

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

In re:

Chapter 11

TEHUM CARE SERVICES, INC.,

Case No. 23-90086 (CML)

Debtor.

**YESCARE'S MOTION TO ENJOIN PLAINTIFF JENNIFER POWER AS
ADMINISTRATOR OF THE ESTATE OF MONNIE WASHBURN FROM
PROSECUTING CLAIMS AGAINST RELEASED PARTIES**

**IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN
WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU
MUST FILE YOUR RESPONSE ELECTRONICALLY AT
HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS
FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE
ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN
OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN
TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED.
OTHERWISE, THE COURT MAY TREAT THE PLEADING AS
UNOPPOSED AND GRANT THE RELIEF REQUESTED.**

CHS TX, Inc. d/b/a YesCare respectfully requests that the Court enter an Order enjoining Jennifer Power, the plaintiff and administrator of the estate of decedent Monnie Washburn in *Power v. Arizona, State of Arizona et al.*, Case No. CV2018-008861 (Ariz. Sup. Ct., Maricopa County) (the "Action"), and the related federal appellate action *Power v. Arizona, State of Arizona et al.*, Case No. 21-16436 (9th Cir.) (the "Appeal") from continuing to prosecute her claims against defendants Corizon Health, Inc., Corizon, Inc., and Corizon LLC (the "Corizon Defendants"),



which are “Released Parties” pursuant to the Bankruptcy Plan, so long as the Bankruptcy Plan’s Injunctions and Releases do not terminate or become void.

INTRODUCTION

On May 16, 2025, CHS TX, Inc. d/b/a YesCare (“YesCare”) filed its original “Omnibus Motion to Enjoin Plaintiffs From Prosecuting Cases Against Released Parties.” ECF No. 2160 (the “Motion to Enjoin”). For the sake of brevity, YesCare generally incorporates the arguments asserted in that motion, as applicable to Ms. Power, herein. Consistent with the points raised in the Motion to Enjoin, specifically related to the Court’s findings regarding “Exhibit A” plaintiffs, the instant Motion seeks an Order that Jennifer Power is enjoined from pursuing her claims in the Action and the Appeal against the Corizon Defendants because they are “Released Parties” under the Plan, because Power had more than adequate notice of the bankruptcy proceedings and notices under governing law, and because Power affirmatively returned her ballot voting to accept the Plan.

Power brought claims against the Corizon Defendants and others on behalf of the decedent, Monnie Washburn, based on allegations that Washburn’s rights were violated in the process of a prison transport between the Arizona state prison in the city of Kingman and the Arizona state prison in the city of Tucson. In the course of transportation, Washburn allegedly began to exhibit signs of medical distress, eventually losing consciousness and ultimately being pronounced dead shortly after the transport’s arrival in Tucson. Power filed a complaint against the Corizon Defendants and others in the State of Arizona, Maricopa County, asserting negligence and 42 U.S.C. § 1983 claims against the Corizon Defendants alleging that Corizon prescribed medications

that increased the risk of Washburn's medical condition and of failing to properly inform paramedics of Washburn's condition.¹

As demonstrated herein, the Corizon Defendants are plainly "Released Parties" under the Plan. Moreover, as the administrator of Washburn's estate, Power was timely served with every required notice and form. And Power filed two proofs of claim in the bankruptcy proceedings and voted to accept the Plan. Accordingly, Power should be enjoined from further prosecuting her claims against the Corizon Defendants in the Action and the Appeal so long as the Bankruptcy Plan's Injunctions and Releases do not terminate or become void.

FACTUAL BACKGROUND

1. On June 14, 2018, Jennifer Power, individually and as administrator of the estate of Monnie Washburn, brought a wrongful death Complaint against Corizon Health, Inc., Corizon, Inc., and Corizon LLC, and others, captioned *Power v. Arizona, State of Arizona et al.*, CV2018-008861 (Ariz. Sup. Ct., Maricopa County), relating to allegedly deficient medical care provided to Washburn during the course of a prison transport in June 2017. See **Exhibit A** (6/14/2018 Complaint).

2. On January 7, 2019, Power filed an Amended Complaint against Corizon Health, Inc., Corizon, Inc., and Corizon LLC, and others, asserting negligence and 42 U.S.C. § 1983 claims against the Corizon Defendants alleging that Corizon prescribed medications that increased the risk of Washburn's medical condition and of failing to properly inform paramedics of Washburn's condition. See **Exhibit B** (1/07/2019 Amended Complaint).

¹ Power's claims against the Corizon Defendants in both the Action and the Appeal have been administratively stayed on account of the bankruptcy proceedings.

3. The Amended Complaint alleges that Defendants Corizon Health, Inc., Corizon, Inc., and Corizon LLC “are related, for-profit foreign business entities, who contract and conduct business within the State of Arizona.” *Id.* at ¶ 13.

4. The Amended Complaint also asserts that defendant Corizon Health, Inc. (*i.e.*, the Debtor) entered into a contract effective March 4, 2013 to provide “full service medical, mental health, and dental care ... to the inmates housed at” numerous prison facilities, including ASPC-Tucson, to which Washburn was being transported.

5. On March 7, 2019, the Action was removed to the United States District Court for the District of Arizona, under Case No. 2:19-cv-01546-DLR (D. Ariz.). *See* Case No. 2:19-cv-01546-DLR, ECF No. 1.

6. On August 13, 2021, the District Court dismissed Power’s claims against the Corizon Defendants under 42 U.S.C. § 1983 and remanded the remaining claims to the Superior Court of Arizona, Maricopa County, Case No. CV2018-008861. *See* Case No. 2:19-cv-01546-DLR, ECF No. 201; **Exhibit C**.

7. Power appealed the dismissal of her claims against the Corizon Defendants and others to the Ninth Circuit, which stayed Power’s appeal as to the Corizon Defendants only on July 10, 2023. **Exhibit D**.

8. On February 14, 2023, the Corizon Defendants filed a Suggestion of Bankruptcy and Notice of Automatic Stay in the Action. *See* Case No. CV2018-008861 at ECF entry 2/14/2023.

9. Following the filing of a Suggestion of Bankruptcy, the court stayed the Action as to the Corizon Defendants, and the Action remains stayed “pending the resolution of plaintiffs

claim against the Corizon Defendants through the claim distribution procedures established in the Tehum Care Services bankruptcy.” Case No. CV2018-008861 at ECF entry 8/28/2025.

10. On or about May 5, 2023, Power was served, through her attorney, with a Proof of Claim form and Notice of Deadlines for Filing Proofs of Claim. ECF No. 609 at 4, 7, 86.²

11. On or about August 9, 2023, Power filed a proof of claim form in connection with these bankruptcy proceedings (claim no. 535).

12. On or about November 20, 2024, Power was served, through her attorney, with a copy of the Plan, Disclosure Statement, Confirmation Hearing Notice, and the Solicitation Package (including the Solicitation Procedures Order, an Opt-Out Release Form, a copy of the appropriate ballots and voting instructions, and a pre-addressed, postage pre-paid return envelope). ECF No. 1852 at 27, 99, 105, 179.

13. Despite receiving the Solicitation Package and all relevant disclosures and notices, including an Opt-Out Release Form, Power never submitted an Opt-Out Release Form to opt-out of the Plan.

14. On or about January 13, 2025, Power returned a ballot voting to accept the Plan. ECF No. 1993 at 20.

15. On or about February 21, 2025, Power filed a second proof of claim form in connection with these bankruptcy proceedings (claim no. 975).

16. By Order dated March 3, 2025, the Court confirmed the *First Modified Joint Chapter 11 Plan of Reorganization of the Tort Claimants’ Committee, Official Committee of*

² The Court repeatedly approved of the form and manner of notice to claimholders. See ECF No. 1813 at ¶ J; ECF No. 1813 at 9, ¶ 18; ECF No. 2014 at 6, § G, ¶ 10.

