

**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. |) | |

**RESPONSE OF KOHCHISE JACKSON, WILLIAM KELLY, ANDREW LYLES,
RANDY McELHANEY, The Estate of KERRY MILKIEWICZ, The Estate of
RICKY SCOTT, GREGORY ABRAHAM, and CHARLES JONES TO DEBTOR’S
EMERGENY MOTION TO EXTEND AND ENFORCE THE AUTOMATIC STAY**



INDEX OF EXHIBITS

Exhibit 1: Excerpt from Corizon’s March 17, 2021 Best and Final Offer to Missouri Department of Corrections

Exhibit 2: Complaint (ECF No. 1) in *Hyman v. Yescare Corp., et. al.*, 3:22-cv-01081, filed in the U.S. District Court for the Middle District of Tennessee on 12/30/2022.

Exhibit 3: University of Missouri’s Reply Brief in Support of their Motion for a Preliminary Injunction, Case No. 22BA-CV01701-01, Circuit Court of Boone County, Missouri, filed 01/30/2023.

Exhibit 4: Tehum Care Services, Inc.’s Suggestions in Support of its Opposition to Plaintiff’s Motion for Preliminary Injunction, Case No. 22BA-CV01701-01, Circuit Court of Boone County, Missouri, filed 01/23/2023.

Exhibit 5: Corizon 2018-2019 Master Policy -Medical Group Professional Liability.

Exhibit 6: M2 LoanCo LLC Company Reinstatement, Filed January 18, 2023 with Florida Secretary of State.

BACKGROUND AND PRELIMINARY STATEMENT

At the time of its formation via a merger of two competing prison healthcare contractors in 2011, Corizon Health was the largest firm in the prison healthcare industry, managing the delivery of medical care to over 300,000 inmates for state and local government clients across the United States and generating annual revenues in excess of one billion dollars. But over the last seven years, Corizon rapidly lost market share to competitors. In the five-year period from March 17, 2016 to March 17, 2021, Corizon lost twenty-five prison and jail healthcare service contracts. These lost contracts covered facilities with a combined average daily population of 192,711 prisoners. (Ex. 1, pg. 12). Over the same time period, Corizon only won four new service contracts, covering a mere 20,810 prisoners. (Ex. 1, pg. 12).

In early 2021, contract renewals for Corizon's multi-year contracts with its two largest remaining clients, the Michigan and Missouri Departments of Corrections, were put out to bid via competitive public procurement processes in those states. Corizon lost both contracts to competitors. The Michigan and Missouri contracts had constituted over 50% of Corizon's remaining business at the time, and their expiration in the fourth quarter of 2021 rendered Corizon deeply-insolvent.

According to Corizon's then-CEO, James Hyman, in early December of 2021, while "[Corizon]'s financial situation was dire", (Mot. ¶ 5), an anonymous buyer

purchased Corizon. (Ex. 2, pg. 6, ¶ 34). The anonymous buyer(s) conducted no due diligence prior to acquiring this deeply-insolvent company. (Ex. 2, pg. 6, ¶ 35). All Directors were replaced as a condition of sale. (Ex. 2, pg. 6, ¶ 38). Almost immediately after the new slate of Directors assumed control, millions of dollars were siphoned out of Corizon to other entities controlled by these new Directors. (Ex. 2, pg. 8, ¶¶ 44-45, pg. 12, ¶¶ 57-59). Per Mr. Hyman, these related-party transactions were authorized by the same individual who placed Tehum Care Services into bankruptcy, Corizon Director Isaac Lefkowitz. [ECF No. 1, pg. 8].

The stripping of Corizon's assets accelerated in May of 2022. At that time, Corizon entered into a divisional merger transaction with itself, dividing its assets and liabilities between two surviving entities. Corizon's Plan of Merger refers to these entities as the "NewCo," (CHS TX, Inc.), and the "RemainCo." [ECF No. 59-10, pg. 23]. The RemainCo is now known as Tehum Care Services, the Debtor. A recent order entered in *Jackson v. Corizon Health, Inc.*, 2022 U.S. Dist. LEXIS 198717 (E.D. Mich. Nov. 1, 2022) summarizes the practical effect of this transaction:

The divisional merger allocated the bulk of Corizon's assets to CHS TX. Specifically, CHS TX inherited all of Corizon's employees, all of Corizon's active contracts, and nearly all of Corizon's cash, equipment, real estate, and other assets. (Id. at PageID.3417-28). Both pre-division Corizon and CHS TX were owned by the same, sole-shareholder, and CHS TX also inherited Corizon's CEO and Chair, Sara Tirschwell. (Compare id. at PageID.3410, with ECF No 83-1, PageID.3371, and ECF No. 83-2, PageID.3391).

Corizon retained all of its expired contracts and their corresponding liabilities. Corizon also held onto one million dollars in cash, the right to collect on its insurance policies, and the right to collect up to four million dollars under a "funding agreement" with an affiliate of Corizon Health, provided that Corizon met "certain conditions." (ECF No. 83-4, PageID.3429-30). All other assets and liabilities passed to CHS TX. (Id. at PageID.3417-18).

After the divisional merger, YesCare, Inc., a corporation owned by CHS TX's CEO, acquired CHS TX, and CHS TX began informally doing business under its parent company's name. (ECF No. 83, PageID.3343; ECF No. 83-7; see, e.g., ECF No. 77-27 (explaining that CHS TX does business under the name "YesCare")). Corizon later changed its name to Tehum Care Services, Incorporated. (ECF No. 83-4, PageID.3587).

Jackson v. Corizon Health, Inc., 2022 U.S. Dist. LEXIS 198717 at *3-*4. (E.D. Mich. 2022).

Although the RemainCo has now filed for Chapter 11 protection, the NewCo and its recently-incorporated parent, Yescare Corp., continue to operate the former Corizon assets outside of bankruptcy. After leaving behind most of Corizon's liabilities in the RemainCo, the NewCo is apparently solvent. Recent filings in a Missouri adversary proceeding reveal that these successor entities have over \$173 million in assets, and those assets were encumbered by less than \$98 million in long-term secured debt. (Ex. 3, pg. 29; Ex. 4, pg. 7).

The RemainCo's assets, in contrast, consisted of, 1) one million dollars in cash on May 5, 2022,¹ 2) an undisclosed funding agreement entered into with a Florida limited liability company under common control, M2 LoanCo LLC, and 3) insurance rights. The RemainCo's liabilities include approximately five hundred personal-injury and employment-law claims, [ECF No. 59-10, pp. 153-160], and per the Amended Petition, at least \$31 million in trade debt. The RemainCo also purported to indemnify, "NewCo and its affiliates . . . for, any and all losses, damages, costs, expenses, taxes, liabilities, obligations, penalties, fines, claims of any kind . . . to the extent such Losses arise from or relate to the RemainCo Liabilities or RemainCo assets." [ECF No. 59-10, pg. 26].

The RemainCo's liability insurance rights are likely to be illusory, at least with respect to the hundreds of medical-malpractice personal-injury claims assigned to the RemainCo. That is because the RemainCo has not been allocated enough cash to meet the approximately \$20-million-per-policy-year² self-insured retentions under its applicable insurance policies. The RemainCo's insurer will not make any payment unless the RemainCo pays the self-insured retention, regardless of any insured's insolvency. The RemainCo's insurance contract is quite explicit on this point:

Under no circumstances will we make any payment under this policy unless and until the First Named Insured has exhausted the Aggregate Self-Insured Retention

¹ This cash has likely already been exhausted by defense costs over the past nine months. Considering only the personal-injury and employment-law claims, the RemainCo's cash amounts to only \$1,927 per lawsuit allocated to the RemainCo.

² See Ex. 5, pg. 1.

by the payment of damages arising from covered medical incidents. **If the First Named Insured is unable to pay any part of the Self-Insured Retention due to bankruptcy, insolvency, or other financial difficulty, then this policy will not be required to “drop down” to make payments of policy limits and/or defense costs,** and no payment of any kind will be available to the First Named Insured or any Insured under this policy.

(Ex. 5, pg. 32) (emphasis added).

While the majority of Corizon’s tort liabilities were left behind in the RemainCo, not all of them were. Corizon assigned the claims of one-hundred and sixty personal-injury claimants and twenty-one employment-law claimants to the NewCo in its Plan of Divisional Merger³. [ECF No. 59-10, pp. 147-151]. The Debtor is not seeking to extend the automatic stay to *these* tort claimants, despite the fact that they are pursuing recovery from the NewCo, for injuries allegedly inflicted by Corizon Health before the NewCo existed. These claimants’ unimpeded access to the solvent successor entity means they will presumably be able to achieve full recoveries on their claims if they are successful. Only those Corizon personal-injury and employment-law claimants that Corizon unilaterally decided to assign to the RemainCo are being sequestered in this Chapter 11

³ The NewCo tort claimants are those whose injuries occurred prior to the divisional merger, but in facilities where Corizon was still providing services as of May of 2022. Prior to the divisional merger, Corizon had a practice of defending and indemnifying its employees for medical-malpractice and other prisoner tort claims asserted against them. Ceasing to indemnify its current employees for their pre-divisional-merger conduct likely would have disrupted CHS TX’ operations in these facilities.

proceeding, where the Debtor now moves for an order prohibiting these claimants from similarly pursuing their claims against Corizon's solvent, operating successors.

Tehum Care Services is an entity built for bankruptcy. Its indemnification-and-funding-agreement structure allows the Tehum/CHS principals to "reap all the benefits of bankruptcy with none of the attendant burdens," *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2022 U.S. Dist. LEXIS 230132 at *9-*10 (N.D. Fl. Dec. 22, 2022), by quarantining vast majority of Corizon Health's unsecured creditors in this Chapter 11 proceeding without subjecting any significant Corizon assets are to bankruptcy court oversight. A stipulation included in the Plan of Divisional Merger provides that nearly-assetless Tehum Care Services has assumed broad indemnification obligations to the NewCo, its affiliates, its officers and directors. This language allows all of these "indemnified" parties to argue that they should all benefit from the automatic stay while they continue to operate the Corizon assets outside of bankruptcy.

The 2022 Restructuring also contains built-in impediments designed to hinder any attempts to "claw back" the Corizon assets into the bankruptcy estate. First, the debtor, Tehum Care Services "irrevocably, unconditionally and completely waive[d] and release[d] and forever discharge[d] NewCo and its subsidiaries and its and their respective past, present or future directors, shareholders, managers, members, officers, [etc.]" from any claims it had against them before, or at, the time of the divisional

merger. [ECF No. 59-10, pp. 27-28]. Based on this preemptory release, the indemnified parties can assert that any fraudulent-transfer or breach-of-fiduciary-duty claims the Debtor might bring against them have already been settled and discharged.

Equally important is Corizon's choice of Texas law to govern its transaction with itself. [ECF No. 59-10, pg. 11]. Corizon changed its state of incorporation from Delaware to Texas immediately prior to consummating the divisional merger, although "Corizon did not conduct any business in Texas when it began the merger, and following the merger, neither Tehum, CHS TX, nor YesCare conduct any business in Texas." *Kelly v. Corizon Health, Inc.*, 2022 U.S. Dist. LEXIS 198725 at *20 (E.D. Mich. Nov. 1, 2022). One factor that made Texas an attractive venue for this transaction is that it is a more difficult jurisdiction for imposing liability on successor corporations. Delaware also permits divisional mergers, See 6 DE Code § 18-217, and Delaware also allows assignment of the assets and liabilities among the surviving entities. But Delaware permits such assignment only, "so long as the plan of division does not constitute a fraudulent transfer under applicable law." 6 DE Code § 18-217 (l)(4). Texas law, in contrast, provides that:

"all rights, title, and interests to all . . . property owned by each organization that is a party to the merger is allocated to and vested . . . in one or more of the surviving or new organizations as provided in the plan of merger **without . . . any transfer or assignment having occurred.**"

Texas Business Organizations Code § 10.008 (emphasis added).

This statute enables the indemnified parties to raise the textualist argument that since there is no *transfer* of the Corizon assets, there can be no *fraudulent transfer*. And Texas law provides other important benefits to those seeking to evade their creditors. For example, Texas law expressly bans “de facto merger” as a means to impose liability on a corporation that acquires all of a predecessor’s assets. *See Shapolsky v. Brewton*, 56 S.W.3d 120, 138-39 (Tex. App. 2001). Texas also generally does not recognize successor-liability theories of recovery. *See Allied Home Mortg. Corp. v. Donovan*, 830 F. Supp. 2d. 223, 233 (S.D. Tex. 2011).

Yet another mechanism to protect the Corizon assets from the unsecured creditors is likely contained in the terms of the M2 LoanCo funding agreement. The principals may have set aside some funds to settle with the unsecured creditors of Corizon, but they did not allocate those funds to the Debtor. Had they done so, the settlement funds would have been subject to bankruptcy court oversight. Instead, these limited funds have only been made available through a conditional funding agreement with a Florida limited liability company, M2 LoanCo LLC. Recent filings indicate that M2 LoanCo is owned or controlled by Abraham Goldberger (Ex. 6) and Isaac Lefkowitz [ECF No. 59-10, pg. 194]. Goldberger and Lefkowitz were a Directors of Corizon prior to the divisional merger. [ECF No. 59-10, pp. 5-7]. They became CEO and Senior Vice President, respectively, of the RemainCo at the time of the merger. [ECF No. 59-10, pg. 5].

Goldberger and Lefkowitz also constitute the majority of the three-member Board of the RemainCo. *Id.* If this funding agreement with M2 LoanCo LLC resembles those employed by other companies that have engaged previous “Texas-two-step” restructuring maneuvers,⁴ the conditions required for the provision of funding under the agreement will involve a third-party release of liability for the operating successor entity, its officers, and its directors. *See DBMP LLC v. Those Parties Listed on Appendix A to Complaint (In re DBMP LLC)*, 2021 Bankr. LEXIS 2194 at *30-*34 (Bankr. W.D.N.C. 2021).

The economic reality of what the Debtor’s (and NewCo’s) principals are seeking to do is retain enterprise value for themselves, the equity participants, while the majority of Corizon Health’s unsecured creditors are impaired. The principals of the NewCo and RemainCo purchased Corizon while it was deeply-insolvent precisely because they believed they could achieve this outcome. This bankruptcy, in which Tehum’s only significant asset is a funding agreement with an LLC that is also controlled by its principals, is designed to impose a unilateral cap on Corizon’s liability to a subset of Corizon’s unsecured creditors, while Corizon’s equity participants retain for themselves an interest in the reorganized entity without needing to bid against other potential buyers

⁴ While Texas law has permitted divisional mergers for over thirty years, use of the Texas Business Organizations Code (“TBOC”) to place a corporation’s assets beyond the reach of its unsecured creditors appears to be a recent innovation. “The first time any debtor in the country used this procedure was in *Bestwall* in 2017.” *In re LTL Mgmt. LLC*, 2021 Bankr. LEXIS 3155 at *27 (Bankr. W.D.N.C. Nov. 16, 2021).

for that interest. Congress categorically prohibited such an outcome in a bankruptcy proceeding; it is a per-se violation of the absolute priority rule. *See Bank of Am. Nat'l Tr. & Sav. Ass'n v. 203 N. Lasalle St. P'ship*, 526 U.S. 434, 437 (1999).

In addition to skirting the absolute priority rule through an innovative application of Texas corporation law, the Debtor now moves on an emergency basis to frustrate another of the primary goals of the bankruptcy code: the “equal treatment of similarly-situated creditors.” *See In re Mirant Corp*, 316 B.R. 234, 242 n.16 (N.D. Tex. 2004) (collecting cases). While tort plaintiffs with claims stemming from pre-petition medical treatment provided by Corizon in Maryland and Wyoming prisons are allowed to pursue their claims against CHS TX unimpeded, the Debtor moves for an order preventing similarly-situated Michigan tort claimants from doing the same. And the Debtor also apparently seeks to extend the automatic stay to a vast array of non-debtors, halting the prosecution of direct claims for medical malpractice and civil rights violations currently pending against Corizon’s state-and-local government clients. (Mot. ¶¶ 6, 33).

The Objectors

The instant Objectors to this Emergency Motion are a group of Michigan tort claimants whose claims arose from medical care provided by Corizon or its contractors prior to the divisional merger. Each respondent holds a claim against one or more

individual medical providers, but the circumstances of the Objectors' claims otherwise differ.

Charles Jones' claim has been reduced to a \$6.4 million judgment against three former Corizon nurses. He has no claim against the Debtor or CHS TX. Mr. Jones seeks to pursue collection of his judgment from these nurses' personal assets. While the Debtor is no longer a party to the *Jones* matter, its counsel filed a "Suggestion of Bankruptcy and Notice of Automatic Stay" in the *Jones* case on 2/22/23. The Debtor's Michigan counsel is apparently taking the position that this bankruptcy proceeding automatically stays enforcement of a judgment entered against the Debtor's former employees.

The remaining claims are unliquidated. Randy McElhaney, the Estate of Kerrie Milkiewicz, and the Estate of Ricky Scott each hold claims against the Debtor, employees of the Debtor's clients, and former employees of Quality Correctional Care of Michigan, P.C. ("Quality"). Corizon contracted with Quality to provide physician services in the Michigan Department of Corrections during the term of its Michigan DOC contract. *See* [ECF No. 59-18]. Quality is solvent, and continues to provide physician services to CHS TX at two Michigan jails.

Andrew Lyles holds a claim against one former employee of Quality. Gregory Abraham holds a claim against a former Quality employee and a claim against the

Debtor. Kohchise Jackson holds a claim against a former Quality employee, a claim against the Debtor, and a claim against CHS TX. William Kelly holds claims against the Debtor, CHS TX, Quality, and five former Quality employees. Mr. McElhaney's, Mr. Jackson's, and Mr. Lyles' claims have survived dispositive motions and are ready for trial, while the *Kelly*, *Abraham*, *Scott*, and *Milkiewicz* cases are in discovery.

ARGUMENT

I. § 362(a)(1) Does Not Stay Litigation Against the Debtor's Co-Defendants.

With limited or no notice to numerous affected parties, the Debtor in this matter seeks to enjoin, on an emergency basis, the continued prosecution medical-malpractice and civil-rights claims pending nationwide against the Debtor's former state-and-local-government clients. The Debtor also seeks to stay most pending litigation against CHS TX, Inc., Yescare Corp, and their officers and directors. The sole basis advanced for staying this vast array of litigation against non-bankrupt third parties is that the Debtor has allegedly agreed to indemnify all of them. (Mot. ¶¶ 9, 10).

§ 362(a)(1) of the Bankruptcy Code is not ordinarily a valid statutory basis to stay direct claims pending against non-bankrupt co-defendants or third parties. *See, e.g., Reliant Energy Servs. v. Enron Can. Corp.*, 349 F.3d 816, 825 (5th Cir. 2003) (“[b]y its terms the automatic stay applies only to the debtor, not to co-debtors under Chapter 7 or

Chapter 11 of the Bankruptcy Code nor to co-tortfeasors.”). Rather, it is the overwhelming consensus among the circuits, including the Fifth Circuit, that § 362(a) protects only “the debtor,” and not the debtor’s third-party co-defendants. *See, e.g. Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir. 1983) (holding that § 362(a) “facially stays proceedings ‘against the debtor’ and fails to intimate, even tangentially, that the stay could be interpreted as including any defendant other than the debtor . . . It is universally acknowledged that an automatic stay of proceeding accorded by § 362 may not be invoked by entities such as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the Chapter 11 debtor”); *Williford v. Armstrong World Industries*, 715 F.2d 124, 126 (4th Cir. 1983); *Teachers Ins. & Annuity Asso v. Butler*, 803 F.2d 61, 65 (2nd Cir. 1986); *Austin v. Unarco Industries, Inc.*, 705 F.2d 1, 4 (1st Cir. 1983) (“had Congress intended § 362(a) to apply to solvent co-defendants, it would have said so”); *Fortier v. Dona Anna Plaza Partners*, 747 F.2d 1324, 1330 (10th Cir. 1984) (“[i]t would make no sense to extend the automatic stay protections to solvent co-defendants. . . . Accordingly, we join the other circuit courts in concluding that 11 U.S.C. § 362 stays litigation only against the debtor, and affords no protection to solvent co-defendants.”). This is because the plain language of § 362(a) limits the applicability of the automatic stay to “the debtor.” As the Fifth Circuit has explained:

We begin our inquiry by examining the plain language of the statute. That language clearly focuses on the insolvent party. There are repeated references to *the debtor*. The stay envisioned is "applicable to all entities," § 362(a), but only in the sense that it stays all entities proceeding against the debtor. To read the "all entities" language as protecting co-debtors would be inconsistent with the specifically defined scope of the stay "against the debtor," § 362(a)(1). Continuing, we note that the remaining clauses of § 362(a) carefully list the kinds of proceedings stayed, in each instance explicitly or implicitly referring to "the debtor."

This literal interpretation of § 362(a) is bolstered by language which is notably absent from its provisions. By way of comparison, Chapter 13 specifically authorizes the stay of actions against co-debtors. 11 U.S.C. § 1301(a) ("a creditor may not . . . commence or continue any civil action . . . [against] any individual that is liable on such debt with the debtor"). No such shield is provided Chapter 11 co-debtors by § 362(a).

Wedgeworth v. Fiberboard Corp., 706 F.2d 541, 544 (5th Cir. 1983) (emphasis in original).

While the Fourth Circuit articulated an atextual "unusual circumstances" exception to this rule in *A.H. Robins Co. v. Piccinin*, 788 F.2d 994 (4th Cir. 1986), the *Robins* exception is not triggered whenever a non-debtor defendant holds an indemnification claim against the debtor. *See, e.g., Johnson v. Fifth Third Bank, Inc.*, 476 B.R. 493, 502 (W.D. Ky. 2012) (collecting cases). "[I]f the 'unusual circumstance' exception is broadened to permit a stay any time that a contractual indemnification provision is at issue, given their prevalence in commercial transactions, then the exception would effectively become the rule." *Smith v. Blitz U.S.A, Inc.*, 2012 U.S. Dist. LEXIS 47817 at *14 (D. Minn. 2012). The Fifth Circuit has held that even where "a

successful claim by [Plaintiff] against [a non-debtor defendant] would probably result in a lawsuit by [the non-debtor defendant] against the debtors seeking indemnification . . . **the merits of that probable litigation are not [plaintiff's] problem . . . its claim is not directed against the debtors' property and is not subject to a stay under § 362(a).**" *Edge Petroleum Operating Co. v. GPR Holdings, L.L.C. (In re TXNB Internal Case)*, 483 F.3d 292, 302 (5th Cir. 2007) (emphasis added).

The Debtor claims that litigation against indemnified parties, such as the municipalities that were its former clients, must be stayed because "any judgment against any Non-Debtor Indemnified Party would entitle such party to file a claim for indemnification against the Debtor in this chapter 11 case." (Mot. ¶ 34). But this argument is a red herring. Indemnified parties do not need to wait until claims against them are reduced to judgment to file their claims for indemnification against the Debtor. *See, e.g., In re Huffy Corp.*, 424 B.R. 295, 300-301 (Bankr. S.D. Ohio 2010). The "accrual approach" to indemnification claims in bankruptcy, i.e., requiring the indemnitee to wait until a right to payment under the indemnification agreement accrues under state law before filing a claim against the Debtor, "has been universally rejected." *Trevino v. HSBC Mortg. Servs. (In re Trevino)*, 535 B.R. 110, 148 (Bankr. S.D. Tex. 2015). Rather, because a "claim" for bankruptcy purposes includes any "right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated,

fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured,” 11 U.S.C. § 101(5)(a), each indemnitee’s claim against the Debtor arises upon “the signing of the indemnification agreement itself[.]” *In re Trevino*, 535 B.R. at 148; *See also, Lycoming Engines v. Superior Air Parts, Inc. (In re Superior Air Parts, Inc.)*, 486 B.R. 728, 739 (N.D. Tex. 2012) (holding that “a right to indemnification is a pre-petition "claim" under the Bankruptcy Code where the indemnification agreement is executed pre-petition, even if the facts giving rise to actual liability did not occur until after the discharge.”). The indemnified parties’ indemnification claims against the debtor have already arisen, and exist regardless of the progress of any litigation against the indemnified parties. Staying litigation against the indemnified parties will not protect the bankruptcy estate from the indemnified parties’ indemnification claims.

Extension of the automatic stay to CHS TX and Yescare Corp. due to their purported indemnity rights is particularly unwarranted where, as is the case here, these indemnified parties have manufactured the relationship that forms the basis for their effort to benefit from the automatic stay by “executing a funding agreement and indemnity agreement” between entities under common control, in which the indemnitor entity is saddled with massive liabilities and placed into bankruptcy, while the indemnitee entities receive all of the major assets of the business and seek to operate

them outside of bankruptcy while also benefiting from the automatic stay.⁵ *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2022 U.S. Dist. LEXIS 230132 at *9-*10 (N.D. Fl. Dec. 22, 2022); *see also*, *3M Occupational Safety LLC v. Those Parties Listed on Appendix A to the Complaint (In re Aearo Techs. LLC)*, 642 B.R. 891, 910-11 (S.D. Ill. 2022). Extending the automatic stay to the sponsors of such a scheme permits them to “reap all of the benefits of bankruptcy with none of the attendant burdens.” *In re 3M Combat Arms Earplug Prods. Liab. Litig.*, 2022 U.S. Dist. LEXIS 230132 at *10. If CHS TX and Yescare Corp wish to benefit from the debtor protections of Chapter 11, they should themselves “pay the price of admission to an Article I forum – here, reorganization and submission to the oversight of a bankruptcy court.” *Id.* at *9.

II. Michigan-Law Based Successor-Liability Claims Against CHS TX, Inc. are not Property of the Bankruptcy Estate

Some of the Michigan personal-injury plaintiffs are pursuing Michigan-law-based successor-liability claims against CHS TX, Inc. *See, e.g. Kelly v. Corizon Health, Inc.*, 2022 U.S. Dist. LEXIS 198725 at *23-*34 (E.D. Mich. 2022). The Debtor argues that

⁵ Only one Circuit to date has ruled on this divisional-merger-plus-indemnification-and-funding-agreement strategy for sequestering creditors in a Chapter 11 proceeding and benefiting from the automatic stay while continuing to operate the productive assets of a company outside of bankruptcy. The Third Circuit recently dismissed that case as a bad-faith filing. *See LTL Mgmt.. LLC v. Those Parties Listed on Appendix A to Complaint (In re LTL Mgmt LLC)*, __ F.4th __, 2023 U.S. App. LEXIS 2323 at *49 (3rd Cir. Jan. 30, 2023).

these claims are property of the bankruptcy estate. (Mot. ¶¶ 35-39). The Debtor is mistaken; the Michigan-law-based successor liability claims against CHS TX belong solely to the Michigan personal-injury claimants. Unlike alter-ego or fraudulent-transfer claims, these claims do not allege injury to the Debtor, do not stem from the depletion of estate assets, and could not have been asserted by the Debtor at the time of filing.

