

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

In re:

TEHUM CARE SERVICES, INC.,

Debtor.

Chapter 11

Case No. 23-90086 (CML)

**SUPPLEMENTAL OPPOSITION TO OMNIBUS MOTION TO ENJOIN PLAINTIFFS
FROM PROSECUTING CASES AGAINST RELEASED PARTIES**

(Related to Dkt. Nos. 2160, 2284, 2425)

Keith Darnell Kelly submits this supplemental opposition to the Debtor's *Omnibus Motion to Enjoin Plaintiffs from Prosecuting Cases Against Released Parties* [Dkt. No. 2160] (the "Motion to Enjoin"). Mr. Kelly is an inmate at the Western Correctional Institution in Cumberland, Maryland and filed a *pro se* opposition to the Motion to Enjoin [Dkt. No. 2284] (the "Opposition"). Since Mr. Kelly filed the Opposition: (a) this Court entered an order deferring ruling on the Motion to Enjoin as it applied to Mr. Kelly and indicating that it would hold a supplemental hearing as to Mr. Kelly and other similarly situated parties, Dkt. No. 2374; (b) the Debtor filed a supplemental memorandum of law in support of the Motion to Enjoin, Dkt. No. 2425 (the "Debtor's Supplemental Brief"); and (c) counsel was appointed for Mr. Kelly in his pending lawsuit against certain non-Debtor defendants in the United States District Court for the District of Maryland, *see Kelly v. Swan*, Case No. 23-cv-2432 (the "2023 Maryland Case"). Accordingly, by and through his newly appointed counsel, Mr. Kelly now files this supplemental opposition to the Motion to Enjoin and in response to the Debtor's Supplemental Brief, as well as the Declaration of Keith Darnell Kelly, attached hereto as **Exhibit A** (the "Kelly Declaration"), in support of this supplemental opposition.



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For the reasons set forth herein, the Motion to Enjoin should be denied as to Mr. Kelly, and Mr. Kelly should be permitted to continue prosecuting the 2023 Maryland Case.

BACKGROUND

At all relevant times, Mr. Kelly has been incarcerated at the Western Correctional Institution at 13800 McMullen Highway, S.W. in Cumberland, Maryland. *See Kelly Decl.*, ¶ 1.

On September 1, 2020, Mr. Kelly filed a suit in the District of Maryland, case no. 20-cv-02531, against the Commissioner of the State of Maryland Department of Corrections, as well as a number of employees of Roxbury Correctional Institution asserting several violations of his Constitutional rights under 42 U.S.C. § 1983 (the “2020 Maryland Case”). Mr. Kelly was represented in that action by attorney Laurence Marder of the firm Bekman, Marder, Hopper, Malarkey and Perlin LLC (the “Bekman Firm”).

On February 13, 2023, Tehum Care Services, Inc. f/k/a Corizon Health, Inc. (“Debtor”) commenced above the above-captioned bankruptcy case (the “Bankruptcy Case”).

On April 28, 2023, the Debtor filed its *Schedules of Assets and Liabilities for Tehum Care Services, Inc.* (the “Schedules”), listing Mr. Kelly as a creditor holding a contingent and unliquidated (though not disputed) “indemnification” claim for an undetermined amount relating to the 2020 Maryland Case (the “Scheduled Claim”). Dkt. No. 481, p. 52 (Schedule E/F, Part 2). The Schedules listed attorney Laurence Marder of the Bekman Firm at the address of that law firm in Baltimore, Maryland as the contact and address for providing notice to Mr. Kelly. *Id.*

On May 2, 2023, the Bankruptcy Court entered an order establishing the bar date for prepetition proofs of claim. Dkt. No. 499.

On May 23, 2023, the claims agent filed a certificate of service, attesting to the service of a bar date notice and a “[Customized] Proof of Claim Form” to Mr. Kelly at the address of the Bekman Firm. Dkt. No. 609, pp. 1-2, Ex. D., p. 77. Mr. Kelly was not served at Western

Correctional Institution, and the Bekman Firm did not provide Mr. Kelly with notice of the proof of claim bar date.

On June 10, 2023, the Debtor filed an amended Statement of Financial Affairs, identifying Mr. Kelly's 2020 Maryland Case as a liability of the Debtor. Dkt. No. 677, p. 143.

On September 5, 2023, Mr. Kelly filed a *pro se* complaint initiating the 2023 Maryland Case against certain individuals who worked at the Western Correctional Institution and were previously employed by the Debtor (the "Maryland Defendants), alleging that such individuals repeatedly denied Mr. Kelly necessary medical care, causing him severe pain and harm. 2023 Maryland Case, Case No. 23-cv-2432, Dkt. No. 1, (D. Md. Sept. 5, 2023). The complaint in the 2023 Maryland Case alleges that these actions violated Mr. Kelly's rights under 42 U.S.C. § 1983 and seeks damages and declaratory and injunctive relief. *Id.* Neither Corizon nor YesCare was named as a defendant in the 2023 Maryland Case.¹

On February 22, 2024, the 2020 Maryland Case was terminated pursuant to stipulation of the parties.

On or about October 21, 2024, Mr. Kelly received a letter from the Bekman Firm enclosing a notice of the disclosure statement hearing that had been sent to the Bekman Firm. This was the first time that Mr. Kelly received any notice of the Bankruptcy Case. *See* Kelly Decl., ¶ 6.

On November 13, 2024, the Bankruptcy Court entered an order approving the disclosure statement and solicitation procedures. Dkt. No. 1813 (the "Solicitation Procedures Order"). The Solicitation Procedures Order provided that "Holders of PI/WD" claims would be entitled to vote

¹ While Mr. Kelly's *pro se* complaint in the 2023 Maryland Case identified YesCare and Corizon as parties in interest, it did not name YesCare or Corizon as a defendant or assert any claims against it. *See generally Kelly v. Swan*, Case No. 23-cv-2432, Dkt. No. 1, (D. Md. Sept. 5, 2023).

on the plan and required that “Holders of PI/WD” receive the “Solicitation Package,” which was defined to include (among other things) the plan, disclosure statement, and a ballot to vote on the plan. *Id.*, Ex. 1.

On December 3, 2024, the claims agent in the Bankruptcy Case filed a certificate of service, attesting to the service of the “Opt-Out Release Form, Notice of Non-Voting Status, Confirmation Hearing Notice, and Return Envelope” on Mr. Kelly at the address of the Bekman Firm, on November 20, 2024. Dkt. No. 1852, p. 4; *see also* Dkt. No. 1852, Ex. H, p. 16 of 37. Mr. Kelly was not served at the Western Correctional Institution. The Debtor did not serve the plan, disclosure statement, or a ballot on Mr. Kelly at the Bekman Firm or at any other address.

On December 3, 2024, the Bekman Firm sent a letter to Mr. Kelly, enclosing the Opt-Out Release Form for Holders of All Claims from the Bankruptcy Case. The letter from the Bekman Firm said “we do not represent you in this matter.” *See* Dkt. No. 1952, p. 5; *see also* Kelly Decl., ¶ 4.

Thereafter, on January 13, 2025, Mr. Kelly submitted a letter to the Bankruptcy Court, which was subsequently filed to the Bankruptcy Case docket on February 4, 2025 (the “Opt-Out Letter”). Dkt. No. 1952. The Opt-Out Letter directed that future correspondence related to the Bankruptcy Case be sent to Mr. Kelly directly and stated that the Bekman Firm did not represent him in this matter. *Id.*, pp. 1-2. The Opt-Out Letter further explained that Mr. Kelly was filing the letter *pro se*, that he did not “fully understand how Bankruptcy work[s], and therefore [was] filing this motion to the best of [his] understanding.” *Id.*, p. 2. Although the Opt-Out Release Form had been served on account of his 2020 Maryland Case, Mr. Kelly, erroneously believing that it had been served on account of his 2023 Maryland Case, referred to that latter action in the Opt-Out Letter. Referring to his 2023 Maryland Case, the letter stated that “I have a ‘pending’ Civil Case, Case No.: BAH-23-2423, in the United States District Court for the District of

Maryland, 101 W. Lombard Street, Baltimore Maryland 21201-2691; so I’m not going to opt-out.” *Id.*, p. 1. While the letter said that Mr. Kelly was “not going to opt-out,” his intention was clearly to preserve his right to continue his 2023 Case in District Court in Maryland. *See* Kelly Decl., ¶ 5.

On March 3, 2025, the Bankruptcy Court confirmed the Debtor’s plan of reorganization [Dkt. No. 2014] (the “Plan”).

On May 16, 2025, the Debtor filed the Motion to Enjoin. Dkt. No. 2160. The Motion to Enjoin identified the 2023 Maryland Case in Exhibit A, listing it as a “PI/WD Claim” (as defined in the Plan), and asserting that Mr. Kelly was “listed on the creditor matrix and is listed as having received notice of the Claims Bar Date and Solicitation Materials related to the Plan, including the Opt-Out Release Form. *See* (SDTX Doc. 609, Ex. D); (SDTX Doc. 1852, Ex. F).” *Id.*, Ex. A, p. 44. The Motion to Enjoin was the first filing by the Debtor referring to—or contending that the Bankruptcy Case had any effect on—Mr. Kelly’s 2023 Maryland Case. The first docket entry cited by the Debtor in the Motion to Enjoin—Dkt. No. 609—was the certificate of service related to the bar date notice and proof of claim for the 2020 Maryland Case which, as explained above, had apparently been served on the Bekman firm but was not forwarded to Mr. Kelly. The second docket entry cited—Dkt. No. 1852, Ex. F—is erroneous. While the people listed on Dkt. No. 1852, Ex. F were identified as people who were served with the Solicitation Materials, ***Mr. Kelly was not listed on Dkt. No. 1852, Ex. F.*** Rather, he is listed at Dkt. No. 1852, Ex. H, which lists people that only received the “Opt-Out Release Form, Notice of Non-Voting Status, Confirmation Hearing Notice, and Return Envelope” and *did not receive the Solicitation Materials*. *See* Dkt. No. 1852, p. 4.

In other words, though the Debtor represented to this Court in the Motion to Enjoin that Mr. Kelly received the “Solicitation Materials” (Dkt. No. 2160, Ex. A, p. 44), that representation

was incorrect, as shown by the very document that the Debtor cited. And all of the materials that the Debtor cited in the Motion to Enjoin as having been served on Mr. Kelly (only some of which he received) had been served on account of his 2020 Maryland Case, not his 2023 Maryland Case.

On June 10, 2025, Mr. Kelly sent to the Bankruptcy Court the *pro se* Objection, which was filed on the docket in the Bankruptcy Case on June 20, 2025. Dkt. No. 2284. The Objection noted Mr. Kelly's limited understanding of the Bankruptcy Case, explained that the District Court in Maryland had approved the appointment of counsel for him but that counsel had not yet been appointed, and explained that in the meantime, he would continue to "fil[e] motions and responses to the best of [his] abilities." *Id.*, p. 2.² The Objection cited his 2023 Maryland Case, explained that he wanted to continue to prosecute his claims in that case against the "Released Parties," and concluded that "[t]he Debtor motion should be denied." *Id.*

On June 11, 2025, the Maryland Defendants filed on the docket in the 2023 Maryland Case a motion to stay that case—asserting for the first time that the Bankruptcy Case had any effect on the 2023 Maryland Case; no suggestion of bankruptcy had previously been filed. 2023 Maryland Case, Case No. 23-cv-2432, Dkt. No. 47, (D. Md. June 11, 2025).

On July 1, 2025, the Debtor filed a reply to the Objection (the "Reply"). Dkt. No. 2321. The Reply asserted that (1) that the Maryland Defendants were former employees of the Debtor, and therefore "Released Parties" under the Plan, and (2) that claims asserted in the 2023 Maryland Case are PI/WD Claims (as defined in the Plan), and thus subject to the Plan's channeling injunction because Mr. Kelly had not opted out. *Id.*

² Though counsel had been appointed for Mr. Kelly the day prior, Mr. Kelly had not yet learned that counsel had been appointed and had not yet conferred with counsel.

On July 9, 2025, the District Court for the District of Maryland appointed Sonika Data of WilmerHale to represent Mr. Kelly in the 2023 Maryland Case. *See* 2023 Maryland Case, Case No. 23-cv-2432, Dkt. No. 48, (D. Md. July 9, 2025).

On August 7, 2025, this Court entered an order on the Motion to Enjoin, determining that certain parties (i.e., those listed on Exhibit C), including Mr. Kelly, were served an Opt-Out Release Form and a Notice of Non-Voting Status instead of a ballot. Dkt. No. 2374. The Court made no finding or ruling with respect to such parties and indicated that a separate hearing would be set for further consideration regarding those Exhibit C parties. *Id.*

On August 27, 2025, the Debtor filed its Supplemental Brief in support of the Motion to Enjoin, arguing that the “Exhibit C Parties” should be enjoined. Dkt. No. 2425. In support of the argument that the Exhibit C Parties had adequate notice of the Bankruptcy Case, Paragraph 2 of the Supplemental Brief lists the notices (in addition to the “Opt-Out Release Form, Notice of Non-Voting Status, Confirmation Hearing Notice, and Return Envelope”) that were supposedly provided to the “Exhibit C Parties.” *Id.*, pp. 1-2. Mr. Kelly is not listed in that paragraph at all.

ARGUMENT

Tellingly, the Debtor never contended that Mr. Kelly’s 2023 Maryland Case was affected by the Plan (or otherwise affected by this Bankruptcy Case) until *after Mr. Kelly erroneously referenced the 2023 Maryland Case in his Opt-Out letter*. The Opt-Out Notice, and all other notices that had been served on Mr. Kelly in this Bankruptcy Case, had been served on account of his 2020 Maryland Case, not the 2023 Maryland Case that the Debtor now seeks to enjoin. The Debtor’s *ex post facto* attempt to bring Mr. Kelly’s 2023 Maryland Case under the Plan—i.e., the Motion to Enjoin—must be denied for three independent reasons. *First*, Mr. Kelly does not assert in the 2023 Maryland Case a claim against the Debtor and therefore, his claims are not enjoined, released, or channeled by the plain language of the Plan. *Second*, even if Mr. Kelly’s

claims would have been enjoined, released, or channeled by the Plan had he not opted out, Mr. Kelly did opt out. *Third*, to the extent the Court finds that Mr. Kelly was required to opt out but did not, enjoining his claims would violate due process because Mr. Kelly had no notice that he had a claim against the Debtor and was required—or even permitted—to opt out.

I. MR. KELLY’S 2023 MARYLAND CASE IS NOT ENJOINED BY THE PLAN

Regardless of whether Mr. Kelly opted out, his Maryland Case is not enjoined, released, or channeled by the Plan because he does not have a claim against the Debtor. Nothing the Debtor says in its Reply or Supplemental Brief demonstrates otherwise.

The Debtor argued in its Reply that the claims asserted by Mr. Kelly in the 2023 Maryland Case are enjoined because they are PI/WD Claims under the Plan. Reply, p. 4. That is wrong. PI/WD Claim 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 regardless of whether such Claim is alleged to have been allocated to CHS TX, Inc. or YesCare Corp. under the Plan of Divisional Merger.

Dkt. No. 2014, Ex. B, p. 74 (Art. I, ¶ 142) (emphasis added).³ The word “Claim” in the Plan is similarly defined as a “claim *against the Debtor*, as defined in section 101(5) of the Bankruptcy Code.” *Id.*, p. 65 (Art. I, ¶ 28) (emphasis added). The claims in the 2023 Maryland Case are asserted only against individuals and not “against the Debtor.”⁴ Accordingly, those claims are not PI/WD Claims and Mr. Kelly is not a PI/WD Claimant under the Plan. Had Mr. Kelly been a

³ In several of its papers, the Debtor has cited to an excerpted version of this definition, without acknowledging that the quoted language is an excerpt. Mot. to Enjoin, p. 5; Reply, p. 4.

⁴ While the Debtor is correct that the Bankruptcy Code’s definition of “claim” is broad (*see* Mot. to Enjoin, p. 5; Reply, p. 4.), Mr. Kelly’s claims are not claims *against the Debtor*, which is the salient point.

PI/WD Claimant, he would have been entitled to vote on the Plan and been sent the Solicitation Materials, including a ballot. The fact that the Debtor never sent him the Solicitation Materials shows that it did not believe he was a PI/WD Claimant.⁵

Having apparently realized after filing the Reply that its representation to this Court that it sent Mr. Kelly the Solicitation Materials was false, the Debtor now asserts in its Supplemental Brief that Mr. Kelly was not entitled to vote on the Plan—thus conceding that he was not a PI/WD Claimant. Debtor’s Suppl. Br., pp. 17-18. Instead, the Debtor now claims that Mr. Kelly was not entitled to vote on the Plan but is nevertheless enjoined by the Plan because he was a member of a “Non-Voting Class.” *Id.*, p. 17. Tellingly, however, the Debtor does not say which Non-Voting Class Mr. Kelly was supposedly in. That is because he is in none of them. As the Debtor’s acknowledge, there are three Non-Voting Classes: Class 1 (Other Priority Claim), Class 2 (Secured Claims), and Class 11 (Interests in the Debtor). *Id.* Mr. Kelly’s claims do not fall within any of those classes. The Supplemental Brief also refers to “Unclassified Claims”—which are Administrative Expense Claims, Professional Fee Claims, or Priority Tax Claims (*see* Dkt. No. 1813, Ex. 4-3, p. 102)—but Mr. Kelly’s claims are not any of those either. Again, the Plan defines “Claim” as a “claim *against the Debtor*,” Dkt. No. 2014, Ex. B, p. 65 (Art. I, ¶ 28), and the claims asserted in the 2023 Maryland Case are not against the Debtor.

The Debtor makes much of the fact that the Defendants in the 2023 Maryland Case are former employees of the Debtor and thus are “Released Parties” under the Plan. Mot. to Enjoin, p. 3; Reply, pp. 2-3. But the Debtor ignores the fact that Mr. Kelly is not a “Releasing Party” under the Plan. Releasing Party is defined as “(a) the Debtor; (b) the Settlement Parties; and (c) Consenting Claimants.” Dkt. No. 2014, Ex. B, p. 76 (Art. I, ¶ 176). Consenting Claimants is

⁵ Indeed, the Debtor never served him with *any notices at all* on account of his 2023 Maryland Case.

defined as “a Consenting Indirect Claimant, a Consenting GUC Claimant, and/or Consenting PI/WD Claimant.” *Id.*, p. 66 (Art. I, ¶ 42). And those terms are defined as “Holder of an Indirect Claim,” “Holder of a GUC Claim,” and “Holder of a PI/WD Claim,” respectively. *Id.*, pp. 66-67 (Art. I, ¶¶ 43-45). Again, Mr. Kelly does not fall within any of those definitions because he is not the holder of a claim “*against the Debtor*,” Dkt. No. 2014, Ex. B, p. 65 (Art. I, ¶ 28). Similarly, Mr. Kelly’s claims are not “Channeled Claims” under the Plan because “Channeled Claim” is defined as “a GUC Claim asserted by a GUC Claimant” and a “PI/WD Claim asserted by a PI/WD Claimant,” *Id.*, p. 65 (Art. I, ¶¶ 19-23), and Mr. Kelly is not the holder of a “Claim” or a “Claimant” under the Plan.

In short, while the Plan may release claims that holders of a claim against the Debtor (i.e., “Claimants”) have against the Releasing Parties, nothing in the Plan enjoins, channels, or releases claims (against Released Parties or otherwise) held by people like Mr. Kelly *who hold no claim against the Debtor and therefore, are not “Claimants” under the Plan*. Accordingly, regardless of whether or not Mr. Kelly opted out, his 2023 Maryland Case should not be enjoined.

II. MR. KELLY OPTED OUT

Even if Mr. Kelly’s claims in the 2023 Maryland Case could be enjoined by the Plan (they cannot), Mr. Kelly opted out.

It is well-established that documents filed by *pro se* litigants should be “liberally construed.” *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *see also In re Dinh*, 562 B.R. 122, 133 (Bankr. S.D. Tex. 2016). Mr. Kelly timely notified the Debtor via the Opt-Out Letter that he wanted to continue his 2023 Maryland Case. That letter stated: “I have a ‘pending’ Civil Case, Case No.: BAH-23-2423, in the [District Court of Maryland], 101 W. Lombard Street, Baltimore Maryland 21201-2691; so I’m not going to opt-out.” Dkt. No. 1952, p. 1. While the letter said

that Mr. Kelly was “not going to opt-out,” it is clear from the face of the letter that his intention was to preserve his right to continue his case in the District Court in Maryland. Mr. Kelly’s intention to opt out is further confirmed by his Objection to the Motion to Enjoin, which referred to his Opt-Out Letter, explained that he wanted to continue to prosecute his claims in his 2023 Maryland Case against the “Released Parties,” and concluded that “[t]he Debtor motion should be denied.” Dkt. No. 2284, p. 2. Finally, Mr. Kelly has submitted a declaration, attached hereto as Exhibit A, explaining that when he filed his “Motion to ‘Not’ Opt Out,” he did so without consulting a lawyer or understanding what it meant to “opt out,” that his intention was to be able to continue litigating his case in the District of Maryland, and that he thought that “not” opting out would allow him to do that. Accordingly, Mr. Kelly opted out. *Cf. In re Nikoloutsos*, 199 F.3d 233, 236 (5th Cir. 2000) (writing filed by with the bankruptcy case that evidences an intent to hold debtor liable for a debt constitutes an informal proof of claim).

Tellingly, none of the Debtor’s relevant filings—the Motion to Enjoin, the Reply, or the Supplemental Brief—makes any reference to this letter filed by Mr. Kelly.

III. ENJOINING MR. KELLY’S CASE WOULD VIOLATE DUE PROCESS

Even if Mr. Kelly’s claims could be enjoined by the Plan if Mr. Kelly did not opt out, and even if Mr. Kelly did not opt out, enjoining his 2023 Maryland Case would violate due process.

As the Supreme Court made clear in *Harrington v. Purdue Pharma LP*, the Bankruptcy Code does not permit non-consensual third-party releases. 144 S. Ct. 2071, 2088 (2024). While this Court has held that plan releases can be opt out (instead of opt in) and still be considered consensual under *Purdue*, parties whose claims may be released must be afforded due process, including “notice ... of such nature as reasonable to convey the required information.” *In re CJ Holding Co.*, 597 B.R. 597, 610 (S.D. Tex. 2019) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306, 314-315 (1950)); see also *In re Robertshaw US Holding Corp.*, 662

B.R. 300, 322-324 (Bankr. S.D. Tex. 2024) (Lopez J.) (holding that releases satisfied *Purdue* because “the third-party release language is specific enough to put releasing parties on notice of the types of claims released”). Mr. Kelly was not on notice that his claims in the 2023 Maryland Case—all of which are against non-debtors—would be released if he did not complete the Opt-Out Release Form.

The Opt-Out Release Form makes clear that it need only be completed by persons holding claims *against the Debtor*. See, e.g., Dkt. No. 1813, Ex. 2, p. 26 (“Making the election to ‘Opt Out’ of the Consensual Claimant Release will impact how Your Claim against Tehum Care Services, Inc., f/k/a Corizon Health Services (the “Debtor”) is treated under the Plan.”; “This Opt-Out Release Form **must** be used by **all** Holders of Claims against the Debtor.”). Moreover, the Opt-Out Release Form states that *only persons holding a claim against the Debtor could submit the form*: it required the person opting out to sign and certify he or she is the holder of a claim against the Debtor. *Id.*, p. 32 (“Please check a box to indicate the nature of Your Claim against or Interest in the Debtor. *You must certify* that Your hold an Other Priority Claim against the Debtor, a Secured Claim against the Debtor, a Convenience Claim against the Debtor, a General Unsecured Claim against the Debtor, a PI/WD Claim against the Debtor, an Indirect Claim against the Debtor, an Interest in the Debtor, or an Unclassified Claim against the Debtor.” (emphasis added)); *id.*, p. 36 (“By signing this Opt-Out Release Form, the signatory certifies, on information and belief, that: (i) I am/ The Claimant is (i) the Holder of Claims or Interests set forth in Item 2”).

As explained above, the Opt-Out Release Form (and all other notices) was sent to Mr. Kelly on account of his 2020 Maryland Case, not the 2023 Maryland Case the Debtor now seeks to enjoin. But even if those notices had been sent on account of his 2023 Maryland Case, neither the Opt-Out Release Form nor any of the materials that he was sent by the Debtor apprised him

that failing to opt out would mean that his 2023 Maryland Case would be enjoined because Mr. Kelly did not assert any claims against the Debtor. Indeed, because he did not assert a claim against the Debtor, Mr. Kelly had no reason to believe he was even allowed to make the certification required by the Opt-Out Release Form. Accordingly, enjoining Mr. Kelly's 2023 Maryland Case based on his failure to complete the Opt-Out Release Form would violate due process.

CONCLUSION

The Motion to Enjoin with respect to Mr. Kelly should be denied.

Dated: September 19, 2025

/s/ Isley M. Gostin

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Counsel to Mr. Kelly

CERTIFICATE OF SERVICE

I do hereby certify that on the 19th day of September, 2025, a true and correct copy of the foregoing was electronically filed with the Clerk of Court and served using the CM/ECF system.

By: /s/ Isley M. Gostin
Isley M. Gostin

Exhibit A

DECLARATION OF KEITH DARNELL KELLY

Pursuant to 28 U.S.C. § 1746, I, Keith Darnell Kelly, declare as follows:

1. I am a prisoner of the State of Maryland in the care and custody of the Maryland Department of Corrections. I am housed in the Western Correctional Institution at 13800 McMullen Highway, S.W. in Cumberland, Maryland.
2. I filed a lawsuit in the District Court for the District of Maryland against two state employees and several individual medical providers who were formerly employed by YesCare. I filed that case because the individual providers repeatedly denied me necessary medical care to treat serious medical issues, including my deep vein thrombosis, which caused me severe pain and harm. In that case, I am seeking damages and declaratory and injunctive relief.
3. On February 4, 2025, I filed a letter in the Tehum Care Services, Inc. bankruptcy case titled “Motion to ‘Not’ Opt Out.” Dkt. 1952. As explained in that notice, I received a letter from Bekman, Marder, Hopper, Malarkey, and Perlin LLC (“Bekman”) dated December 3, 2024, sending me an Opt-Out Release Form from this bankruptcy case that they received on my behalf. *Id.* at 5.
4. Bekman was my former counsel who represented me in a different civil case. As they made clear in their letter, they do not represent me in connection with this bankruptcy case.
5. I did not consult with a lawyer before filing my “Motion to ‘Not’ Opt Out” and as I explained in that filing, I did not understand what it meant to “opt out.” *Id.* at 2. My intention was that I wanted to be able to continue litigating my case in the District of Maryland, and I thought that *not* opting out would allow me to do that.

6. The first notice I received of the Tehum/YesCare/Corizon bankruptcy case was a letter that Bekman sent to me on October 21, 2024, enclosing a notice of a hearing on November 6. I never received any other information about the bankruptcy case before that, from Bekman or otherwise.
7. I also filed an opposition to the Motion to Enjoin on June 20, 2025. Dkt. 2284 at 2. My position was that I should be able to continue litigating my pending case in the District of Maryland.
8. On July 9, 2025, Sonika Data of WilmerHale was appointed as my counsel in my pending case in the District of Maryland.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, and that this Declaration was executed on the 01 day of August 2025 in Cumberland, Maryland.


Keith Darnell Kelly