Unsecured Creditors and Debtor (the “Bankruptcy Plan”). ECF No. 2014.³ The Bankruptcy Plan is effective.

17. The Plan defines the “Debtor” as Tehum Care Services, Inc., f/k/a Corizon Health, Inc. Art. I, ¶ 51. The Released Parties under the Bankruptcy Plan include, amongst others, the Debtor and its “respective current and former officers, directors, managers, employees, contractors, agents, attorneys, and other professional advisors, Insiders, *and Affiliates.*” Art. I, ¶ 175 (emphasis added).

18. The Consensual Claimant Release releases the Released Parties from “all claims or Causes of Action, including any Estate Causes of Action, against a Released Party that are released under the Plan and the Confirmation Order.” Art. I, ¶ 173.⁴ Pursuant to the Plan’s Consensual Claimant Release, “[a]s of the Final Payment Date”:

Consenting Claimants shall, and shall be deemed to, expressly, conclusively, absolutely, unconditionally, irrevocably, and forever release and discharge each Released Party of and from *any and all Causes of Action based on or relating to, or in any manner arising from, in whole or in part, 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

³ Capitalized terms used herein but not defined have the meanings ascribed to in the Bankruptcy Plan.

⁴ The Bankruptcy Plan defines “Causes of Action” to

mean[] any claims, causes of action, interests, damages, remedies, demands, rights, actions (including Avoidance Actions), suits, debts, sums of money, obligations, judgments, liabilities, accounts, defenses, offsets, counterclaims, crossclaims, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, now existing or hereafter arising, contingent or non-contingent, liquidated or unliquidated, choate or inchoate, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, in contract, tort, law, equity, or otherwise.

Art. I, ¶ 18.

former assets and properties, the Chapter 11 Case, the Plan of Divisional Merger, any Claim or Interest that is treated by the Plan, *the business or contractual arrangements between 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 of the Plan Documents or 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, the pursuit of Plan confirmation, the administration and implementation of the Plan, the solicitation of votes with respect to the Plan, the distribution of property under the Plan, *or 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...*

19. Power did not object to or appeal the Confirmation Order.

ARGUMENT

I. POWER IS ENJOINED FROM FURTHER PROSECUTING HER CLAIMS AGAINST THE CORIZON DEFENDANTS IN THE ACTION AND THE APPEAL BECAUSE THE CORIZON DEFENDANTS ARE “RELEASED PARTIES.”⁵

The Plan’s definition of “Released Parties” includes the Debtor, Tehum Care Services, Inc., f/k/a Corizon Health, Inc. and, among others, the Debtor’s “Affiliates.” Art. I, ¶ 175. The Corizon Defendants are the Debtor and “related” affiliate companies of the Debtor operating at all relevant times in the State of Arizona. **Exhibit B** at ¶ 13. Pursuant to the Plan, the Debtor, Tehum Care Services, Inc. f/k/a Corizon Health, Inc., is a “Released Party.” Art. I, ¶ 175. Claims against the Debtor are, accordingly, released under the Plan.

The claims against the remaining Corizon Defendants are also released as they are related, affiliate companies of the Debtor. **Exhibit B** at ¶ 13. The Bankruptcy Code defines an “affiliate,” in relevant part, as

(B) [a] corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the debtor, or by an entity that directly or indirectly owns, controls, or holds

⁵ The Court already held with respect to the Omnibus Motion that it had jurisdiction to entertain a motion to enjoin, including seeking the relief herein.

with power to vote, 20 percent or more of the outstanding voting securities of the debtor, other than an entity that holds such securities--

- (i) in a fiduciary or agency capacity without sole discretionary power to vote such securities; or
- (ii) solely to secure a debt, if such entity has not in fact exercised such power to vote

11 U.S.C. § 101(2)(B). Defendants Corizon, Inc. and Corizon LLC in the Action and related Appeal are “affiliates” of the Debtor as they are and were, at all relevant times, wholly owned subsidiaries of the Debtor.⁶ Accordingly, each of the Corizon Defendants in the Action and related Appeal qualify as “Released Parties” under the Plan, and Power’s claims against them are released pursuant to the Plan.

II. POWER IS A CONSENTING CLAIMANT UNDER THE PLAN

In addition to the foregoing, YesCare notes that Power had adequate notice of the Plan, the Consensual Claimant Release, and her ability to opt-out of the Plan. Through her attorney, Power was timely served with a Proof of Claim form, Notice of Deadlines for Filing Proofs of Claim, the Plan, the Disclosure Statement, and the Solicitation Package which included an Opt-Out Release form. ECF No. 609 at 4, 7, 86; ECF No. 1852 at 27, 99, 105, 179. A Suggestion of Bankruptcy was also filed in the Action on February 14, 2023. *See* Case No. CV2018-008861 at ECF entry 2/14/2023. Power did not opt-out of the Plan. Rather, Power filed two proofs of claim, (Claim Nos. 535 and 975), and affirmatively voted in favor of the Plan, ECF No. 1993 at 20.

As Power did not opt-out of the Plan and, in fact, affirmatively voted for the Plan, Power is a Consenting PI/WD Claimant under the Plan. Art. I, ¶ 45. Accordingly, Power should be

⁶ Corizon Inc. converted to Corizon, LLC on or about August 26, 2016 and has been inactive since that time. *See* Case No. 2:19-cv-01546-DLR, ECF No. 6-1 at 2.

enjoined from further prosecuting her claims against the Corizon Defendants in the Action and Appeal.

CONCLUSION

For the reasons stated herein, and as set forth in YesCare's Memorandum of Law In Support Of its Omnibus Motion to Enjoin Plaintiffs From Prosecuting Cases Against Released Parties and the Court's Order regarding "Exhibit A" parties, the Court should enter an Order enjoining plaintiff Jennifer Power from continuing to prosecute her claims against the Corizon Defendants in *Power v. Arizona, State of Arizona et al.*, Case No. CV2018-008861 (Ariz. Sup. Ct., Maricopa County), and the related appellate action *Power v. Arizona, State of Arizona et al.*, Case No. 21-16436 (9th Cir.), as long as the Bankruptcy Plan's Injunctions and Releases are in effect.

Respectfully submitted,

By: /s/ Trevor W. Carolan

Trevor W. Carolan
State Bar No.: 24128898
Southern District Federal No. 3794850
BOWMAN AND BROOKE LLP
5850 Granite Parkway, Suite 900
Plano, TX 75024
(972) 616-1700 (Telephone)
Trevor.carolan@bowmanandbrooke.com

Adam M. Masin
Admitted Pro Hac Vice
BOWMAN AND BROOKE LLP
750 Lexington Avenue
New York, NY 10022
(646) 844-9252 (Telephone)
Adam.masin@bowmanandbrooke.com

Attorneys for Movants
CHS TX, INC. d/b/a YESCARE

CERTIFICATE OF SERVICE

I do hereby certify that on the 30th 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.

In addition, a true and correct copy has been electronically mailed to the following:

Anne E Findling
Robbins & Curtin PLLC
301 E Bethany Home Rd., Ste. B100
Phoenix, AZ 85012-3312
anne@rcmslaw.com

/s/ Trevor W. Carolan

Trevor W. Carolan

Exhibit A

CHRIS DEROSE
 Clerk of the Superior Court
 By Ashley Hatch, Deputy
 Date 06/14/2018 Time 14:52:40

Description	Amount
CASE# CV2018-008861	
CIVIL NEW COMPLAINT	333.00
TOTAL AMOUNT	333.00
Receipt# 26646940	

Joel B. Robbins (011065)
 Anne E. Findling (010871)
 ROBBINS & CURTIN, P.L.L.C.
 301 E. Bethany Home Road, Suite B-100
 Phoenix, Arizona 85012-0001
 Telephone: (602) 285-0100
 Facsimile: (602) 265-0267
joel@robbinsandcurtin.com
anne@robbinsandcurtin.com

Attorneys for Plaintiff

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
 IN AND FOR THE COUNTY OF MARICOPA

JENNIFER POWER, individually and
 on behalf of the statutory beneficiaries
 of MONNIE WASHBURN, Deceased,

No. CV2018-008861

Plaintiff,

vs.

