

ENTERED

May 01, 2024

Nathan Ochsner, Clerk

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

In re:)	
)	Chapter 11
TEHUM CARE SERVICES, INC., ¹)	
)	Case No. 23-90086 (CML)
Debtor.)	
)	

**THIRD AMENDED STIPULATION AND AGREED
 ORDER REGARDING MEDIATION PROCEDURES**

Tehum Care Services, Inc., the above-captioned debtor and debtor in possession (the “Debtor”), the Official Committee of Unsecured Creditors appointed in this chapter 11 case (the “Creditors’ Committee”), the Official Tort Claimants’ Committee appointed in this chapter 11 case on November 20, 2023 (the “Tort Committee”), M2 LoanCo, LLC, YesCare Corp., M2 HoldCo, LLC, Perigrove 1018, LLC, and Geneva Consulting, LLC (collectively, the “Parties” and all of the Parties without the Tort Committee being the “Original Parties”), hereby enter into this Stipulation and Agreed Order as follows:

WHEREAS, on February 13, 2023 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above-captioned chapter 11 case (the “Bankruptcy Case”);

WHEREAS, pursuant to an agreed order entered on May 22, 2023 [Docket No. 603], a three-day mediation was held on August 21–23, 2023, which was attended by representatives of the Original Parties and mediated by Judge David R. Jones (the “Original Mediation”);

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.



WHEREAS, the Original Mediation resulted in a settlement (the “August Settlement”), which was incorporated into a joint plan filed by the Debtor and the Creditors’ Committee (the “Joint Plan”);²

WHEREAS, on November 8, 2023, the Court entered an agreed order appointing Judge Christopher S. Sontchi (ret.), a well-known and respected jurist with no prior connections to this Bankruptcy Case, this district, or the parties involved in this matter, as mediator (the “Mediator”) for a second mediation (the “Second Mediation”);

WHEREAS, on November 20, 2023, the United States Trustee appointed the Tort Committee;³

WHEREAS, on November 29, 2023, at the request of the Debtor, the Creditors’ Committee, and the Tort Committee, the Court entered an amended order rescheduling the Second Mediation to December 14, 2023, and including the Tort Committee in the participants to the Second Mediation;⁴

WHEREAS, the Second Mediation resulted in a new settlement among all Parties except the Tort Committee (the “January Settlement”);

WHEREAS, the Debtor and the Creditors’ Committee filed a joint motion to approve the January Settlement (the “9019 Motion”),⁵ and the Tort Committee filed a motion to dismiss the Bankruptcy Case (the “Dismissal Motion”⁶ and, together with the 9019 Motion, the “Motions”);

² Docket No. 985, as amended at Docket Nos. 1043 and 1072.

³ Docket No. 1095.

⁴ Docket No. 1158.

⁵ Docket No. 1259.

⁶ Docket No. 1260.

WHEREAS, following a four-day evidentiary hearing, the Bankruptcy Court denied both Motions;⁷

WHEREAS, the Parties seek authority for Judge Sontchi to mediate the issues raised by the Court in its rulings on the Motions, as well as any other issues necessary to bring this Bankruptcy Case to an effective resolution, as the Mediator deems appropriate, including considering any submissions the Parties or the Mediator deem appropriate, reviewing the results of the Original Mediation, the Second Mediation, the evidentiary record from the hearing on the Motions, and conducting a third mediation with the Parties on May 6, 2024, and continuing on such other dates as the Parties and the Mediator may agree (the “Third Mediation”).

NOW, THEREFORE, IT IS HEREBY STIPULATED, AGREED, AND ORDERED AS FOLLOWS:

1. Christopher S. Sontchi, former Chief Judge of the U.S. Bankruptcy Court for the District of Delaware, is appointed as Mediator. Except as expressly set forth herein, the Third Mediation will be governed by Paragraph S of the *Procedures for Complex Cases in the Southern District of Texas (Effective October 18, 2023)*, which provides as follows:

- a. Time and Place of Mediation. The Mediator will schedule a time and place for the Second 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 Third 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. Cost of Mediation. Unless otherwise ordered by the Court, or agreed by the Parties, the non-estate Parties shall bear the fees and costs of the Mediator, whether there is a settlement reached at the Third Mediation or not; *provided, however*, that to the extent that the estate is required to pay the Mediator’s fees and costs following the

⁷ Docket Nos. 1505, 1506, 1508, 1509, and 1513.

Third Mediation, the Debtor or the Mediator, as applicable, will file a fee application with this Court.

- d. Protection of Information Disclosed at Mediation. The Mediator and the participants in the Third Mediation are prohibited from divulging, outside of the Third Mediation, any oral or written information disclosed by the Parties in the course of the Third 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 Third Mediation; and (E) documents prepared for the purpose of, in the course of, or pursuant to the Third 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 Third Mediation.
- e. 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 Third Mediation in connection with any arbitral, judicial or other proceeding. The Mediator will not be a necessary party in any proceedings relating to the Third 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 Third Mediation.
- f. Protection of Proprietary Information. The Parties, the Mediator and all mediation participants shall protect proprietary information.
- g. 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.
- h. Service of Process. No Party may be served with a summons, subpoena, notice or other pleading during the Third Mediation, at the location where the Third Mediation is occurring, or while any Party is traveling to or from the Third Mediation.

2. For the avoidance of doubt, the Mediator shall not be compelled, under any circumstances, to disclose to the Court or to any person outside the Third Mediation any records, reports, summaries, notes, communications, submissions, or other documents received or made by or to the Mediator while serving in such capacity. The Mediator shall not testify, be subpoenaed or compelled to testify regarding the Third Mediation in connection with any arbitral, judicial or other proceeding. The Mediator shall not be a necessary party in any proceedings relating to the mediation. Nothing contained in this paragraph shall prevent the Mediator from reporting the status, but not the substance, of the mediation effort to the Court in writing, from filing a certificate of completion, or from otherwise complying with the obligations set forth in this Stipulation and Agreed Order. In the event that some, but not all, Parties to the Third Mediation reach an agreement or agreements as a result of the Third Mediation, no Party may use confidential information shared during the Third Mediation, and no Party may compel discovery from the Mediator or any other Party concerning the confidential information shared during the Third Mediation, to support or oppose such agreement.

3. A representative with full settlement authority for each Party shall attend the Third Mediation, in person or via live video conference.

4. To the extent this Stipulation and Agreed Order conflicts with any provisions of the Court's prior orders (each, a "Prior Order") regarding mediations in this Bankruptcy Case,⁸ the terms of this Stipulation and Agreed Order shall prevail. Notwithstanding any prohibitions set forth in the Prior Order, all Parties are authorized, without waiving any privileges, to disclose to the Mediator any information or documents previously discussed with or disclosed to Judge Jones in connection with the Original Mediation.

⁸ See Docket Nos. 603, 1109, and 1158.

5. The Mediator is authorized to mediate any issues and disputes concerning the Joint Plan, the Original Mediation, the August Settlement, the January Settlement, the Second Mediation, the hearings on the Motions, and any other topics that the Mediator determines to be in the best interests of the Debtor, its estate, and its creditors.

6. Parties may communicate with other Parties and/or the Mediator, and no other Party may compel disclosure of the substance of such settlement communications from the Mediator or Party.

7. The Third Mediation will be conducted on or after May 6, 2024. The specific location(s), time(s), and additional procedures for the Third Mediation and any continuation of the Third Mediation after May 6, 2024, 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 Third Mediation contemplated herein as soon as reasonably practicable under the circumstances.

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

9. The Debtor is authorized to indemnify the Mediator for reasonable attorneys' fees and expenses, if any, that may be incurred in relation to the relief granted under this Stipulation and Agreed Order.

10. Each of the Parties represents and warrants that it is duly authorized to enter into and be bound by this Stipulation and Agreed Order.

11. 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 01, 2024



Christopher Lopez
United States Bankruptcy Judge

STIPULATED AND AGREED TO THIS 30th DAY OF APRIL, 2024:

/s/ Jason S. Brookner

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[Signature Page to Mediation Stipulation and Agreed Order]

/s/ Michael W. Zimmerman (with permission)

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