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.	

INTERESTED PARTY RILWAN AKINOLA'S MEMORANDUM IN OPPOSITION TO "CHS TX, INC.'S MEMORANDUM OF LAW IN SUPPORT OF ITS OMNIBUS MOTION TO ENJOIN PLAINITFFS [SIC] FROM PROSECUTING CASES AGAINST RELEASED PARTIES RELATING TO 'EXHIBIT C' PARTIES" (DOCKET NO. 2545)

Interested Party Rilwan Akinola, by counsel, submits the following Supplemental Memorandum in Opposition to CHS TX, Inc. d/b/a YesCare's ("YesCare") Omnibus Motion to Enjoin Plaintiffs from Prosecuting Cases Against Released Parties, ECF No. 2160) (the "Omnibus Motion"), and its more recent memorandum of law in support of the Omnibus Motion relating to "Exhibit C Parties," ECF No. 2425 (the "Supplemental Brief," cited as "Supp. Br."). The Court reserved decision as to Mr. Akinola and other plaintiffs listed on Exhibit C ("Exhibit C Parties") in its Order on the Omnibus Motion, ECF No. 2374 (the "Omnibus Order"). For the reasons set forth below, the Court must deny the relief requested in YesCare's Omnibus Motion and Supplemental Brief as to Mr. Akinola, principally because he has made an unrebutted showing that he was never served with an Opt-Out Release Form and Notice of Non-Voting Status.

INTRODUCTION

True to form, YesCare again seeks relief against Mr. Akinola without regard to the undisputed evidence that the Opt-Out Release Form that it claims was served on him was in fact served at a correctional facility from which he had been moved more than a year earlier. Although Mr. Akinola submitted a sworn Declaration establishing that the address to which the Debtor attested it sent him notice of his right to opt out was an outdated address and he never received the notice, ECF No. 2285-1 (attached hereto as Exhibit 1), YesCare has repeatedly disregarded Mr. Akinola's Declaration and indeed, made inaccurate assertions to obscure these inconvenient but undisputed facts. In YesCare's Reply addressing arguments common to many of the individual oppositions and its Reply addressing the Joint Opposition filed by Mr. Akinola and certain other plaintiffs, it simply disregarded Mr. Akinola's factual showing. ECF Nos. 2311, 2325. And again in its Supplemental Brief, YesCare repeatedly makes assertions that are untrue because they disregard Mr. Akinola's showing and ignore objections to the Omnibus Motion interposed by Mr. Akinola and other Exhibit C Parties. For example, YesCare claims, no fewer than 10 times, that *all* Exhibit C Parties received an Opt-Out Release Form, failing to acknowledge that Mr. Akinola has introduced unrefuted evidence disputing that very fact. Supp. Br. at 2, 3, 9, 10, 11, 12, 20. Incredibly, YesCare asserts that "none of the Exhibit C Parties has ever argued lack of notice, including in response to the Omnibus Motion." Supp. Br. at 20.[1] YesCare's omissions and

---

[1] YesCare even goes so far as to claim that "[t]he only Exhibit C Party to object to the Omnibus Motion was Andrew Lyles." Supp. Br. at 11 n.6. This, of course, ignores the objections of Mr. Akinola, and of Deon Glenn, Dustin Hefley, Keith Kelly, and Ardra Young, all Exhibit C Parties who objected to the Omnibus Motion. ECF Nos. 2210, 2231, 2256, 2284, 2285. The same counsel who signed individualized replies to each of those objections just three months ago now recklessly claims that they did not exist. *See* ECF Nos. 2249, 2262, 2281, 2321, 2325.

YesCare's misrepresentations are no trifle. Consider the numerous misrepresentations in Exhibit A to the Omnibus Motion: of the 18 Exhibit C Parties, ten were said to have been served with the approved Solicitation Package for claimants in Classes 6, 7, and 8, and one was said to have been served with the approved Solicitation Package for claimants in Classes 4 and 5. *See* ECF No. 2160-1 (representing such as to plaintiffs Akinola, Beach, Clay, Kelly, Nachtweih, Nettles, Perkins, Vela, Wichterman, and Wolf). In reality, all of the Exhibit C Parties were served with the approved materials for claimants and interest holders in Classes 1, 2, and 11. *See* ECF No. 1852 at 41–78. In a subsequent, revised version of Exhibit A, YesCare reproduced the same misstatements cannot obscure the uncontroverted evidence that Mr. Akinola never received notice of his right to opt out, or of the effect of the bankruptcy on his claim against a former employee of the Debtor.