“Whether the bankruptcy estate or a creditor can pursue a claim against third parties is a recurring issue in bankruptcy law.” *Meridian Capital CIS Fund v. Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019). In the Fifth Circuit, “[w]hether a particular state-law claim belongs to the bankruptcy estate **depends on whether under applicable state law the debtor could have raised the claim as of the commencement of the case.**” *Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 584 (5th Cir. 2008) (citing *Schertz-Cibolo-Universal City v. Wright (In re Educators Group Health Trust)*, 25 F.3d 1281, 1284 (5th Cir. 1994)) (emphasis added). The source of this rule is 11 U.S.C. § 541(a)(1), which defines the bankruptcy estate as, “all legal or equitable interests of the debtor in property at the commencement of the case.” *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1149 (5th Cir. 1987).

In conducting the property-of-the-estate analysis for a given cause of action, courts often consider whether the claim alleges a harm to the debtor. *See, e.g., In re*

Educators Group Health Trust, 25 F.3d at 1284 (5th Cir. 1994). If the claim does not involve any harm to the debtor, the debtor would have lacked standing to raise the claim itself at the time of its bankruptcy filing; the claim therefore cannot be estate property under § 541(a)(1). *See Burton (In re Buccaneer Res., L.L.C.)*, 912 F.3d 291, 293 (5th Cir. 2019) (explaining that no-harm-to-the-debtor claims represent “the simple case” where the claim “cannot be part of the estate.”).

But a finding that the claim alleges harm to the debtor does not mean the claim is necessarily estate property. Even where a claim alleges an injury to the debtor, the estate only owns the claim if a second condition is satisfied: “the debtor otherwise could have brought a cause of action under Texas law for its direct injury as of the commencement of the case.” *In re Educators Group Health Trust*, 25 F.3d at 1285 n.2 (5th Cir. 1994). As a result, it is possible for groups of creditors and the estate to simultaneously hold separate claims, against the same defendant, for essentially the same wrongful conduct. *See Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 585 (5th Cir. 2008).

For example, the Fifth Circuit found in *In re S.I Acquisition, Inc.*, 817 F.2d 1142 (5th Cir. 1987) that a Texas-law alter-ego claim was bankruptcy-estate property. The panel held that, “[o]f most importance to our decision, however, is whether a corporation could assert an action against itself based upon alter ego.” *In re S.I Acquisition, Inc.*, 817

F.2d at 1152. Since Texas law alter-ego claims require “misuse[] of the corporation” by a control entity, and “theoretically nothing in Texas law prohibits a corporation from asserting on its own an action based on alter ego,” the panel held that this cause of action “is "property of the estate" within the meaning of section 541(a)(1).” *Id.* at 1153.

But the same is not true of successor-liability claims. First, Texas law explicitly prohibits Texas corporations from asserting successor liability claims against entities that acquire their assets. *See McKee v. American Transfer & Storage*, 946 F. Supp. 485, 487 (finding that “Texas law does not generally recognize successor liability . . . [t]he Texas Business & Corporations Act eliminates the doctrine of implied successor liability”). The Debtor, a Texas corporation at the time of the commencement of the bankruptcy case, thus could not have brought a successor-liability claim against CHS TX, Inc., another Texas corporation, under applicable state law. For this reason alone, any successor liability claims against CHS TX, Inc. cannot be estate property. *See Highland Capital Mgmt. LP v. Chesapeake Energy Corp. (In re Seven Seas Petroleum, Inc.)*, 522 F.3d 575, 586 (5th Cir. 2008).

The Michigan personal-injury claimants’ successor-liability claims also could not have been asserted by the debtor at the commencement of the bankruptcy case for a second reason: they do “not depend on any harm to the debtor.” *Meridian Capital CIS Fund v. Burton, (In re Buccanneer Res., L.L.C.)*, 912 F.3d 291, 294 (5th Cir. 2019).

Michigan imposes successor liability on asset purchasers even when fair value was paid for the assets, and no injury has been inflicted on the predecessor corporation. *See, e.g. Turner v. Bituminous Casualty Co.*, 397 Mich. 406, 411 (1976) (holding arms-length purchaser of corporation's assets liable for injury sustained by Michigan resident on machine previously manufactured by asset-seller corporation); *Ryan Racing v. Gentilozzi*, 231 F. Supp. 3d 269, 285, 289 (W.D. Mich. 2017) (imposing successor liability under Michigan law on entity that continued predecessor's auto-racing activities, despite "no evidence that RSR gave less than reasonably equivalent value for the assets it purchased."). Michigan recognizes the "mere continuation" doctrine of successor liability, which "simply asks whether a successor corporation is the reincarnation of its predecessor—and a successor corporation can be a continuation of its predecessor even if the predecessor corporation continues to exist with just enough assets to satisfy its liabilities." *Kelly v. Corizon Health*, 2022 U.S. Dist. LEXIS 198725 at *33 n.9 (E.D. Mich. 2022). Imposition of successor liability under Michigan law requires no fraud, no fraudulent transfers, no misuse of the corporate form, and most importantly, no injury to the predecessor corporation. The Debtor does not have standing to assert these claims, so they do not fall within the definition of estate property under § 541(a)(1).

The Debtor could argue, in the alternative, that although the Michigan tort claimants *causes of action* are not estate property, they nevertheless should be stayed under § 362(a)(3) because they seek to obtain assets of CHS TX, Inc., and *the CHS TX assets themselves are estate property* under § 541(a)(1). See *In re S.I. Acquisition, Inc.*, 817 F.2d 1142, 1150 (5th Cir. 1987). The assets of CHS TX could be considered estate property because they were fraudulently transferred in the divisional merger, therefore, the Debtor “retained a legal or equitable interest in the property fraudulently transferred to [CHS TX]” at the commencement of the bankruptcy case. *In re S.I. Acquisition, Inc.*, 817 F.2d at 1150.

The problem with endorsing this view is that it leads to a conclusion that no one may sue CHS TX, or seek to collect payment from CHS TX, for any reason, during the pendency of this Chapter 11 proceeding. Currently, hundreds of plaintiffs are suing CHS TX for claims relating to medical treatment provided by Corizon in Maryland and Wyoming prisons before CHS TX existed. [ECF No. 59-10, pp. 147-151]. Additional personal injuries will likely arise from CHS TX’ “post-Tehum-petition” conduct in these state prison systems. While all of these claims seek recovery from the fraudulently-transferred assets, none of them are *premised on the fraudulent transfer*. Thus, they do not fall within the ambit of § 362(a)(3). “As long as the injury a creditor is pursuing against a third party does not stem from the depletion of estate assets, the injury is a

direct one that does not belong to the estate.” *Meridian Capital CIS Fund v. Burton, (In re Buccanneer Res., L.L.C.)*, 912 F.3d 291, 295 (5th Cir. 2019). Michigan law successor-liability claims satisfy this test.

CONCLUSION

For all the foregoing reasons, the Debtor’s Emergency Motion should be denied.

Local Rule 9013-1(g)(1) Certification

Undersigned counsel certifies that they conferred with counsel for Debtor regarding the Debtor’s Emergency Motion and they were unable to resolve this matter.

/s/ Ian T. Cross

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Additional contributions that Corizon has made to its partnership with MDOC:

- Development and implementation of updated and evidence-informed treatment program based on best practice recommendations.
- Expanded infirmary bed usage resulting in fewer hospital days and less officer utilization, as illustrated in Section 2.1 of Exhibit B.
- Enhanced Care Units – worked together to provide special housing units for our infirmed and demented offenders
- Established Vivitrol Program
- Established Troponin program – to reduce outcounts for non-cardiac chest pain complaints
- Developed patient education for: diabetes, hypertension, flu, COVID, overdoses, suicide prevention
- Established/Expanded telehealth program
- Implemented weekly rounds by mental health staff for offenders in isolation due to COVID positive results
- Statewide Infection Control Nurse entering offender COVID data into the DOC COVID database.
- Established medical unit at Transition Center of St. Louis
- Provided more chronic care clinics than required by contract
- Corizon physician (Dr. Thomas Pryor, Medical Director at OCC) became HIV certified to manage HIV patients
- Infectious disease referrals to community for releasing offenders; for example, TB/HIV – Positive Start program came on site to talk with offenders prior to release
- Established on-site clinics for oral surgery, endoscopy, and physical therapy
- Established programs with professional schools to allow students to participate in clinical rotations at our facilities
- Assisted with development and implementation of MARS (electronic medical record)
- Developed the Benefits Guide for Offenders
- Formed a grievance committee and developed a handbook for managers to respond to offender grievances
- Set up FRDC lab to conduct HIV, syphilis, and hepatitis tests
- Funded and set up the dialysis unit at MCC
- Assisted DOC with development and implementation of the hospice program
- Assisted with WSRU move to CCC to expand number of patients that can be treated outside of the segregation setting

Contracts Gained and Lost in Past Five Years

The tables on the following page list the contracts gained and lost over the past five years, the average daily population, and the reasons for any lost contract. All contracts were for correctional medical care services and some also included mental health and pharmacy services. The table on page 12, which lists all contracts for the past five years, also indicates the scope of services provided for each contract.

BEST AND FINAL OFFER

VENDOR RESPONSE TO CHANGED REQUIREMENTS

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| Contracts Gained | |
|--|--------|
| | ADP |
| Brevard County (FL) Sheriff's Office | 1,626 |
| Maryland Department of Public Safety and Correctional Services | 17,629 |
| Riverside Regional Jail (VA)* | 1,228 |
| St. Clair County (MI) Sheriff's Office | 327 |

* Riverside Regional Jail contract expired in 2019 and was re-awarded to Corizon through competitive bid in 2020.

| Contracts Lost | | |
|--|--|--------|
| | Reason | ADP |
| Alabama Department of Corrections | Expired | 21,278 |
| Alameda County (CA) Jail & Detention Center | Expired | 2,474 |
| Anne Arundel County (MD) Sheriff's Office | Expired | 762 |
| Arizona Department of Corrections | Expired | 33,587 |
| Bergen County (NJ) Jail | Expired | 483 |
| Chatham County (GA) Sheriff's Office | Expired | 1,650 |
| Clackamas County (OR) Sheriff's Office | Expired | 478 |
| Cumberland County (ME) Sheriff's Office | Expired | 399 |
| Florida Department of Corrections | Vendor Initiated | 72,483 |
| Fresno County (CA) Sheriff's Office | Expired | 3,230 |
| Fulton County (GA) Jail | Expired | 2,522 |
| Gwinnett County (GA) Sheriff's Office | Expired | 2,180 |
| Henderson, City of (NV) Jail | Expired | 490 |
| Hennepin County (MN) Sheriff's Office | Terminated by county to use statewide DOC vendor, in accordance with state statutes. | 420 |
| Indiana Department of Corrections | Expired | 25,387 |
| Kansas Department of Corrections | Expired | 10,070 |
| Kintock Group (NJ & PA) | Expired | 682 |
| Mohave County (AZ) Jail & Detention Center | Expired | 465 |
| New Mexico Corrections Department | Expired | 7,215 |
| Polk County (IA) Sheriff's Office | Expired | 875 |
| Riverside Regional Jail (VA)* | Expired | 1,354 |
| Santa Barbara (CA) County Jail & Juvenile | Expired | 1,128 |
| Somerset County (NJ) Jail | Expired | 175 |
| St. Lucie (FL) County Sheriff's Office | Expired | 1,301 |
| Tulare County (CA) Adult & Juvenile Facilities | Expired | 1,683 |

* Riverside Regional Jail contract expired in 2019 and was re-awarded to Corizon through competitive bid in 2020.

BEST AND FINAL OFFER

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Contracts/Clients for Past Five Years

The following table is a summary of Corizon's contracts/clients over the past five years. All contracts have been for the provision of correctional health and/or mental health service with the specific scope of work indicated. State correctional systems are **shaded and shown in bold type**.

| Contract/Client | Average Daily Population | Medical | Mental Health | Dental | Pharmacy | Support Services* |
|--|--------------------------|----------|---------------|----------|----------|-------------------|
| Adams County (CO) | 908 | X | X | X | X | X |
| Alabama Department of Corrections | 21,278 | X | | X | X | X |
| Alachua County (FL) | 707 | X | X | X | X | X |
| Alameda County (CA) | 2,474 | X | | X | X | X |
| Allegheny County (PA) | 2,422 | X | X | X | X | X |
| Anne Arundel County (MD) | 762 | X | X | X | X | X |
| Arizona Department of Corrections | 33,587 | X | X | X | X | X |
| Arlington County (VA) | 253 | X | X | X | | X |
| Bergen County (NJ) | 483 | | | | | X |
| Brevard County (FL) | 1,537 | X | | X | X | X |
| Calhoun County (MI) | 402 | X | X | X | X | X |
| Charlotte County (FL) | 514 | X | X | X | X | X |
| Chatham County (GA) | 1,650 | X | X | X | | X |
| City of Henderson (NV) | 490 | X | X | X | | X |
| Clackamas County (OR) | 478 | X | X | X | | X |
| Collier County (FL) | 793 | X | X | X | X | X |
| Cumberland County (ME) | 399 | X | X | X | X | X |
| Cumberland County (NJ) | 601 | X | X | X | | X |
| Doña Ana County (NM) | 525 | X | X | X | X | X |
| El Paso County (TX) | 2,078 | X | X | X | | X |
| Essex County (NJ) | 95 | X | X | X | X | X |
| Florida Department of Corrections | 72,486 | X | X | X | | X |
| Fresno County (CA) | 3,230 | X | X | X | X | X |
| Fulton County (GA) | 2,522 | X | X | X | X | X |
| Genesee County (MI) | 563 | X | X | X | X | X |
| Gwinnett County (GA) | 2,180 | X | X | X | X | X |
| Hennepin County (MN) | 420 | X | X | X | X | X |
| Hunterdon County (NJ) | 65 | X | X | | | X |
| Idaho Department of Corrections | 6,777 | X | X | X | X | X |
| Indiana Department of Corrections | 25,387 | X | X | X | X | X |
| Kent County (MI) | 806 | X | X | X | | X |
| Kintock Group (NJ & PA) | 341 | X | X | | | X |
| Lane County (OR) | 321 | X | X | X | X | X |
| Lee County (FL) | 1,691 | X | X | X | | X |

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VENDOR RESPONSE TO CHANGED REQUIREMENTS

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| Contract/Client | Average Daily Population | Medical | Mental Health | Dental | Pharmacy | Support Services* |
|---|--------------------------|----------|---------------|----------|----------|-------------------|
| Leon County (FL) | 929 | X | X | X | X | X |
| Lexington-Fayette County (KY) | 980 | X | | X | X | X |
| Maryland Department of Public Safety and Correctional Services | 18,313 | X | | | | X |
| Michigan Department of Corrections | 34,540 | X | X | X | X | X |
| Missouri Department of Corrections | 23,420 | X | X | X | X | X |
| Mohave County (AZ) | 465 | X | X | X | X | X |
| New Mexico Corrections Department | 7,215 | X | | X | X | X |
| Okaloosa County (FL) | 675 | X | X | X | X | X |
| Passaic County (NJ) | 495 | X | X | | | X |
| Philadelphia, City of (PA) | 4,222 | X | | X | X | X |
| Polk County (FL) | 2,328 | X | X | X | X | X |
| Polk County (IA) | 875 | X | X | X | X | X |
| Prince George's County (MD) | 699 | X | X | X | X | X |
| Rikers Island (NY) | 8,226 | X | X | X | X | X |
| Riverside Regional Jail (VA) | 1,193 | X | X | X | | X |
| Santa Barbara County (CA) | 1,128 | X | | X | X | X |
| Shawnee County (KS) | 479 | X | X | X | X | X |
| Somerset County (NJ) | 175 | X | X | X | X | X |
| St. Clair County (MI) | 287 | X | X | X | X | X |
| St. Louis, City of (MO) | 763 | X | X | X | X | X |
| St. Lucie County (FL) | 1,301 | X | | X | X | X |
| Tennessee Department of Corrections | 15,013 | | | | X | |
| Tennessee Department of Corrections | 12,427 | | X | | | |
| Tulare County (CA) | 1,683 | X | X | X | X | X |
| Union County (NJ) | 782 | X | X | X | | X |
| Volusia County (FL) | 1,348 | X | | X | | X |
| Washington County (ME) | 39 | | | | X | |
| Washington County (OR) | 512 | X | X | X | | X |
| Wyoming Department of Corrections | 1,848 | X | X | X | X | X |

* Support Services include, but are not limited to: recruiting and retention, training and education, utilization management, IT support, professional development, telehealth, claims and billing, network development, and continuous quality improvement.

Healthcare Experience with Comparable State Correctional Systems

In addition to the state correctional systems served in the past five years, Corizon has also provided medical, mental health, and/or pharmacy services to the following state systems:

- Arkansas Department of Corrections: 1997-2013
- Delaware Department of Corrections: 1985-2002; 2005-2010

BEST AND FINAL OFFER

VENDOR RESPONSE TO CHANGED REQUIREMENTS

STATE OF MISSOURI – COMPREHENSIVE HEALTH CARE SERVICES

RFPS30034902100318 | MARCH 17, 2021

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

JAMES E. HYMAN,

Plaintiff,

V.

**YESCARE CORP., VALITAS
INTERMEDIATE HOLDINGS, INC.,
CHS TX, INC., PERIGROVE, LLC,
SARA TIRSCHWELL, SCOTT KING,
ABRAHAM GOLDBERGER,
YITZCHOK “ISAAC” LEFKOWITZ,
and DAVID GEFNER,**

Defendants.

No.

JURY DEMAND

COMPLAINT

Plaintiff, for his complaint against Defendants, states to the Court as follows:

I. Summary of Action

1. Plaintiff James E. Hyman is the former CEO of Valitas Health Services, Inc.
2. After Mr. Hyman resigned from Valitas, in order to avoid paying Mr. Hyman (and various other creditors) the amounts to which they were contractually due, Defendants perpetrated a fraudulent transfer by implementing the controversial “divisional merger” under Texas law.
3. Defendants merged what is now known as the “YesCare” family of companies into a single company, which company was then split into two entities: (1) Corizon Health, Inc. n/k/a Tehum Care Services, Inc., a shell company with virtually no assets that retained nearly all liabilities, and (2) CHS TX, Inc., which acquired nearly all of the assets without the most

significant liabilities. Significantly, Tehum is the company that was assigned the liability for Mr. Hyman's employment contract.

4. If Defendants follow the typical so-called "Texas Two-Step," Corizon Health, Inc. n/k/a Tehum Care Services, Inc., will soon file for bankruptcy, leaving Mr. Hyman (and various other creditors) without a meaningful remedy absent this Court's intervention.

5. Defendants have already represented on numerous occasions that they intend to put Tehum into bankruptcy.

6. For instance, although he was then the CEO, immediately after Mr. Hyman questioned a suspect \$3 million wire transfer to a company insider for non-specific services, Mr. Hyman was instructed to take a leave of absence and told: "***We will deal in short order with your employment termination by all the options available to the company, either through a friendly severance or through aggressive litigation with you, or alternatively through a bankruptcy filing which will wipe out all of your claims.***"

7. Indeed, YesCare's current litigation counsel is, according to his firm's website, "a bankruptcy litigator" who "has had a leading role in some of the largest and most complex restructurings in recent history." Further, counsel for YesCare recently represented that Corizon Health, Inc. n/k/a Tehum Care Services, Inc. is "on the verge" of bankruptcy.

8. Defendants acted in concert and conspired on a fraudulent scheme that was designed to strip YesCare's valuable assets from its significant liabilities and file a bankruptcy petition for the entity laden with those liabilities (Corizon Health, Inc. n/k/a Tehum Care Services, Inc.) to hinder and delay payment of those liabilities and use the bankruptcy process to delay and seek to avoid or reduce recoveries to Mr. Hyman and other creditors.

9. What Defendants have done, and are still doing, is essentially an old-fashioned bankruptcy fraud scheme – taking assets and avoiding liabilities, while draining coffers into their own pockets – by misusing a controversial statute of a state with no relationship to the company, guided and directed by those who describe themselves as sophisticated bankruptcy litigators.

10. The divisional merger was essential to this scheme, as it allowed CHS TX, Inc. and the overall YesCare enterprise to continue to operate outside of bankruptcy, while taking advantage of the bankruptcy process with respect to the vast majority of its creditors under the Tehum entity.

11. Neither law nor equity countenances such schemes.

12. Thus, this action seeks to hold Defendants liable for their fraudulent scheme to deprive Mr. Hyman of his rights under his employment contract, by seeking to unwind the divisional merger.

13. Notably, Mr. Hyman is not the only party whose remedies have been jeopardized by Defendants' scheme. Again, Corizon Health, Inc. n/k/a Tehum Care Services, Inc., a shell company with virtually no assets, retained nearly all liabilities after the divisional merger, which liabilities include lawsuits filed by parties injured as a result of medical care provided, or denied, by Corizon.

14. It is important to note that the Defendants are involved in the business of providing essential healthcare services to incarcerated individuals who reside in very close living quarters and have no freedom to obtain alternative health services. Literally tens of thousands of lives are potentially affected by Defendants' actions.

II. The Parties

15. Plaintiff James Hyman is an individual resident of Connecticut. He is a former employee of a company known as “Valitas Health Services, Inc.” and, pursuant to his employment agreement, is a current stockholder in both CHS TX, Inc. and Corizon Health, Inc. n/k/a Tehum Care Services, Inc.

16. Defendant CHS TX, Inc. is a Texas corporation with its principal place of business in Brentwood Tennessee. Pursuant to a divisional merger, Valitas Health Services, Inc., Mr. Hyman’s former employer, was merged into Corizon Health, Inc., which was then split into two entities: CHS TX, Inc. and Corizon Health, Inc. n/k/a Tehum Care Services, Inc. The latter acquired the liability under Mr. Hyman’s employment contract, and the former acquired nearly all of the pre-merger assets. Both CHS TX, Inc. and Tehum Care Services, Inc. are part of the “YesCare” family of companies, and both are owned by Valitas Intermediate Holdings, Inc. CHS TX, Inc. sometimes uses the d/b/a “YesCare.”

17. Defendant YesCare Corp. is a Texas corporation with its principal place of business in Brentwood Tennessee. Although Defendants’ structure is somewhat opaque, upon information and belief, YesCare Corp. is also a successor in interest to Valitas Health Services, Inc. and/or an alter ego of CHS TX, Inc. For example, although it was only recently formed, YesCare publicly represents in its marketing materials that, despite its corporate existence of less than one year, it has “40 years of experience as the leading provider of corrections healthcare” and “over 40 years, YesCare has provided expert medical, dental, and behavioral health services to more than 1,000,000 patients at 475 correctional facilities across the country.” It also represents on its website (<https://www.yescarecorp.com>) that it acquired all of the employees and active contracts of Corizon Health in early 2022.

18. YesCare Corp., CHS TX, Inc., Valitas Health Services, Inc., and Tehum Care Services, Inc. are collectively referred to herein as “YesCare.”¹

19. Defendants Sara Tirschwell, Scott King, Abraham Goldberger, Yitzchok “Isaac” Lefkowitz, and David Gefner are all directors of one or more of the corporate Defendants.

20. Perigrove, LLC is a New York limited liability company that holds itself out as a “a prolific private equity firm strategically diversified across every segment of the global healthcare sector.” David Gefner is the founder and principal of Perigrove. Abraham Goldberger is also an officer, employee, and/or agent of Perigrove.

III. Jurisdiction and Venue

21. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. § 2201 and 28 U.S.C. § 1332.

22. This Court has personal jurisdiction over Defendants because Defendants are conducting business in the State of Tennessee and have otherwise availed themselves of the jurisdiction of this Court.

23. This Court is the proper venue to hear this dispute pursuant to 28 U.S.C. § 1391(b).

IV. Facts

A. Mr. Hyman’s Employment Agreements

24. Mr. Hyman is the former CEO of Valitas Health Services, Inc. Valitas was a company that provided healthcare services to incarcerated individuals.

¹ As required by his employment agreement, Mr. Hyman previously initiated an arbitration against YesCare Corp., among others, for breach of his employment agreement. However, YesCare Corp., through bankruptcy counsel, objected to jurisdiction of the AAA, claiming they are not subject to arbitration. Therefore, Mr. Hyman dismissed that entity and substituted Tehum in its place. This litigation was filed as a result of YesCare Corp. disputing jurisdiction of the AAA.

25. Mr. Hyman has been employed in the role of CEO for several companies over the past decade and has served as a board member of nearly a dozen public and private companies, including Cornell Companies, Community Education Centers, TestAmerica, Inc., and Citizens Parking, Inc.

26. Mr. Hyman also has extensive experience providing interim leadership to companies undergoing financial restructuring through his previous role as Senior Managing Director of FTI Consulting.

27. On September 1, 2019, Mr. Hyman signed an Executive Employment Agreement with Valitas Health Services, Inc. to be its chief executive officer. At the time, Valitas Health Services, Inc. was one of the owners of Corizon Health, Inc. (**Exhibit 1.**)

28. On October 27, 2020, Mr. Hyman signed an amendment to his employment agreement, which was effective September 3, 2020. That amendment vested Mr. Hyman with stock in Valitas Health Services, Inc. (**Exhibit 2.**)

29. The amendment provided, in relevant part, that Mr. Hyman was entitled to resign “With Good Reason” upon the occurrence of various events. If he did so, he was entitled to various compensation enumerated in the contract.

B. The First Change in Control

30. On June 30, 2020, the Flacks Group, a privately held investment firm, acquired Valitas Health Services, Inc. through a transaction in which it purchased its parent entity, Valitas Intermediate Holdings, Inc.

31. As part of the transaction, two new entities were formed: M2 EquityCo, LLC and M2 HoldCo, LLC.

32. M2 EquityCo, LLC purchased Valitas Intermediate Holdings, Inc. M2 EquityCo, LLC is a Florida limited liability company that was formed by James Gassenheimer, the former Chairman of the Valitas Board of Directors. Michael Flacks is listed as the manager of the company. The company is currently administratively dissolved.

33. M2 EquityCo, LLC is owned by M2 HoldCo, LLC, which is a Florida limited liability company that was formed by James Gassenheimer. Michael Flacks is listed as the manager of the company. The company is currently administratively dissolved.

C. The Second Change in Control and Mr. Hyman's Resignation as Officer

34. In December 2021, one or more persons or entities whose identities are unknown purchased Flacks Group's interest in M2 EquityCo, LLC and/or M2 HoldCo, LLC.²

35. These new owners performed no due diligence.

36. Defendants David Gefner and Isaac Lefkowitz, on behalf of Defendant Perigrove, served as "representatives" of the new owners throughout the buying process. Mr. Lefkowitz's actions described herein were all at the direction of Mr. Gefner and perhaps other Perigrove agents.

37. Mr. Hyman met with Defendant Abraham Goldberger and Mr. Lefkowitz on December 1, 2021.

38. As a condition of closing, Isaac Lefkowitz demanded that the CEO, CFO and CLO of Valitas Health Services, Inc. each submit a signed resignation from their positions as officers and board members of Valitas Health Services, Inc. and its subsidiaries.