COMPLAINT

(Wrongful Death)

(Jury Trial Requested)

STATE OF ARIZONA, a governmental
 entity; CORIZON HEALTH, INC., a
 Missouri corporation, doing business in the
 State of Arizona; CORIZON, INC., a
 Missouri corporation, doing business in the
 State of Arizona; CORIZON, LLC, a foreign
 limited liability company,

Defendants.

Plaintiff Jennifer Power, individually and on behalf of the statutory
 beneficiaries of Monnie Washburn, for her Complaint against Defendants,
 allege as follows:

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012

Telephone: (602) 285-0707 • Fax: (602) 265-0267

PARTIES

1
2 1. Plaintiff, Jennifer Power, is the wife of Monnie Washburn, deceased, and
3 brings this action individually and on behalf of the statutory beneficiaries of Monnie
4 Washburn.

5 2. Mr. Washburn was also survived by two children, who are statutory
6 beneficiaries pursuant to A.R.S. § 12-612 (A).

7 3. Decedent Monnie Washburn was a resident of the State of Arizona.
8 Although incarcerated within the Arizona Department of Corrections at the time of his
9 death, Mr. Washburn's residence was in Maricopa County, Arizona prior to his
10 incarceration. Mr. Washburn died on June 20, 2017.

11 4. The State of Arizona is a body politic; the Arizona Department of
12 Corrections (ADC) is a department of the State of Arizona.

13 5. The State of Arizona has a non-delegable duty for the care and custody of
14 inmates within the Arizona State Prison System, including providing health care services
15 to those incarcerated in the system.

16 6. The State of Arizona is responsible for the actions of ADC, its medical and
17 mental health staff, its corrections staff, and other ADC employees.

18 7. Pursuant to A.R.S. § 31-201.01, any and all causes of action which may
19 arise out of tort caused by the director, prison officers or employees of the department,
20 within the scope of their legal duty, shall run only against the State.

21 8. Defendants Corizon Health, Inc., Corizon, Inc. and Corizon LLC are
22 related, for-profit foreign business entities, who contract and conduct business within the
23 State of Arizona. These entities will be referred to as "Corizon."

24 9. Corizon has a corporate office in Maricopa County, Arizona. Corizon also
25 conducts business in Maricopa County and other locations within the State of Arizona.

26 10. Effective March 4, 2013, Defendant Corizon Health, Inc. contracted with
27 the State of Arizona / Arizona Department of Corrections to provide full service medical,
28 mental health, and dental care (collectively "healthcare") to the inmates housed at ASPC-

1 Douglas, ASPC-Phoenix, ASPC-Eyman, ASPC-Safford, ASPC-Florence, ASPC-Tucson,
2 ASPC-Lewis, ASPC-Winslow, ASPC-Perryville, ASPC-Yuma.

3 11. The State of Arizona retained monitoring responsibility for Defendant
4 Corizon's provision of health care to inmates within the Arizona Department of
5 Corrections prison system.

6 12. The State of Arizona requires inmates to be provided opportunities for
7 reasonable and appropriate access to a community standard of health care and appropriate
8 referrals for inmates who appear for treatment.

9 13. Corizon has caused events to occur in the State of Arizona and is subject to
10 this Court's jurisdiction.

11 JURISDICTION AND VENUE

12 14. The amount in controversy exceeds the jurisdictional threshold of the Court.

13 15. A timely notice of claim pursuant to A.R.S. § 12-821.01 was served on
14 Defendant State of Arizona on December 15, 2017. More than sixty (60) days have
15 passed since this Notice of Claim was served upon the Defendant. By operation of statute,
16 the claim is deemed denied.

17 16. This is an action against the State of Arizona. Venue is proper in the Superior
18 Court in and for Maricopa County.

19 FACTUAL BACKGROUND

20 17. At the time relevant to the present dispute, Monnie Washburn was an
21 inmate within the Arizona Department of Corrections, housed at the ASP-Kingman
22 facility.

23 18. Monnie Washburn was serving a term of incarceration at ASPC -
24 Kingman, in Mohave County, Arizona, with a maximum end date of February 15, 2019.

25 Medications

26 19. Corizon prescribed and administered to Mr. Washburn the following
27 medications: Prozac, Risperdal, and Cogentin. All of these medications increased Mr.
28

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012

Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

1 Washburn's risk of hyperthermia.

2 20. Risperdal (risperidone) is known to cause disruption of body temperature
3 regulation. Both hyperthermia and hypothermia have been reported in association with
4 oral risperidone. Per labeling, caution is advised when patients will be exposed to
5 temperature extremes.

6 21. Individuals such as Mr. Washburn who take antipsychotic agents, including
7 risperidone, are also at risk for neuroleptic malignant syndrome (NMS). This syndrome
8 can cause high fever (102-104 degrees), muscle stiffness, excessive sweating, anxiety, fast
9 or abnormal heart beat, increased saliva, and quick breaths.

10 22. Cogentin (benztropine), when given concomitantly with drugs that have
11 anticholinergic or antidopaminergic activity (such as Risperidone), may cause fever or heat
12 intolerance. Paralytic ileus, hyperthermia, and heat stroke, with associated fatalities have
13 been reported.

14 23. Prozac (fluoxetine) may cause serotonin syndrome. This adverse event may
15 lead to autonomic instability, which may include hyperthermia.

16 24. The risks associated with these medications are known by any reasonably
17 trained prescriber.

18 Transport

19 25. On the morning of June 20, 2017, Mr. Washburn was being transferred from
20 the State Prison Complex in Kingman to the State Prison Complex in Tucson, via an ADC
21 bus in which the air conditioning was reportedly not functioning. It was also reported that
22 the bus was overheating, and was only able to travel at a speed of 30-35 miles per hour
23 due to the heat. According to the National Weather Service, the temperature in Tucson hit
24 116 degrees that day.

25 26. Correctional Officer II Dale A. King (CO II King) was driving the transport
26 van.

27 27. Correctional Officer II Antonio R. Tuccino (COII Tuccino) was present in
28 the van.

ROBBINS & CURTIN, P.L.L.C.
 301 East Bethany Home Road, Suite B-100
 Phoenix, Arizona 85012
 Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

28. Sergeant Steven Gallardo acted in a supervisory role to COII King and COII Tuccino.

29. At approximately 3:00 p.m., it was reported that Mr. Washburn began to behave erratically and tried to remove his restraints. By 4:30 p.m., while still on the bus, Mr. Washburn fell ill, had seizure like symptoms, began vomiting and became unresponsive. ICS was not initiated nor was aid rendered to him.

30. Licensed Practical Nurse Nidia Salazar, an employee and/or agent of Corizon, and an "on-call" doctor made remote recommendations to COII King and COII Tuccino regarding Mr. Washburn's medical status.

31. COII King and COII Tuccino did not initiate ICS, and instead had Mr. Washburn lay on the floor of the bus, while they continued on to the Tucson DOC Complex, arriving approximately three hours later.

32. Medical staff from the prison were contacted and were standing by in the sally port, and Tucson Fire Department paramedics were en route when the bus arrived. Monnie Washburn was taken off of the bus, apneic and unresponsive, and CPR was initiated. CPR continued for another 30 minutes before paramedics pronounced death.

33. The Pima County Medical Examiner's Office concluded that Mr. Washburn died of heat stroke/hyperthermia.

CLAIMS FOR RELIEF
COUNT ONE
NEGLIGENCE
(State of Arizona / Corizon)

34. The foregoing paragraphs are incorporated as if fully set forth herein.

35. Defendant State of Arizona through ADC owes and owed a non-delegable duty of care to inmates in its custody, including Monnie Washburn, which duty includes taking reasonable steps to recognize the need for, and provide, medical attention and intervention.