Like several of the other Exhibit C Parties, Mr. Akinola is a formerly incarcerated individual who sustained serious injuries due to inadequate medical care while in prison, for which he has sought redress under 42 U.S.C. § 1983 in the United States District Court for the District of Maryland.[2] He does not pursue claims against the Debtor, though he does pursue a claim against a former employee of the Debtor for which, as a matter of law, the Debtor bears no vicarious liability. *See, e.g.*, *Powell v. Shopco Laurel Co.*, 678 F.2d 504, 506 (4th Cir. 1982); *Coleman v. Hamilton Cnty. Bd. of Cnty. Commissioners*, 130 F.4th 593, 603 (6th Cir. 2025). By the Omnibus Motion, YesCare seeks to enjoin Mr. Akinola from proceeding with this case on the basis of a "consensual" third-party release that he purportedly agreed to by failing to file a timely election to opt-out therefrom. But Mr. Akinola has shown by clear and convincing evidence—evidence that YesCare has never disputed—that he never received any notice of the consensual third-party

misrepresentations. ECF No. 2360-1. It has yet to correct or acknowledge these material misstatements to the Court.

[2] Mr. Akinola's case is currently pending in the United States District Court for the District of Maryland, under the caption *Akinola v. Stafford-Shroyer, et al.*, Case No. 1:22-cv-00657 (DKC). Where documents from that case are referenced herein, the ECF number will be preceded by "Akinola Action" to distinguish from ECF filings in this bankruptcy proceeding.

Exhibit A to the Omnibus Motion incorrectly styles the case as *Akinola v. Corizon Health, Inc., et al.* and lists a second state case number in the District Court of Maryland for Allegany County (small claims court). In the federal case, well before YesCare filed the Omnibus Motion, Mr. Akinola dropped all claims against Corizon. ECF No. 2285 at 9, 20-21. The only claims relevant to this proceeding are against Corizon's former employee, Amy Stafford-Schroyer. The state case, and an appeal to the Circuit Court for Allegany County, is closed. *See* Case No. C-01-CV-22-000408 (Circuit Court for Allegany County, MD) (available at https://casesearch.courts.state.md.us/casesearch/inquiry-search.jsp).

release or an Opt-Out Release Form, and the Omnibus Motion should be denied as to Mr. Akinola on that basis alone.

FACTUAL BACKGROUND

While incarcerated at Western Correctional Institution in Maryland, Rilwan Akinola suffered serious injuries in September 2021 from the gross negligence of a correctional officer and the subsequent deliberate indifference of a prison nurse—a now-former employee of Corizon—who denied and delayed medically necessary care and failed to ensure Mr. Akinola received prescribed medication. As a result of this deficient care, Mr. Akinola suffers from ongoing, excruciating pain and inflammation in his left knee and back. This pain and inflammation has significantly impaired Mr. Akinola's mobility and, at the age of 41, he required use of a cane when walking.

To redress these damages, on March 17, 2022, Mr. Akinola filed a pro se Complaint in the United States District Court for the District of Maryland that asserted claims under 42 U.S.C. § 1983 against Corizon Health, Inc. and the nurse for acting with deliberate indifference in violation of the Eighth Amendment, and against the correctional officer. *See* Akinola Action, ECF No. 1. Corizon filed a Suggestion of Bankruptcy on February 21, 2023, and the district court stayed proceedings against Corizon on March 16, 2023. Akinola Action, ECF Nos. 30, 34. The Suggestion of Bankruptcy did not stay claims against any other party or provide notice that claims against any of them could be released in the course of bankruptcy proceedings. Indeed, the Court continued to treat the nurse, a former Corizon employee, as a Defendant and on May 9, 2023, denied her pending motion to dismiss on grounds unrelated to the bankruptcy. Akinola Action, ECF Nos. 36, 37. The nurse continued to participate fully and actively in the Maryland proceedings, answering the Complaint and responding to discovery requests without raising any argument that she was entitled to a stay or otherwise affected by Corizon's bankruptcy until June 6, 2025, well after the Debtor filed the Omnibus Motion to Enjoin in this Court. *See* Akinola Action, ECF Nos. 39, 73.