39. Mr. Lefkowitz concurrently, on December 3, 2021, represented via email that "we have no intention of making any employment changes in the company from CEO all the way down the flag pole." (**Exhibit 3.**) He made a similar representation in a December 5, 2021 email in which

² They rebranded the company as "YesCare" on or about January 1, 2022.

he said there would “[n]o changes” in response to Mr. Hyman’s following question: “although the officers will change (eg Abe as President) for communications (internal,vcustomer) are you wanting us to still position me as CEO, Jeff as CFO, etc.?” (**Exhibit 4.**)

40. Further, Scott King, Chief Legal Officer, assured Mr. Hyman that since the resignation was only a resignation of *title*, and not *employment*, he would suffer no employment-related consequences as a result. Mr. King sent an email on December 2, 2021, representing that “the Corizon officers will stay on in an employment capacity and I have noted that in the document pertaining to the officers.” (**Exhibit 5.**)

41. Upon information and belief, the above demands and representations were made in furtherance of the scheme to fraudulently isolate all liabilities, including employment contracts such as Mr. Hyman’s, into a new shell entity, which is described in detail below.

42. In fact, James Gassenheimer, then Chairman of the Valitas Board of Directors, who was a corporate attorney as well as a board member, threatened to sue officers for breach of fiduciary duty if they refused to sign their resignation as officers.

43. Therefore, in reasonable reliance on the foregoing representations and under the duress of Mr. Gassenheimer’s threat, Mr. Hyman signed the resignation as to his officer and board member status (though not his employment).

D. The Wire and the Fallout

44. On December 8, 2021, Mr. Hyman discovered that Mr. Lefkowitz had ordered a wire transfer for \$3 million be sent from Valitas to “Geneva Consulting, LLC” as a payment for future services vaguely described as “Corporate Restructuring.”

45. The consulting agreement with Geneva Consulting, LLC was signed by Mr. Lefkowitz on behalf of Valitas (though it is unclear if he had such authority at the time) and by

Jay Leitner on behalf of Geneva Consulting, LLC. Mr. Leitner is the Vice President of Special Operations for Defendant Perigrove. Defendant Perigrove and Geneva Consulting share the same address.

46. Mr. Hyman emailed Mr. Lefkowitz and inquired about the \$3 million payment to an entity apparently owned or controlled by Mr. Lefkowitz. To Mr. Hyman, this was a dissipation of Valitas' financial resources away from the daily health needs of its contracted clients, which could lead to a crisis for thousands of detainees and incarcerated prisoners.

47. Less than ten minutes later, Mr. Lefkowitz responded that the payment was for "multiple Corizon litigation matters to get it settled before year end." Corizon, of course, was a separate entity at this time.

48. Then, via letter dated December 9, 2021, Mr. Lefkowitz instructed Mr. Hyman to "refrain from making any material company decisions or issue any orders to any of the company and all its subsidiaries' staff until the interim board will have a chance to install a permanent governing body of directors and officers will have the opportunity to evaluate each of the former Corizon Health executives for their new role in the restructuring of the company." Mr. Lefkowitz signed the letter as "Interim CEO and Member of the Board."

49. Upon information and belief, the \$3 million wire was part of Defendants' scheme to redirect assets and silo liabilities into a shell company via the divisional merger discussed below.

50. On December 10, 2021, Mr. Hyman sent an email to Mr. Lefkowitz, expressing his concern about how the transition was being handled:

I take this opportunity to share a concern with you and the Board, that my refraining from engaging in my contractual duties, as you have directed in your letter, without my being advised who has been and who has not been consulted and/or notified of this intended course, may be an unwitting breach by the Company of important contractual and fiduciary duties to the Company's many stakeholders, who rely on

the uninterrupted continuity of the Company's operations and decision-making processes to deliver patient care and respond to customer concerns.

Mr. Hyman also reiterated that he remained willing to serve the company but stated that, "I believe it best if mutual consideration was given to my departure from Company employment." He concluded the email with a summary of the company's obligations under Mr. Hyman's employment agreement as a result of the "Change of Control," including a \$2 million bonus.

51. Mr. Lefkowitz responded approximately an hour later, instructing Mr. Hyman to take a leave of absence and stating as follows:

Be also aware, should you in any way have any negative communication that impacts the company, we will hold you liable for such damages.

We will deal in short order with your employment termination by all the options available to the company, either through a friendly severance or through aggressive litigation with you, or alternatively through a bankruptcy filing which will wipe out all of your claims . . . [we] will have to wait until the new CEO is in place and with the new governing body in place.

52. Therefore, via letter dated December 8, 2021, Mr. Hyman provided detailed "Notice of Good Reason" of resignation under his employment agreement, which notice was supplemented on December 30, 2021 and January 10, 2022.

53. Rather than accept Mr. Hyman's resignation, on January 13, 2022, Heather Adelman, joint counsel for Perigrove and Valitas, sent a letter to Mr. Hyman stating his employment was terminated "effective as of December 3, 2021, per [his] resignation letter" (even though, again, Mr. Hyman simply resigned from his roles as CEO and board member—that is, as officer—and not as an employee). (**Exhibit 6.**) The letter asserted that Valitas "accepted [Mr.

Hyman's] resignation as a courtesy ... to enable [his] graceful departure" even though Valitas considered his "termination to have been for Cause."³

54. Prior to this letter, Mr. Hyman *never* received the requisite contractual notice claiming he was deficient in his performance, nor was he provided an opportunity to cure, as required by his agreements. Moreover, he never received notice that he failed to follow the Valitas Board of Directors' directives or policies.

55. Mr. Hyman submitted a Notice of Resignation and a limited Release of Claims, in the form required by the Second Valitas Contract, on January 14, 2022.

56. The Employment Agreements provide that if Mr. Hyman resigns with Good Reason, or if Valitas terminated his employment Without Cause, and Mr. Hyman abides by each of the deadlines and conditions set forth in that contract, he is entitled to certain enumerated payments and benefits. Thus, Mr. Hyman is due the following:

- a. Unpaid Salary from December 31, 2021, through effective date of Mr. Hyman's Good Reason Resignation (approximately 90 days) (Exhibit 1, Section 6(c)(i));
- b. Unpaid "Transaction Bonus" per the Second Valitas Employment Contract (Exhibit 2, Section 10);
- c. Salary for 24 months as severance (Exhibit 2, Section 11(a));
- d. Consulting Agreement Services with Marketing Strategies, LLC, or another LLC designated by Mr. Hyman, for 24 months (Exhibit 1, Section 6(d)(vi));

³ The faulty reasoning underlying Ms. Adelman's assertion that Mr. Hyman had engaged in "Cause" for termination was that Valitas was in grave financial health, which was simply not one of the limited, contractually enumerated bases of "Cause for Termination." In fact, Valitas Health Services, Inc. was in grave financial circumstances for years before Mr. Hyman became affiliated with it, and the pandemic made its provision of health services to tens of thousands of incarcerated individuals, living in extraordinarily close quarters, that much more expensive, and in many instances, contractually non-reimbursable.

- e. Accrued but Unused Vacation (PTO) (Exhibit 1, Section 6(c)(ii));
- f. 401k Match for Year 2021(Exhibit 1, Section 6(c)(iv));
- g. COBRA Family Health Insurance Payments (approximately 21 months) (Exhibit 1, Section 6(d)(ii));
- h. Incentive bonus (Exhibit 1, Section 6(d)(iii)).

57. Shortly after Mr. Hyman resigned, another suspect transaction occurred.

58. A company called Seven Trade, LLC purchased COVID test kits for immediate resale to YesCare at **a 57% markup** (for a total of just over \$3.2 million).

59. Upon information and belief, Seven Trade, LLC is an affiliate of Defendants Gefner, Lefkowitz, and Perigrove. It has the same address listed on the YesCare purchase order as the office of Defendant Perigrove. See <https://www.perigrove.com/>

E. The Texas Two-Step

60. Although unfathomable to Mr. Hyman at the time, the reason for the new owners' lack of due diligence became clear over the ensuing months—the liabilities did not matter to them.

61. Shortly after they purchased what they would eventually re-brand as “YesCare,” the new owners used a novel process called a “divisional merger” to transfer all of its assets to a new entity called “CHS TX, Inc.” and all of its liabilities (including Mr. Hyman’s contract) to a new entity called “Tehum Care Services, Inc.”

62. Texas is one of just a handful of states that permits “divisional mergers.” Tex. Bus. Org. Code § 1.002(55)(A).

63. Unlike a traditional merger, a divisional merger involves one entity dividing into multiple entities. The assets and liabilities of the original entity are divided among the new entities.

64. In the typical “Texas Two-Step,” once the assets and liabilities are separated into two entities, the entity with the bulk of the liabilities files for bankruptcy, leaving creditors out in the cold and handing the shareholders a shiny new company that has been cleared of its debt.

65. Due to the potential for abuse, there has been much debate over the propriety of this so-called “Texas Two-Step.” Controversies and varying viewpoints aside, there is no known instance of any litigant employing the argument, either in or out of any court, that the “Texas Two-Step,” wise or unwise, may be legally available as a means to commit fraud, as it is being used in this case.

66. For example, the Two-Step is central to the Johnson & Johnson bankruptcy, aiming to separate talc liabilities from Johnson & Johnson’s assets. Several U.S. Senators objected to this tactic, stating: “This bait-and-switch bankruptcy maneuver, known as the ‘Texas two-step,’ would protect Johnson & Johnson’s profits and leave tens of thousands of cancer patients holding the bag”⁴

67. The reason the Texas Two-Step has been labeled as a “bait-and-switch bankruptcy maneuver” is because, as two commentators observed: “The Texas divisive merger statute creates a fraudulent transfer conundrum, because it says movements of assets pursuant to a divisive merger are not transfers. If there’s no transfer, there’s no fraudulent transfer liability [under section 548 of the Bankruptcy Code], as there must first be a transfer for there to be liability.”⁵

⁴ Durbin, Senate and House Dems Object to Johnson & Johnson Bankruptcy Maneuver, Demand Answers, Committee on the Judiciary, <https://www.judiciary.senate.gov/press/dem/releases/durbin-senate-and-house-dems-object-to-johnson-and-johnson-bankruptcy-maneuver-demand-answers> (last visited Nov. 28, 2022).

⁵ [Texas Two-Step and the Future of Mass Tort Bankruptcy Series] The Texas Two-Step: The Code Says it’s a Transfer, Harvard Law School Bankruptcy Roundtable, <https://blogs.harvard.edu/bankruptcyroundtable/2022/07/19/texas-two-step-and-the-future-of->

68. However, one of the few courts that have addressed this issue recently rejected a “Texas Two-Step” as “wholesale fraud.”⁶ See *In Re DBMP LLC*, Adv. Pro. No. 22-03000 (W.D.N.C. Bankr.). The court held that allowing a divisional merger to sidestep the fraudulent transfer provision of the Bankruptcy Code “would contradict another provision of the Texas statute, which states that a divisive merger is not meant to ‘abridge any . . . rights of any creditor under existing law,’ Tex. Bus. Orgs. Code § 10.901.”⁷ Regardless, as Professors Roe and Organek recently observed, “A divisive merger is a disposition of property and, hence, the [Bankruptcy] Code says it’s a transfer, thereby triggering the opening prerequisite to there being a fraudulent transfer.”

69. In the instant case, on April 28, 2022, the new owners converted Corizon Health, Inc. into a Texas corporation and concurrently merged Valitas Health Services, Inc., among other entities, into Corizon Health, Inc.⁸

70. Then, the new owners divided Corizon into two entities: (i) Corizon Health, Inc. and (ii) CHS TX, Inc.⁹ pursuant to an Agreement and Plan of Divisional Merger. (**Exhibit 7.**)

71. The Agreement and Plan of Divisional Merger provides that 100% of the capital stock of the new Corizon Health, Inc. entity shall be converted into: (i) 100% of the capital stock of Corizon Health, Inc., and (ii) 100% of the capital stock of CHS TX, Inc.

mass-tort-bankruptcy-series-the-texas-two-step-the-code-says-its-a-transfer/ (last visited Nov. 28, 2022).

⁶ *Id.*

⁷ *Id.*

⁸ YesCare has no connection to Texas other than their incorporation. Corizon did not conduct any business in Texas when it began the merger, and following the merger, neither Tehum, CHS TX, nor YesCare conduct any business in Texas. Corizon, Tehum, and CHS TX all held their principal place of business at the same location in Brentwood, Tennessee.

⁹ According to paragraph 8(a) of the Agreement and Plan of Divisional, CHS TX, Inc. is owned by Valitas Intermediate Holdings, Inc. As noted above, the LLC that owns Valitas Intermediate is dissolved, as is the LLC that owns that dissolved entity.

72. Thus, because Mr. Hyman owned stock in Valitas Health Services, Inc. prior to the divisional merger, because Valitas Health Services, Inc. was merged into Corizon Health, Inc., which was then split into two entities, he now owns stock in both of those entities--Corizon Health, Inc. n/k/a Tehum Care Services, Inc. and CHS TX, Inc.

73. Pursuant to the Agreement and Plan of Divisional Merger, all employees of Corizon Health, Inc. became employees of CHS TX, Inc.

74. CHS TX was also granted nearly all of Corizon's assets, including all cash (other than \$1 million set aside for Tehum), all fixtures and equipment, all service agreements, all assets of employee benefit plans, all trademarks and domains, all receivables, all real estate, all permits and licenses, and the Corizon Health Political Action Committee.

75. Corizon, on the other hand, was allocated and remained laden with (a) liabilities of employee benefits plans; liability and responsibility for hundreds of pending lawsuits; \$1 million in cash, (b) ownership of various Corizon Health subsidiaries that have no assets, (c) liability under various independent contractor, staffing, and employment contracts, including Mr. Hyman's contract, (d) the obligations under various service agreements, (e) liability under the home office lease in Brentwood, Tennessee, and various other leases, (f) the right to take out a \$4 million loan from M2 LoanCo, LLC pursuant to a "funding agreement,"¹⁰ and (f) the right to make certain insurance claims.

76. Thus, pursuant to the Agreement and Plan of Divisional Merger, Corizon Health, Inc. abandoned hundreds of personal injury claims, dozens of employment claims, and tens of

¹⁰ M2 LoanCo, LLC is a Florida limited liability company formed by James Gassenheimer. Michael Flacks is listed as the manager of the company. The company is now administratively dissolved. "Funding agreements" like this one are common smoke screens in divisional merger schemes.

millions of dollars in trade debt, all of which it put into a new shell company, which was allocated only \$1 million.

77. If the new owners of YesCare follow the “bait-and-switch bankruptcy maneuver” that has become part and parcel of the Texas-Two-Step, Corizon Health, Inc. will soon declare bankruptcy.

78. And in an apparent effort to avoid the type of negative publicity Johnson & Johnson received, the new owners changed the name of Corizon Health, Inc. to Tehum Care Services, Inc.

79. In sum, from the outset, the primary objective of the divisional merger and forthcoming bankruptcy was to allow Defendants to operate outside of bankruptcy while subjecting Mr. Hyman and other creditors to the mandatory stay that would deprive such creditors of any recovery unless or until they consent to a chapter 11 plan of reorganization that resolves their claims for a fraction of the value.

IV. Causes of Action

A. Violation of the Uniform Fraudulent Transfer Act

80. Tennessee’s Uniform Fraudulent Transfer Act provides that a transfer made or obligation incurred by a debtor is fraudulent as to a creditor, whether the creditor's claim arose before or after the transfer was made or the obligation was incurred, if the debtor made the transfer or incurred the obligation:

- (1) With actual intent to hinder, delay, or defraud any creditor of the debtor; or
- (2) Without receiving a reasonably equivalent value in exchange for the transfer or obligation, and the debtor:

(A) Was engaged or was about to engage in a business or a transaction for which the remaining assets of the debtor were unreasonably small in relation to the business or transaction; or

(B) Intended to incur, or believed or reasonably should have believed that the debtor would incur, debts beyond the debtor's ability to pay as they became due.

Tenn. Code Ann. § 66-3-305(a).

81. In determining such actual intent, the statute instructs courts to consider various non-exclusive badges of fraud, including, most relevant in this case, whether (1) the transfer or obligation was to an insider; (2) the debtor retained possession or control of the property transferred after the transfer; (3) the transfer or obligation was disclosed or concealed; (4) before the transfer was made or obligation was incurred, the debtor had been sued or threatened with suit; (5) the transfer was of substantially all the debtor's assets; (6) The debtor removed or concealed assets; (7) the value of the consideration received by the debtor was reasonably equivalent to the value of the asset transferred or the amount of the obligation incurred; (8) the debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred.

82. Additionally, Tenn. Code Ann. § 66-3-306(a) provides: “A transfer made or obligation incurred by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made or the obligation was incurred if the debtor made the transfer or incurred the obligation without receiving a reasonably equivalent value in exchange for the transfer or obligation and the debtor was insolvent at that time or the debtor became insolvent as a result of the transfer or obligation.”

83. Tenn. Code Ann. § 66-3-306(b) provides: “A transfer made by a debtor is fraudulent as to a creditor whose claim arose before the transfer was made if the transfer was made to an insider for an antecedent debt, the debtor was insolvent at that time, and the insider had reasonable cause to believe that the debtor was insolvent.”

84. As discussed above, pursuant to Defendant’s Texas Two-Step scheme, Mr. Hyman’s former employer, Valitas Health Services, Inc., merged with Corizon Health, Inc., which entity was then divided into two entities: Corizon Health, Inc. and CHS TX, Inc. Then, Corizon Health, Inc. (Tehum) was assigned Mr. Hyman’s contract along with nearly all pre-merger liabilities, and CHS TX, Inc. received nearly all assets. There was no consideration paid for this transaction.

85. This transaction was fraudulent as to Mr. Hyman, whose claim arose before the transfer, because Valitas Health Services, Inc. made the transfer to an insider, CHS TX, Inc. (and/or did not receive a reasonably equivalent value in exchange for the transfer), and Valitas was insolvent at that time or it became insolvent as a result of the transfer. Indeed, Valitas no longer exists. Additionally, Defendants engaged in this transaction with actual intent to hinder, delay, or defraud Mr. Hyman and similarly situated creditors.

86. Thus, (a) prior to the divisional merger, Valitas had been threatened with suit by Mr. Hyman; (b) Defendants planned the divisional merger for the purpose of avoiding obligations to existing and future creditors; (c) the divisional merger was intentionally concealed from people both outside and within Defendants’ organizations based on the opaque nature of the transaction itself; (d) Defendants intentionally engaged in the divisional merger to evade liabilities, including to Mr. Hyman; (e) the divisional merger allocated substantially all of the assets to CHS TX, Inc., leaving virtually nothing for Tehum and its creditors.

87. The divisional merger was intended to hinder and delay—for years—recoveries to creditors like Mr. Hyman, and to impair recovery through use of the bankruptcy process. The divisional merger created Tehum as an empty shell, with few (insufficient) assets, employees or operations, and wholly dependent on the other YesCare entities for any ability to pay its creditors. Defendants, therefore, effectuated the divisional merger with actual intent to hinder, delay, and defraud their creditors. Accordingly, the divisional merger should be avoided. *See, e.g., Aldrich Pump LLC v. Those Parties to Actions Listed on Appendix A to Complaint (In re Aldrich Pump LLC)*, Nos. 20-30608 (JCW), 20-03041 (JCW), 2021 Bankr. LEXIS 2294, at *80 (Bankr. W.D.N.C. Aug. 23, 2021) (“if a corporation uses a divisional merger to dump its liabilities into a newly created ‘bad’ company that lacks the ability to pay creditors while its ‘good’ twin walks away with the enterprise’s assets, a fraudulent transfer avoidance action lies.”).¹¹

B. Declaration of Unenforceability of Divisional Merger

88. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that the divisional merger was invalid, as set forth below.

89. The Texas divisional merger statute ensures that, in accordance with the common law, divisional mergers cannot disadvantage creditors. The statute states, “This code does not . . . abridge any right or rights of any creditor under existing laws.” Tex. Bus. Orgs. Code Ann. § 10.901.

¹¹ *See also* Cliff Ernst, *Steps to Accomplish a Divisional Merger, in Divisive [Sic] Mergers: How To Divide An Entity Into Two Or More Entities Under A Merger Authorized By The Texas Business Organization Code*, 2016 WL 10610449 (Tex. 2016) (“[O]ne could certainly imagine an egregious situation where all assets were allocated to one party to the merger and all liabilities were allocated to another party without assets and creditors might attempt to void the transaction as a fraudulent conveyance.”).

90. “[A] purpose of the statute was to enable mergers that did not adversely affect the rights of parties under preexisting contracts with the entities undergoing the mergers.” *Plastronics Socket, Ltd. v. Hwang*, Nos. 2020-1739, 2020-1781, 2022 U.S. App. LEXIS 883, at *8 (Fed. Cir. Jan. 12, 2022) (holding “the Texas divisive merger statute does not enable an entity to eliminate royalty payments due under a contract with the predecessor entity. Plastronics Socket [original entity] cannot divest itself of the obligation to pay royalties on sockets sold with H-Pins” by allocating the contract to a new entity as part of a divisional merger)

91. The legislative history confirms the intent that a “[c]reditor's rights would not be adversely affected by the proposed amendment, and creditors would continue to have the protections provided by the Uniform Fraudulent Transfer Act and other existing statutes that protect the rights of creditors.” H. Comm. on Bus. & Com., Bill Analysis, H.B. 472, 71st Reg. Sess., at 23 (Tex. 1989).

92. And one of the authors of the Texas merger statute reflected: “While the provisions permitting multiple surviving entities in a merger were intended to provide corporations with greater flexibility in structuring acquisition and restructuring transactions, they were not intended to have any material effect on the existing rights of creditors of the parties to a merger.” Curtis W. Huff, *The New Texas Business Corporation Act Merger Provisions*, 21 St. Mary's L.J. 109, 122 (1989).

93. Where, as here, a divisional merger materially prejudices a creditor, the creditor of the old entity may contest the merger, including the asset and liability allocations, and may seek to hold the new company responsible for those liabilities. *See, e.g., In re Aldrich Pump LLC*, No. 20-30608 (JCW), 2021 Bankr. LEXIS 2294, 2021 WL 3729335, at *27-30 (Bankr. W.D.N.C. Aug.

23, 2021); *In re DBMP LLC*, No. 20-30080 (JCW), 2021 Bankr. LEXIS 2194, 2021 WL 3552350, at *24-26 (Bankr. W.D.N.C. Aug. 11, 2021).

94. Therefore, Mr. Hyman seeks a declaration that the divisional merger is invalid under the Uniform Fraudulent Transfer Act and that the assets of Defendants should be reallocated in a manner that is fair and equitable.

C. Declaration of Alter Ego

95. Pursuant to 28 U.S.C. § 2201, Plaintiff is entitled to a declaration that, at all relevant times, YesCare Corp., Valitas Intermediate Holdings, Inc., and/or CHS TX, Inc. (“Alter Ego Defendants”) were the alter egos of Valitas Health Services, Inc. (which eventually became Tehum) such that Valitas Health Services, Inc. was a mere instrumentality of the Alter Ego Defendants, and the corporate separateness of Valitas Health Services, Inc. and the Alter Ego Defendants should therefore be disregarded. As such, each Alter Ego Defendant must be held jointly and severally liable under Mr. Hyman’s employment contract.

96. The Alter Ego Defendants, through their common owners, completely dominated the finances, policies and business practices of Valitas Health Services, Inc., so that Valitas Health Services, Inc. had no separate existence of its own. The Alter Ego Defendants used their control over Valitas Health Services, Inc. to perpetrate the fraudulent transfer to the detriment of Mr. Hyman and similar creditors.

97. A unity of interest in ownership and control has existed at all relevant times between the Alter Ego Defendants and Valitas Health Services, Inc., rendering each of the Alter Ego Defendants the alter ego of Valitas. As such, adherence to the fiction of Valitas’ existence as an entity separate and distinct from the Alter Ego Defendants would permit an abuse of corporate privilege and would promote injustice.

98. Specifically, as discussed above, Valitas Health Services, Inc., among other entities, was merged with Corizon Health, Inc., which was then split into CHS TX, Inc. and Corizon Health, Inc. n/k/a Tehum Care Services, Inc. Both CHS TX and Tehum are owned by Valitas Intermediate Holdings, Inc., which is owned by a dissolved LLC that appears to have been formed specifically to buy Valitas Intermediate Holdings.

99. Further, YesCare Corp. operates and/or manages all of the business of Corizon Health, Inc. n/k/a Tehum Care Services, Inc. and CHS TX, Inc. and, in doing so, exercises complete control over those entities and uses those entities as mere instrumentalities of YesCare Corp.

100. There is also significant overlap in the managers of the Alter Ego Defendants and Tehum.

101. At the time of the divisional merger, the directors of CHS TX, Inc. were (1) Sara Tirschwell, (2) Scott King, (3) Jeff Sholey, and (4) Greg Ladele.

102. At the time of the divisional merger, the directors of Valitas Health Services, Inc. were (1) Sara Tirschwell, (2) Yitzchok “Isaac” Lefkowitz, (3) David Gefner, and (4) Abraham Goldberger.

103. At the time of the divisional merger, the directors of Corizon Health, Inc. n/k/a Tehum Care Services, Inc. were: (1) Sara Tirschwell, (2) Yitzchok “Isaac” Lefkowitz, (3) David Gefner, (4) Abraham Goldberger, (5) Scott King (Secretary), (6) Jeff Sholey (CFO), (7) Greg Ladele (CMO), and (8) Jennifer Finger (Assistant Secretary).¹²

¹² Mr. Hyman is also currently listed as the president of Tehum with the Texas Secretary of State as of the date of this filing.

104. At the time of the divisional merger, Sara Tirschwell was the sole director of YesCare Corp. YesCare Corp. is owned 95% by YesCare Holdings, LLC and 5% by Sara Tirschwell.

105. In addition, the protection provided to separate corporate entities should be disregarded, the corporate veil should be pierced, and the Alter Ego Defendants should be held liable for the liabilities of Tehum for the reasons discussed above and because (1) Tehum is grossly undercapitalized; (2) Tehum uses the same Brentwood, Tennessee business location as the other Defendants; (3) Tehum is simply an instrumentality or business conduit for YesCare Corp. and its affiliates to hold and litigate liabilities; (4) YesCare diverted corporate assets to the detriment of creditors and/or manipulated assets and liabilities pursuant to the divisional merger;¹³ and (5) Tehum was formed and used to transfer to it the existing liability of other entities pursuant to the divisional merger.

106. In short, the corporate veil should be pierced, and Defendants should be held liable for the liabilities of Tehum through avoidance of the divisional merger. In addition, Tehum, as the fraudulently created entity used simply to isolate liabilities that was completely dominated and controlled by Defendants by and through their officers, is the alter ego of Defendants. Tehum is a mere shell, instrumentality, and conduit by which Defendants carried out their plan to hinder, delay, and defraud creditors and to effectuate a constructive fraudulent transfer.

¹³ For instance, the suspect \$3 million wire transfer about which Mr. Hyman inquired on December 10, 2021, while he was CEO of Valitas, and which gave rise to a threat of denial of contract rights and interests by means of a bankruptcy court filing, was a wire transfer to Geneva Consulting LLC, an entity of unknown ownership, but which shared a New York City office address with Messrs. Gefner and Lefkowitz, who claimed “representative” status with the new owners of Valitas.

D. Breach of Fiduciary Duty

107. At the time of the divisional merger, Sara Tirschwell was a director and/or officer of CHS TX, Inc., YesCare Corp., Valitas Health Services, Inc., and Corizon Health, Inc. n/k/a Tehum Care Services, Inc.

108. At the time of the divisional merger, Scott King was a director and/or officer of CHS TX, Inc. and Corizon Health, Inc. n/k/a Tehum Care Services, Inc.

