

ENTERED

May 22, 2023

Nathan Ochsner, Clerk

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

In re:

TEHUM CARE SERVICES, INC.,¹

Debtor.

Chapter 11

Case No. 23-90086 (CML)

TEHUM CARE SERVICES, INC.,

Plaintiff,

v.

THOSE PARTIES LISTED IN APPENDIX A
TO THE COMPLAINT,

Defendants.

Adv. Pro. No. 23-03049

**ORDER APPOINTING A MEDIATOR AND
GOVERNING MEDIATION PROCEDURES FOR THIS ADVERSARY PROCEEDING**

On May 17, 2023, the Court held a status conference (“Conference”) in the above-referenced chapter 11 case (the “Main Case”) and adversary proceeding (the “Adversary Proceeding”) in which the Debtor filed a *Complaint Seeking (I)(A) a Declaratory Judgment that the Automatic Stay Applies to Certain Claims and Causes of Actions Asserted Against Certain Non-Debtors and (B) an Extension of the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) a Preliminary Injunction Related to Such Actions* [Adv. No. 23-03049, Docket No. 1] (the “Adversary Complaint”) and a *Motion for an Order (I)(A) Declaring that the Automatic Stay Applies to Certain Claims and Causes of Action Asserted against Certain Non-Debtors and*

¹ The last four digits of the Debtor’s federal tax identification number is 8853. The Debtor’s service address is: 205 Powell Place, Suite 104, Brentwood, Tennessee 37027.



(B) *Extending the Automatic Stay to Certain Non-Debtors, or in the Alternative, (II) Preliminary Enjoining Such Actions* [Adv. No. 23-03049, Docket No. 2] (the “Adversary Stay Motion”). Based on the discussions held on the record at the Conference, it is HEREBY ORDERED THAT:

1. Judge David R. Jones is appointed as mediator (the “Mediator”) in this Adversary Proceeding. At all times in the performance of his mediation duties, Judge Jones will be acting in his official capacity as a United States Bankruptcy Judge, with all of the privileges and immunities of a United States Bankruptcy Judge. Mediation in this Adversary Proceeding will be governed by Paragraph S of the *Procedures for Complex Cases in the Southern District of Texas (Effective January 1, 2023)*, which provides as follows:

- a. Time and Place of Mediation. The mediator will schedule a time and place for the mediation and any pre-mediation conferences.
- b. Submission Materials. Each party must submit directly to the mediator such materials (the “Submission”) in form and content as the mediator directs. Prior to the mediation, the mediator may talk with the participants to determine what materials would be helpful. The Submission must not be filed with the Court.
- c. Protection of Information Disclosed at Mediation. The mediator and the participants in mediation are prohibited from divulging, outside of the mediation, any oral or written information disclosed by the parties in the course of the mediation. No person may rely on or introduce as evidence in any arbitral, judicial or other proceeding, evidence pertaining to any aspect of the mediation effort, including but not limited to: (A) views expressed or suggestions made by a party with respect to a possible settlement of the dispute; (B) the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator, (C) proposals made or views expressed by the mediator; (D) statements or admissions made by a party in the course of the mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the mediation. Without limiting the foregoing, the parties are bound by (i) FED. R. EVID. 408, and (ii) any applicable federal or state statute, rule, common law or judicial precedent relating to the privileged nature of settlement discussions, mediations or other alternative dispute resolution procedures. Information otherwise discoverable or admissible in evidence does not become exempt from discovery, or inadmissible in evidence, merely by being used by a party in the mediation.

- d. Discovery from Mediator. The mediator may not be compelled to disclose to the Court or to any person any of the records, reports, summaries, notes, communications or other documents received or made by the mediator while serving in such capacity. The mediator may not testify or be compelled to testify regarding the mediation in connection with any arbitral, judicial or other proceeding. The mediator will not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph prevents the mediator from reporting (i) the status, but not the substance, of the mediation effort to the Court; or (ii) whether a party failed to participate in good faith in the mediation.
- e. Protection of Proprietary Information. The parties, the mediator and all mediation participants shall protect proprietary information.
- f. Preservation of Privileges. The disclosure by a party of privileged information to the mediator does not waive or otherwise adversely affect the privileged nature of the information.
- g. Service of Process. No party may be served with a summons, subpoena, notice or other pleading during the mediation or at the location where the mediation is occurring.

2. The mediation in this Adversary Proceeding shall focus on resolving the relief requested in the Adversary Stay Motion and Adversary Complaint. A separate order shall issue in the Main Case concerning a mediation among the Debtor, the Committee, M2 LoanCo, LLC, M2 HoldCo, LLC, YesCare Corp., M2 HoldCo, LLC, Perigrove 1018, LLC, Geneva Consulting, LLC, and potentially others, which mediation shall focus on resolving broader issues germane to the Main Case.

3. The parties to the mediation in this Adversary Proceeding shall include the Debtor, the Committee appointed in the Main Case, all defendants listed in Appendix A to the Adversary Complaint (unless the Debtor has reached prior agreements resolving such disputes) and any other party in interest who the Court determines should be included in the mediation.

4. The defendants herein shall not be required to attend the mediation, but the Mediator is authorized to report to the Court on whether a settlement is reached, whether the

parties have participated in the mediation in good faith and/or whether the Court should grant an extension beyond July 31, 2023, to allow the mediation parties to continue settlement discussions. Other than the Debtor, the other parties to the mediation may attend the mediation in person or by remote means; *provided however*, that the Debtor and the Mediator shall use best efforts to allow for remote participation by incarcerated persons listed in Appendix A to the Adversary Complaint.

5. Parties may communicate with other parties and/or the Mediator regarding the substance of the mediation, and no other party may compel disclosure of the substance of such settlement communications from the Mediator or parties.

6. The specific location(s), time(s), and additional procedures for the mediation will be determined by the Mediator, following such consultation with the parties as he deems appropriate. The parties shall use their good faith best efforts to complete the mediation contemplated herein before July 31, 2023.

7. The Parties are authorized and empowered to take all actions necessary to effectuate the relief granted in this Stipulation and Agreed Order.

8. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation of this Stipulation and Agreed Order.

Signed: May 22, 2023



Christopher Lopez
United States Bankruptcy Judge