On April 4, 2024, the district court appointed pro bono counsel for Mr. Akinola, after which date counsel's name and contact information was listed on the docket of the Maryland proceedings. Akinola Action, ECF No. 48. On September 13, 2024, Mr. Akinola, by counsel, moved to amend his complaint and filed a proposed amended complaint that dropped the stayed claim against Corizon and asserted claims only against the nurse and a correctional officer. Akinola Action, ECF No. 57. The district court granted Mr. Akinola's motion. Akinola Action, ECF Nos. 69, 70. Mr. Akinola does not pursue any claim against the Debtor or any entity affiliated with it, and has not pursued any such claim since early 2023.

Mr. Akinola, like many inmates, was transferred between correctional facilities during the course of the Maryland proceedings. At all times during his incarceration, Mr. Akinola's contemporaneous whereabouts were readily ascertainable through the publicly available Inmate Locator on the website of Maryland's Department of Public Safety and Correctional Services. On November 20, 2024, Mr. Akinola was located at Roxbury Correctional Institution in Hagerstown, Maryland, which is the same facility and address listed in the caption of his district court case in Maryland cited by YesCare. Although he had been located at Baltimore City Correctional Center for a period of time during the pendency of the Maryland proceedings, the last day on which he resided at that facility was March 11, 2023. Counsel for the Debtor's former employee in the Maryland action was made aware of Mr. Akinola's changes in address by the return address on his filings, which were filed on the docket and are attached hereto as Exhibits 2 and 3. Akinola Action, ECF Nos. 41-1, 46-1. Mr. Akinola was released from custody on November 27, 2024.

A Certificate of Service filed by the Debtor's claims and noticing agent in this bankruptcy action on November 20, 2024, ECF No. 1852, asserted that Mr. Akinola was mailed the following items as part of a "Non-Voting Package": (1) a Notice of Non-Voting Status, *see* ECF No. 1813 at 100–16; (2) an Opt-Out Release Form, *id.* at 25–45; (3) a Confirmation Hearing Notice, *id.* at 84–94; and (4) a return envelope. *See* ECF No. 1852 at 3, 68. As to Mr. Akinola, the Non-Voting Package was mailed to:

Rilwan Akinola #477515
Baltimore City CC
901 Greenmount Ave.
Baltimore, MD 21202

Id. at 68. As noted, at the time of alleged service, Mr. Akinola had not been incarcerated in the Baltimore City Correctional Center located at that address for more than eight months. In short, YesCare does not contend that an Opt-Out Release Form, or any other document referring to a third-party release, was ever sent to Mr. Akinola at his correct address. Moreover, at no time prior to Plan confirmation were any documents served on Mr. Akinola's known counsel in the Maryland action, which the Debtor now contends ought to be enjoined under the Plan.

ARGUMENT

I. MR. AKINOLA DID NOT RECEIVE ACTUAL NOTICE, AS DUE PROCESS AND THE SOLICITATION ORDER REQUIRE

Although Mr. Akinola has been grouped with the Exhibit C Parties by virtual of the materials allegedly served on him, as a factual matter, Mr. Akinola is no differently situated than the Exhibit B Parties as to whom the Omnibus Motion was denied. Indeed, as to Mr. Akinola, the Omnibus Motion must be denied on a straightforward application of the holdings in this Court's Omnibus Order to the facts of Mr. Akinola's case because: Mr. Akinola was entitled to actual notice of the proposed consensual third-party release; YesCare cannot rely on the mailbox presumption to satisfy the actual notice requirement; and even if YesCare can rely on the mailbox presumption, the presumption is rebuttable, and Mr. Akinola has offered clear, convincing, and unrefuted evidence that rebuts it.

A. Mr. Akinola was entitled to actual notice.

Mr. Akinola was entitled to actual notice (i.e., receipt of the Opt-Out Release Form) both as a matter of Due Process and under the terms of the Solicitation Order. Omnibus Ord. at 5; *see* Solicitation Order, ECF No. 1813 at 9. Like many other inmate plaintiffs in this bankruptcy, Mr. Akinola "is unquestionably a known creditor constitutionally entitled to actual notice—and not publication notice—before his claims against non-debtors, or payment obligations by non-debtors to him, could be released under the Plan." *See* Ord. at 4, ECF No. 2460 (holding creditor Vincent Ward was entitled to actual notice and citing *In re Placid Oil Co.*, 753 F.3d 151, 154 (5th Cir. 2014)); *see also* Omnibus Ord. at 5, ECF No. 2374 (holding Exhibit B Parties were "known creditors constitutionally entitled to actual notice . . . before their litigation claims could be released under the Plan" and citing *In re Placid Oil* and *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 313–15 (1950)).

That holding stands on firm constitutional foundations.[3] In the bankruptcy context, "[d]ue process requires that notice must be reasonably calculated, under all of the circumstances, to

---

[3] YesCare has appealed the Court's Omnibus Order. ECF No. 2414. Notwithstanding the pending appeal, YesCare's Supplemental Brief is largely devoted to its attempt to relitigate the Court's holdings as to actual notice without any meaningful discussion addressed to what should be the sole relevant question on this topic: why a known creditor's alleged receipt of a Non-Voting Package instead of a Solicitation Package should subject it to a different threshold of constitutional notice. *See* Supp. Br. at 3–11. YesCare cannot answer that question because it is simply not the law; Mr. Akinola, like the Exhibit B Parties, was entitled to actual notice of the third-party release for which his consent was sought. *See infra* at 8–9.

Also of note with respect to the pending appeal, YesCare asks this Court to amend its Omnibus Order as to two parties who were expressly included in the Notice of Appeal. *See* Supp. Br. at 21. It is black letter law that the Court is without authority to make such amendments to an order that has already been appealed.

apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *In re Pipeline Health Sys., LLC*, No. 22-90291, 2025 WL 686080, at *3 (Bankr. S.D. Tex. Mar. 3, 2025) (internal citation omitted). The sufficiency of notice is addressed in each case against the backdrop of its unique factual circumstances. *In re Kendavis Holding Co.*, 249 F.3d 383, 387 (5th Cir. 2001); *In re Chassix Holdings, Inc.*, 533 B.R. 64, 79 (Bankr. S.D.N.Y. 2015) ("Circumstances may justify . . . different approach[es] in different cases.").

Information with respect to third-party releases and the means to opt out from them must be "properly and sufficiently provided" and "reasonably calculated to alert *each holder*, consistent with federal due process principles, to the fact that consent . . . would be deemed given" in the absence of an opt out. *In re Tommy's Fort Worth, LLC*, No. 24-90000 (ELM), 2025 WL 2092193, at *68 (Bankr. N.D. Tex. July 24, 2025) (emphasis added); *In re GOL Linhas Aéreas Inteligentes S.A.*, No. 24-10118, 2025 WL 1466055, at *24 (Bankr. S.D.N.Y. May 22, 2025) ("Consent must be knowing and voluntary and can be inferred from inaction *if* there has been constitutionally adequate service of process; however, deemed consent (via language in an opt-out) without evidence of, at least, adequate service would pose due process problems." (emphasis in original)).

Under controlling precedent, known creditors—those who are actually known by the Debtor or whose identities are "reasonably ascertainable"—"must" receive direct and actual notice of bankruptcy proceedings, including and especially all critical deadlines. *See In re MA-BBO Five, LP*, No. 11-40644, 2022 WL 3329016, at *8 (Bankr. E.D. Tex. Aug. 11, 2022); *see also In re Placid Oil*, 753 F.3d at 154 ("A debtor must provide actual notice to all 'known creditors' in order to discharge their claims." (citing *City of New York v. New York, N.H. & H.R. Co.*, 344 U.S. 293, 295-97 (1953))). "Known creditors include both claimants actually known to the debtor and those whose identities are 'reasonably ascertainable.'" *Id.* at 154 (quoting *Tulsa Prof'l Collection Servs.*, *Inc. v. Pope*, 485 U.S. 478, 489-90 (1988)). Parties are “known” and therefore entitled to actual notice when they are engaged in active litigation against a non-Debtor party that the Debtor seeks to terminate by way of a consensual third-party release in bankruptcy. Omnibus Ord. at 5.

Assuming Mr. Akinola was a creditor by virtue of his claim against a former employee of the Debtor, as YesCare contends (notwithstanding his earlier abandonment of his claim against Corizon), he was a known creditor who had been in active litigation against the former employee for over two-and-a-half years by the time his consent to the third-party release in the Plan was sought, and with whose counsel attorneys for the Debtor regularly corresponded on matters related to the litigation YesCare seeks to enjoin. As this Court held, he was therefore entitled to actual notice of the third-party release. That is, YesCare was required to serve him with, at minimum, an Opt-Out Release Form by means reasonably calculated to be effective in reaching him.

B. The Debtor cannot rely on the mailbox presumption where it knew, or should have known, that the service address used for Mr. Akinola was incorrect.

The Debtor failed to provide actual notice to Mr. Akinola even though doing so would not have been a difficult undertaking. The Solicitation Agent or Debtor’s counsel in the Maryland action need only have reviewed the docket and verified Mr. Akinola’s last known address in a matter of minutes by reviewing the service address printed on Mr. Akinola’s most recent filing. *See* Exhibit 3.[4] The Debtor’s counsel or Solicitation Agent could have verified Mr. Akinola’s current address in a matter of seconds by referencing Maryland’s publicly available Inmate

[4] Counsel for Ms. Stafford-Schroyer, the nurse formally employed by the Debtor, also represented the Debtor in responding to the *pro se* complaint. Akinola Action, ECF Nos. 15, 17. In addition, the same firm represented the Debtor on other filings in which the Debtor remained a party. *See* Akinola Action, ECF Nos. 23, 30. Thus, the Debtor’s Maryland counsel has continued to participate in Mr. Akinola’s action since first entering an appearance to respond to the Complaint on August 11, 2022. And in any event, the electronic docket was publicly accessible.

Locator.[5] Or the Debtor's counsel or Solicitation Agent could have served the Opt-Out Release Form on Mr. Akinola's known counsel in the Maryland action.

Even if service by mail is ordinarily sufficient to satisfy due process, it is not sufficient when the party seeking to provide notice is aware of facts that would render the putative notice ineffective. *Jones v. Flowers*, 547 U.S. 220, 223-26 (2006). A Debtor can normally rely on the so-called "mailbox presumption" to establish effective service upon mailing to a creditor's last known address, *see In re OCA, Inc.*, 551 F.3d 359, 371 (5th Cir. 2008) ("Mail that is *properly addressed*, stamped and deposited into the mails is presumed to be received by the addressee." (emphasis added)), but it can benefit from no such presumption when it has failed to "exercise [] reasonable diligence" in updating its records to correctly reflect the actual last known address of a creditor. *In re Faden*, 170 B.R. 304, 309 (Bankr. S.D. Tex. 1994), *aff'd sub nom. Matter of Faden*, 96 F.3d 792 (5th Cir. 1996).

Although "a certificate of service may create the presumption that papers were actually mailed as described in the certificate[,]" "any presumption that the papers were actually received by the addressee requires that the mail have been 'properly addressed, stamped and deposited in the mails.'" *In re Jafroodi*, 651 B.R. 13, 22 (Bankr. C.D. Cal. 2023) (quoting *In re Bucknum*, 951 F.2d 204, 207 (9th Cir. 1991)). The Debtor may not rely on third parties to forward or properly direct mail to a creditor whose address is inaccurately or inadequately printed on a mailing. *In re Cunningham*, 506 B.R. 334, 341 (Bankr. E.D.N.Y. 2014). Where a Debtor knows or should know that its service package bears an outdated address, it is not "reasonably calculated" to provide the

[5] YesCare—which served as the State Medical Contractor for the Maryland correctional system after the Debtor—would certainly have been aware that the location of Maryland inmates is readily accessible through regularly updated internet records. *See generally* https://dpscs.maryland.gov/services/ii-locator.shtml.

notice required by due process. *See Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 314 (1950); *see also In re Weems*, 359 B.R. 919, 921 (Bankr. N.D. Ind. 2007). To hold otherwise "would be to turn the constitutional requirement of due process on its head." *In re Jafroodi,* 651 B.R. at 22.

Here, there is ample documentary evidence filed on the docket in the Maryland action to show that the Debtor knew or should have known that the address to which it apparently mailed Mr. Akinola a Non-Voting Package containing the Opt-Out Release Form was not a current and accurate address. Most importantly, Debtor's counsel in the Maryland action knew or should have known that Mr. Akinola's last known address was not at the Baltimore City Correctional Center. It had received at least two subsequent filings reflecting an updated address. *See* Exhibits 2 and 3; *see also In re Mayhew*, 223 B.R. 849, 856 (D.R.I. 1998) ("[I]t is the duty of an attorney to monitor the docket and to keep him or herself apprised of developments in a case."). Furthermore, Debtor should have known that, with respect to inmate creditors, involuntary changes of address attributable to an inmate's transfer between facilities are common, and therefore it should have "exercise[d] . . . reasonable diligence . . . to provide more accurate information" for purposes of service. *In re Faden*, 170 B.R. at 309. In this context, "reasonable diligence" would have entailed, at a minimum, verifying a last known address by reference to publicly available inmate location information. Because Debtor failed to properly address the mailing sent to Mr. Akinola with the Opt-Out Release Form, or to provide its solicitation agent with the correct address, it cannot establish service by relying on the mailbox presumption.

C. Even if the mailbox presumption applies, Mr. Akinola has adequately rebutted it.

Even if YesCare is permitted to rely on the mailbox presumption, the presumption is rebutted where a party contesting service presents clear and convincing evidence that a mailing was not, in fact, accomplished. *In re OCA, Inc.*, 551 F.3d at 371; *but see In re Bryan*, 261 B.R. 240, 245 (B.A.P. 9th Cir. 2001) (applying substantial evidence standard). Credible evidence of ineffective service that goes uncontradicted can rebut the mailbox presumption. *In re Wooten*, 620 B.R. 351, 355 (Bankr. D.N.M. 2020). In the face of an inaccurate or inadequate mailing, the mailbox presumption is "weakened" and may be rebutted by credible evidence of non-receipt. *In re Cunningham*, 506 B.R. at 341.

Here, whether the standard is clear and convincing, substantial, or credible evidence, Mr. Akinola has easily met it. Not only has he provided documents filed in the Maryland action showing that his last known address at the time of alleged service of the Opt-Out Release Form was *not* Baltimore City Correctional Center, but instead Roxbury Correctional Institution, *see* Exhibit 3, he has also provided a sworn declaration establishing that he was not located at Baltimore City Correctional Center at the time of service and never received an Opt-Out Release Form. *See* Exhibit 1. Since Mr. Akinola filed that declaration, YesCare has filed two reply briefs and one supplemental brief addressing issues of notice in Mr. Akinola's case. *See* ECF Nos. 2311, 2325, 2425. Across all three subsequent filings, YesCare has not presented a shred of evidence to contradict Mr. Akinola's declaration, nor has it questioned Mr. Akinola's credibility in any way. *See id.* Mr. Akinola's documentary and testimonial evidence thus stands unrebutted—and it is irrefutable. Because Mr. Akinola was entitled to receive actual notice of the consensual third-party release, which he did not receive, the Omnibus Motion must be denied as to him.

II. EVEN IF MR. AKINOLA HAD RECEIVED THE NON-VOTING PACKAGE YESCARE CLAIMS WAS SERVED ON HIM, IT DID NOT COMPLY WITH THE SOLICIATION PROCEDURES ORDER AND WAS INADEQUATE TO APPRISE HIM OF ANY NEED TO ACT TO PROTECT HIS ABILITY TO PROCEED WITH HIS ACTION AGAINST A NON-DEBTOR THIRD PARTY.

Clear notice is vital when claims against non-Debtor entities are implicated. *See, e.g.*, *In re Lower Bucks Hosp.*, 471 B.R. 419, 461 (Bankr. E.D. Pa. 2012); *In re Chassix Holdings, Inc.*, 533

B.R. 64, 80-81 (Bankr. S.D.N.Y. 2015). Notice and disclosure of the effects of a bankruptcy plan on third-party claims must be clearly and specifically communicated whenever possible. *See In re Lower Bucks Hosp.*, 471 B.R. at 459, 461. As the court explained in *In re Chassix,* even the receipt of disclosure materials about a debtor's bankruptcy is insufficient itself to put creditors on notice that their claims against other parties could be implicated. 533 B.R. at 80-81. There, the court explained:

> [M]any creditors may simply have assumed that a package that related to the Debtors' bankruptcy case must have related only to their dealings with the Debtors and would not affect their claims against other parties. Charging all inactive creditors with full knowledge of the scope and implications of the proposed third party releases, and implying a "consent" to the third party releases based on the creditors' inaction, is simply not realistic or fair, and would stretch the meaning of "consent" beyond the breaking point.

Id.

Here, the notice the Debtor allegedly sent to Mr. Akinola's former address was not only far from clear, it was not the notice this Court required under the Solicitation Procedures. The Non-Voting Package included a Notice of Non-Voting Status, which incorrectly stated that Mr. Akinola was a holder of a Class 1 or Class 2 Claim that was unimpaired under the Plan; a member of Class 11 (equity Interests in the Debtor), which class was presumed to accept the Plan; or the holder of an administrative professional fee, or tax claim. *See* ECF No. 1813 at 100–16. Mr. Akinola is none of these; his claim against the Debtor's former employee is a Class 6 PI/WD claim that YesCare contends *is* impaired by the plan. Indeed, the Opt-Out Release Form requires a person completing it to certify the class of his claim, *id.* at 34, but after receiving a Notice of Non-Voting Status informing him that he was in Class 1, 2, or 11 Claim, or held an administrative professional fee or tax claim, Mr. Akinola could only have completed an Opt-Out Release Form by attesting that he held one of those classes of Claims, which would not have been effective as to a PI/WD Claim.

The Solicitation Procedures Order required all "Incarcerated Claimants" to be served with paper copies of the entire Solicitation Package. ECF No. 1813 at 6. The Debtor not only failed to send notice to Mr. Akinola's then-current address, as a result of which he did not receive notice, it sent a package that was plainly non-compliant with the Solicitation Procedures and would not have provided the required notice even if received.

Notice to a former address that Mr. Akinola never received, that did not comply with this Court's Order concerning Solicitation Procedures, and that misstated the proposed Plan's treatment of his claim was plainly not "reasonably calculated" to alert Mr. Akinola "that consent . . . would be deemed given" in the absence of an opt out. *In re Tommy's Fort Worth, LLC*, 2025 WL 2092193, at *68.[6]

CONCLUSION

Although Mr. Akinola's then-current residence and the identity of his counsel were both matters of public record and well-known to Debtor's counsel, he never received any notice of his ability to opt out of the third-party release in the Chapter 11 Plan. Like the incarcerated individuals listed in Exhibit B, he was deprived of his due process rights under the Fifth Amendment. Accordingly, the Court should deny the Omnibus Motion as it pertains to Mr. Akinola and permit him to pursue the action that YesCare seeks to enjoin.

---

6 Mr. Akinola also incorporates the arguments set forth in the Joint Objection he previously filed with a number of other plaintiffs. *See* ECF No. 2285. In addition, he adopts the arguments of Andrew Lyles concerning the inadequacy of the non-voting package to provide him the notice required by the Solicitation Procedures Order. ECF No. 2469 at 9–11.

Dated: September 19, 2025

Respectfully submitted,

*/s/ Kirk E. MacKinnon Morrow*______
Martin S. Himeles, Jr.
Md. Bar No. 9001080001
Admitted *pro hac vice*
Kirk E. MacKinnon Morrow
Md. Bar No. 2410241018
Admitted *pro hac vice*
ZUCKERMAN SPAEDER LLP
100 East Pratt St., Suite 2440
Baltimore, MD 21202-1031
T: 410-332-0444
F: 410-659-0436
MHimeles@zuckerman.com
KMacKinnonMorrow@zuckerman.com

Counsel for Rilwan Akinola in Rilwan Akinola v. Amy Stafford-Schroyer, et al., Case No. 1:22-cv-00657 (D. Md.)

CERTIFICATE OF SERVICE

I certify that on September 19, 2025, I caused a true and correct copy of the foregoing document to be served by the Court's CM/ECF notification system, which will send notice of electronic filing to all counsel of record.

/s/ Kirk E. MacKinnon Morrow
Kirk E. MacKinnon Morrow

EXHIBIT 1

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)**

DECLARATION OF RILWAN AKINOLA IN SUPPORT OF CERTAIN PLAINTIFFS' OPPOSITION TO YESCARE'S OMNIBUS MOTION TO ENJOIN PLAINTIFFS FROM PROSECUTING CASES AGAINST RELEASED PARTIES

I, Rilwan Akinola, am of legal age and have personal knowledge of the facts stated herein.

1. Beginning on or about July 26, 2022, I was in the custody of the Maryland Department of Public Safety and Correctional Services ("DPSCS") at the Baltimore City Correctional Center ("BCCC"), which is located at 901 Greenmount Avenue, Baltimore, Maryland 21202.

2. On or about March 11, 2023, I was transferred from BCCC to Dorsey Run Correctional Facility and remained in the custody of DPSCS. Dorsey Run Correctional Facility is located at 2020 Toulson Road, Jessup, Maryland 20794.

3. On or about November 11, 2023, I was again transferred from Dorsey Run Correctional Facility to Roxbury Correctional Institution and remained in the custody of DPSCS. Roxbury Correctional Institution is located at 18701 Roxbury Road, Hagerstown, Maryland 21746.

4. I remained in custody at Roxbury Correctional Institution until the date of my release on November 27, 2024.

5. Although I understood it to be the policy of DPSCS that, after I was transferred to a new facility, my mail would be forwarded to me at the new facility's address, in practice, DPSCS regularly failed to do so. During one approximately five-month period in 2024, I did not receive any mail at all—whether forwarded or otherwise.

6. After my release, DPSCS did not forward mail to me that had been sent to my address while in custody.

7. During my time in custody and continuing after my release, it has been my consistent practice to carefully review and retain my legal mail. I pay especially close attention to mail addressed to me that references courts or legal proceedings.

8. My attorney has informed me of an allegation that I was served with a "Solicitation Package" by first class mail in November 2024. I have never received such materials, by mailing or otherwise.

9. My attorney has informed me of an allegation that I was served with a "Proof of Claim Form" by first class mail in May 2023. I have never received such materials, by mailing or otherwise.

I solemnly declare under the penalties of perjury that the contents of this document are true to the best of my knowledge, information, and belief.

Signed: Rilwan Akinola

Executed on this 18 day of June, 2025.

EXHIBIT 2

MR. RILWAN AKINOLA.#477515
DORSEY RUN CORR. FACILITY
2020 TOULSON ROAD
JESSUP, MD 20794

CAPITAL DISTRICT 206
27 JUL 2023 PM 2 L

ATTN: CLERK OF THE COURT
UNITED STATES DISTRICT COURT
DISTRICT OF MARYLAND
101 W. LOMBARD STREET
BALTIMORE, MD 21201-2691

21201-260599

FILED ENTERED
LOGGED RECEIVED

JUL 28 2023

AT BALTIMORE
CLERK U.S. DISTRICT COURT
DISTRICT OF MARYLAND

BY DEPUTY

EXHIBIT 3

Ridwan Alcindor, #[illegible]
RCI
18701 Roxbury Road
Hagerstown, MD 21746

BALTIMORE MD 212
5 MAR 2024 PM 2 L

FILED ENTERED
LOGGED RECEIVED
NO

MAR 07 2024

AT GREENBELT
CLERK, U.S. DISTRICT COURT
DISTRICT OF MARYLAND
BY DEPUTY

The United States District Court
for the District of Maryland
Greenbelt, MD 20770

03/05/2024

MAIL
INMATE
RCI

20770-999955