109. At the time of the divisional merger, Yitzchok “Isaac” Lefkowitz, David Gefner, and Abraham Goldberger were all directors and/or officers of Valitas Health Services, Inc. and Corizon Health, Inc. n/k/a Tehum Care Services, Inc.

110. As officers and/or directors of the above-referenced entities, Tirschwell, King, Lefkowitz, Gefner, and Goldberger (collectively, the “Director Defendants”) each owed fiduciary duties to Valitas Health Services, Inc. and/or, for the reasons set forth below, its creditors, including the highest obligation of care, loyalty, and good faith in managing and administering Valitas Health Services, Inc.’s affairs and the interests of Valitas Health Services, Inc.’s creditors.

111. Valitas Health Services, Inc. was rendered insolvent as a result of the divisional merger.

112. Because Valitas Health Services, Inc. was insolvent or was rendered insolvent by the divisional merger, the Director Defendants’ fiduciary duties to Valitas Health Services, Inc. run to the benefit of Valitas Health Services, Inc.’s creditors, including Mr. Hyman.

113. Once a director’s fiduciary duties to creditors arise, a director is generally prohibited from taking advantage of his or her intimate knowledge of the corporate affairs and his or her position of trust for his or her own benefit and to the detriment of the creditors to whom he

or she owes the duties, and the director must treat all creditors of the same class equally by making any payments to such creditors on a pro rata basis.

114. The duty of care required the Director Defendants to apprise themselves of all information relevant to their decisions and to carefully and critically consider that information. As set forth below and throughout this Complaint—including, particularly and without limitation, failing to carefully or critically consider the information provided, instead making choices to benefit the YesCare enterprise to the detriment of Valitas Health Services, Inc. and its creditors—the Director Defendants failed to uphold their duty of care and thus breached their duty of care.

115. The duty of loyalty required the Director Defendants to act with undivided and unselfish loyalty to the corporation and/or—given Valitas Health Services, Inc.’s insolvency—its creditors, and to exercise proper oversight and avoid self-dealing transactions with respect to an insolvent Valitas Health Services, Inc., unless those transactions met the standard of entire fairness. As set forth below and throughout this Complaint, the Director Defendants failed to do so and thus breached their duty of loyalty.

116. A director or officer acts in breach of the duty of good faith where the fiduciary (i) intentionally acts with a purpose other than that of advancing the best interests of the corporation or, in this case, the insolvent corporation’s creditors; (ii) acts with the intent to violate applicable positive law; or (iii) intentionally fails to act in the face of a known duty to act, demonstrating a conscious disregard for his or her duties. As set forth below and throughout this Complaint, the Director Defendants breached their duty of good faith.

117. While serving as officers and/or managers of Valitas Health Services, Inc., the Director Defendants also simultaneously held similar positions at other entities within the YesCare organization, as set forth above.

118. As a result of the Director Defendants' dual and multiple roles at other entities within the organization, the Director Defendants were hopelessly conflicted and unable to fairly and adequately consider the interests of Valitas Health Services, Inc. and/or its creditors.

119. As such, each of the Director Defendants, in breach of their fiduciary duties of care, loyalty, and good faith owed to an insolvent Valitas Health Services, Inc. and/or its creditors, abdicated their roles as corporate fiduciaries to Valitas Health Services, Inc.'s creditors and instead acted solely in the interest of Valitas Health Services, Inc.'s affiliates and parent companies, including CHS TX, Inc., Corizon Health, Inc., and YesCare Corp.

120. Indeed, some of the very agreements that the various entities entered into in connection with the divisional merger were between insiders, lacked any meaningful negotiation, and were driven by the upper management of YesCare and its various companies for the benefit of the parent entities and the directors and to the detriment of Valitas' creditors.

121. The Director Defendants thus breached the fiduciary duties owed to Valitas Health Services, Inc.'s creditors when they participated in the divisional merger and, without considering any other options, to the detriment of Valitas Health Services, Inc. and/or its creditors and to the benefit of Valitas Health Services, Inc.'s affiliates and parents.

122. The Director Defendants abdicated and disregarded their roles as corporate fiduciaries of Valitas and/or its creditors and instead acted solely in the interests of Valitas' affiliates and parent companies (including CHS TX, Inc., Corizon Health, Inc. n/k/a Tehum, and YesCare Corp.).

123. The Director Defendants not only lacked independence but acted with gross negligence, with malice, with reckless indifference, and/or in bad faith, and thus engaged in willful

and wanton conduct when they entered into the divisional merger in breach of their fiduciary duties owed to an insolvent Valitas Health Services, Inc. and/or its creditors.

124. The conduct of the Director Defendants in engaging in the divisional merger and saddling Corizon Health, Inc. n/k/a Tehum with Valitas Health Services, Inc.'s liabilities cannot be attributed to any rational business purpose as to Valitas Health Services, Inc. and/or its creditors.

125. The Director Defendants recklessly disregarded the fact that they were acting in a manner adverse to the interests of Valitas Health Services, Inc.'s creditors.

126. The conduct of the Director Defendants summarized above, among others, constituted breaches of their fiduciary duties, including but not limited to their duties of loyalty, care, and good faith.

127. As a direct and proximate result of the Director Defendants' breaches of their fiduciary duties, Valitas Health Services, Inc. and/or its creditors suffered significant damages in an amount to be proven at trial.

E. Aiding and Abetting

128. As described above, the Director Defendants breached their fiduciary duties owed to Valitas Health Services, Inc. and/or its creditors.

129. To the extent each Director Defendant was not personally involved in the breaches of fiduciary duty, including the divisional merger scheme, those remaining Director Defendants ("Aiding and Abetting Defendants") knew that the other Director Defendants owed fiduciary duties to Valitas Health Services, Inc. and/or its creditors and were breaching those duties in connection with the divisional merger and otherwise.

130. As an alternative to their direct conduct, the Aiding and Abetting Defendants colluded in and aided and abetted those breaches of fiduciary duties and the Aiding and Abetting

Defendants were active and knowing participants in and substantially assisted and/or encouraged those breaches of fiduciary duties in a variety of ways set forth throughout this Complaint.

131. As such, by directing and knowingly participating in the breaches of fiduciary duties by the Director Defendants, the Aiding and Abetting Defendants are liable for aiding and abetting breaches of fiduciary duties owed to Valitas Health Services, Inc. and/or its creditors.

132. For example, the Aiding and Abetting Defendants conceived, designed, and structured all aspects of the divisional merger and did so in a way that was not in the best interests of Valitas Health Services, Inc. and/or its creditors, but in the best interests of Valitas Health Services, Inc.'s parent companies and affiliates.

133. The Aiding and Abetting Defendants exerted dominion and control over the remaining Director Defendants and Valitas Health Services, Inc. in connection with the divisional merger in such a way as to harm Valitas Health Services, Inc. and/or its creditors and assisted the Director Defendants in facilitating and/or causing the divisional merger to the detriment of Valitas Health Services, Inc. and/or its creditors.

134. Upon information and belief, the decision to execute the divisional merger was not made by the Director Defendants after exercising their independent judgment and acting in the best interests of Valitas Health Services, Inc. and/or its creditors; rather, it was made and directed by the Director Defendants for the benefit of other entities in the YesCare family and to the detriment of Valitas Health Services, Inc. and/or its creditors.

135. By directing and instructing the Director Defendants to authorize Valitas Health Services, Inc.'s divisional merger, whether in whole or in part, the Aiding and Abetting Defendants knowingly participated in and substantially assisted the Director Defendants' breaches of fiduciary duties described above.

136. In addition, the Aiding and Abetting Defendants knowingly participated in and substantially assisted the Director Defendants' breaches of fiduciary duties by entering into the funding agreement discussed above, among others, as part of the overall fraudulent divisional merger scheme. That agreement was not an "arm's length" contract.

137. The actions of the Aiding and Abetting Defendants in knowingly participating and substantially assisting in the Director Defendants' breaches of fiduciary duties summarized above and throughout this Complaint were undertaken with gross negligence, with malice, with reckless indifference, and/or in bad faith, and thus constitute willful and wanton conduct.

138. As a direct and proximate result of the Director Defendants' breaches of their fiduciary duties, as aided and abetted by the Aiding and Abetting Defendants, Valitas Health Services, Inc. and/or its creditors suffered significant damages in an amount to be proven at trial.

F. Tortious Interference

139. Defendants Perigrove, Lefkowitz and Gefner acted in concert to tortiously interfere with Mr. Hyman's employment agreements. They did this prior to the purchase of Corizon by the unknown buyer, as well as after, but all their acts were in furtherance of their own interests and/or those of Perigrove, not the interest of Valitas.

140. Perigrove, Lefkowitz and Gefner had knowledge of Mr. Hyman's employment agreements.

141. Perigrove, Lefkowitz and Gefner intended to induce the breach by requiring Mr. Hyman to resign his officer position under false pretenses and by causing Valitas to terminate the employment agreements without cause and without accepting Mr. Hyman's resignation, while not paying Mr. Hyman his contractually entitled payments and benefits.

142. Perigrove, Lefkowitz and Gefner acted maliciously in their treatment of Mr. Hyman. In addition to the false statements made to induce his resignation of his officer position on the eve of the closing, they also acted to end his employment once he made inquiry about the \$3 million payment to Geneva Consulting, an affiliate of Perigrove.

143. Furthermore, Lefkowitz intentionally induced a breach of Mr. Hyman's employment agreements by interfering with Hyman's ability to fulfill his contractual obligations. In Lefkowitz's December 9th email, Lefkowitz instructed Mr. Hyman to cease making material company decisions.

144. Moreover, in response to Mr. Hyman asserting his rights under the employment agreements and inquiring about the suspicious \$3 million payment, Perigrove and its representatives maliciously threatened Mr. Hyman with "aggressive litigation" or a "bankruptcy filing."

145. The actions of Perigrove, Lefkowitz and Gefner proximately caused Valitas to breach Mr. Hyman's employment agreements.

146. Their actions were without privilege or justification.

147. Additionally, there was never formal Valitas board action to terminate Mr. Hyman's employment agreements. There was only the unauthorized acts of Perigrove and its agents.

148. Perigrove, Lefkowitz and Gefner are responsible for all damages suffered by Mr. Hyman from the breach of contract, including attorneys' fees, which damages should be trebled in accordance with Tenn. Code Ann. § 47-50-109.

G. Promissory Fraud

149. Mr. Hyman sues Mr. Lefkowitz, Perigrove, and Mr. King for promissory fraud.

150. As discussed above, Isaac Lefkowitz, on behalf of Perigrove, represented that “we have no intention of making any employment changes in the company from CEO all the way down the flag pole” and that there would be “no changes” to Mr. Hyman’s employment.

151. Similarly, Scott King assured Mr. Hyman that he would suffer no employment-related consequences as a result. Specifically, Mr. King represented that “the Corizon officers will stay on in an employment capacity and I have noted that in the document pertaining to the officers.”

152. Mr. Lefkowitz and Mr. King had no present intention to carry out these promises. As discussed above, they did in fact intend to make employment changes in the company and it was not true that the Corizon officers—among them Mr. Hyman—would stay on in an employment capacity.

153. Mr. Hyman reasonably relied on these representations when he signed the resignation as to his officer and board member status.

154. As a result of his resignation, Mr. Hyman was damaged.

H. Civil Conspiracy

155. Messrs. Lefkowitz, King, and Gassenheimer had a common design to accomplish an unlawful purpose by concerted action and by unlawful means the interference with Mr. Hyman’s employment contract, as discussed above.

156. They did so through the fraudulent misrepresentations of King and Lefkowitz and the threat of Mr. Gassenheimer, all as set forth above.

157. In doing so, King and Gassenheimer acted outside the scope of their relationship, if any, with the Alter Ego Defendants and/or Valitas Health Services, Inc., and they engaged in their conspiratorial conduct to further their own personal purposes.

158. As a result of this conspiracy, Mr. Hyman was damaged because his employment was terminated.

WHEREFORE, Plaintiff demands:

1. A jury of six (6) to try this case;
2. Compensatory damages of at least \$5 million or an amount the jury deems fair and reasonable, trebled pursuant to Tenn. Code Ann. § 47-50-109 with respect to Mr. Hyman's tortious interference claim;
3. A declaratory judgment, as set forth above;
4. All available remedies under the Tennessee Uniform Fraudulent Transfer Act, including, without limitation,
 - a. Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim;
 - b. An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedure prescribed by title 26;
 - c. Subject to applicable principles of equity and in accordance with applicable rules of civil procedure:
 - d. An injunction against further disposition by the debtor or a transferee, or both, of the assets transferred or of other property;
 - e. Appointment of a receiver to take charge of the assets transferred or of other property of the transferee; or
 - f. Any other relief the circumstances may require.
5. Attorneys' fees;

6. Punitive damages for Defendants' intentional, fraudulent, malicious, or reckless conduct, as set forth above;

7. To the extent any Defendant is a successor to Valitas Health Services, Inc. and bound by the terms of Mr. Hyman's employment agreements, an order compelling such Defendant to participate in the pending arbitration;

8. Pre- and post-judgment interest;

9. That Plaintiff be awarded such other and further relief as is just.

Respectfully submitted,

s/ Michael A. Johnson

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IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

**THE CURATORS OF THE UNIVERSITY OF)
MISSOURI and CAPITAL REGION)
MEDICAL CENTER,)**

Plaintiffs,)

Case No. 22BA-CV01701-01

v.)

Division 4

**TEHUM CARE SERVICE, INC. d/b/a)
CORIZON HEALTH, INC., CHS TX, INC.,)
and YESCARE CORP.,)**

Defendants.)

PLAINTIFFS' REPLY IN SUPPORT OF THEIR MOTION FOR PRELIMINARY
INJUNCTION

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The facts are not in dispute. As of at least November 2021, Corizon Health intended to “restructure.” Driven “by the hundreds of [] litigations”¹ against it, the restructuring was intended to “maximize the prospects of the Company’s former business,”² “re-allocate assets and liabilities among the resulting entities in a manner that is binding on creditors,”³ gain a “stronger balance sheet”⁴ and put “the Company” on “stronger financial footing.”⁵ As Corizon Health’s—now YesCare’s—CEO put it succinctly, the restructuring was intended to allow the Company to “make a fresh start.”⁶

Defendants do not dispute the restructuring was an insider transaction. Nor do they dispute that they intended the restructuring to bind Plaintiffs. Indeed, Defendants confirm that they intended for the restructuring, which gutted Corizon Health, leaving behind an empty shell unable to pay its debts, to affect “*all* of its creditors.”⁷

Unable to escape the facts, Defendants’ strategy is two-fold. First, they advance purely legal arguments. Ignoring both the letter and the spirit of the TBOC, Defendants advocate that the TBOC insulates their restructuring from fraudulent transfer laws because it was a “by-the-book” divisional merger. That’s not true. The TBOC is not a safe harbor; technical compliance with its underlying legal requirements does not insulate Defendants from what the law presumptively deems a fraudulent transfer. Seemingly recognizing this, Defendants next argue this Court lacks jurisdiction. But Defendants’ reincorporation in Texas, a place where they had and have no business, in order to effect their restructuring scheme does not rob this Court of jurisdiction. Nor

¹ YesCare and CHS TX’s Opposition to Plaintiffs’ Motion for Preliminary Injunction (“YesCare Opp.”) at ¶ 27.

² *Id.* at ¶ 8.

³ Corizon Health’s Opposition to Plaintiffs’ Motion for Preliminary Injunction (“Corizon Opp.”) at ¶¶ 7-8.

⁴ *See* Ex. A to Corizon Opp. at Corizon0011602.

⁵ **Ex. 45**, YesCare Employee Q&A, YESCARE-CHS-00000493.

⁶ *Id.*

⁷ YesCare Opp. at ¶ 25 (emphasis in original).

does it render Texas a forum with a more significant relationship to the case for purposes of successor liability.

Those arguments failing, Defendants dedicate the remainder of their briefing to previewing the scorched earth tactics they will employ if the Court orders any injunctive relief. Defendants threaten to declare bankruptcy, “deprive the tens of thousands of prisoners of their constitutional right to adequate medical care,” lay off their employees, and “prejudice hundreds of other contingent litigation claimants.”⁸

But these tactics lack teeth. Not only because YesCare and CHS TX have represented they are on strong financial footing, generate over \$300 million in revenue annually, and are set to begin work on a billion-dollar contract—but because this Court has broad authority to fashion equitable relief that protects Plaintiffs’ interests while allowing Defendants to continue with their business. For the foregoing reasons, Plaintiffs respectfully request this Court grant their Motion for Preliminary Injunction.

ADDITIONAL DISCOVERED FACTS

Since the filing of Plaintiffs’ Motion, additional facts have come to light that provide further support for Plaintiffs’ claims and requested injunctive relief.

I. YesCare and CHS TX Are Setting Up Shop in Missouri.

On June 6, 2022, CHS TX filed an Application for Certificate of Authority for a Foreign For-Profit Corporation with the Missouri Secretary of State’s Office.⁹ Then, on November 29, 2022, CHS TX filed a Registration of Fictitious Name with the Missouri Secretary of State, stating it is doing business in Missouri as “YesCare.”¹⁰

⁸ *Id.* at ¶ 27.

⁹ **Ex. 87**, June 6, 2022 CHS TX Application for Certificate of Authority with Missouri Secretary of State (authorizing CHS TX to do business in Missouri).

¹⁰ **Ex. 88**, November 29, 2022 CHS TX’s Registration of Fictitious Name with Missouri Secretary of State.

On April 4, 2022, Sara Tirschwell organized CHS MO, LLC in Missouri, stating its purpose was “[t]o provide correctional healthcare services.”¹¹ Tirschwell lists CHS MO, LLC’s registered agent as CT Corporation System at 120 S. Central Ave in Clayton, Missouri—the same registered agent previously used by Corizon, LLC.¹² Tirschwell lists the “principle office address” of CHS MO, LLC as 3411 Yoakum Blvd Suite 2901—which is Tirschwell’s personal residence, and is also listed as YesCare’s registered office.¹³ On January 13, 2023, CHS MO, LLC *also* filed a Registration of Fictitious Name with the Missouri Secretary of State, stating it, too, is doing business in Missouri as “YesCare.”¹⁴

II. Former Corizon Health CEO Mr. Hyman Also Alleges Defendants’ Fraudulent Transfer Scheme.

On December 30, 2022, Corizon Health’s former CEO James Hyman, ousted as part of the restructuring, filed a lawsuit in the Middle District of Tennessee alleging the restructuring was indeed intended to frustrate Corizon Health’s creditors.

Mr. Hyman alleges that in December 2021, new owners (whose identities were, and remain, unknown to him) purchased Flacks Group’s interest in M2 EquityCo, LLC and/or M2Holdco, LLC.¹⁵ Mr. Hyman alleges these new owners “performed no due diligence” prior to the purchase.¹⁶ Mr. Hyman alleges that “[a]lthough unfathomable to Mr. Hyman at the time, the reason for the new owners’ lack of due diligence became clear over the ensuing months—the liabilities did not matter to them.”¹⁷ Mr. Hyman alleges that “from the outset, the primary objective

¹¹ Ex. 89, CHS MO, LLC’s Articles of Organization.

¹² *Id.*; see Corizon’s Answer to Pls’ Original Petition, filed 7/11/22 at ¶ 4 (stating “Corizon admits that it can be served through its registered agent as listed in Paragraph 4 of the [Petition]”); see also Original Petition ¶ 4 (alleging Corizon, LLC’s registered agent is “120 South Central Avenue, Clayton, Missouri”).

¹³ See PI Motion, at p. 35.

¹⁴ Ex. 90, January 13, 2023 CHS MO’s Registration of Fictitious Name with Missouri Secretary of State.

¹⁵ Ex. 91, Hyman v. YesCare, et al., Complaint ¶ 34.

¹⁶ *Id.* at ¶ 35.

¹⁷ *Id.* at ¶ 60.

of [Corizon Health's] divisional merger and forthcoming bankruptcy was to allow Defendants to operate outside of bankruptcy while subjecting Mr. Hyman and other creditors to the mandatory stay that would deprive such creditors of any recovery.”¹⁸

III. Mr. Hyman Alleges Defendants Diverted At Least 3 Million In Company Money Shortly After Takeover; Engaged in Suspicious Business Dealings.

On December 8, 2021, Mr. Hyman alleges he discovered that Mr. Lefkowitz had ordered a wire transfer for \$3 million be sent from Valitas to Geneva Consulting, LLC as payment for future services vaguely described as “Corporate Restructuring.”¹⁹

Mr. Hyman alleges Mr. Lefkowitz had signed a “consulting agreement” with Geneva Consulting, LLC on behalf of Valitas, and by Jay Leitner on behalf of Geneva Consulting, LLC.²⁰

Mr. Hyman also alleges that he emailed Mr. Lefkowitz, concerned about the \$3 million payment to an entity apparently owned or controlled by Mr. Lefkowitz.²¹ Mr. Hyman characterized this transfer as “a dissipation of Valitas’ financial resources away from the daily health needs of its contracted clients, which could lead to a crisis for thousands of detainees and incarcerated prisoners.”²²

Less than ten minutes later, Mr. Lefkowitz responded that the payment was for “multiple Corizon litigation matters to get it settled before year end,” even though Corizon Health was a separate entity at the time.²³ Then, via letter dated December 9, 2021, Mr. Lefkowitz instructed Mr. Hyman to “refrain from making any material company decisions or issue any orders to any of the company and all its subsidiaries’ staff until the interim board will have a chance to install a permanent governing body of directors and officers will have the opportunity to evaluate each of

¹⁸ *Id.* at ¶ 79.

¹⁹ *Id.* at ¶ 44.

²⁰ *Id.* at ¶ 45.

²¹ *Id.* at ¶ 46.

²² *Id.*

²³ *Id.* at ¶ 47.

the former Corizon Health executives **for their new role in the restructuring of the company.**²⁴

Mr. Lefkowitz signed the letter as “Interim CEO and Member of the Board.”²⁵

Mr. Hyman alleges that “[u]pon information and belief, the \$3 million wire was part of Defendants’ scheme to redirect assets and silo liabilities into a shell company via the divisional merger[.]”²⁶ On December 10, 2021, Mr. Hyman alleges he sent an email to Mr. Lefkowitz, expressing his concern about how the transition was being handled, stating:

I take this opportunity to share a concern with you and the Board, that my refraining from engaging in my contractual duties, as you have directed in your letter, without my being advised who has been and who has not been consulted and/or notified of this intended course, may be an unwitting breach by the Company of important contractual and fiduciary duties to the Company’s many stakeholders, who rely on the uninterrupted continuity of the Company’s operations and decision-making processes to deliver patient care and respond to customer concerns.²⁷

Mr. Lefkowitz responded an hour later instructing Mr. Hyman to take a leave of absence and stating:

Be also aware, should you in any way have any negative communication that impacts the company, we will hold you liable for such damages.

We will deal in short order with your employment termination by all the options available to the company, either through a friendly severance or through aggressive litigation with you, or alternatively through a bankruptcy filing which will wipe out all of your claims...[w]e will have to wait until the new CEO is in place with the new governing body in place.²⁸

Mr. Hyman resigned.²⁹

Shortly after he resigned, Mr. Hyman alleges another suspect transaction occurred.³⁰

Another one of Lefkowitz, Leitner, and Gefner’s companies, called Seven Trade, LLC purchased

²⁴ *Id.* at ¶ 48 (emphasis added).

²⁵ *Id.*

²⁶ *Id.* at ¶ 49.

²⁷ *Id.* at ¶ 50.

²⁸ *Id.* at ¶ 51.

²⁹ *Id.* at ¶ 57.

³⁰ *Id.* at ¶ 57.

COVID test kits for immediate resale to the “deeply insolvent” Corizon Health under its control at a 57% markup (for a total of just over \$3.2 million).³¹

³¹ *Id.* at ¶ 58.

ARGUMENT

I. This Court Has Personal Jurisdiction Over Defendants.

Defendants fail to raise a colorable challenge to this Court’s jurisdiction over YesCare and CHS TX.

A. Personal Jurisdiction Exists Over YesCare and CHS TX As Recipients of, and Conspirators in, Corizon Health’s Fraudulent Transfers.

YesCare argues that where “the only contact between a defendant-transferee and the forum state is the claimed impact on an in-state creditor, personal jurisdiction over the transferee does not exist.” YesCare Opp. at ¶ 23. But that is not the only contact here. Not only did the fraudulent transfer affect in-state creditors (Plaintiffs), but the *debtor* was a Missouri limited liability company (Corizon, LLC) whose contract with Plaintiffs, and subsequent performance and breach, were located in Missouri. Courts applying Missouri law acknowledge personal jurisdiction over non-resident defendants-transferees in these circumstances. *See, e.g., Nat’l Green Gas, L.L.C. v. Estrategy, Inc.*, 2019 WL 13207472, at *5 (W.D. Mo. June 27, 2019).

Defendants fail to meaningfully distinguish Plaintiffs’ authority. YesCare argues *Nat’l Green Gas, L.L.C.* doesn’t apply because the court found personal jurisdiction over a non-resident transferee where, along with the effects felt by Missouri creditors, the debtor had its principal place of business in Missouri. YesCare Opp. at ¶ 24. But that is also the case here: immediately before the Restructuring, Corizon, LLC was a Missouri limited liability company.³² It was so when it contracted with Plaintiffs; when it contracted with the MDOC for the provision of services to Missouri inmates; when it performed its services in Missouri; when it received funds from the MDOC; when it failed to pay Plaintiffs; and when it developed a scheme to fraudulently transfer its assets, including \$22.3 million in unsecured funds from its Corizon, LLC account to YesCare

³² *See* Amended Answer to First Amended Petition ¶ 3.

and CHS TX. Defendants provide no authority for the proposition that *Nat'l Green Gas, L.L.C.* is rendered inapplicable by their conversion of Corizon, LLC to a Texas entity in the restructuring as part of the fraudulent scheme to shed its assets. Thus, YesCare's argument that "neither Corizon nor CHS TX nor YesCare is a Missouri corporation or has any other connection to Missouri sufficient to support the Court's exercise of personal jurisdiction" is wrong, and ignores Corizon Health's repeated admissions that this Court retains personal jurisdiction over it.³³

YesCare next argues *C.D. Acquisition Holdings, Inc. v. Meinershagen*, 2007 WL 184796, at *1 (W.D. Pa. Jan. 22, 2007) doesn't apply because the "alleged transactions were specifically aimed at the forum state." YesCare Opp. at ¶ 25.³⁴ YesCare claims that Corizon Health engaged in the restructuring for "reasons unrelated to Plaintiffs," yet, in the same sentence, confirms that the restructuring was in fact intended to affect its mounting creditors. YesCare Opp. at ¶ 25 (claiming the restructuring was a step to "improve the value available to *all* of its creditors") (emphasis in original). Plaintiffs are two of those creditors. By admitting that the restructuring was intended to affect its creditors, including Plaintiffs, YesCare admits they targeted their conduct at the forum state. YesCare militates no support for the proposition that personal jurisdiction does not exist because the restructuring was intended to affect creditors *in addition to* Plaintiffs.

Mullins v. Testamerica, Inc., 554 F. 3d 386 (5th Cir. 2009) is instructive here. In that case, the Fifth Circuit held that an out of state transferee of fraudulently conveyed assets in violation of UFTA was subject to personal jurisdiction in Texas, where the transferee was more than a mere passive recipient of a fraudulent transfer, but rather was an active, insider participant/conspirator in that transfer. The court concluded that these acts in "engineering a transfer that knowingly

³³ See Amended Answer ¶¶ 8-9.

³⁴ Defendants also argue this case is inapposite because it involved a "judgment creditor," but provide no support for why the distinction of "judgment creditor" versus "creditor" is relevant in the personal jurisdiction analysis. See *id.*

impaired the rights of a Texas resident under agreements centered in Texas substantiates that he purposefully aimed his intentionally tortious conduct at the forum state.” *Id.* at 403; *see Cent. Freight Lines Inc. v. APA Transp. Corp.*, 322 F.3d 376, 383–84 (5th Cir.2003) (holding that the defendant shipper’s awareness of and interference with a contractual relationship between two Texas-based companies whose business relationship centers in Texas and that resulted in harm to the plaintiff in Texas supported personal jurisdiction in Texas). So too, here. YesCare and CHS TX are not arm’s-length, passive recipients of fraudulent transfers from Corizon Health. Rather, they are entities created and controlled by Corizon Health’s board for the express purpose of engineering a transfer that knowingly impaired the rights of Missouri creditors under large-scale agreements centered in Missouri.³⁵

This Court’s personal jurisdiction over these entities is made even more obvious by the fact that the company is currently setting up shop and trying to do business in Missouri under the “YesCare” name, leaving a trail of unpaid Corizon, LLC creditors in its wake. Indeed, after benefiting from the fraudulent transfer of millions in assets from Missouri entity Corizon, LLC, CHS TX, Inc. (and an entity called “CHS MO, LLC”) have submitted filings in Missouri to operate under the “YesCare” name. Defendants cannot have their cake and eat it too. This Court has personal jurisdiction over YesCare and CHS TX.

³⁵ **Ex. 87**, June 6, 2022 CHS TX Application for Certificate of Authority with Missouri Secretary of State (authorizing CHS TX to do business in Missouri); **Ex. 88**, November 29, 2022 CHS TX’s Registration of Fictitious Name with Missouri Secretary of State (stating CHS TX, Inc. is “doing business” as “YesCare”); **Ex. 89**; **Ex. 90**, January 13, 2023 CHS MO’s Registration of Fictitious Name with Missouri Secretary of State (stating CHS MO, LLC is “doing business” as “YesCare”).

B. Independently, Personal Jurisdiction Exists Over YesCare and CHS TX Because They Are Successors to Corizon Health.

Next, YesCare and CHS TX argue that this court doesn't have personal jurisdiction over them under successor liability principles "because...neither entity is a successor to Corizon." YesCare Opp. ¶ 26. As is fully laid out in Plaintiffs' Motion for Preliminary Injunction, Argument Section II, YesCare and CHS TX undisputedly satisfy the elements of three independent methods for establishing successor liability test in Missouri.

YesCare and CHS TX argue that even if they are successors to Corizon Health, they are not subject to this Court's personal jurisdiction because they don't have "sufficient contacts with Missouri to support personal jurisdiction," and "the jurisdictional contacts of Corizon may not be attributed to" CHS TX and YesCare. YesCare Opp. ¶¶ 23, 26. Not so.

In *Green v. Montgomery Ward & Co.* cited positively elsewhere in YesCare's Opposition (see YesCare's Opp. ¶ 41), the Western District Court of Appeals explained that in successor liability, "the close alignment" of the successor "to the predecessor is enough to bind" the successor "to its predecessor's jurisdictional contacts." 775 S.W.2d 162, 166 (Mo. App. W.D. 1989). The court affirmed that, "[a]s a 'mere continuation' of [the predecessor], [the successor] is subject to the personal jurisdiction of the Missouri courts if [the predecessor] had contacts with the state sufficient to allow this exercise of personal jurisdiction." *Id.* The court explained that "[t]he rationale for this is quite simple. It would be all too easy for a corporation to immunize itself from liability by utilizing such a device as a change of name." *Id.* Thus, the court explained that the proper question in this analysis is "whether the contacts [the predecessor] had with Missouri are sufficient to establish long-arm jurisdiction." *Id.*

The Missouri Supreme Court, en banc, citing *Green* and a wealth of other cases, has confirmed that "a corporation may be subject to personal jurisdiction if its predecessor had

sufficient contacts with the state to allow the exercise of jurisdiction.” *Bennett v. Rapid Am. Corp.*, 816 S.W.2d 677, 678 (Mo. banc. 1991). Federal courts applying Missouri law likewise confirm this principle. In *LearSchmidt*, the Western District of Missouri, citing *Green*, explained that for personal jurisdiction over a purported successor, “the question is whether the contacts [the predecessor] had with Missouri are sufficient to establish jurisdiction over its successor.” *LearSchmidt Inv. Grp., LLC v. AB-Alpine SPE, LLC*, 2019 WL 3779521, at *1-6 (W.D. Mo. Aug. 12, 2019). Finding that the defendant was a “mere continuation” of its predecessor, the Court confirmed that the defendant would be “subject to the personal jurisdiction of the Missouri courts” if its predecessor “had contacts with the state sufficient to allow this exercise of personal jurisdiction.” *Id.*

YesCare and CHS TX fail to dispute this authority,³⁶ and the cases they cite do not require a contrary result. *See Koch Supplies, Inc. v. Charles Needham Indus.*, 1990 WL 274485, at *3 (W.D. Mo. Nov. 14, 1990) (explaining jurisdiction over successor company was proper even though the defendant “engaged in minimal amounts of business in Missouri,” because the facts nonetheless established that it was a “mere continuation” of the predecessor and “purposefully availed itself of the privileges and benefits of conducting activities within Missouri”); *Stolzenburg v. Biewer Lumber, LLC*, 2016 WL 3582032, at *1 (E.D. Mo. June 28, 2016) (denying motion to dismiss for lack of personal jurisdiction over alleged successor company, Biewer, where the plaintiff sufficiently alleged that Biewer and its predecessor Green Tree were controlled by the same people, and that Biewer had expressly or impliedly agreed to assume liabilities of Green tree). Thus, this Court has personal jurisdiction over YesCare and CHS TX.

³⁶ YesCare seeks to distinguish *LearSchmidt* by arguing “jurisdiction was not contested” in that case. YesCare Opp. at fn. 44. But as the above analysis demonstrates, that reading of *LearSchmidt* is inaccurate; jurisdiction *was* contested; AB-Alpine had moved to dismiss the plaintiff’s claims for lack of personal jurisdiction, prompting an evidentiary hearing and the Court’s ruling. *Id.* at *1.

II. Plaintiffs Have a Fair Chance of Prevailing on Their Fraudulent Transfer Claims.

This is the most important factor. *Craig v. Simon*, 980 F.3d 614, 617 (8th Cir. 2020). And it weighs strongly in Plaintiffs’ favor.

A. The TBOC Does Not Authorize Defendants’ Fraudulent Conduct.

Corizon Health complains that Plaintiffs “make no effort to even address Texas law as part of their Motion.” Corizon Opp. at 10. But as Plaintiffs explain in Section I of their Motion, the TBOC “does not permit that company to thereby prejudice its creditors.” *In re Aldrich Pump LLC*, 2021 WL 3729335, at *27 (Bankr. W.D.N.C. Aug. 23, 2021). None of the Defendants address this. Indeed, the TBOC “explicitly states that the merger provisions do not ‘abridge any right or rights of any creditor under existing laws.’” *Id.* (citing Tex. Bus. Orgs. Code Ann § 10.901). This has been the “unwavering and stated policy behind the Texas divisional merger statute since it was first adopted,” memorialized in both the text of the statute and its legislative history. *Id.* (explaining the legislative history of the TBOC reflected that “creditors would continue to have the protections provided by the Uniform Fraudulent Transfer Act and other existing statutes that protect the rights of creditors”). Two recent bankruptcy court cases confirm: the Texas divisive merger statute did not relieve companies of obligations under preexisting agreements. *In re Aldrich Pump LLC*, 2021 WL 3729335, at *27–30 (Bankr. W.D.N.C. Aug. 23, 2021); *In re DBMP LLC*, 2021 WL 3552350, at *24–26 (Bankr. W.D.N.C. Aug. 11, 2021). In short, Plaintiffs Motion is not a request for this Court for analyze a “lawful corporate transaction[.]” “with total disregard for the law of the state of incorporation,”³⁷ but is a request aligned with the policy of the very statute Defendants seek to invoke.

³⁷ Corizon Opp. at 9.

B. Plaintiffs' Evidence Presumptively Establishes Actual Fraud.

Under MUFTA, a transfer is fraudulent if “the debtor made the transfer or incurred the obligation ... [w]ith actual intent to hinder, delay or defraud any creditor of the debtor.” *See* Mo. Stat. Ann. § 428.024.1.(1); *Jet Midwest Int'l Co. v. Jet Midwest Grp., LLC*, 2020 WL 4819416, at *49 (W.D. Mo. May 26, 2020), *amended*, 2020 WL 13049652 (W.D. Mo. Aug. 6, 2020).

The focus of the inquiry is “on the intent of the debtor,” as opposed to the transferee’s intent. *Jet Midwest Int’ Co.*, 2020 WL 4819416, at *49. Corizon Health is the debtor. Yet, nowhere in Corizon Health’s opposition does it dispute intent. Instead, it simply states it was “faced with no other option.” Corizon Opp. at p. 10. Indeed, Corizon Health’s only argument against Plaintiffs’ MUFTA claims is that there was no “transfer” of assets. Corizon Opp. at 10, 11.³⁸ Because this argument fails on its face, Plaintiffs have established a likelihood of success on the merits.

i. The Effect of the Restructuring Was Plainly to Hinder or Delay.

The best evidence of a debtor’s intent is the effect of the debtor’s conduct. *Citizens National Bank v. Cook*, 857 S.W.2d 502 (Mo. App. W.D. 1993). If the necessary consequence of a conceded transaction was defrauding another, then the transaction itself is conclusive evidence of a fraudulent intent. *Id.* (explaining a party cannot be permitted to say that he did not intend the necessary consequence of his own voluntary act).

There can be no dispute that the effect of Defendants’ actions was, at the very least, to “hinder or delay” Plaintiffs from collecting the amounts owed under the Agreement. *In re Tronox Inc.* is instructive here. 503 B.R. 239, 280 (Bankr. S.D.N.Y. 2013). In that case, which was a non-

³⁸ As is fully laid out in Plaintiffs’ Opposition to Defendants’ Motion to Dismiss, Section II, and Plaintiffs’ Motion for Preliminary Injunction, Section I, this argument lacks merit. The TBOC is not a safe harbor; If a divisional merger is fraudulent, it is voidable, just as any other transfer under MUFTA. *See, also, e.g., Derma Pen, LLC v. 4EverYoung Ltd.*, 2015 WL 641618, at *5 (D. Utah Feb. 16, 2015) (a debtor’s “technical compliance with the underlying legal requirements for a grant of lien under Article 9 of the Uniform Commercial Code does not insulate him from a fraudulent transfer attack”).

Texas two-step spinoff, Kerr-McGee Corporation (Old KM) was a chemical and energy company plagued with onerous liabilities. To rid itself of those liabilities, Old KM created a new parent entity, NKM, to which it transferred all of Old KM's equity in its profitable subsidiaries. Old KM retained all of its liabilities, and renamed itself "Tronox." After suit was filed, the court ruled that Defendants were liable for actual and constructive fraud under Oklahoma's Uniform Fraudulent Transfer Act. The court found that it was clear from the evidence that "there can be no dispute that [Old KM] acted to free substantially all of its assets—certainly its most valuable assets—from 85 years of environmental and tort liabilities." *Id.* at 280. The court explained that "[t]he obvious consequence of this act was that the legacy creditors would not be able to claim against 'substantially all of [old KM's] assets,' and with a minimal asset base against which to recover in the future, would accordingly be 'hindered or delayed' as the direct consequence of the scheme." *Id.* at 280; *see also United States v. Spencer*, 2012 WL 4577927 (N.D.Okla. Oct. 2, 2012) (concluding the debtor "admitted his intent to delay collection of the debt" where the defendant testified that he put funds in trust to delay his principal creditor and gain time so he could make enough money to pay the debt); *ASARCO LLC v. Americas Mining Corp.*, 396 B.R. 278, 386 (S.D. Tex. 2008) (observing that "a transfer may be made with fraudulent intent even though the debtor did not intend to harm creditors but knew that by entering the transaction, creditors would inevitably be hindered, delayed or defrauded").

So too, here. Corizon Health acted to free substantially all of its assets from years of mounting tort and professional liabilities. The obvious consequence of this act was that its unsecured creditors would not be able to claim against substantially all of Corizon Health's assets, and with a minimal asset base against which to recover, would accordingly be "hindered or delayed" as a direct consequence of the scheme.

ii. Separately, Defendants' Admissions Are Overwhelming Direct Evidence of Intent to Defraud.

While fraudulent intent is rarely proven by direct evidence, this is the rare case in which Defendants' own admissions evidence direct intent to defraud. *See, e.g., CitiMortgage, Inc. v. Just Mortg., Inc.*, 2013 WL 6538680, at *2 (E.D. Mo. Dec. 13, 2013) (explaining badges of fraud are typically used to prove intent because direct evidence of fraud is "rare").

Schmoll v. ACandS, Inc. is instructive here. 703 F. Supp. 868, 872 (D. Or. 1988), *aff'd*, 977 F.2d 499 (9th Cir. 1992). In that case, the district court found defendant Raymark Corporation was liable for the debts of its pre-restructuring predecessor, acknowledging statements made by the company evidencing that it carried out the restructuring to escape liability, including:

- "In response to Raymark Corporation's financial difficulties...officers and directors, with the advice of counsel, developed the sophisticated corporate restructuring scheme." *Id.* at 873;
- Raymark Corporation claimed in its annual report that the company's strategy was "to protect and enhance shareholder investment, to maximize the amounts available for deserving asbestos-injured claimants, and to limit exposure for asbestos claims only to businesses currently threatened, thus enabling our other businesses and any new business opportunities to grow, unshadowed by the cloud of [] liability." *Id.* at 873-74;
- Raymark Corporation stated the purpose of the restructuring was also "to gain access to new sources of capital and borrowed funds which could be used to finance the acquisition and operation of new business in a corporate restructure." *Id.* at 874.

The Court concluded, on these facts, that "[t]here is no just reason to respect the integrity of these transactions," because "although the corporate restructuring meets the technical formalities of corporate form, it was designed with the improper purpose of escaping asbestos-related liabilities." *Id.* at 874. The Court noted it was "ironic" that while Raymark "pride[s] itself" for not filing bankruptcy, it was "in effect attempting a bankruptcy-like reorganization without affording creditors the protections of a formal bankruptcy." *Id.*

That’s exactly what Corizon Health has done, here. And like in *Schmoll*, Defendants’ own statements reveal their intent:

- “The 2022 Corporate Restructuring allowed Corizon to avoid bankruptcy;”³⁹
- “Given Corizon’s financial position, it did not have the financial wherewithal to satisfy its defaulted secured debt, let alone its unsecured debt and litigation claims....In early 2022, Corizon’s Board, with the help of counsel, began considering restructuring alternatives” including “a divisional merger” under the TBOC, which allows corporate entities to “re-allocate assets and liabilities among the resulting entities in a manner that is binding on creditors;”⁴⁰
- “The Company was deeply insolvent and heading towards bankruptcy as a result of mounting litigation expenses related to professional liability claims...Corizon faced several hundred lawsuits at the time of the 2022 Corporate Restructuring...Corizon determined that the fairest and most value-maximizing path forward, which would also maximize the prospects of the Company’s former business as a going concern, was to engage in a divisional merger...;”⁴¹
- Corizon’s financial “challenges have negatively impact the Company’s ability to retain existing contracts, as well as the Company’s ability to win new business. Competitors with stronger balance sheets have a distinct advantage....For these reasons, Management believes it is critical that the Company...evaluate all available restructuring alternatives.”⁴²
- “**Why are we making this change?** After digging in, we decided that this was the best path forward—to make a fresh start....This change puts us on stronger financial footing and broadens our access to resources that we have never had”⁴³
- “This affords our re-branded organization with....strong financial and leadership stability”⁴⁴

In fact, Defendants repeatedly admit that Corizon Health’s “decision to undergo the 2022 Corporate Restructuring,” was intended to affect Corizon Health’s creditors (what Defendants charitably characterize as an intent to “preserve value” for them), and to “maximize the prospect

³⁹ YesCare Opp. at ¶ 51.

⁴⁰ Corizon Opp. at ¶¶ 7-8

⁴¹ YesCare Opp. at ¶ 8.

⁴² Ex. A to Corizon Opp. at 0011602.

⁴³ Ex. 45, YesCare Employee Q&A, YESCARE-CHS-00000493.

⁴⁴ Ex. 16, YesCare’s 6.1.22 Invoicing Talking Points Email - YESCARE-CHS-00000446-449 at 448.

of the Company’s former business.” *See, e.g.*, YesCare Opp. at ¶¶ 1; fn. 21; 25; 31; Corizon Opp. at p. 18 (“a key purpose of the divisional merger” was “protect unsecured creditors”).

Thus, even without the badges of fraud, Plaintiffs have established a fair chance of succeeding on the theory that Defendants acted to defraud, hinder or delay creditors when they executed the Restructuring.

iii. *Independently, Missouri Law Presumes the Restructuring was Fraudulent Because of the Presence of Several Badges of Fraud.*

Separate and apart from these statements of intent, the restructuring displays virtually all the badges of fraud. The badges of fraud are not “elements;”⁴⁵ while the presence of “any one” of the eleven badges of fraud “can be a sufficient basis on which to find the requisite intent,” the presence of “more than one” of the eleven badges of fraud “strongly indicates that the debtor did, in fact, possess the requisite intent” to defraud. *Jet Midwest Int’l Co.*, 2020 WL 4819416, at *51. Because several badges of fraud are present, a presumption arises that the restructuring was fraudulent. *Higgins v. Ferrari*, 474 S.W.3d 630, 638 (Mo. App. W.D. 2015); *See also In re Sherman*, 67 F.3d 1348, 1354 (8th Cir. 1995) (explaining the confluence of several badges of fraud constitutes “conclusive evidence” of actual intent to defraud).

None of the Defendants dispute that the assets transferred were to insiders.⁴⁶ Likewise, none of the Defendants dispute that Corizon Health retained control of the assets transferred. YesCare and CHS TX dispute that the transaction was “concealed” because the corporate restructuring was “consummated through a public filing” and YesCare “publicly announced” it after the fact. YesCare Opp. at ¶ 34. But this argument lacks merit. *See, e.g., Total Renal Care*,

⁴⁵ *See* YesCare Opp. at ¶ 36 (characterizing the badges of fraud as elements).

⁴⁶ Since Plaintiffs’ Motion, Plaintiffs have received corporate filings further confirming the insider-status of the transaction. **Ex. 92**, 2021 Annual Report of Valitas Intermediate Holdings, Inc. (establishing that David Gefner, Isaac Lefkowitz, Jay Leitner, and Abe Goldberger are Valitas Intermediate Holdings, Inc.’s board of directors; Valitas owns Corizon Health).

Inc. v. Bharati Enterprises, L.P., 2011 WL 13248444, at *5 (E.D. Mo. Aug. 4, 2011) (rejecting the defendants’ argument that the plaintiff had failed to plead the transfer was concealed because the quitclaim deed was a matter of public record, explaining defendant deliberately left out any mention of the transfer in a deposition taken three months after the transfer and implied it still owned the property). None of the Defendants dispute that before the transfer was made, Corizon Health had been threatened with suit.⁴⁷ None of the Defendants dispute that the transfer was of substantially all of Corizon Health’s assets. None of the Defendants dispute that Corizon Health was insolvent or became insolvent shortly after the transfer.⁴⁸ And it cannot be reasonably disputed that the transaction occurred shortly after a substantial debt was incurred. Together, these factors establish a presumption and “strong inference” of fraud, and Plaintiffs have a high likelihood of success on their MUFTA claim. *See, e.g., BancorpSouth Bank v. Hall*, 2011 WL 529971, at *5 (W.D. Mo. Feb. 7, 2011) (granting plaintiffs’ motion for preliminary injunction, finding plaintiffs were likely to succeed on the merits of their MUFTA claim where four badges of fraud were present).

Once the presumption of fraud has been established, the burden shifts to the debtor who bears the burden to prove that the transfer was not made for the purpose to hinder, delay or defraud creditors. *Higgins*, 474 S.W.3d at 638; *Jet Midwest Int’l Co.*, 2020 WL 4819416, at *50. This is “a heavy burden,” and requires more than simply “explain[ing] away natural inferences[.]” *Cole v. Strauss*, 2014 WL 4055787, at *7 (W.D. Mo. Aug. 15, 2014), *aff’d*, 608 F. App’x 438 (8th Cir. 2015).

⁴⁷ All Defendants make much ado about how they were planning the restructuring *before* Plaintiffs sent their second demand letter in April of 2022. *See* Corizon Opp. at fn.1; YesCare Opp. at ¶ 9. This argument lacks legal significance. As is fully laid out in Plaintiffs’ Motion, the April 2022 demand letter was preceded not only by a demand letter in November 2021, but months of repeated attempts by Plaintiffs to collect the amounts owed. This badge is undisputedly satisfied. *See, e.g., In re The Heritage Organization, L.L.C.*, 413 B.R. 438, 473–74 (Bankr. N.D. Tex. 2009) (finding demands for repayment sufficient to satisfy this badge).

⁴⁸ “Corizon was facing insolvency at the time of its financial restructuring.” YesCare Opp. at ¶ 35.

Because Corizon Health does not attempt to dispute intent, it has failed to meet this burden. Indeed, the only evidence Corizon Health attaches to its Opposition is a presentation to Corizon Health's board which conspicuously *redacts*, among other things, Corizon Health's "core objectives" for the restructuring.⁴⁹ Corizon Health otherwise lends no support for the proposition that they did not intend to delay, hinder, or defraud.⁵⁰ While Corizon Health's Opposition generally claims the restructuring was intended to "protect unsecured creditors" (Corizon Opp. at 18), this is not a straight-faced argument. Before the restructuring, Corizon, LLC had \$22.3 million in unsecured funds with which it could have paid Plaintiffs. Now, those funds are with YesCare—and Corizon Health claims it cannot pay Plaintiffs because they have no assets. How did this transaction protect Plaintiffs?

iv. *YesCare and CHS TX Have Failed to Establish "Good Faith" and "Reasonably Equivalent Value."*

In response to an actual fraud claim, the transferee may attempt to assert, as an affirmative defense, that the transferee "took in good faith and for a reasonably equivalent value." *Jet Midwest*

⁴⁹ Ex. A to Corizon Opp. at Corizon011604.

⁵⁰ In its factual background (though not in the argument section of its Opposition) Corizon Health claims it "ensure[d]" that the Restructuring was "fair" because it engaged FTICA to render a "fairness opinion." Corizon Opp. at ¶¶ 9-10. Corizon Health alleges FTICA "conducted widescale due diligence," in preparing this opinion; a claim belied by FTICA's representations in the actual report. Corizon Opp. at ¶ 9; **Ex. 18**, Presentation to Corizon Health, Inc on Fairness Analysis Pertaining to Proposed Transaction, YESCARE-CHS-00000383 at 385 (explaining FTICA "has not performed or obtained any independent appraisal of the assets or liabilities...of the Company or of the parties to the Proposed Transaction"); *id.* ("In preparing this Presentation, FTICA (i) has relied upon and assumed the accuracy, completeness, and fair presentation of" all information provided by senior management of Corizon, and "does not assume any responsibility, obligation, or liability...for the accuracy, completeness, reasonableness, achievability, or independent verification of, and FTICA has not independently verified, any such information," and "has relied upon the assurances of Management that they are unaware of any facts or circumstances that would make any such information...incomplete, inaccurate, or misleading in any material respect,"); *id.* at 386 ("All analyses contained herein...and methodologies are predicated on numerous assumptions pertaining to prospective economic and operating conditions"); *id.* ("FTICA makes no representations regarding the accuracy or completeness of the information provided by the Company"); *id.* at 387 ("While FTICA is frequently engaged to render transaction, collateral value, tax and other financial reporting opinions to its clients, including ASC 820 fair value opinions, purchase price allocation opinions, goodwill impairment opinions, and equity-based incentive opinions, FTICA was not engaged to render any such opinions (or perform any supplemental due diligence and/or analyses that might be customary in connection with such opinions) in connection with this Presentation").

Int'l Co., 2020 WL 4819416, at *52 (citing Mo. Stat. Ann. § 428.044.1). To successfully assert this affirmative defense, “the transferee must prove *both* good faith *and* reasonably equivalent value.” *Id.* (emphasis in original). In the Eighth Circuit, “[t]he question of good faith consists of two parts: (1) whether the transferee was on inquiry notice of the transferor’s fraud or insolvency; and, if so, (2) whether the transferee conducted a diligent investigation.” *Id.*

Here, YesCare and CHS TX fail to meet their burden under either element. It is undisputed that YesCare and CHS TX, created, owned, and controlled by Corizon Health’s management, actually knew that Corizon Health was in financial distress and intended to shed its assets at the expense of its creditors—indeed, that was the impetus for the transfers. And while YesCare and CHS TX, like Corizon Health, conclude without support that the restructuring “preserve[d] value” for Plaintiffs because Corizon Health was released of “nearly \$100 million of senior secured debt,” they fail to address Corizon, LLC’s \$22.3 million in unsecured funds that would have been available to Plaintiffs before they were syphoned away by CHS TX and YesCare. Those funds are gone; and Plaintiffs now must stand among the creditors of not only Corizon, LLC, but of Corizon Health’s other subsidiaries (who combined liabilities to form “Corizon Health”) in seeking to recover from an insolvent shell.

III. Plaintiffs Have a Fair Chance of Prevailing on Their Successor Liability Theories.

Defendants do not dispute that Missouri law regards Defendants’ restructuring as the paradigmatic case of successor liability. Thus, their sole defense to successor liability is that Texas law, instead of Missouri law, should apply. Notwithstanding that YesCare and CHS TX have no business in Texas whatsoever (in fact, their joint principal place of business is Corizon Health’s former headquarters in Tennessee), this argument fails.

Defendants first argue that “[b]ecause YesCare, CHS TX, and Corizon are all Texas corporations, Texas law determines whether Corizon’s creditors may maintain any lawsuit against

its purported successors.” YesCare Opp. at ¶ 37. But neither of the cases Defendants cite for this proposition supports this argument. *Montgomery Bank, N.A. v. First Horizon Home Loan Corp.*, for example, did not involve disputes of successor liability, as the successor defendant did not contest that it assumed the obligation of its predecessor. 2010 WL 1712848, at *1 (E.D. Mo. Apr. 26, 2010). Instead, the defendants in *Montgomery* argued that the predecessor company should be dismissed because it no longer existed and the successor had admittedly taken on its obligations. *Id.* at *2 (explaining there was “no apparent basis” for the plaintiff to assert claims against the predecessor because it “ceased to exist” and the successor “assumed [its] debts and liabilities, including its obligations with respect to the [contract]”). *Pac. Intermountain Exp. Co. v. Best Truck Lines, Inc.*, likewise, is factually inapposite. 518 S.W.2d 469, 470 (Mo. App. K.C. 1974) (affirming judgment entered against defendant, holding defendant was estopped from asserting defense of lack of corporate existence).

Next, Defendants argue for application of Missouri’s “internal affairs” doctrine, claiming “Plaintiffs’ theories of successor liability are based on the corporate formation of YesCare and CHS TX.” YesCare Opp. at ¶¶ 37-39. Not so. The “internal affairs” doctrine concerns the relationship between the corporation and its shareholders, directors, and officers, not the relationship between corporations and external parties. *See, e.g., First Nat. City Bank v. Banco Para El Comercio Exterior de Cuba*, 462 U.S. 611, 621 (1983) (“As a general matter, the law of the state of incorporation normally determines issues relating to the *internal* affairs of a corporation....Different conflicts principles apply, however, where the rights of third parties *external* to the corporation are at issue”) (emphasis in original); Restatement (Second) of Conflict of Laws § 313(a) (1971) (explaining a “corporation’s internal affairs are involved whenever the issue concerns the relations *inter se of the corporation*, its shareholders, directors,

officers or agents”) (emphasis added); *Id.* at § 302 cmt. e (explaining that matters regarding a corporate’s internal administration include the election or appointment of directors, the adoption of bylaws, the issuance of corporate shares, or cumulative voting requirements); *J.Y.C.C. v. Doe Run Res., Corp.*, 370 F. Supp. 3d 1031, 1044 (E.D. Mo. 2019) (holding the “internal affairs” doctrine inapplicable to case involving veil piercing where it did not involve any disputes about the internal affairs of the various defendants, citing Restatement (Second) of Conflicts of Laws § 302 cmt. e).

Plaintiffs are not members, directors, shareholders, or officers of Defendants; and the theories Plaintiffs rely on to show breach of contract, fraudulent transfer, and fraud concern YesCare and CHS TX’s liability for actions which affected them—external parties. Because Plaintiffs’ successor liability theories concern YesCare and CHS TX’s liability to third parties—instead of their shareholders, directors, or officers—the “internal affairs” doctrine does not apply. *See, e.g., Enslein as Tr. for Xurex, Inc. v. Di Mase*, 2019 WL 2505052, at *27 (W.D. Mo. June 17, 2019) (holding the internal affairs doctrine is not applicable to the plaintiff’s claim of aiding and abetting breach of fiduciary duty where it did not affect the organic structure or internal administration of a corporation, did not have anything to do with internal regulation of a corporation, did not involve disputes about internal affairs, and did not involve the issuance of stock); *Shaffer v. Health Acquisition Co., LLC*, 2019 WL 1049392, at *6 (W.D. Mo. Mar. 5, 2019) (explaining an action by shareholders on behalf of a corporation seeking to vindicate its rights against third parties case did not involve “regulation of the internal affairs” of the corporation).

YesCare claims *Enslein* and *Schaffer* are not on point because they “did not concern a corporation’s internal organization.” YesCare Opp. at ¶ 39. But that is exactly the point—the courts

in those cases concluded, after considering whether the internal affairs doctrine should apply, that neither case concerned the “internal affairs” of a corporation, just as this case, too, does not.

YesCare seeks to distinguish *A.O.A.* because it “concerned a veil-piercing claim—a question of whether the corporation, in question, was *ignoring* corporate formalities,” which YesCare claims is “a theory Plaintiffs did not pursue.” YesCare Opp. at ¶ 39 (citing *A.O.A. v. Rennert*, 350 F. Supp. 3d 818, 834 (E.D. Mo. 2018)). This argument makes no sense. Successor liability is an equitable doctrine to “ignore” the corporate form to provide relief to outside parties, and Defendants fail to establish how the principles laid out in *A.O.A.* regarding veil-piercing, also an equitable doctrine closely related and often pursued in tandem with successor liability, do not apply here. In *A.O.A.*, the Court explained that the internal affairs doctrine’s purpose was not served by applying it to the subject veil-piercing claims, which “relate[] to the way the various entities were operated in relation to one another and to [defendant],” and was not, for example, “a case involving a fight among shareholders or over the election of corporate officers.” *Id.* at 836. The same is true here.

YesCare next argues that *Osborn* is “unavailing” because “corporate internal affairs were not at issue in that case.” Like with *Enslein* and *Schaffer*, that is exactly the point—the *Osborn* court explained that Missouri law applies Missouri tort choice of law rules to successor liability, not the “internal affairs” doctrine. *Osborn v. Prime Tanning Corp.*, 2011 WL 13291159, at *5 (W.D. Mo. Apr. 29, 2011) (explaining successor liability issues require application of Missouri tort choice of law rules, rather than Missouri contract choice of law rules).

Defendants retort that Plaintiffs’ claims are “based on the corporate formation of YesCare and CHS TX” and “depend on what the ‘organic structure’ of Corizon and CHS TX were following the divisional merger,”” citing *Stewart v. GeoStar Corp.*, 2008 WL 4155643, at *1 (E.D. Mich.

Sept. 5, 2008). YesCare Opp. at ¶¶ 38-39. But that case involved application of the internal affairs doctrine to an internal dispute between a corporation and its shareholder. *Id.* (plaintiff requested a declaratory judgment determining that he owned 300,000 shares of stock of defendant).

Second, Defendants argue that even if the proper inquiry is which state has the “most significant relationship,” that this court should find Texas law instead of Missouri law, applies. In support, Defendants concede that Missouri has the most significant relationship to the breach of contract, but argue Texas has a more significant relationship because “the matter at issue here is the legal effect of a Texas merger on questions of successor liability.” YesCare Opp. at ¶ 40. Defendants claim Texas “has a more significant relationship to that issue,” but the Restatement, which Missouri courts follow to evaluate which law should govern,⁵¹ instructs differently. “[W]hen a corporation has little or no contact with [a] state other than the fact that it was incorporated there...some other state will almost surely have a greater interest than the state of incorporation in the determination of the particular issue.”⁵² Restatement (Second) of Conflict of Laws, § 302, cmt. g.

That is precisely the situation here. YesCare and CHS TX have no connection with Texas other than their incorporation; Corizon Health did not conduct any business in Texas when it began the merger; nor do YesCare and CHS TX conduct any business there now. Moreover, the very

⁵¹ *Rider v. The Young Men's Christian Ass'n of Greater Kansas City*, 460 S.W.3d 378, 388 (Mo. App. W.D. 2015) (“When a conflict of law exists, Missouri evaluates which law should govern according to the Restatement (Second) of Conflicts of Laws”).

⁵² Defendants cite *Soviet Pan Am* and *Leitner* for the proposition that Texas has the most significant relationship. YesCare Opp. at ¶ 40. But both cases, from New York and California respectively, are not persuasive; *Soviet Pan Am* involved defendants who had a more substantial connection with their requested forum other than mere incorporation, unlike YesCare and CHS TX, who maintain no business or operations in Texas but chose the forum as a means to effect a divisional merger and evade successor liability. See *Soviet Pan Am Travel Effort v. Travel Comm., Inc.*, 756 F. Supp. 126, 129 (S.D.N.Y. 1991) (explaining the successor had its principal place of business in Maryland). Similarly in *Leitner*, there were no allegations that the defendant incorporated in New York as a means of taking advantage of that forum’s laws to the detriment of its existing creditors. See *Leitner v. Sadhana Temple of New York, Inc.*, 2014 WL 12588643, at *16 (C.D. Cal. Oct. 17, 2014).

purpose of the successor liability doctrine—disregarding the corporate form to provide relief to outside parties—is why this Court cannot disregard Missouri’s interest in this matter. *See Osborn v. Prime Tanning Corp.*, 2011 WL 13291159, at *5 (W.D. Mo. Apr. 29, 2011) (explaining “Missouri has a judicially adopted policy concerning successor corporate liability” and “[t]his relevant policy strongly supports application of Missouri law”). For that reason, “a state’s interest in applying its law to citizens injured by foreign corporations [often] outweighs the interest of the incorporating state.” *Chrysler Corp. v. Ford Motor Co.*, 972 F. Supp. 1097, 1104 (E.D. Mich. 1997). Indeed, “when the plaintiff is a third party who had no business relationship with defendant,” the plaintiff’s state “has a stronger interest in applying its law to disregard the corporate form.” *Allstate Ins. Co. v. Countrywide Fin. Corp.*, 824 F. Supp. 2d 1164, 1174 n. 11(C.D. Cal. 2011). Thus, Missouri has a heightened interest in applying its own laws to determine whether it should disregard the corporate form. *See also* Order on Plaintiff’s Motion for Substitution, *Kelly v. Corizon Health, Inc.*, Case 2:22-cv-10589, ECF No. 43 at 12-23 (Nov. 1, 2022) (Morris, M.J.) (**Ex. 86**).⁵³

In short, Missouri has a strong interest in applying its own law to determine whether the Court should disregard the corporate form. By comparison, Texas has a relatively weak interest in enforcing its successorship liability doctrine under these circumstances. *See id.* Thus, the Court should look to Missouri law to determine whether YesCare and CHS TX are successors of Corizon Health.

Finally, Defendants declare that Plaintiffs’ successor liability claims are unlikely to succeed in any case, because the corporate restructuring “was not a mere name change, nor was it

⁵³ This result makes sense in light of the relevant factors. *See, e.g., Osborn*, 2011 WL 13291159, at *5 (explaining the two most significant contacts under this analysis are “the place of injury” and the “place where the conduct causing the injury were located”).

employed to immunize Corizon from liability.” YesCare Opp. at ¶ 41. These self-serving conclusions neither align with the facts,⁵⁴ nor address the factors relevant to successor liability.⁵⁵

IV. Plaintiffs Will Suffer Irreparable Harm Absent Provisional Relief.

Defendants argue Plaintiffs do not face irreparable harm because there is an “adequate remedy at law.” Corizon Opp. at 13; YesCare Opp. at ¶ 44. Not true. MUFTA recognizes the danger that while a plaintiff’s fraudulent transfer claim is pending, the transferee might seek to make further transfers, and protects against that danger by authorizing the Court to grant appropriate provisional relief. “Irreparable harm occurs when a party has no adequate remedy at law, typically because its injuries cannot be fully compensated through an award of damages.” *CitiMortgage, Inc. v. Just Mortg., Inc.*, 2013 WL 6538680, at *4 (E.D. Mo. Dec. 13, 2013); *Haase v. Chapman*, 308 F. Supp. 399, 406 (W.D. Mo. 1969) (finding the plaintiff may suffer irreparable harm as a result of a fraudulent transfer without the appointment of a receiver). *See also Janvey v. Alguire*, 647 F.3d 585, 600 (5th Cir. 2011) (explaining that “where a meaningful decision on the merits would be impossible without an injunction, the district court may maintain the status quo and issue a preliminary injunction to protect a remedy, including a damages remedy, when the freezing of the assets is limited to the property in dispute or its direct, traceable proceeds”); *Hilao v. Marcos*, 25 F.3d 1467, 1480 (9th Cir. 1994) (joining “majority of circuits in concluding that a

⁵⁴ **Ex. 41**, O’Neal to Clemons-Abdullah May 13, 2022, YESCARE-CHS-00000461; **Ex. 42**, O’Neal to Phelps May 13, 2022, YESCARE-CHS-0000467 (“As you are very well by now that Corizon was in the process of rebranding. We are excited to share its official now. Effective today, we are announcing our new company name YesCare.”); **Ex. 43**, O’Neal to Farmer May 13, 2022, YESCARE-CHS-00000470 (“As I shar[e]d with you during the MAC meeting, we are excited to share our announcement of our new company name YesCare”); **Ex. 35**, YesCare Announcement-Client Email, YESCARE-CHS-0000486 (“Please join us in our excitement for this next stage of innovative and compassionate care, under the new YesCare name”); **Ex. 36**, YesCare Client Q&A - YESCARE-CHS-00000463 (“We have a new name...the current services we provide at your facility will continue”).

⁵⁵ As their only attempt to address such factors, Defendants claim the de facto merger theory, just one of the four theories available to Plaintiffs, “applies only in the absence of a formal, statutory merger.” YesCare Opp. at ¶ 42 (citing a second circuit case). Not so in Missouri. *See, e.g., Harashe v. Flintkote Co.*, 848 S.W.2d 506, 509 (Mo. App. E.D. 1993) (“While the agreement was delineated as a reorganization through a purchase of assets it contained all the elements of a *de facto* merger” thus “W.R. Grace has successor liability for the liabilities of Zonolite”).

district court has authority to issue a preliminary injunction where the plaintiffs can establish that money damages will be an inadequate remedy due to impending insolvency of the defendant or that defendant has engaged in a pattern of secreting or dissipating assets to avoid judgment.”); *Pashaian v. Eccelston Props.*, 88 F.3d 77, 86-87 (2d Cir. 1996) (“preliminary injunction may issue to preserve assets as security for a potential monetary judgment where the evidence shows that a party intends to frustrate any judgment on the merits by making it uncollectible.”).

YesCare and CHS TX next argue that Plaintiffs fail to show harm that is “certain and great and of such imminence that there is a clear and present need for equitable relief,” concluding Plaintiffs’ cited authority is “opposite” to Defendants’ “lawful” restructuring and claiming Plaintiffs are merely “speculating” that Defendants “may possibly undergo a corporate restructuring at some point in the future,” YesCare Opp. at ¶¶ 45-46. But Plaintiffs are more than speculating that Defendants are willing to dissipate or remove assets from this court’s jurisdiction. Indeed, YesCare and CHS TX, in response to Plaintiffs’ Motion, threaten bankruptcy should this Court initiate any provisional relief.⁵⁶

To be sure, Plaintiffs have submitted substantial evidence regarding Defendants’ fraudulent conduct and suspicious business behaviors. *See* Pls’ Mot. at p. 27-28 (establishing Geneva Consulting, LLC is paying for Corizon Health’s obligations using a joint bank account with YesCare); *Id.* at p. 29 (establishing David Gefner formed Geneva Consulting, LLC on November 16, 2021, two days after losing the MDOC contract); *Section Id.* at 28 (establishing Corizon Health director Lefkowitz also controls Geneva Consulting, LLC); *supra* p. 3-5 (noting

⁵⁶ This isn’t the first time Defendants have demonstrated a willingness to take direct business action in response to this litigation. Pls’ Mot. at p. 21 (establishing that after Plaintiffs’ Amended Petition, YesCare removed a statement from its website stating “YesCare acquired all of the employees and active contracts of Corizon Health in early 2022”); YesCare Opp. at ¶ 13 (stating that, since Plaintiffs’ Motion, M2LoanCo “has taken steps to rectify its administrative status with the Florida Secretary of State”).

former Corizon Health CEO alleges he caught Lefkowitz transferring \$3 million in Valitas funds to Geneva Consulting, LLC in December 2021); *Id.* (alleging Corizon Health directors Lefkowitz, Gefner, and Leitner sold COVID tests to a deeply insolvent Corizon Health for over \$3 million, a 57% profit); Pls’ Mot. at p. 12-13 (establishing Corizon Health VP David Gefner purchased YesCare’s equity for \$95, a fact none of the Defendants address); *id.* at p. 29-30 (establishing a lack of required regulatory filings despite Perigrove’s claim that it raised \$3 billion in equity, a fact none of the Defendants address); *id.* at p. 32-33 (establishing Perigrove’s actual business address is the upstairs of an auto-parts store, a fact none of the Defendants address); *Id.* at p. 26-27 (establishing M2 LoanCo LLC, Corizon Health’s purported lender controlled by Lefkowitz, was administratively dissolved). In short, Plaintiffs have presented substantial evidence of questionable business activity conducted by Defendants and their affiliate/related entities in relation to the restructuring.⁵⁷

Thus, a meaningful threat exists that Defendants may render relief in this case meaningless by dissipating assets or removing them from this court’s jurisdiction. *See, e.g., S. New England Tel. Co. v. Glob. Naps, Inc.*, 595 F. Supp. 2d 155, 159 (D. Mass. 2009) (finding this factor satisfied where the court was “persuaded that, absent an injunction, there is a substantial risk that [the involved company and its owner] would dissipate, conceal, or otherwise secrete assets” where there was “a plethora of circumstantial evidence that [the owner], as well as [the debtors] has been

⁵⁷ Indeed, though Mr. Sholey, in his affidavit, states he left Corizon in May 2022, he has continued to be the signatory on corporate filings for Corizon Health in which the company apparently fails to disclose its corporate restructuring. Just last month, on December 15, 2022, Jeff Sholey signed and filed a “Statement of Information” with the California Secretary of State for Corizon, LLC, affirming “under penalty of perjury” that “Corizon, LLC” was formed in Missouri; that Sara Tirschwell is its current CEO; and that 205 Powell Place in Brentwood, TN is its mailing address. **Ex. 93.** That same day, on December 15, 2022, Sholey signed and filed a “Statement of Information” in California for Corizon Health, Inc., claiming he was the “Chief Financial Officer,” that Sara Tirschwell was its CEO, and that J. Scott King was its Secretary. Despite claiming they no longer have a corporate headquarters, this document lists Corizon Health, Inc.’s “principal address” as 205 Powell Place in Brentwood, TN. **Ex. 94.**

implicated in suspicious business activity”); *Caterpillar Inc. v. Jerryco Footwear, Inc.*, 880 F. Supp. 578, 587 (C.D. Ill. 1994) (finding this element satisfied where, “[c]onsidering the defendants’ past intentionally deceptive, bad faith acts,” there was a “high probability that, absent a preliminary injunction, the defendants would engage in further acts designed to defraud [the plaintiff] and frustrate any enforcement the Court may enter”);⁵⁸ *Trafalgar Power, Inc. v. Aetna Life Ins. Co.*, 131 F. Supp. 2d 341, 350 (N.D.N.Y. 2001) (explaining plaintiff established a likelihood of irreparable harm by demonstrating defendants’ intent to frustrate any potential collection on counterclaims); *Canty v. Morris St. Partners, LLC*, 2006 WL 1769620, at *4 (Pa. Com. Pl. May 23, 2006) (“if Morris Street Partners, LLC were permitted to dispose of any and all remaining assets, Plaintiffs would be subject to irreparable harm as a result of the lack of funds to compensate them for their injuries if they were to receive a jury award”).

V. The Balance of Harms Weighs in Plaintiffs’ Favor.

In a full-throated opposition to any injunctive relief, YesCare and CHS TX advance a doomsday narrative, complaining that allowing injunctive relief sufficient to maintain the status quo would deal a “death blow” to its business. YesCare Opp. at p. 48.

First, should the Court freeze any of YesCare and CHS TX’s assets, YesCare and CHS TX claim they would be “suddenly forced to halt” their operations as they apparently do not have assets over \$11 million to freeze that are not “already allocated to payroll and other expenses.” *Id.* at ¶ 17-18. Defendants provide no support for this conclusion. Based on recently-produced financials, YesCare and CHS TX have over \$173 million in assets.⁵⁹ And according to Defendants,

⁵⁸ Citing *Roland Machinery Co. v. Dresser Industries, Inc.*, 749 F.2d 380, 386 (7th Cir.1984) (irreparable harm may exist where defendant may become insolvent before a final judgment can be collected); *Federal Trade Commission v. World Travel Vacation Brokers, Inc.*, 861 F.2d 1020, 1031 (7th Cir. 1988) (freezing defendants assets upheld where assets had been shifted from closely-held corporate defendant to individuals who were sole shareholders of corporate defendant)).

⁵⁹ Ex. 95, YesCare Corp. and Subsidiaries Balance Sheet.

CHS TX and YesCare generate in excess of \$300 million in revenue on “an annual basis,”⁶⁰ and have negotiated a state Department of Corrections contract, set to begin in the second quarter of 2023, which Defendants anticipate will bring in “in excess of \$1 billion” in revenue. Sholey Aff. at ¶¶ 8, 15. Further, Defendants represent they are bidding on several other business opportunities “with other possible revenues in excess of \$1 billion annually.” *Id.* at ¶ 16. In short, YesCare and CHS TX have failed to explain how a small fraction of their total assets would spur a total shutdown of their operations.

Second, should the Court appoint a receiver, YesCare and CHS TX claim they would be likely forced into bankruptcy, concluding, without explanation, that a receivership would “endanger its ability to begin performance” under its new billion-dollar contract, and “eviscerate YesCare’s ability to win new business.” *Id.* at ¶ 19. Defendants, who fail to provide any support for these doomsday-conclusions, ask this Court to simply take their word for it. Plaintiffs are skeptical that their requested relief would lead to such results. *See, e.g., Caterpillar Inc. v. Jerryco Footwear, Inc.*, 880 F. Supp. 578, 587 (C.D. Ill. 1994) (noting the defendants “offered no credible evidence” showing injunctive relief caused “any material or irreparable harm,” explaining that the court “has the authority to fashion equitable relief that leaves Defendants in possession of their property and merely establishes control to prevent fraudulent transfers of assets”).

But taking Defendants at their word, MUFTA provides this court broad discretion to fashion equitable relief that does not implicate Defendants’ above concerns. Mo. Ann. Stat. § 428.039 (explaining that a creditor may obtain “[a]ny other relief the circumstances may require”). For example, if YesCare is, as it claims, “in a position to begin performing under the new State Department of Corrections contract” worth \$ 1 billion, and “win other potential revenue streams,

⁶⁰ Since CHS TX was only formed earlier this year, this figure likely represents the revenue Corizon Health generated on a yearly basis before the restructuring.

placing it on a firm financial footing to satisfy all of its creditor claims,”⁶¹ then it should be reasonably able to provide a bond or letter of credit sufficient to cover the amounts at issue in this case. *See, e.g., CitiMortgage, Inc. v. Just Mortg., Inc.*, 2013 WL 6538680, at *5 (E.D. Mo. Dec. 13, 2013) (explaining that the court would reconsider its ruling sustaining plaintiffs’ request to freeze the assets of defendants if defendants “secure a bond in the amount of plaintiff’s judgment”). Thus, the balance of harms weighs in Plaintiffs’ favor.

VI. The Public Interest Supports an Injunction.

Because Plaintiffs are likely to succeed on their fraudulent transfer claims, the general public interest against fraud is implicated here. *Jet Midwest Int’l Co. v. Jet Midwest Grp., LLC*, 953 F.3d 1041, 1046 (8th Cir. 2020). Further, the public has an interest in “enforcing contractual obligations.” *Sleep No. Corp. v. Young*, 532 F. Supp. 3d 793, 804 (D. Minn. 2021), *aff’d*, 33 F.4th 1012 (8th Cir. 2022); *Medicine Shoppe Int’l., Inc.*, 336 F.3d at 805 (“[W]e agree that the public interest would not be served by permitting a party to avoid contractual obligations.”).

Defendants’ claim that “public policy” weighs against injunctive relief is premised on their unsupported argument that any injunctive relief will “hinder YesCare’s operations.” YesCare Opp. At p. 26. Indeed, YesCare threatens to “jeopardize[]” prisoners’ “constitutional right to medical care,” force its clients to “scramble and expend significant resources to replace lost medical care,” and put its employees paychecks “at risk,” all of which, YesCare argues, would be against public policy. YesCare Opp. at p. 26. This argument is disingenuous. YesCare and CHS TX, who since their inception have boasted of “financial strength” and “access to resources we have never had,” and have undoubtedly used those assurances to secure over a billion-dollar contract, should not now be permitted to claim that providing assurances for \$12 million will destroy their business.

⁶¹ YesCare Opp. at ¶¶ 19-20.

To be sure, if Defendants intend to use their employees' salaries and the inmates within their care as bargaining chips in this litigation, then it is they who are acting contrary to public policy.

In any case, this Court has broad authority to fashion equitable relief that accommodates any reasonable business concerns.

CONCLUSION

For the foregoing reasons, Plaintiffs request this Court grant their motion for preliminary injunction, and afford any and all relief as the Court deems just and proper.

Dated: January 30, 2023

Respectfully submitted,

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IN THE CIRCUIT COURT OF BOONE COUNTY, MISSOURI

**THE CURATORS OF THE UNIVERSITY OF)
MISSOURI and CAPITAL REGION)
MEDICAL CENTER,)**

Plaintiffs,)

v.)

**TEHUM CARE SERVICES, INC. d/b/a)
CORIZON HEALTH, INC., CHS TX, INC.,)
and YESCARE CORP.,)**

Defendants.)

Case No. 22BA-CV01701-01

Division 4

**DEFENDANT TEHUM CARE SERVICES, INC. d/b/a CORIZON HEALTH, INC'S
SUGGESTIONS IN SUPPORT OF ITS OPPOSITION TO PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION**

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Defendant Tehum Care Services, Inc. d/b/a Corizon Health, Inc. (“Corizon”), pursuant to Missouri Rule of Civil Procedure 55.26, provides the following Suggestions in Support of its Opposition to Plaintiffs The Curators of the University of Missouri and Capital Region Medical Center’s (“Plaintiffs”) Motion for Preliminary Injunction.

INTRODUCTION

Plaintiffs—two unliquidated litigation claimants in a breach of contract action—have filed this Motion for Preliminary Injunction seeking unprecedented injunctive relief. Indeed, Corizon is not aware of (and Plaintiffs have not pointed to) a single case where a Missouri court has *ever* fashioned equitable relief quite like what Plaintiffs suggest. In reality, Plaintiffs’ Motion for Preliminary Injunction is a bald attempt to invalidate decades-old corporate law of another state (Texas), including the corporate restructuring transaction conducted by Corizon to create value for unsecured creditors like Plaintiffs. While devoting **39 pages** to hearsay storytelling, Plaintiffs fail to satisfy the four well-known factors considered in assessing whether to grant the extraordinary relief of a preliminary injunction. For these reasons and those explained in more detail below, Plaintiffs’ Motion for Preliminary Injunction should be denied.

FACTUAL BACKGROUND

A. Corizon’s Contracts With The Missouri Department Of Corrections (“MDOC”) And Plaintiffs

1. Until May 5, 2022, Corizon was a nationwide provider of correctional healthcare, providing services in states such as Missouri. *See* Corizon’s Am. Answer to Pls.’ Am. Pet. at ¶ 3.

2. Corizon previously entered into an agreement with the MDOC whereby Corizon would provide, or arrange for the provision of, healthcare services to certain inmates and detainees under the control of the MDOC. *See id.* at ¶ 16.

3. Plaintiffs and Corizon, LLC (a Corizon affiliate) entered into a Hospital Service Agreement (the “Agreement”) on November 1, 2016, whereby Plaintiffs agreed to provide healthcare services to Corizon’s patients, and Corizon would reimburse Plaintiffs for their services upon receipt of timely submitted claims. *See* Pls.’ Am. Pet., Ex. 1, Agreement. The Agreement was between Plaintiffs, on the one hand, and Corizon, LLC, on the other, “acting for itself or on behalf of any/all/other affiliated companies.” *Id.* at 34. The Agreement, which remained in effect through November 2021, predates the formation of Defendants CHS TX, Inc. and YesCare Corp, and does not bind those entities. *See* Pls.’ Am. Pet. at ¶ 4 (noting that YesCare Corp. “is a Texas for-profit corporation formed on January 26, 2022”); ¶ 5 (noting that CHS TX, Inc. “is a Texas for-profit corporation formed on May 3, 2022”).

4. On April 19, 2022, Plaintiffs sent a demand letter to Corizon requesting payment for what they claim is over \$12,000,000 in unpaid services. *See id.* at ¶ 85.

5. Corizon admits that it was *billed* \$11,174,465.50 by Plaintiffs under the Agreement but disputes that \$11,14,465.50 is the correct amount *owed* to Plaintiffs pursuant to the Agreement as prior limited audits of claims exceeding \$25,000.00 revealed billing discrepancies by Plaintiffs. Plaintiffs and Corizon have not yet engaged in or performed an audit of the remaining claims. *See e.g., id.* at ¶ 46–47; 248; 261; 277; 288.

B. Corizon’s Dire Financial Condition And Plan To File For Chapter 11 Bankruptcy

6. By the end of 2021, Corizon’s financial situation was dire, and it was headed toward an almost certain bankruptcy: Its financial position had worsened in recent years due to revenue declines, margin compression, and deteriorating liquidity; it was operating in a significant negative working capital position due to its debt obligations; and it faced increased exposure to professional liability claims (indeed, hundreds) to the tune of an estimated \$88 million in total exposure. *See*

e.g., Pls.’ Mot. for Prelim. Inj., Ex. 28, Plan of Divisional Merger, at § 4.01(b)(RL) (detailing the hundreds of lawsuits filed against Corizon); Feb. 23, 2022 Presentation to Board of Directors of Corizon Health, Inc. and Valitas Health Services, Inc., attached as **Exhibit A**, at 11601–02.

7. Given Corizon’s financial position, it did not have the financial wherewithal to satisfy its defaulted secured debt, let alone its unsecured debt and litigation claims. In other words, Corizon’s unsecured creditors like Plaintiffs were likely going to receive no compensation. *See* Feb. 23, 2022 Presentation to Board of Directors of Corizon Health, Inc. and Valitas Health Services, Inc., **Ex. A**, at 11602.

8. In early 2022, Corizon’s Board, with the help of counsel, began considering restructuring alternatives other than bankruptcy. *See id.* One restructuring alternative was a divisional merger under the Texas Business Organizations Code (“TBOC”)—a decades-old statutory framework that allows one or more corporate entities to merge into one or more surviving or new legal entities and re-allocate assets and liabilities among the resulting entities in a manner that is binding on creditors.

C. The Diligence Process

9. To ensure that a divisional merger was a viable and fair path forward, on February 8, 2022, Corizon engaged independent financial firm, FTI Capital Advisors, LLC (“FTI”), to render a fairness opinion on the proposed divisional merger.¹ *See* Pls.’ Mot. for Prelim. Inj., Ex. 18, Fairness Analysis Pertaining to the Proposed Transaction to the Board of Directors of Corizon Health, Inc., at 384 (noting that the engagement letter for the fairness opinion was dated February 8, 2022); *id.* at 390 (same). FTI conducted widescale due diligence, including, but not limited to,

¹ Corizon engaged FTI on February 8, 2022, *more than two months before* Plaintiffs sent their demand letter to Corizon. *See* Pls.’ Am. Pet. at ¶ 85. Any assertion that Corizon underwent the divisional merger in response to Plaintiffs’ demand for payment is unfounded and inaccurate.

a review and analysis of Corizon’s financial history and contingent liabilities. *Id.* at 394. FTI ultimately reached the conclusion that the proposed divisional merger provided Corizon’s unsecured creditors with access to equal or greater value than not completing the merger (*i.e.*, a bankruptcy), a conclusion that was supported by the availability of a \$15,000,00 M2 LoanCo, LLC funding agreement (the “Funding Agreement”). *Id.* at 394, 398–404.

10. FTI again confirmed the fairness of the divisional merger in a May 1, 2022, Fairness Opinion sent to Corizon’s Board of Directors. *See* Pls.’ Mot. for Prelim. Inj., Ex. 23, FTI Fairness Opinion, at 23 (“[W]e are of the opinion that the Transaction is fair, from a financial point of view, to the RemainCo Unsecured Creditors as compared to a scenario in which the Transaction does not occur and instead there is a Restructuring.”).

D. The Transaction²

i. The Combination Merger

11. In Spring of 2022, Corizon and several of its affiliates, including Corizon, LLC (formerly a Missouri limited liability company), Valitas Health Services, Inc. (“Valitas”) (formerly a Delaware corporation), and Corizon Health of New Jersey, LLC (“Corizon NJ”) (formerly a New Jersey limited liability company) (collectively, the “Company”) began to take steps to execute a corporate reorganization (the “2022 Corporate Restructuring”). The 2022 Corporate Restructuring was effectuated through two merger transactions under the TBOC: A Combination Merger and a Divisional Merger. The following steps comprised the Combination Merger:

- a. On April 28, 2022, Corizon (previously incorporated in Delaware) converted to a Texas corporation.

² Corizon largely incorporates by reference the history of the Combination Merger and Divisional Merger from Plaintiffs’ Amended Petition and CHS TX, Inc. and YesCare Corp.’s Motion to Dismiss.

- b. Each of Corizon, Corizon, LLC, Valitas, and Corizon NJ merged pursuant to a plan of combination merger under Texas law (the “Combination Merger”).
- c. Corizon filed the Certificate of Combination Merger with the Texas Secretary of State on May 2, 2022, and the Combination Merger became effective on May 5, 2022.
- d. Corizon was the sole survivor of the Combination Merger and was vested with all assets and liabilities of the merged entities. The other entities ceased to exist.

See CHS TX, Inc. and YesCare Corp.’s Mot. to Dismiss, at 5–6.

ii. *The Divisional Merger*

12. Corizon then underwent a by-the-book divisional merger. *See generally* Pls.’ Am. Pet., Ex. 28, Plan of Divisional Merger (containing Corizon 167-page plan to consummate the entirely lawful divisional merger under Texas law).

13. The following steps comprised the Divisional Merger:

- a. Corizon drafted the Plan of Merger, which provided that CHS TX, Inc. would be formed and documented which assets and liabilities were to remain with Corizon and which were to be allocated to CHS TX, Inc.³
- b. The approved Plan of Merger was in writing and included all information required by the TBOC.

³ As part of the divisional merger, Corizon was allocated and remained vested with all inactive and expired customer contracts, as well as all liabilities related to such contracts. *See* Pls.’ Am. Pet., Ex. 28, Plan of Divisional Merger, Schedule 3.01(b); Schedule 4.01(b).

- c. Corizon filed the Certificate of Merger and Certificate of Formation for CHS TX, Inc. with the Texas Secretary of State on May 3, 2022, and the Divisional Merger became effective on May 5, 2022.
- d. On May 11, 2022, the Texas Secretary of State approved and accepted the Certificate of Merger and Certificate of Formation for CHS TX, Inc. effective as of May 5, 2022.

See CHS TX, Inc. and YesCare Corp.'s Mot. to Dismiss at 7.

14. After the Divisional Merger became effective, CHS TX, Inc. was acquired by YesCare Corp., and the Transaction was complete. *Id.*

E. Corizon Today

15. Corizon is actively winding down its business as it is no longer an active entity with any active contracts. As part of the wind down process and since the effective date of the Divisional Merger, Corizon has resolved numerous claims made by its unsecured creditors.

LEGAL STANDARD

1. Preliminary Injunction Standard

A preliminary injunction is an “extraordinary remedy.” *Mgmt. Registry, Inc. v. A.W. Cos., Inc.*, 920 F.3d 1181, 1183 (8th Cir. 2019) (internal quotation omitted); *see also State ex rel. Dir. of Revenue v. Gabbert*, 925 S.W.2d 838, 839 (Mo. 1996) (“It is the movant’s obligation to justify the court’s exercise of such an extraordinary remedy.”). “When considering a motion for a preliminary injunction, a court should weigh ‘the movant’s probability of success on the merits, the threat of irreparable harm to the movant absent the injunction, the balance between this harm and the injury that the injunction’s issuance would inflict on other interested parties, and the public interest.’” *State ex rel. Dir. of Revenue*, 925 S.W.2d at 839 (quoting *Pottgen v. Mo. State High Sch. Activities Ass’n*, 40 F.3d 926, 928 (8th Cir. 1994)).

A likelihood of success on the merits “is the most significant” preliminary injunction factor. *Barrett v. Claycomb*, 705 F.3d 315, 320 (8th Cir. 2013) (internal quotation omitted). “To that end, ‘the absence of a likelihood of success on the merits strongly suggests that preliminary injunctive relief should be denied.’” *Id.* (quoting *CDI Energy Servs., Inc. v. W. River Pumps, Inc.*, 567 F.3d 398, 402 (8th Cir. 2009)). To demonstrate a likelihood of success on the merits, a movant must show that its “prospects for success is *sufficiently likely* to support the kind of relief it requests.” *Rural Cmty. Workers All. v. Smithfield Foods, Inc.*, 459 F. Supp. 3d 1228, 1244 (W.D. Mo. 2020). In other words, a movant needs to show “a fair chance of prevailing” based on the record before the court. *See id.*; *Phelps-Roper v. Nixon*, 509 F.3d 480, 485 (8th Cir. 2007). To that point, movants face a higher degree of difficulty in obtaining injunctive relief absent full and robust discovery as the evidence offered is often “slim” and “based in part on speculation.” *SI03, Inc. v. Musclegen Rsch., Inc.*, No. 1:16-CV-274 RLW, 2021 WL 765293, at *5 (E.D. Mo. Feb. 26, 2021).

But even if a movant demonstrates a likelihood of success on the merits, this warrants a preliminary injunction only “if there is a risk of irreparable harm and the balance of the factors support an injunction.” *CDI Energy*, 567 F.3d at 402. Indeed, the “failure to show irreparable harm is, by itself, a sufficient ground upon which to deny a preliminary injunction.” *Gelco Corp. v. Coniston Partners*, 811 F.2d 414, 418 (8th Cir. 1987); *see id.* at 420 (“Once a court determines that the movant has failed to show irreparable harm absent an injunction, the inquiry is finished and the denial of the injunctive request is warranted.”).

Ultimately, “[w]hether an injunction should be granted is a matter of the trial court’s discretion in balancing the equities.” *Doe v. Phillips*, 259 S.W.3d 34, 36 (Mo. Ct. App. 2008). In determining whether to exercise its discretion to issue a preliminary injunction, courts should,

however, keep in mind the purpose of a preliminary injunction, which is only “to preserve the status quo until the trial court adjudicates the merits of the claim[s].” *See Cook v. McElwain*, 432 S.W.3d 286, 292 (Mo. Ct. App. 2014).

2. Standard For The Appointment Of A Receiver

Like a preliminary injunction, appointing a receiver is an “extraordinary remedy.” *Riegel v. Jungerman*, 597 S.W.3d 695, 708 (Mo. Ct. App. 2019). The power to appoint a receiver is within the sound discretion of the trial court. *Id.* at 702. Still, before judgment against a defendant, a court should appoint a receiver “only in highly unusual and compelling circumstances.” *Id.* at 708.

ARGUMENT

I. THE COURT SHOULD DENY PLAINTIFFS’ UNPRECEDENTED REQUEST FOR PRELIMINARY INJUNCTIVE RELIEF AGAINST CORIZON.

Plaintiffs have failed to meet the high burden for the issuance of the “extraordinary remedy” of a preliminary injunction. *See Mgmt. Registry, Inc.*, 920 F.3d at 1183 (internal quotation omitted); *see also State ex rel. Dir. of Revenue*, 925 S.W.2d at 839 (“It is the movant’s obligation to justify the court’s exercise of such an extraordinary remedy.”). Plaintiffs have not demonstrated a likelihood of success on the merits of their fraudulent transfer claims. Moreover, Plaintiffs have not—and indeed cannot—establish irreparable harm in this breach of contract action. In addition, Plaintiffs have entirely failed to address the harm that will come to Corizon should their premature pre-judgment request for injunctive relief be granted. Finally, Plaintiffs fail to demonstrate that granting an injunction against Corizon, which would indeed harm Corizon’s unsecured creditors and the legitimate public interests of the state of Texas, is in the public interest. For these reasons, Plaintiffs’ Motion for Preliminary Injunction should be denied.

A. Applying Governing Texas Law, Plaintiffs Do Not Have A Fair Likelihood Of Success On The Merits Of Their Fraudulent Transfer Claims.

Plaintiffs have not satisfied their burden of demonstrating a likelihood of success on the merits of their fraudulent transfer claims, and this alone “strongly suggests” that Plaintiffs’ request for injunctive relief vis a vis Corizon should be denied. *See Barrett*, 705 F.3d at 320.⁴

1. Texas law governs the divisional merger.

As an initial, threshold matter, Plaintiffs’ conclusion that the divisional merger at issue in this case constitutes a “fraudulent transfer” proceeds from their conclusory presumption that Missouri law governs the analysis of the internal affairs of a Texas corporation. Not so. Under Missouri’s own well-established choice-of-law principles, enshrined in statute, Missouri law may not “regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state.” Mo. Rev. Stat. § 351.582; *see also* Restatement (Second) of Conflicts of Laws § 302 cmt. a (1971) (describing “mergers, consolidations and reorganizations” as the type of matters typically governed by the law of the state of incorporation). Plaintiffs cite no Missouri case—and Corizon is aware of none—in which a court has discarded this long-recognized doctrine and analyzed lawful corporate transactions (and any “transfers” that occurred as part of such transactions) with total disregard for the law of the state of incorporation of the corporation(s) at issue.⁵ *See* Restatement (Second) of Conflicts of Laws § 302 cmt. g (1971) (“[T]he local law of

⁴ In arguing the likelihood of success on the merits, Plaintiffs only address their fraudulent transfer claims (*see* Pls.’ Mot. for Prelim. Inj. at 41–45) and successor liability claims (*see id.* at 45–53). Plaintiffs’ successor liability claims (Counts III, IV, V, VI) are asserted against Defendants CHS TX, Inc. and YesCare, Corp., not Corizon. As such, Corizon will assess the likelihood of success on the merits of the fraudulent transfer claims only. Plaintiffs do not address their likelihood of success on the merits of their remaining (and primary) claims: Breach of Contract (Count I) and Breach of the Covenant of Good Faith and Fair Dealing (Count II).

⁵ *A.O.A. v. Rennert*, the sole Missouri case cited by Plaintiffs (*see* Pls.’ Mot. for Prelim. Inj. at 47), does not apply here. It concerned alter-ego claims involving a Peruvian corporation, and had nothing to do with a merger or other similar transaction conducted under the laws of another state. *See* 350 F. Supp. 3d 818, 836 (E.D. Mo. 2018).

the state of incorporation has been applied almost invariably to determine issues involving matters that are peculiar to corporations.”).

Texas law governs when assessing the divisional merger at issue and whether, as part of that divisional merger, a “transfer” occurred. Plaintiffs make no effort to even address Texas law as part of their Motion for Preliminary Injunction, let alone demonstrate how they have *any* chance of success on their fraudulent transfer claims. *See* Pls.’ Mot. for Prelim. Inj. at 41–45.

2. Fraudulent transfer claims

Despite boldly claiming that they have a high likelihood of success on the merits of their MUFTA claims against Corizon (*see id.* at 46), Plaintiffs ignore one glaring red flag that dooms their fraudulent transfer claims: there was no “transfer” of assets between Corizon, on the one hand, and CHS TX, Inc. and YesCare, Corp., on the other. While it goes without saying, “[a] fundamental requirement of the MUFTA statutory scheme is that the alleged fraud involve a ‘transfer.’” *Konopasek v. Konopasek*, No. SD 37388, 2022 WL 4178971, at *3 (Mo. Ct. App. Sept. 13, 2022), *reh’g and/or transfer denied* (Sept. 26, 2022) (dismissing fraudulent transfer claim where there was no “transfer”). Where there is no “transfer,” the additional elements of a MUFTA claims (*i.e.*, the “badges of fraud” that Plaintiffs belabor) are moot. *See id.* at *4.

Under relevant Texas law, one form of “merger” is the divisional merger whereby one or more corporate entities merges into one or more surviving or new legal entities and re-allocates assets and liabilities (via a plan of merger) among the resulting entities in a manner that is binding on creditors. *See* Tex. Bus. Orgs. Code Ann. § 1.002(55)(A); Tex. Bus. Orgs. Code Ann. § 10.003; *see also* Pls.’ Am. Pet., Ex. 28, Plan of Divisional Merger (outlining this “allocation” of assets and liabilities with respect to the divisional merger at issue). When a “merger”—which by statutory definition includes a Tex. Bus. Orgs. Code Ann. § 1.002(55)(A) divisional merger—takes effect, all rights, title, and interests to property owned by each organization that is a party to the merger

is “allocated to and vested” in “one or more surviving or new organizations as provided in the plan of merger *without... any transfer or assignment having occurred.*” Tex. Bus. Orgs. Code Ann. § 10.008(a)(2)(C); *Plastronics Socket Partners, Ltd. v. Don Weon Hwang*, 2019 WL 1009404, at *2–4 (E.D. Tex. Feb. 13, 2019) (holding that a patent that was allocated and vested in a separate entity as part of a divisive merger did not violate a provision in a patent ownership agreement prohibiting transfers without consent as, under the TBOC, an allocation of interests through a divisive merger does not constitute a transfer).

Here, Corizon—faced with no other option than filing Chapter 11 bankruptcy—underwent a by-the-book divisional merger. *See generally* Pls.’ Am. Pet., Ex. 28, Plan of Divisional Merger. As part of this divisional merger, Corizon was allocated and remained vested with all inactive and expired customer contracts, as well as all liabilities related to such contracts. *See id.* at Schedule 3.01(b); Schedule 4.01(b). In return, Corizon was released from nearly \$100 million of senior secured debt; those secured debt obligations were allocated to CHS TX, Inc. *See id.* at 326; Schedule 4.01(a). Moreover, as part of the divisional merger, Corizon was allocated \$1 million in cash, as well as the right to draw on the \$15 million Funding Agreement with M2 LoanCo, \$11 million of which was earmarked for creditors of Corizon. *See id.* at Schedule 3.01(b). These allocations *did not*, as a matter of Texas law, constitute a transfer or assignment. *See* Tex. Bus. Orgs. Code Ann. § 10.008(a)(2)(C). Without the necessary predicate “transfer,” Plaintiffs’ fraudulent transfer claims against Corizon will fail.

B. Plaintiffs Face No Irreparable Harm As This Is A Simple Alleged Breach of Contract Case That Can Be Remedied In Full By Monetary Damages.

Plaintiffs’ Motion for Preliminary Injunction should also be denied as to Corizon as Plaintiffs have failed to demonstrate or allege irreparable harm. This alone is an independently sufficient ground upon which to deny Plaintiffs’ request for injunctive relief, including the

appointment of a receiver. *See Rucker v. Fowler*, 233 S.W.2d 809, 814 (Mo. Ct. App. 1950); *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003); *see also Simplex Paper Corp. v. Standard Corrugated Box Co.*, 97 S.W.2d 862, 866 (Mo. Ct. App. 1936) (“It seems to be supported by the great weight of the authorities that, before a court may be clothed with jurisdiction to appoint a receiver, it must first appear that the plaintiff has no adequate remedy at law and, absent such a showing, the court is without jurisdiction to appoint a receiver.”).

“Irreparable harm is established if monetary remedies cannot provide adequate compensation for improper conduct.” *Minana v. Monroe*, 467 S.W.3d 901, 907 (Mo. Ct. App. 2015) (internal quotations omitted). It follows then that quantifiable losses, such as losses based on a purported breach of contract, are *not* irreparable. *See Mgmt Registry, Inc.*, 920 F.3d at 1183 (affirming denial of preliminary injunction where facts presented the “opposite” of irreparable harm—“that an award of money damages would fully compensate [movant] because its losses were quantifiable”); *Miller v. Ziegler*, 582 F. Supp. 3d 640, 647 (W.D. Mo. 2022) (finding there to be no irreparable harm where governing contract at issue could be used to calculate monetary remedy owed to movant if successful on claims); *Caballo Coal Co. v. Ind. Mich. Power Co.*, No. 4:01-CV-1558CAS, 2002 WL 32727070, at *7 (E.D. Mo. Jan. 10, 2002), *aff’d*, 305 F.3d 796 (8th Cir. 2002)) (finding there to be no irreparable harm in breach of contract action where movant could and did in fact already “calculate[] damages for the next five-year contract period, should [movant] prevail on the merits”)). In a similar vein, harm is not irreparable where a plaintiff—by its own admission—monetizes the value of its harm as part of the pleadings. *See, e.g., MPAY Inc. v. Erie Custom Comput. Apps., Inc.*, 970 F.3d 1010, 1020 (8th Cir. 2020) (confirming that movant’s losses were quantifiable, and thus *not* irreparable, where movant’s “own admission” provided a numerical damages estimate of \$580,000/year).

Here, there can be no doubt that Plaintiffs face *no* irreparable harm absent injunctive relief against Corizon. This action—despite Plaintiffs’ best efforts to frame this dispute as more—is a breach of contract action. *See* Pls.’ Pet. ¶¶ 35–50 (asserting claims for breach of contract and breach of the covenant of good faith and fair dealing only); Pls.’ Am. Pet. ¶¶ 15–47; 134–48. Just like virtually all run of the mill breach of contract actions, Plaintiffs have an adequate remedy at law—money damages. Similar to *Miller*, Plaintiffs can easily quantify their alleged harm by looking to the Contract that they allege Corizon breached. *See* 582 F. Supp. 3d at 647. Indeed, Plaintiffs already did so by *repeatedly quantifying their purported damages through the pleadings*. *See, e.g.*, Pls.’ Am. Pet. ¶ 85 (explaining that on April 19, 2022, Plaintiffs’ counsel sent Corizon a “Demand for Payment of Amounts Due and Owing under the Hospital Services Agreement, demanding the \$12 million owed.”); *id.* ¶ 279 (noting “the approximately \$12 million owed to Plaintiffs”); *id.* ¶ 293 (same).

This inescapable conclusion fares no different in light of Plaintiffs’ unsupported concerns that Corizon will engage in “additional transfers” and that without a preliminary injunction it “could make it difficult...for Plaintiffs to recover at the conclusion of the litigation.” *See* Pls.’ Mot. for Prelim. Inj. at 55. In Missouri, “one seeking injunctive relief on grounds of irreparable damage and lack of adequate remedy at law must plead irreparable injury and inadequate legal remedy as traversable facts, not mere conclusions.” *State ex rel. Gardner v. Stelzer*, 568 S.W.3d 48, 51 (Mo. Ct. App. 2019) (internal quotations omitted). That Plaintiffs *may* have difficulty later collecting a judgment—a judgment that Plaintiffs (who are unsecured creditors) have in no way yet obtained⁶— is the type of unsupported “remote future injury” that cannot, as a matter of law,

⁶ Plaintiffs are putting the cart before the horse. Plaintiffs are unsecured creditors seeking to obtain a judgment against Corizon and, as such, have “no rights to property or right to judgment.” *Stockdale*, 2009 WL 2151159, at *3 (doubting the propriety of issuing an injunction against a

support the “dramatic and drastic power of injunctive force.” *See Stockdale v. Stockdale*, 2009 WL 2151159 at *2 (E.D. Mo. July 16, 2009) (quoting *Rogers v. Scurr*, 676 F.2d 1211, 1214 (8th Cir. 1981)); *Shafer v. Home Trading Co.*, 52 S.W.2d 462, 464 (Mo. Ct. App. 1932) (noting that appointing a receiver is “drastic” option which “should only be invoked when all other remedies fail”). And despite Plaintiffs’ best efforts, none of the case law upon which Plaintiffs rely (*see* Mot. for Prelim. Inj. at 55) changes this conclusion. *See, e.g., Rodriguez v. Lawns of Distinction, Ltd.*, No. 4:07-MC-447CAS, 2008 WL 4552973, at *1 (E.D. Mo. Oct. 7, 2008) (presenting distinguishable facts where movant had previously obtained a MUFTA judgment against party it sought to enjoin from transferring assets); *CitiMortgage, Inc. v. Just Mortg., Inc.*, No. 4:09 CV 1909 DDN, 2013 WL 6538680, at *2 (E.D. Mo. Dec. 13, 2013) (presenting distinguishable facts where movant had previously obtained a MUFTA judgment that it could not collect upon against party it sought to enjoin from transferring assets); *BancorpSouth Bank v. Hall*, No. 6:10-CV-03390-DGK, 2011 WL 529971, at *6 (W.D. Mo. Feb. 7, 2011) (presenting distinguishable facts where movant was a secured creditor who sought preliminary injunction as to avoid disposal of class of preferred shares by conclusion of litigation).

Simply put, a preliminary injunction—especially a preliminary injunction of the magnitude proposed by Plaintiffs—is an “extraordinary remedy.” *See Mgmt. Registry, Inc.*, 920 F.3d at 1183. Plaintiffs have failed to satisfy their obligation of justifying the court’s exercise of fashioning such an extraordinary remedy as the threat of irreparable harm is, as made clear by the less-than one-page Plaintiffs devote to it in their Motion for Preliminary Injunction (*see generally* Pls.’ Mot. for Prelim. Inj. at 55), non-existent.

defendant at risk of insolvency from transferring assets as “an unsecured credit has no rights to property prior to judgment”).

C. Granting Plaintiffs’ Requested Injunctive Relief Pre-Judgment Is Premature And Will Cause Severe Harm To Corizon.

When balancing the equities, the harm to Corizon weighs against granting Plaintiffs their requested injunctive relief. Again, both preliminary injunctions and the appointment of a receiver are extraordinary remedies.⁷ At bottom, Plaintiffs seek to freeze Defendants’ assets. Such a remedy is extraordinary, yet Plaintiffs devote just one paragraph of their 63-page, 84 exhibit Motion for Preliminary Injunction to grappling with the harm posed to Corizon or the other Defendants. *See* Pls.’ Mot. for Prelim. Inj. at 55–56.⁸

To start, the harm to Corizon must be considered in the context of this litigation’s procedural posture. At this point, Plaintiffs have obtained ***no judgment*** against Corizon. Under Missouri common law, courts will not appoint a receiver pre-judgment when the defendant lacks meaningful remaining assets to be managed. *See Yellow Mfg. Acceptance Corp. v. Am. Taxicabs*, 130 S.W.2d 601, 610 (Mo. 1939) (affirming the refusal of the lower court to appoint a receiver where there was no judgment yet obtained against the corporate directors and the corporation at issue did not have remaining assets to be managed). Such is the case here for Corizon—an entity that is currently winding down and that has no judgment against it.

True, the MUFTA allows a pre-judgment appointment of a receiver. *See* Mo. Rev. Stat. § 428.039.1(3)(b); *Riegel*, 597 S.W.3d at 708. But those limited instances where Missouri courts

⁷ Before appointing a receiver under MUFTA, Missouri courts have ordered briefing and a hearing on the issue separate from other motions. *See Riegel*, 597 S.W.3d at 706. If the Court does not reject outright Plaintiffs’ request for the appointment of a receiver, Corizon requests full briefing and a hearing on the issue.

⁸ This is an interesting approach in light of *Mgmt. Registry, Inc.* where the Eighth Circuit Court of Appeals admonished a movant who “devoted most of its memorandum accompanying its preliminary-injunction motion to chronicling the [defendants’] alleged misdeeds, regardless of their relevance to the motion,” in lieu of explaining how the movant satisfied the preliminary injunction factors. *See* 920 F.3d at 1184. The court criticized this approach, and noted that it was not the court’s responsibility to “try to then connect the dots between [movant’s] allegations and its legal theories.” *Id.*

have appointed a receiver pre-judgment, such as *Riegel*, are, in all respects, materially distinct from this case. In *Riegel*, the individual-defendant was the alleged sole owner of other named defendant organizations operating as his alter ego. *See id.* at 699. The petition did not criticize a perfectly appropriate divisional merger (as is the case here), but that the individual-defendant moved money around from bank accounts, trusts, and deposits to various organizations he owned to avoid paying a \$5,750,000 judgment against him from a different case—a wrongful death case where the individual-defendant allegedly murdered a lawyer who secured a judgment against him. *See id.* at 698–99. Against that backdrop, plaintiff petitioned for the appointment of a pre-judgment receiver. *Id.* at 700. After separate briefing and oral argument, the trial court found that “the facts presented show the existence of conduct on the part of Defendants which constitutes a *great emergency* and places this matter in an *urgent posture* sufficient to require and justify the appointment of a receiver immediately to take charge of, manage, preserve, and protect the assets of the [d]efendants.” *Id.* at 701 (emphasis added). In confirming the appointment, the Missouri Court of Appeals court recognized that “the appointment of a receiver over a civil defendant’s property, during the pendency of litigation, is an extraordinary remedy which should be employed *only in high unusual and compelling circumstances.*” *Id.* at 708 (emphasis added). A defendant who murdered the last lawyer to secure a judgment against him and who was transferring assets among his own companies is a highly unusual and compelling circumstance. A healthcare company undergoing a lawful divisional merger under Texas law is not.

Further, the relief sought by Plaintiffs is overly broad. Missouri courts have long recognized the “necessity that an injunction clearly and specifically describe the acts and things enjoined.” *Nat’l Rejectors, Inc. v. Trieman*, 409 S.W.2d 1, 18 (Mo. 1966) (en banc). Plaintiffs’ vague and broad request falls far short of this standard. Plaintiffs do not delineate which

Defendants and which assets should be overseen by a receiver (*see, e.g.*, Pls.’ Mot. for Prelim. Inj. at 56). In effect, their requested relief—appointing a receiver to take charge of all of the Defendants’ assets—would be taking charge of the organizations as a whole. This kitchen sink approach is beyond the bounds of sound discretion.

Last, but of equal importance, it is unlikely that the Court even has the power to appoint a receiver over an out-of-state entity like Corizon. In general, “[c]ourts will not interfere to regulate the internal affairs of a foreign corporation and will not appoint a receiver for a foreign corporation where to do so would amount to interference with its internal affairs.” 17A Fletcher Cyc. Corp. § 8554. Relevant here:

A state court will not examine the affairs of a corporation created by another state and appoint a receiver to take possession of and to administer all its assets under the direction of the court pendente lite, since a court of equity never decrees what it cannot compel to be performed, and if a receiver for a foreign corporation were appointed, the receiver would have no power outside of the state in which the court was sitting.

Id. (footnotes omitted). Missouri courts have long held the same:

A court of equity never does a vain act; it never decrees what it cannot compel to be performed. ***If this were a domestic corporation*** the court could... appoint a receiver, if it deemed proper, to take possession of all its assets and administer the same under the direction of the court pendente lite, and if the corporation or its officers should refuse to surrender its books or assets, there would be sufficient executive power forthcoming at the call of the court to enforce its decrees. But the commissioner or the receiver in such case is but the representative of the court. He is, while he keeps within his decree, pro hac vice the court. Where he goes the court goes, and what he does the court does. ***Can the circuit court in this case...go to Minnesota and take charge of the affairs of this corporation there?*** If the corporation should refuse to turn over its books to the commissioner or its money to the receiver, what could the court do? ***A court has no right to put itself in a position where its orders may be treated with contempt...***

State ex rel. Minn. Mut. Life Ins. Co. v. Denton, 129 S.W. 709, 712 (Mo. 1910) (emphasis added); *see also State ex rel. Chicago Cardinals Football Club, Inc. v. Nangle*, 369 S.W.2d 167, 171 (Mo. 1963) (“The attempt here is not to appoint a receiver to preserve a specific asset of the estate

located in Missouri but to appoint a receiver to operate the business of an Illinois corporation in which decedent was a stockholder.”); *Sidway v. Missouri Land & Live-Stock Co.*, 101 F. 481, 483–84 (C.C.W.D. Mo. 1900) (“[I]n the absence of a statute conferring such jurisdiction the settled rules of equity seem to answer the question [whether to appoint a receiver over an out of state corporation] in the negative.”).

The MUFTA does not confer the power to appoint a receiver over an out-of-state corporation. Especially when the receiver would take charge of all of a corporation’s assets—in effect, taking control of the corporation. Instead, MUFTA retains “the principles of law and equity” absent an explicit displacement. *See* Mo. Rev. Stat. § 428.054. Those principles of law and equity prohibit the appointment of a receiver to take charge of an out-of-state corporation—not just for Corizon in this instance, but also all other out-of-state corporations who may consider doing business in Missouri.

D. Public Interest Considerations Weigh Strongly In Favor Of Denying Plaintiffs’ Motion for Preliminary Injunction.

Finally, the public interest would not be served by granting the injunction Plaintiffs seek against Corizon. Plaintiffs’ argument to the contrary—contained in a single sentence in their 63-page, 84 exhibit Motion for Preliminary Injunction—is that “the public has a legitimate interest in ensuring that debtors are not allowed to frustrate legitimate collection efforts by creditors.” Pls.’ Mot. for Prelim. Inj. at 56. On this point, Corizon agrees.

Indeed, a key purpose of the divisional merger transaction was to protect unsecured creditors—like Plaintiffs—who, absent the divisional merger, would have had no recourse as the keys to Corizon would have been turned to a bankruptcy trustee. The fairness of the divisional merger transaction, including its benefits to unsecured creditors, was thoroughly assessed by independent financial advisors, including as part of a fairness opinion. *See* Pls.’ Mot. for Prelim.

Inj., Ex. 18, Presentation to Corizon Health, Inc. on Fairness Analysis Pertaining to Proposed Transaction; Pls.’ Mot. for Prelim. Inj., Ex. 23, FTI Capital Advisor’s Fairness Opinion. Those independent financial advisors determined that a divisional merger—the exact transaction that Plaintiffs criticize—was the fairest, most value-maximizing path forward. *See id.* Only after Corizon’s Board determined that it was in the best interests of Corizon Health, its shareholders, and its creditors, did the Board approve the divisional merger transaction. *See* Pls.’ Am. Pet., Ex. 28, Plan of Divisional Merger, Recitals. And the fruits of that decision are apparent in the various settlements Corizon has reached with its unsecured creditors since the divisional merger—money that those unsecured creditors would likely not have otherwise been paid if Corizon proceeded with a bankruptcy.

But the public interest considerations do not stop there. Texas’s legitimate public interest—long recognized by the Supreme Court—in “promoting stable relationships among parties involved in the corporations it charters” through the enforcement of its corporate laws must also be considered. *CTS Corp. v. Dynamics Corp.*, 481 U.S. 69, 91 (1987). The relief Plaintiffs seek as part their Motion for Preliminary Injunction—effectively, allowing a creditor from one state to upend a sophisticated transaction lawfully conducted under the laws of another state—would hardly serve that interest. It would extinguish it.⁹

CONCLUSION

For the foregoing reasons, Defendants request this Court to deny Plaintiffs’ Motion for Preliminary Injunction as to Corizon.

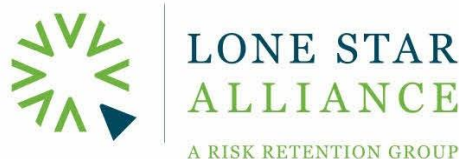
Dated: January 20, 2023

⁹ To be sure, there is more on the line in this case than the corporate laws of Texas, which is but one of several states with statutory provisions allowing divisional mergers. *See, e.g.*, 15 Pa. Cons. Stat. Ann. § 361; Ariz. Rev. Stat. § 29-2601; 6 Del. C. § 18-217(b)–(c).

Respectfully submitted,

/s/ R. Thomas Warburton
R. Thomas Warburton (MO Bar No. 65477)
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Birmingham, AL 35203
205.521.8987
twarburton@bradley.com

*Counsel for Tehum Care Services, Inc. d/b/a Corizon
Health, Inc.*



POLICY NUMBER 4-453668

Renewal ☒ New Policy ☐

Agent – USI/HLS

DECLARATIONS PAGE
Professional Liability Insurance Policy
Occurrence

NAMED INSURED: (including mailing address)

Valitas Health Services, Inc.
103 Powell Court
Brentwood, TN 37027

NAMED INSURED IS A(N): **Group**

NOTICE: THIS POLICY IS ISSUED BY YOUR
 RISK RETENTION GROUP

Your risk retention group may not be subject to all of the insurance laws and regulations of your state. State insurance insolvency guaranty funds are not available for your risk retention group.

POLICY PERIOD:

Effective Date:

01/01/2018

Expiration Date:

01/01/2019

Beginning and ending at 12:01 a.m.

SPECIALTY:

See Schedule of Insureds

TOTAL PREMIUM:

Premium is fully earned at policy inception.

LIMITS OF LIABILITY:

| | |
|---|--------------|
| TOTAL POLICY AGGREGATE LIMIT | \$24,000,000 |
| AGGREGATE SELF-INSURED RETENTION* | \$20,000,000 |
| MEDICAL GROUP PROFESSIONAL LIABILITY: | |
| Each Medical Incident – Each Physician Insured Limit | \$1,000,000 |
| Each Medical Incident – All Other Non-Physician Insureds Combined Limit | \$1,000,000 |
| Each Medical Incident Aggregate – All Insureds Combined Limit** | \$2,000,000 |
| Each Physician Insured Aggregate Limit | \$3,000,000 |
| Each Medical Incident – Physician Insured Self-Insured Retention | \$1,000,000 |
| Each Medical Incident – All Other Non-Physician Insureds Combined Self-Insured Retention | \$1,000,000 |
| Each Medical Incident Aggregate – All Insureds Combined Self-Insured Retention** | \$2,000,000 |
| Each Physician Insured Aggregate Self-Insured Retention | \$3,000,000 |
| <p>*The Aggregate Self-Insured Retention reduces the Total Policy Aggregate Limit. The Aggregate Self-Insured Retention is reduced by damages only, not Defense Costs. Defense Cost are paid directly by the First Named Insured and do not erode the Limits of Insurance or the Self-Insured Retention. Thus, the maximum total amount payable as damages by Lone Star Alliance, Inc. is \$4,000,000.</p> <p>** The Each Medical Incident Aggregate – All Insureds Combined Limit and Self-Insured Retention apply regardless of the number of Insured defendants involved or named in a medical incident.</p> | |

This Declarations Page, along with the coverage forms and *endorsements* attached, completes the above numbered policy and is part of and subject to all terms, conditions and exclusions of the above numbered policy and any *endorsements* issued by the Corporation to the *Named Insured*.

Issue Date: **12/27/2017**

AM

Countersigned by:



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

ph 844 595 8866
www.lonestara.com

P.O. Box 160140
Austin, Texas 78716-0140



**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-453668**

Policy Term: **01/01/2018 to 01/01/2019**
Endorsement Effective Date: **01/01/2018**
Insured: **Valitas Health Services, Inc.**

POLICY ENDORSEMENT
Schedule of Forms and Endorsements

Declarations Page
Medical Professional Liability Insurance Policy **OCCURRENCE**
Schedule of Forms and Endorsements
Schedule of Additional Insureds
Limits of Insurance for Specific Contracts Endorsement
State Requirements Endorsement
Additional Insured, Blanket Endorsement
Additional Insured, Limited Endorsement
Self-Insured Retention Endorsement
Patient Bodily Injury Coverage Endorsement
Policy Audit Endorsement
Minimum Earned Premium Endorsement
Pennsylvania Physician Coverage Endorsement
Maximum Aggregate Self-Insured Retention Erosion Endorsement
Class Actions and Mass Litigation
Polk County Iowa Endorsement

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

If *this policy* is initially issued with this *endorsement* forming a part thereof at that time and having the same effective date as such policy, or if this *endorsement* is issued together with any renewal or amendatory Declarations Page for *this policy* and having the same effective date as such Declarations Page, then no countersignature on this *endorsement* is necessary. Otherwise this *endorsement* shall not be valid and binding on the Corporation unless countersigned below by an authorized representative of the Corporation.

This *endorsement* takes effect as of the beginning day and hour for the *policy period of this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: **12/27/2017**

AM

Countersigned by: _____

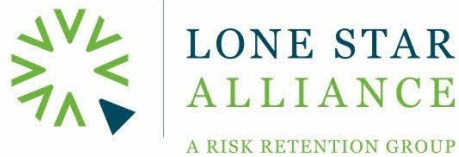
Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

ph 844 595 8866
www.lonestara.com

P.O. Box 160140
Austin, Texas 78716-0140

LSA_50
ver 0414



MEDICAL PROFESSIONAL LIABILITY INSURANCE POLICY OCCURRENCE

I. INSURING AGREEMENT

Medical Group Professional Liability

We will reimburse the **First Named Insured** those sums in excess of the self-insured retention set forth in the Declarations Page of this policy that an **Insured** becomes legally obligated to pay others as damages resulting from a **medical incident** arising out of **professional services**. The **medical incident** must take place during the **policy period**. A **claim** for a **medical incident** must be made within the coverage territory. The amount we will pay for damages is limited as described in Section IV. LIMITS OF INSURANCE.

When the Aggregate SIR has been exhausted by actual payments, we will reimburse the **First Named Insured** within 30 days of receipt of proof of indemnity payment by the **First Named Insured**, excess of the self-insured retention aggregate, for a covered **claim**.

This policy does not provide any **insured** with a defense to a **claim**, disciplinary proceeding or administrative proceeding. The policy does not pay or reimburse attorneys' fees or any other defense costs. Such fees and expenses are excluded in their entirety and do not reduce or exhaust any limits of liability or Self-Insured Retention. Payment of **defense costs** is the responsibility of the **First Named Insured**.

II. WHO IS AN INSURED

The following are **Insureds** under this Coverage Part:

- A. The **First Named Insured (You)** and any other Named **Insureds** shown on the Schedule of Named **Insureds**.
- B. A newly formed or acquired subsidiary or affiliated entity of the **First Named Insured**, acquired or formed during the **policy period** for which the primary business is providing correctional healthcare, and for which the **First Named Insured** (a) has more than 50% ownership, OR (b) exercises management or financial control.
- C. A Professional Corporation (P.C.) or Professional Association (P.A.) that is a party to a written contract with a subsidiary or affiliated entity of the **First Named Insured** during the **policy period**, but only with respect to a **medical incident** arising out of correctional healthcare services provided to correctional facilities under such written contract.
- D. A partnership or joint venture, but only if the partnership or joint venture is specifically listed as a Named **Insured**. The partnership's partners or joint venture's members are also **Insureds**, but

only with respect to the conduct of **your** business. No person or organization is an **Insured** with respect to the conduct of any current or past partnership or joint venture that is not shown as a Named **Insured** in the Declarations.

- E. A limited liability company, but only if the limited liability company is specifically listed as a Named **Insured**. The limited liability company's members are also **Insureds**, but only with respect to the conduct of **your** business. **Your** managers are **Insureds** but only with respect to their duties as **your** managers.
- F. If **you** are designated in the Declarations as other than partnership, joint venture or limited liability company, the organization so designated and any **Executive Officer**, director or stockholder thereof while acting within the scope of his duties for **you**.
- G. **Your Physician Insureds.**
- H. **Your employees**, other than **your Physician Insureds**, but only for acts within the scope of their employment by **you** or while performing duties related to the conduct of **your** business.
- I. Any **Physician Insureds** or any of **your** other employed or contracted healthcare providers for the providing of **professional services** as a Good Samaritan away from **your** premises in sudden and unforeseen emergencies outside the scope of his or her **patient** care duties for **you**, provided that, no remuneration is demanded, expected or received.
- J. Members of **your** boards and committees, including physician members of **your** Medical Advisory Board and the Technical Advisory Panel, but only for conduct arising out of their duties as board or committee members. Any **Physician Insured** while acting as a member of any committee of any licensed hospital or other healthcare facility, professional medical association or society or of a legally constituted professional standards review organization at **your** request.
- K. Any **locum tenens** healthcare professional engaged to act on **your** behalf as a replacement while an **Insured** or a **Physician Insured** is temporarily absent from professional practice, only while acting within the scope of their employment by **you**.
- L. Any student enrolled in a training program in connection with **your professional services**, but only when acting within the scope of his or her duties and at **your** direction.
- M. Any of **your** authorized volunteer workers, other than a healthcare provider, but only while acting within the scope of their duties as such and at **your** direction.
- N. **Your** superintendents, administrators, directors, department heads, medical directors and heads of the medical staff, but only in their capacity as such.
- O. **Your** trustees and governors, but only for the conduct of **your** business within the course and scope of their employment or their duties as trustees or governors.

III. EXCLUSIONS

This insurance does not apply to any **medical incident, claim or suit** arising out of:

- A. Contractual Liability

Any liability **you** assume under any contract or agreement.

This exclusion does not apply to:

1. . Liability that **you** would have in the absence of a contract or agreement;
2. . Liability **you** assume in a written contract with:
 - a. A Health Maintenance Organization;
 - b. A Preferred Provider Organization;
 - c. An Independent Practice Association; or
 - d. Any other similar organization;

but only for such liability as is attributable to an **Insured's** alleged negligence arising out of **professional services**; or

3. . A warranty of fitness or quality of any therapeutic agents or supplies an **Insured** has furnished or supplied in connection with treatment that has been performed.

B. Unfair Trade Practices

Any allegations of price fixing, unfair competition or trade practices; a dispute over fees, income or revenue; the inducement to enter into, the interference with or the dissolution or termination of any business or economic relationship; or violations of any federal, state or local law (including but not limited to Title 15 of the United States Code or any similar state statute) that prohibits the unlawful restraint of trade, business or profession.

This exclusion shall not apply to allegations of restraint of trade, business or profession arising out of the activities of the **Insured's** professional boards or committees as described in Section II. **WHO IS AN INSURED**, I. provided that settlement thereof or final judgment rendered therein does not affirm a violation of law.

C. U.S. Department of Health & Human Services (HHS)

Any administrative or judicial hearings pertaining to Medicare/Medicaid fraud or any other hearing initiated against an **Insured** by HHS or by any utilization or quality review organization under contract with HHS.

This exclusion does not apply to HHS proceedings that allege the violation of the Emergency Medical Treatment and Labor Act.

D. Workers Compensation and Similar Laws

Any obligation an **Insured** has under a workers compensation, disability benefits, or unemployment compensation law or any similar law.

E. Employer's Liability

1. . **Bodily Injury** to an **employee** of **yours** arising out of and in the course of:
 - a. Employment by **you**; or
 - b. While performing duties related to the conduct of **your** business; or
2. . **Claims** or **suits** by a spouse, child, parent, grandparent, brother, or sister of that **employee** as a consequence of sub-paragraph a. above.

This exclusion applies:

1. Whether **you** may be liable as an employer or in any other capacity; and
2. To any obligation to share damages with or repay someone else who must pay damages because of the injury.

F. Employment Practices

Refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or other practices or policies related to employment for which a **claim** or **suit** is brought by an **Insured** or the spouse, parent, brother or sister of that **Insured**.

This exclusion does not apply to services by any person as a member of **your** formal accreditation, standards review or similar professional board or committee otherwise covered by this policy.

G. ERISA

Employee Retirement Income Security Act (ERISA) of 1974 or amendments thereto, or any similar state law.

H. War

War, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

I. Dishonest Practices

Dishonest, fraudulent, criminal or malicious acts, errors, or omissions.

J. Pollution

1. . The actual, alleged, or threatened, discharge, dispersal, seepage, migration, release, or escape of **pollutants**;
2. . Any direction, request, demand, order or statutory or regulatory requirement to test for, monitor, investigate, cleanup, remove, contain, treat, detoxify, or neutralize **pollutants** or in any way respond to or assess the effects of **pollutants**; or
3. . Any cost, charge, expense or request for reimbursement arising out of 1. or 2. above.

K. Nuclear Hazards

Nuclear fission, nuclear fusion or radioactive contamination.

This exclusion does not apply to **bodily injury** to a **patient** arising out of the practice of Nuclear Medicine.

L. Asbestos

The manufacture, mining, use, sale, installation, removal, abatement, clean-up, distribution or exposure to asbestos, asbestos containing waste materials, asbestos waste, asbestos fibers, asbestos products and asbestos dust.

M. Sexual Misconduct

Any sexual act, including without limitation sexual intimacy (even if consensual), sexual contact, sexual advances, requests for sexual favors, sexual molestation, sexual assault, sexual abuse, sexual harassment, sexual exploitation or other verbal or physical conduct of a sexual nature. However, if required by written contract with the Named **Insured**, this exclusion does not apply to:

1. . Any specific individual **Insured** who allegedly committed such sexual misconduct, unless there is an admission of guilt or it is judicially determined that the specific individual **Insured** committed the sexual misconduct. If there is an admission of guilt or it is judicially determined that the specific individual **Insured** committed the sexual misconduct **we** will not pay any damages.
2. . Any other **Insured**, unless there is an admission of guilt or judicial determination that such **Insured**:
 - a. knew or should have known about the sexual misconduct allegedly committed by the specific individual **Insured**, but failed to prevent or stop it; or
 - b. knew or should have known that the specific individual **Insured** who allegedly committed the sexual misconduct had a prior history of such sexual misconduct.

As used in this exclusion, specific individual **Insured** includes **employees** and authorized volunteer workers while performing duties related to the conduct of **your** business.

N. Discrimination/Humiliation

Discrimination based on, but not limited to race, color, creed, sex, religion, age, national origin, physical impairment, sexual preference, nor any **claims** involving humiliation or mental anguish, arising out of such discrimination whether or not for alleged violation of any federal, state or local government law or regulation prohibiting such discrimination.

However, this exclusion does not apply to any Civil Rights Violation alleged pursuant to 42 USC § 1983, et seq., provided that, such Civil Rights Violation arises out of a **medical incident** for which the **Insured** is legally liable.

O. Expected or Intended Injury

Damages or harm expected or intended from an **Insured's** standpoint.

P. Other Coverage Parts

Any **claims** or **suits** brought under any Coverage Part of this policy other than this MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART.

Q. **Insured vs. Insured**

Any **claims** made by one **Insured** against another **Insured**.

This exclusion does not apply to:

1. Services by any person as a member of **your** formal accreditation, standards review or similar professional board or committee otherwise covered by this policy; or
2. **Medical incidents** involving **your employees**, students, volunteers or others that are considered within the policy definition of **Insureds** when they are receiving medical treatment from another **Insured**.

R. Penalties

Any fines or penalties.

S. Current or Past Partnerships or Joint Ventures

Arising out of any current or past partnership or joint venture not named as an **Insured** in this policy.

IV. LIMITS OF INSURANCE

The Limits of Liability shown on the Declarations Page apply as follows:

- A. The Each **Medical Incident** – Each **Physician Insured** Limit and the Each **Medical Incident** All Other Non-Physician **Insured's** Combined Limit are the most **we** will pay for damages under Section I. INSURING AGREEMENT – MEDICAL GROUP PROFESSIONAL LIABILITY for a single **medical incident** and/or all **bodily injury** to any one **patient** arising out of a single **medical incident** regardless of the number of **claims** made or **suits** brought; or persons or organizations making **claims** or bringing **suits**.

1. . The Each **Medical Incident** – Each **Physician Insured** Limit applies separately to each **Physician Insured**; however any **locum tenens** and each **Physician Insured** for whom the **locum tenens** is substituting will share the same Each **Medical Incident** – Each **Physician Insured** Limit; and
2. . The Each **Medical Incident** All Other Non-Physician **Insured's** Combined Limit applies to all Named **Insureds** and all additional **Insureds** collectively, other than each **Physician Insureds**. This limit applies regardless of the number of **Insureds** who are covered under this policy.

All related or interrelated **medical incidents** causing **bodily injury** to a **patient** shall be deemed a single **medical incident** for the purpose of applying each **medical incident** limit.

Refer to the “Self-Insured Retention Endorsement” with respect to the reduction of the Each **Medical Incident** – Each **Physician Insured** Limit and the reduction of the Each **Medical Incident** All Other Non-Physician **Insured’s** Combined Limit.

- B. The Each **Physician Insured** Aggregate Limit and All Other Non-Physician **Insureds** Aggregate Limit are the most **we** will pay for damages under Section I. INSURING AGREEMENT – MEDICAL GROUP PROFESSIONAL LIABILITY for each **policy period**.
 - 1. Each **Physician Insured** Aggregate Limit applies separately to each **Physician Insured**; however any **locum tenens** and the **Physician Insured** for whom the **locum tenens** is substituting will share the same Each **Physician Insured** Aggregate Limit;
 - 2. All Other Non-Physician **Insureds** Aggregate Limit separately to all Named **Insureds** and all additional **Insureds** collectively, other than each **Physician Insureds**. This limit applies regardless of the number of **Insureds** who are covered under this policy.
- C. The Limit of Insurance shown on the Declarations as the Total Policy Aggregate Limit is the most **we** will pay for all damages under the MEDICAL GROUP PROFESSION LIABILITY COVERAGE PART combined. Refer to the “Self-Insured Retention Endorsement” with respect to the reduction of the Total Policy Aggregate Limit.
- D. Subject to paragraph A., B, and C. above, all **claims** arising from one **medical incident** or a series of related **medical incidents** to any one **patient** shall be deemed to be a single **medical incident** and shall be deemed to have occurred at the time of the first **medical incident** regardless of the number of claimants, or the number of **Insureds** against whom such **claims** are made. If a **medical incident** commences prior to the inception date of the first policy issued by **us** and continues thereafter, such fact will not prejudice such **medical incident** being covered under such first policy issued by **us**.
- E. If the **policy period** is extended for an additional period of less than 12 months, the additional period will be deemed part of the **policy period** for purposes of determining the Limits of Insurance.



**LONE STAR
ALLIANCE**

A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-453668**

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

04/06/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT
Additional Insured

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy* that the parties listed below are included as Additional *insureds*.

In no event shall the Corporation be liable under *this policy* for more than the limits of liability stated in the applicable Declarations Page or any *endorsement* of *this policy*.

| Additional insured(s) | Effective Date(s) | Termination Date(s) |
|---|-------------------|---------------------|
| Cortland Capital Market Services LLC, as first lien administrative agent and first lien collateral agent 225 W. Washington St., 21st Floor Chicago, Illinois 60606 Attn: Maria Villagomez and Legal Department | 04/06/2017 | |
| Cortland Capital Market Services LLC, as second lien administrative agent and second lien collateral agent 225 W. Washington St., 21st Floor Chicago, Illinois 60606 Attn: Maria Villagomez and Legal Department | 04/06/2017 | |

Additional *insureds* and the *Named Insured* or other insured listed above will share the “each *claim*” and “all *claims*” limits of liability for all *claims* arising out of the same *insured incident*. There shall be no additional limits of liability available to Additional *insureds*.

Coverage for additional *insureds* is limited to *claims* arising out of professional services performed by an individual or entity shown on the Declarations Page, