 365 U.S. 167, 172, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961). Accordingly, it authorized suits to redress deprivations of civil rights by persons acting "under color of any [state] statute, ordinance, regulation, custom, or usage." 42 U.S.C. § 1983. The requirement of action under color of state law means that Papendick may be liable for injuring this Unsecured Creditor precisely because of his authority as reviewing physician. This Court should not accept the novel proposition that this same official

authority insulates Papendick from civil suit. *Hafer v. Melo*, 502 U.S. 21, 27-28, 112 S.Ct. 358, 116 L.Ed.2d 301 (1991).

This Unsecured Creditor is suing Papendick in his personal capacity, and not in his official capacity. With that said, Papendick should not be afforded the protections of this bankruptcy venue, forum, or jurisdiction, as it has been the law of the land for more than 125 years that when a defendant is sued in his personal capacity, he is being sued for his personal liability and not as part of the corporate entity. See *Case Mfg. Co. v. Soxman*, 138 U.S. 431, 438, 11 S.Ct. 360, 34 L.Ed. 1019 (1891)(corporate liability does not extend beyond the corporate assets); *Whitman v. Oxford Natl. Bank*, 176 U.S. 559, 567, 20 S.Ct. 477, 44 L.Ed. 587 (1900)(an action upon individual liability is not one to enforce a penal statute but only to secure a private remedy is not open to question since the decision in *Huntington v. Attrill*, 146 U.S. 657).

For all the reasons stated herein, this Unsecured Creditor prays that this Honorable Court (1) grant his objection; (2) void Claim No. 694; and, (3) deny Papendick the protections afforded by this Bankruptcy Court, thereby allowing this Unsecured Creditor to continue seeking redress for his injury, pursuant to 42 U.S.C. § 1983, which he has been prosecuting in the United States District Court for the Western District of Michigan since January of 2022, more than 3 years prior to the filing of the Motion and Concurrence currently before this Court.

Respectfully submitted,



Gordon S. Dittmer,  
Unsecured Creditor,  
MDOC No. 175464,  
Lakeland Correctional Facility,  
141 First Street,  
Coldwater, MI., 49036-9687.

Dated: July 1, 2025

**PROOF OF SERVICE**

**23-90086 (CML) (In Re: TEHUM CARE SERVICES, INC.)**

Clerk of the Court,  
United States Bankruptcy Court,  
Courtroom 401,  
515 Rusk,  
Houston, TX., 77002.

HACKNEY, ODLUM & DARDAS,  
Attn: Thomas G. Hackney,  
Conner A. McLaughlin,  
Bayview Professional Centre,  
10850 East Traverse Hwy.,  
Suite 4440,  
Traverse City, MI., 49684-1364.

**NOTICE OF UNITED STATES POSTAL MAILING**

The following documents were mailed by Gordon Scott Dittmer on July 1, 2025, to the Clerk of the Court and to Thomas G. Hackney and Conner A. McLaughlin (attorneys for KEITH PAPENDICK, M.D.) at the above addresses, and are considered filed on July 1, 2025.

**DOCUMENTS ENCLOSED**

1) BRIEF IN SUPPORT OF OBJECTION TO FORMER MICHIGAN EMPLOYEE'S MOTION AND CONCURRENCE IN YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES:

2) PROOF OF SERVICE; and,

3) CERTIFICATE OF SERVICE.

**Case Name:** In Re: TEHUM CARE SERVICES, INC.

**Case Number:** 23-90086 (CML)

**MEANS OF SERVICE**

Service upon them has been done by sealing said documents inside properly addressed envelopes and handing said sealed envelopes, along with properly completed Expedited Legal Mail Disbursement Authorization forms, to prison authorities for processing and positing into the out-going United States mail.

**Dated:** July 1, 2025



Gordon S. Dittmer,  
Unsecured Creditor,  
MDOC No. 175464,  
Lakeland Correctional Facility,  
141 First Street,  
Coldwater, MI., 49036.

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

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CERTIFICATE OF SERVICE

This is to certify that on the 1st day of July, 2025, a true and correct copy of BRIEF IN SUPPORT OF OBJECTION TO FORMER MICHIGAN CORIZON EMPLOYEE'S MOTION AND CONCURRENCE IN YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES was filed with the Clerk of the Court, and with Thomas G. Hackney and Connor A. McLaughlin (attorneys for Dr. Keith Papendick), and served using the United States Postal Service, addressed as follows:

Clerk of the Court,  
United States Bankruptcy Court,  
Courtroom 401,  
515 Rusk,  
Houston, TX., 77002.

HACKNEY, ODLUM & DARDAS,  
Attn: Thomas G. Hackney,  
Connor A. McLaughlin,  
Bayview Professional Centre,  
10850 East Traverse Hwy.,  
Suite 4440,  
Traverse City, MI., 49684-1364.

Dated: July 1, 2025

  
Gordon Scott Dittmer,  
Unsecured Creditor,  
MDOC No. 175464,  
Lakeland Correctional Facility,  
141 First Street,  
Coldwater, MI., 49036-9687.

Clerk of the Court,  
United States Bankruptcy Court,  
Courtroom 401,  
515 Rusk,  
Houston, TX., 77002.

Gordon Scott Dittmer,  
MDOC No. 175464,  
Lakeland Correctional Facility,  
141 First Street,  
Coldwater, MI., 49036-9687.

RE: In re: TEHUM CARE SERVICES, INC.  
(Case No. 23-90086 (CML))

Dear Court Clerk,

Enclosed, please find for filing in the above entitled cause: 1) BRIEF IN SUPPORT OF OBJECTION TO FORMER MICHIGAN CORIZON EMPLOYEES' MOTION AND CONCURRENCE IN YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES; 2) PROOF OF SERVICE; and 3) CERTIFICATE OF SERVICE.

I thank you in advance for your time and efforts in this most important matter.

Kindest regards,

Dated: July 1, 2025

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Gordon S. Dittmer,  
Unsecured Creditor,  
MDOC No. 175464,  
Lakeland Correctional Facility,  
141 First Street,  
Coldwater, MI., 49036-9687.

Gordon S. Dittmer,  
MDOC No. 175464,ational Facility,  
Lakeland Correctional Facility,  
141 First Street, 49036-9687.  
Coldwater, MI.,

United States Court  
Southern District of Texas  
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Nathan Ochsmier, Clerk of Court

Clerk of the Court,  
United States Bankruptcy Court,  
Courtroom 401,  
515 Rusk, TX., 77002.  
Houston,

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