36. Defendant State of Arizona through ADC owes and owed a non-delegable

1 duty of care to inmates in its custody, including Monnie Washburn, which duty also
2 includes taking reasonable and necessary steps to reduce the risk that inmates taking
3 certain medications are exposed to extreme temperatures known to put those inmates at
4 risk for hyperthermia and other medication-related complications.

5 37. Corizon owes and owed a duty of care to Mr. Washburn to inform ADC of
6 his medication status and any risk inherent in that medication status.

7 38. Corizon owes and owed a duty of care to Mr. Washburn to provide accurate
8 and appropriate information to minimize the risk of complications from known medical
9 conditions and to adequately respond to urgent and/or emergency medical conditions.

10 39. Defendants also observed, and failed to report or otherwise act upon their
11 observations, that Monnie Washburn was dangerously ill and needing medical
12 intervention and supervision.

13 40. Defendants were negligent and/or grossly negligent by failing to recognize
14 Monnie Washburn's need for medical intervention, and by having failed to provide such
15 medical attention.

16 41. Defendants breached their duty of care (1) by failing to take appropriate
17 steps to protect Mr. Washburn for known risks of complications of his medications; (2) by
18 forcing Mr. Washburn to endure life-threatening conditions over a period of time; (3) by
19 ignoring his pleas for help; (4) by ignoring the warnings of other inmates that Mr.
20 Washburn was in trouble; and (5) by failing to provide Mr. Washburn access to timely
21 medical care for his emergent medical condition.

22 42. Defendants' negligence was the direct and proximate cause of the death of
23 Plaintiffs' decedent Monnie Washburn; such death would not have happened without
24 Defendants' negligence.

25 43. Monnie Washburn's death caused injury and loss to Plaintiffs and the
26 statutory beneficiaries of Monnie Washburn.
27
28

COUNT TWO
MEDICAL NEGLIGENCE
(Corizon)

44. The foregoing paragraphs are incorporated as if full set forth herein.

45. As set forth above, Corizon prescribed medications to Monnie Washburn that it knew would increase Mr. Washburn's risk of adverse side effects, including hypothermia and death.

46. Corizon failed to take steps to mitigate the risk of death, including, upon information and belief, failing to warn Defendant State of the risk of transporting Mr. Washburn in a transport van without air conditioning in the Arizona summer heat.

47. Once Corizon learned of Mr. Washburn's emergent condition during transport, Corizon failed to provide appropriate advice to officers, including the recommendation that Mr. Washburn be taken immediately to a higher level of care to prevent his death.

48. Defendants ADOC, Corizon, and their employees are health care providers and, as such, owe and owed Monnie Washburn the duty to exercise that degree of care, skill, and learning that would be expected under similar circumstances of a reasonably prudent health care provider within this state.

49. Were it not for the failure of Defendants and their employees to comply with the applicable standard of care, Monnie Washburn would have received timely medical treatment and would not have died.

50. Monnie Washburn's death caused injury and loss to Plaintiffs and the statutory beneficiaries of Monnie Washburn.

COUNT THREE
(All Defendants)

51. As set forth above, Monnie Washburn's death was caused by wrongful act, neglect, or default.

52. The act, neglect, or default as set forth above, if death had not ensued,

1 would have entitled Mr. Washburn to maintain an action to recover damages in respect
2 thereof.

3 53. As a result Defendants are liable to Plaintiff and the statutory beneficiaries
4 of Monnie Washburn for damages that resulted from Mr. Washburn's death.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 7 A. For special damages;
8 B. For lost wages, income, and other economic losses;
9 C. For other general damages, including but not limited to pain and suffering,
10 loss of enjoyment of life and other emotional trauma;
11 D. For exemplary damages to the extent permitted by law;
12 E. For taxable costs and pre- and post-judgment interest to the extent permitted
13 by law;
14 F. Such other relief as the Court deems just and proper.

15
16 **DATED** this June 14, 2018.

17
18 **ROBBINS & CURTIN, p.l.l.c.**

19
20 By: Anne E. Findling
21 Anne E. Findling
22 Attorney for Plaintiff
23
24
25
26
27
28

Exhibit B

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

Joel B. Robbins (011065)
Anne E. Findling (010871)
ROBBINS & CURTIN, P.L.L.C.
301 E. Bethany Home Road, Suite B-100
Phoenix, Arizona 85012-0001
Telephone: (602) 285-0100
Facsimile: (602) 265-0267
joel@robbinsandcurtin.com
anne@robbinsandcurtin.com

Attorneys for Plaintiff

**IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA**

JENNIFER POWER, individually and
on behalf of the statutory beneficiaries
of MONNIE WASHBURN, Deceased;
ESTATE OF MONNIE WASHBURN,

No. CV2018-008861

Plaintiff,

vs.

**FIRST AMENDED
COMPLAINT**

(Wrongful Death)

(Jury Trial Requested)

STATE OF ARIZONA, a governmental
entity; CORIZON HEALTH, INC., a
Missouri corporation, doing business in the
State of Arizona; CORIZON, INC., a
Missouri corporation, doing business in the
State of Arizona; CORIZON, LLC, a foreign
limited liability company, CORRECT
CARE SOLUTIONS, LLC a foreign
limited liability company doing
business in Arizona; THE GEO
GROUP, INC., a Florida Corporation
doing business in Arizona;
CORRECTIONS OFFICER DALE A.
KING, individually; CORRECTIONS
OFFICER ANTONIO R. TUCCINO,
individually; SERGEANT STEVEN
GALLARDO, individually;

1
2 Defendants.
3
4
5
6

7
8 Plaintiff Jennifer Power, individually and on behalf of the statutory
9 beneficiaries of Monnie Washburn, and in her capacity as personal
10 representative of the Estate of Monnie Washburn, deceased, for her Complaint
11 against Defendants, allege as follows:
12

13 **PARTIES**

14 1. Plaintiff, Jennifer Power, is the wife of Monnie Washburn,
15 deceased, and brings this action individually and on behalf of the statutory
16 beneficiaries of Monnie Washburn.
17

18 2. Jennifer Power is also the duly appointed personal representative
19 of the Estate of Monnie Washburn, Maricopa County Superior Court No.
20 PB2018-003467.
21

22 3. Mr. Washburn is also survived by two children, who are statutory
23 beneficiaries pursuant to A.R.S. § 12-612 (A).
24

25 4. Decedent Monnie Washburn was a resident of the State of
26 Arizona. Although incarcerated within the Arizona Department of
27 Corrections (ADC) at the time of his death, Mr. Washburn's residence was in
28 Maricopa County, Arizona prior to his incarceration. Mr. Washburn died on
June 20, 2017.

5. At the time of his death, Mr. Washburn was actively being treated

1 for mental illness and was being prescribed psychotropic medications as
2 reflected in his ADC assigned mental health score of 3M.

3 6. The State of Arizona is a body politic; the Arizona Department of
4 Corrections is a department of the State of Arizona.

5 7. The State of Arizona has a non-delegable duty for the care and
6 custody of inmates within the Arizona State Prison System, including
7 providing health care services to those incarcerated in the system.

8 8. The State of Arizona is responsible for the actions of ADC, its
9 medical and mental health staff, its corrections staff, and other ADC
10 employees.

11 9. The State of Arizona promulgates Department Orders, General
12 Orders, Directors Instructions, Post Orders, and other rules and regulations
13 to ensure the safety of the community, the safety of employees of ADC, and
14 the safety of inmates in ADC's custody (collectively "ADC Policy.")

15 10. The State of Arizona mandates the training, retraining, and
16 currency training for ADC employees (collectively "ADC Training") on ADC
17 Policy.

18 11. The State of Arizona protects certain aspects of ADC Policy from
19 public disclosure.

20 12. Pursuant to A.R.S. § 31-201.01, any and all causes of action which
21 may arise out of tort caused by the director, prison officers or employees of the
22 department, within the scope of their legal duty, shall run only against the
23 State.

24 13. Defendants Corizon Health, Inc., Corizon, Inc. and Corizon LLC
25 are related, for-profit foreign business entities, who contract and conduct
26 business within the State of Arizona. These entities will be referred to as
27 "Corizon."
28

1 14. Corizon has a corporate office in Maricopa County, Arizona.
2 Corizon also conducts business in Maricopa County and other locations within
3 the State of Arizona.

4 15. Effective March 4, 2013, Defendant Corizon Health, Inc.
5 contracted with the State of Arizona to provide full service medical, mental
6 health, and dental care (collectively “healthcare”) to the inmates housed at
7 ASPC-Douglas, ASPC-Phoenix, ASPC-Eyman, ASPC-Safford, ASPC-Florence,
8 ASPC-Tucson, ASPC-Lewis, ASPC-Winslow, ASPC-Perryville, ASPC-Yuma.

9 16. The State of Arizona retained monitoring responsibility for
10 Defendant Corizon’s provision of health care to inmates within the Arizona
11 Department of Corrections prison system.

12 17. Defendant Correct Care Solutions, LLC (“Correct Care”) is a
13 foreign limited liability company doing business in the State of Arizona.
14 Correct Care is a contracted provider for medical and mental health care to
15 inmates housed at ASPC-Kingman.

16 18. Defendant GEO Group (“GEO”) is a foreign for-profit corporation
17 doing business in the State of Arizona. GEO Group contracts with the State of
18 Arizona to operate the prison complex at ASPC-Kingman. Geo Group is
19 responsible for the actions of its employees, contractors and agents in the
20 scope of their engagement.

21 19. ADC Policy requires inmates to be provided opportunities for
22 reasonable and appropriate access to a community standard of health care
23 and appropriate referrals for inmates who appear for treatment.

24 20. ADC Policy requires corrections officers and others charged with
25 the supervision of inmates to regularly conduct health and safety checks, and
26 to record those checks.
27
28

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

1 21. ADC Policy requires corrections officers to respond to medical
2 emergencies involving inmates within three minutes. Examples of medical
3 emergencies for which officers receive training include seizures, heat
4 exhaustion, and heat stroke.

5 22. ADC Policy requires corrections officers who are transporting
6 inmates within the state to conduct regular equipment checks of security
7 devices and transportation vehicles.

8 23. ADC Policy requires corrections officers to keep accurate records of
9 health and safety checks of inmates and to regularly report those security
10 checks.

11 24. ADC Policy provides for emergency response through its Incident
12 Command System ("ICS"). One purpose of ICS is to mobilize resources during
13 an emergency for the safety of the community, the staff, and the inmates.

14 25. Defendant Corrections Officer Dale A. King ("CO King") is or was
15 an employee of the State of Arizona as a corrections officer at the time of the
16 events that give rise to this action.

17 26. Defendant Corrections Officer Antonio R. Tuccino ("CO Tuccino")
18 is or was an employee of the State of Arizona as a corrections officer at the
19 time of the events that give rise to this action.

20 27. Defendant Corrections Sergeant Steven Gallardo ("Sgt. Gallardo")
21 is or was an employee of the State of Arizona as a corrections sergeant at the
22 time of the events that give rise to this action.

23 28. Defendants King, Tuccino, and Gallardo are named individually
24 for purposes of a federal civil rights claim pursuant to 42 U.S.C. § 1983.
25 Defendants King, Tuccino, and Gallardo are state actors as that term is used
26 in the jurisprudence of federal civil rights law. Defendants King, Tuccino and
27 Gallardo acted under color of state law.
28

1 29. Corizon, Correct Care, and Geo Group have caused events to
2 occur in the State of Arizona and are subject to this Court's jurisdiction.

3 **JURISDICTION AND VENUE**

4 30. The amount in controversy exceeds the jurisdictional threshold of
5 the Court.

6 31. A timely notice of claim pursuant to A.R.S. § 12-821.01 was served
7 on Defendant State of Arizona on December 15, 2017. More than sixty (60)
8 days have passed since this Notice of Claim was served upon the Defendant.
9 By operation of statute, the claim is deemed denied.

10 32. This is an action against the State of Arizona. Venue is proper in
11 the Superior Court in and for Maricopa County.

12 33. This Court has jurisdiction for claims made under 42 U.S.C. § 1983.
13 A trial by jury is demanded for all claims asserted in this action.

14 **FACTUAL BACKGROUND**

15 34. At times relevant to the present dispute, Monnie Washburn was
16 an inmate within the Arizona Department of Corrections, housed at the
17 Arizona State Prison Complex at Kingman, Arizona (ASPC-Kingman).

18 35. Monnie Washburn was serving a term of incarceration, with a
19 maximum end date of February 15, 2019.

20 36. On June 20, 2016, Mr. Washburn was being transferred from
21 ASPC-Kingman, operated by Geo Group, to a state-run prison facility in
22 Tucson (ASPC-Tucson).

23 37. Upon information and belief, Geo Group and/or Correct Care was
24 responsible for ensuring that Mr. Washburn's medical and/or mental health
25 conditions were accurately and timely reported in anticipation of the transfer
26 from ASPC-Kingman to ASPC-Tucson.
27
28

Medications

38. Corizon and/or Correct Care prescribed and administered to Mr. Washburn the following medications: Prozac, Risperdal, and Cogentin. All of these medications increased Mr. Washburn's risk of hyperthermia.

39. Risperdal (risperidone) is known to cause disruption of body temperature regulation. Both hyperthermia and hypothermia have been reported in association with oral risperidone. Per labeling, caution is advised when patients will be exposed to temperature extremes.

40. Individuals such as Mr. Washburn who take antipsychotic agents, including risperidone, are also at risk for neuroleptic malignant syndrome (NMS). This syndrome can cause high fever (102-104 degrees), muscle stiffness, excessive sweating, anxiety, fast or abnormal heart beat, increased saliva, and quick breaths.

41. Cogentin (benztropine), when given concomitantly with drugs that have anticholinergic or antidopaminergic activity (such as Risperidone), may cause fever or heat intolerance. Paralytic ileus, hyperthermia, and heat stroke, with associated fatalities, have been reported.

42. Prozac (fluoxetine) may cause serotonin syndrome. This adverse event may lead to autonomic instability, which may include hyperthermia.

43. The risks associated with these medications are known by any reasonably trained prescriber.

Transport

44. On June 20, 2017, Mr. Washburn was scheduled to be transferred from ASPC-Kingman to ASPC-Tucson.

45. The air conditioning in the transport bus was reportedly not functioning.

46. It was also reported that the bus was overheating and was only

1 able to travel at a speed of 30-35 miles per hour due to the heat. According to
2 the National Weather Service, the temperature in Tucson hit 116 degrees that
3 day. Phoenix experienced record heat of 119°.

4 47. COII King was driving the transport van during a portion of the
5 trip and/or was present in the van during the transport; COII Tuccino also
6 drove the transport van during a portion of the trip and was present in the
7 van during the transport.

8 48. Sergeant Steven Gallardo supervised COII King and COII
9 Tuccino.

10 49. On June 20, 2017, at approximately 4:30 a.m., COII King and
11 COII Tuccino left ASPC-Tucson in transportation bus G819FG with 38
12 inmates en route to ASPC-Kingman.

13 50. COII King and COII Tuccino arrived at ASPC-Kingman at
14 approximately 10:00 a.m.

15 51. COII King and COII Tuccino left ASPC-Kingman at
16 approximately 1:05 p.m. with 11 inmates, including Mr. Washburn, with COII
17 Tuccino driving and COII King as passenger.

18 52. At the time the transport bus left Kingman, COII King and COII
19 Tuccino knew that it was hot in the passenger compartment of the transport
20 bus and that they did not have adequate water to meet the needs of the
21 inmates they were transporting, including Mr. Washburn.

22 53. COII King and COII Tuccino's route of travel from ASPC-
23 Kingman to ASPC-Tucson took them through or near the Arizona cities of
24 Wikieup, Wickenburg, Phoenix, and Marana, near ADC's prison complexes at
25 Perryville and Phoenix with medical units, and near hospitals equipped to
26 accept inmate patients for urgent or emergent care.
27
28

1 54. At approximately 3:05 p.m., just prior to the Town of Wikieup,
2 Mr. Washburn began to pace inside the transport bus and complain about the
3 heated temperature within the bus. Mr. Washburn asked for water, asked for
4 medical help, and tried to remove his restraints, resulting in scrapes to his
5 wrists.

6 55. COII King threatened Mr. Washburn with a pepper ball launcher
7 and directed him to sit down. Mr. Washburn complied with COII King's
8 request.

9 56. Neither COII King nor COII Tuccino informed a supervisor,
10 contacted ADC, or initiated an ICS.

11 57. The transportation team stopped in Wikieup to fuel the transport
12 bus but were unable to due so, reportedly because of a problem with the fuel
13 card.

14 58. COII King and COII Tuccino chose to continue to Wickenburg
15 (approximately 75 miles) from Wikieup.

16 59. Outside of Wikieup, COII Tuccino pulled the bus to the side of the
17 road because the check engine light and the temperature light came on. The
18 bus was stopped on the side of the road for approximately 10 minutes until
19 the emergency lights went out and the gauge showed the engine had cooled.

20 60. Neither COII King nor COII Tuccino informed a supervisor,
21 contacted ADC, or initiated an ICS.

22 61. COII King and COII Tuccino subjected Mr. Washburn and the
23 other inmates on the transport bus to increasingly hot temperatures within
24 the bus.

25 62. In violation of policy, and without informing a supervisor, ADC, or
26 initiating an ICS, COII King and COII Tuccino opened the door to the inmate
27 passenger area of the bus and removed an ice chest ("igloo") to refill the igloo
28

with ice and water at Filiberto's restaurant.

63. Mr. Washburn informed the officers that he was overheated and needed medical attention, but neither COII King nor COII Tuccino informed a supervisor, contacted ADC, or initiated an ICS.

64. At or before 4:35 p.m., Mr. Washburn suffered a seizure and became unresponsive. Neither COII King nor COII Tuccino informed a supervisor, contacted ADC, or initiated an ICS.

65. At or near that time, Mr. Washburn vomited. Neither COII King nor COII Tuccino did anything to assist Mr. Washburn, despite being urged by the inmates on the transport bus to help him.

66. At 4:40 p.m., COII Tuccino finally contacted Sgt. Gallardo. Sgt. Gallardo did not advise the officers to initiate an ICS or to divert the transport bus to an available state prison complex and/or medical center.

67. Sgt. Gallardo contacted Licensed Practical Nurse Nidia Salazar ("LPN Salazar"), an employee and/or agent of Corizon.

68. Upon information and belief, Sgt. Gallardo told LPN Salazar that Mr. Washburn had suffered a seizure, was overheated, was unresponsive to commands, had vomited repeatedly, but was still breathing.

69. LPN Salazar did not ask to speak to the transporting officers directly, did not ask for a medical or mental health history, did not access Mr. Washburn's medical records, and did not seek clarification of Mr. Washburn's condition.

70. LPN Salazar spoke to an "on-call" doctor. The "on-call" doctor did not speak to the transporting officers directly, did not ask for a medical or mental health history, did not access Mr. Washburn's medical records, and did not seek clarification of Mr. Washburn's condition.

71. COII King and COII Tuccino did not initiate ICS, and instead had

1 Mr. Washburn lay on the floor of the bus, while they continued to ASPC-
2 Tucson. Mr. Washburn continued to vomit.

3 72. Sgt. Gallardo delayed contacting COII King and COII Tuccino for
4 almost an hour.

5 73. At some point near Marana, Arizona, COII King and COII
6 Tuccino finally initiated an ICS.

7 **Delayed Medical Response**

8 74. Mr. Washburn's medical record documented that he was
9 prescribed three medications: Prozac, Risperdal, and Cogentin. The record
10 also documented that he was seriously mentally ill (SMI).

11 75. At 5:03 p.m., LPN Salazar documents: "IM [Mr. Washburn] is in
12 transit from Kingman Private Prison to Tucson Complex." LPN Salazar
13 further documents: "IM [Mr. Washburn] is vomiting and appears to be
14 severely dehydrated."

15 76. Severe dehydration/hypovolemia is a known life-threatening
16 medical condition that requires urgent and/or emergent interventions.
17 Untreated dehydration / hypovolemia can result in seizure, coma, and death.

18 77. Mr. Washburn's death was pronounced at 7:58 P.M.

19 78. At 10:00 p.m., after Mr. Washburn died, LPN Salazar documented
20 that she had earlier been told that Mr. Washburn "was vomiting and feeling
21 malaise."

22 79. "Feeling malaise" is not synonymous with "severely dehydrated."
23 "Feeling malaise" suggests that a patient has a general feeling of discomfort,
24 illness, or lack of well-being.

25 80. LPN Salazar was never told that Mr. Washburn was "feeling
26 malaise" and her documentation to that effect in Corizon's medical record is a
27 fabrication designed to deflect responsibility for having failed to appropriately
28

1 and timely triage Mr. Washburn's serious medical condition.

2 81. According to the record, LPN Salazar knew that Mr. Washburn
3 suffered from paranoid schizophrenia and was prescribed psychotropic
4 medications.

5 **Arrival at ASPC Tucson**

6 82. Shortly before the arrival of the transport bus at ASPC-Tucson
7 medical staff from the prison were contacted and were standing by in the sally
8 port. Tucson Fire Department paramedics were en route when the bus
9 arrived. Monnie Washburn was taken off the bus, apneic and unresponsive,
10 and CPR was initiated. CPR continued for another 30 minutes before
11 paramedics pronounced death.

12 83. The Pima County Medical Examiner's Office concluded that Mr.
13 Washburn died of heat stroke/hyperthermia.

14 84. COII King and COII Tuccino failed to initiate ICS at
15 approximately 1505 hours, when Mr. Washburn began to behave erratically
16 and tried to remove his restraints. They failed to initiate ICS at
17 approximately 1635 hours, when it was reported that Mr. Washburn had
18 seizure like symptoms, vomited and became unresponsive.

19 85. COII King and COII Tuccino did not contact their supervisor, Sgt.
20 Gallardo, regarding the issues with Mr. Washburn until 1640 hours. Sgt.
21 Gallardo did not elevate the issues regarding inmate Washburn to his
22 supervisor, Lt. Baker, until 1858 hours. ICS was initiated by COII Tuccino, at
23 the direction of Lt. Baker at approximately 1911 hours.

24 86. ADC Central Communications was not aware of the issues
25 regarding Mr. Washburn until ICS was initiated at 1911 hours.

26 87. COII King and COII Tuccino admitted they did not render aid to
27 Mr. Washburn within three minutes of becoming aware of Mr. Washburn
28

1 being unresponsive or in medical crisis.

2 88. COII King, COII Tuccino, and Sgt. Gallardo violated Department
3 Order 705, Department Order 807, and Duty Specific Post Order #26.

4 89. One or more employees of ADC and/or Corizon lied to paramedics
5 and said that Mr. Washburn had become unresponsive at 6:50 p.m.

6
7 **CLAIMS FOR RELIEF**

8 **COUNT ONE**

9 **NEGLIGENCE**

10 **(State of Arizona / Corizon / Geo Group / Correct Care)**

11 90. The foregoing paragraphs are incorporated as if full set forth
12 herein.

13 91. Defendant State of Arizona through ADC owes and owed a non-
14 delegable duty of care to inmates in its custody, including Monnie Washburn,
15 which duty includes taking reasonable steps to recognize the need for, and
16 provide, medical attention and intervention.

17 92. Defendant State of Arizona through ADC owes and owed a non-
18 delegable duty of care to inmates in its custody, including Monnie Washburn,
19 which duty also includes taking reasonable and necessary steps to reduce the
20 risk that inmates taking certain medications are exposed to extreme
21 temperatures known to put those inmates at risk for hyperthermia and other
22 medication-related complications.

23 93. Defendant State of Arizona through ADC owes and owed a non-
24 delegable duty of care to provide safe transport for inmates in its custody,
25 including Monnie Washburn, which duty includes taking reasonable steps to
26 ensure that transport vehicles are safe and do not present an unreasonable
27 risk of harm to inmates.

28 94. Geo Group owes and owed a duty to inmates in its custody,

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

1 including Monnie Washburn, which duty includes taking reasonable steps to
2 reduce the risks that inmates taking certain medications are exposed to
3 extreme temperatures known to put those inmates at risk for hyperthermia
4 and other medication-related complications.

5 95. Geo Group, Correct Care and Corizon owe and owed a duty of care
6 to Mr. Washburn to inform ADC of his medication status and any risk
7 inherent in that medication status.

8 96. Corizon owes and owed a duty of care to Mr. Washburn to provide
9 accurate and appropriate information to minimize the risk of complications
10 from known medical conditions and to adequately respond to urgent and/or
11 emergency medical conditions.

12 97. Correct Care owes and owed a duty of care to Mr. Washburn to
13 ensure that known medical and mental health conditions are communicated
14 when an inmate is transported.

15 98. Defendants observed that Monnie Washburn was dangerously ill
16 and needing medical intervention and supervision and failed to report or
17 otherwise act upon their observations that Monnie Washburn was
18 dangerously ill and needing medical intervention and supervision.

19 99. Defendants were negligent and/or grossly negligent by failing to
20 recognize Monnie Washburn's need for medical intervention, and by having
21 failed to provide such medical attention.

22 100. Defendants breached their duty of care (1) by failing to take
23 appropriate steps to protect Mr. Washburn from known risks of complications
24 of his medications; (2) by forcing Mr. Washburn to unnecessarily endure life-
25 threatening conditions during the transport; (3) by ignoring his pleas for help;
26 (4) by ignoring the warnings of other inmates that Mr. Washburn was in
27 trouble; and (5) by failing to provide Mr. Washburn access to timely medical
28

1 care for his emergent medical condition.

2 101. Defendants' negligence was the direct and proximate cause of the
3 death of Plaintiffs' decedent Monnie Washburn; such death would not have
4 happened without Defendants' negligence.

5 102. Monnie Washburn's death caused injury and loss to Plaintiff and
6 the statutory beneficiaries of Monnie Washburn.

7
8 **COUNT TWO**
9 **MEDICAL NEGLIGENCE**
10 **(Corizon)**

11 103. The foregoing paragraphs are incorporated as if full set forth
12 herein.

13 104. As set forth above, Corizon and/or Correct Care prescribed
14 medications to Monnie Washburn that they knew would increase Mr.
15 Washburn's risk of adverse side effects, including hypothermia and death.

16 105. Corizon and/or Correct Care failed to take steps to mitigate the
17 risk of death, including, upon information and belief, failing to warn
18 Defendant State of Arizona of the risk of transporting Mr. Washburn in a
19 transport van without air conditioning in the Arizona summer heat.

20 106. Once Corizon learned of Mr. Washburn's emergent condition
21 during transport, Corizon failed to provide appropriate advice to officers,
22 including the recommendation that Mr. Washburn be taken immediately to a
23 higher level of care to prevent his death.

24 107. After Mr. Washburn's death, employees of Corizon falsified the
25 medical record to deflect responsibility for their negligence.

26 108. Defendants ADOC, Corizon, and their employees are health care
27 providers and, as such, owe and owed Monnie Washburn the duty to exercise
28

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

1 that degree of care, skill, and learning that would be expected under similar
2 circumstances of a reasonably prudent health care provided within this state.

3 109. Were it not for the failure of Defendants and their employees to
4 comply with the applicable standard of care, Monnie Washburn would have
5 received timely medical treatment and would not have died.

6 110. Monnie Washburn's death caused injury and loss to Plaintiffs and
7 the statutory beneficiaries of Monnie Washburn.

8
9 **COUNT THREE**

10 **(Deliberate Indifference / 42 U.S.C. § 1983)**

11 **(Individual Defendants Tuccino, King, and Gallardo)**

12
13 111. Plaintiff incorporates the allegations set forth above.

14 112. On June 20, 2017, Monnie Washburn was incarcerated within the
15 Arizona Department of Corrections.

16 113. During the transport as described in this Complaint, Mr.
17 Washburn presented with a serious medical need requiring prompt medical
18 attention including transport to a facility where he could receive medical
19 attention.

20 114. The serious medical need began when Mr. Washburn began to
21 complain that he was hot and needed medical care.

22 115. The serious medical need continued and became more urgent, as
23 Mr. Washburn suffered seizures, vomiting, heat exhaustion, heat stroke,
24 hypovolemia, hyperthermia, dehydration, and loss of consciousness.

25 116. During the transport, Mr. Washburn's condition further
26 deteriorated and became life-threatening.

27 117. Sgt. Gallardo was informed of Mr. Washburn's serious medical
28

1 need. Ultimately, Mr. Washburn died because Defendants Tuccino, King, and
2 Gallardo were deliberately indifferent to his medical needs.

3 118. The inmates on the transport bus recognized Mr. Washburn's
4 serious medical need and begged COII Tuccino and COII King to rendered
5 medical aid to Mr. Washburn.

6 119. Examples of Defendant Tuccino's deliberate indifference include,
7 but are not limited:

- 8 a. Undertaking the transport of inmates in Arizona in the summer
9 knowing that there was insufficient ventilation and/or air
10 conditioning on the transport bus;
- 11 b. Continuing the transport of inmates without keeping contact with
12 ADC;
- 13 c. Leaving ASPC-Kingman with inmates in the transport bus
14 without having sufficient drinking water;
- 15 d. Hearing, and being deliberately indifferent to, Mr. Washburn's
16 complaints of overheating;
- 17 e. Hearing, and being deliberately indifferent to, Mr. Washburn's
18 pleas for medical attention;
- 19 f. Seeing, and being deliberately indifferent to, Mr. Washburn
20 vomiting on himself and being left on the floor of the bus in his
21 own vomit;
- 22 g. Seeing, and being deliberately indifferent to, Mr. Washburn
23 experiencing seizures;
- 24 h. Seeing, and being deliberately indifferent to, the change in Mr.
25 Washburn's level of consciousness, and ultimately loss of
26 consciousness;
- 27 i. Recognizing, but being deliberately indifferent to, Mr. Washburn's
28

seizures;

- j. Recognizing, but being deliberately indifferent to, Mr. Washburn's heat-related illness.

120. Examples of Defendant King's deliberate indifference include, but are not limited:

- a. Undertaking the transport of inmates in Arizona in the summer knowing that there was insufficient ventilation and/or air conditioning on the transport bus;
- b. Continuing the transport of inmates without keeping contact with ADC;
- c. Leaving ASPC-Kingman with inmates in the transport bus without having sufficient drinking water;
- d. Hearing, and being deliberately indifferent to, Mr. Washburn's complaints of overheating;
- e. Hearing, and being deliberately indifferent to, Mr. Washburn's pleas for medical attention;
- f. Seeing, and being deliberately indifferent to, Mr. Washburn vomiting on himself and being left on the floor of the bus in his own vomit;
- g. Seeing, and being deliberately indifferent to, Mr. Washburn experiencing seizures;
- h. Seeing, and being deliberately indifferent to, the change in Mr. Washburn's level of consciousness, and ultimately loss of consciousness;
- i. Recognizing, but being deliberately indifferent to, Mr. Washburn's seizures;
- j. Recognizing, but being deliberately indifferent to, Mr. Washburn's

ROBBINS & CURTIN, P.L.L.C.
 301 East Bethany Home Road, Suite B-100
 Phoenix, Arizona 85012
 Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

heat-related illness.

121. Examples of Defendant Gallardo's deliberate indifference include, but are not limited to:

- a. Knowing, and being deliberately indifferent to, information Mr. Washburn had suffered seizures, heat-related illness, and altered level of consciousness;
- b. Knowing, and being deliberately indifferent to, delays in getting Mr. Washburn urgent and emergent medical care;
- c. Knowing, and being deliberately indifferent to, violations of policy that resulted in Mr. Washburn's heat-related illness progressing to his death.

122. Defendants have known since no later than 2010 and the publication of *Graves v. Arpaio*, 623 F.3d 1043 (9th Cir. 2010) that it is a violation of the Eighth Amendment to subject inmates taking psychotropic medications to temperatures exceeding 85 degree.

123. The Constitutional violations as set forth in this Count and as set forth generally in this complaint caused Mr. Washburn to suffer actual and grievous injury, with resulting pre-death pain and suffering.

124. The Constitutional violations as set forth in this Count and as set forth generally in this complaint caused Plaintiffs to suffer harms and losses as surviving statutory beneficiaries of Mr. Washburn.

125. Plaintiffs as stated herein have standing and hereby assert claims under the 8th and 14th Amendments to the United State Constitution.

COUNT FOUR

(Deliberate Indifference / 42 U.S.C. § 1983)

(Defendant Corizon)

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

1
2 126. Plaintiff incorporates the allegations set forth above.

3 127. Corizon is a for-profit private corporation that contracts with the
4 State of Arizona / Arizona Department of Corrections to provide medical,
5 dental, and mental health care to inmates in the custody of ADC.

6 128. As a for-profit private corporation, Corizon has a financial
7 incentive to delay and/or deny inmates access to outside medical care.

8 129. Corizon is a state actor as that term is used in the jurisprudence
9 of federal civil rights law, 42 U.S.C. § 1983.

10 130. As set forth in this Count and through this Complaint, Corizon
11 was deliberately indifferent to the serious medical need of Monnie Washburn,
12 an inmate in the custody of ADC.

13 131. The serious medical need was identified to Corizon at or before
14 5:03 p.m. on June 20, 2017, when Corizon was notified that Mr. Washburn
15 was suffering from vomiting and severe dehydration, which is an
16 urgent/emergent medical requiring treatment by an appropriate medical
17 provider.

18 132. Rather than divert the transport to an appropriate health care
19 provider, Corizon advised officers to continue to transport Mr. Washburn to
20 ASPC-Tucson.

21 133. Deliberate indifference to Mr. Washburn's serious medical need is
22 demonstrated by Corizon's failure to advise officers to access urgent and/or
23 emergent medical care.

24 134. Falsification of the medical record by Corizon is evidence of willful
25 or malevolent intent.

26 135. Corizon violated Mr. Washburn's right to be free from cruel and
27 unusual punishment.
28

138. As a result of the conduct alleged in this Count and through this Complaint, Plaintiffs suffered harms and losses, including the loss of Mr. Washburn.

(All Defendants)

141. As a result, Defendants are liable to Plaintiff and the statutory beneficiaries of Monnie Washburn for damages that resulted from Mr. Washburn's death.

PRAYER FOR RELIEF

D. For exemplary damages to the extent permitted by law;

1 E. For taxable costs and pre- and post-judgment interest to the extent
2 permitted by law;

3 F. Such other relief as the Court deems just and proper.
4

5
6 DATED this January 7, 2019.

7 **ROBBINS & CURTIN, p.l.l.c.**
8

9 By: /s/ Anne E. Findling
10 Joel B. Robbins
11 Anne E. Findling
12 301 E. Bethany Home Road, Suite B-100
13 Phoenix, Arizona 85012
14 *Attorneys for Plaintiff*

15 The foregoing electronically filed
16 this January 7, 2019 to:

17 Clerk of the Court
18 Maricopa County Superior Court

19 COPIES of the foregoing e-served/mailed this same day to:

20 Mandi J. Karvis
21 Anngelica N. Davis
22 WICKER SMITH O'HARA McCOY & FORD, P.A.
23 One N. Central Ave., Suite 885
24 Phoenix, AZ 85004
25 *Attorneys for Defendants*

26 By: /s/ Kimberly A. Wolf
27
28

ROBBINS & CURTIN, P.L.L.C.
301 East Bethany Home Road, Suite B-100
Phoenix, Arizona 85012
Telephone: (602) 285-0707 ♦ Fax: (602) 265-0267

Exhibit C

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK

DEBRA D. LUCAS

District Court Executive/Clerk of Court
Sandra Day O'Connor U.S. Courthouse
Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118



Jeff Fine
Maricopa County Superior Court
201 West Jefferson
Phoenix, Arizona 85003-2205

August 12, 2021

Attention: Jeff Fine

MICHAEL O'BRIEN

Chief Deputy Clerk
Evo A. DeConcini U.S. Courthouse
405 W. Congress, Suite 1500
Tucson, Arizona 85701-5010

SHANNON SHOULDERS

Chief Deputy Clerk
Sandra Day O'Connor U. S. Courthouse
Suite 130
401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

☒ FILED	☐ LODGED
☐ RECEIVED	☐ COPY
AUG 20 2021	
CLERK U S DISTRICT COURT DISTRICT OF ARIZONA	
BY	DEPUTY

Re: REMAND TO MARICOPA COUNTY SUPERIOR COURT

District Court Case Number: CV 19-01546-PHX-DLR (MHB)
Superior Court Case Number: CV2018-008861

Dear Mr. Fine:

Enclosed is a copy of the Order entered in this Court on August 12, 2021, remanding the above case to Maricopa County Superior Court for the State of Arizona.

Debra D. Lucas
District Court Executive/Clerk of Court

By: Mary Hawkins
Case Administration Specialist

cc: Judicial Administrator
Civil Court Administration
4th Floor, CCB
201 West Jefferson
Phoenix, Arizona 85003-2205

PLEASE ACKNOWLEDGE RECEIPT OF THIS DOCUMENT AND RETURN IN THE ENVELOPE PROVIDED

Received By:  Dated: AUG 18 2021

Exhibit D

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED

JUL 10 2023

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

JENNIFER POWER, on behalf of herself, all
statutory beneficiaries of decedent Monnie
Washburn, and the Estate of Monnie
Washburn,

Plaintiff-Appellant,

v.

STATE OF ARIZONA, a governmental
entity; et al.,

Defendants-Appellees.

No. 21-16436

D.C. No. 2:19-cv-01546-DLR
District of Arizona,
Phoenix

ORDER

This appeal has been held in abeyance as to Corizon Health, Inc., Corizon, Inc., and Corizon, LLC since May 18, 2023, due to the automatic stay imposed by 11 U.S.C. § 362. *See* Docket Entry No. 66.

The Clerk will administratively close this appeal as to Corizon Health, Inc., Corizon, Inc., and Corizon, LLC. No mandate will issue in connection with this administrative closure, and this order does not constitute a decision on the merits as to Corizon Health, Inc., Corizon, Inc., or Corizon, LLC. Within 28 days after any change to the automatic stay's effect in this appeal, any party may notify this court and move to reopen the appeal as to Corizon Health, Inc., Corizon, Inc., or

Corizon, LLC or for other appropriate relief.

This appeal will proceed as to the remaining parties.

FOR THE COURT:

MOLLY C. DWYER
CLERK OF COURT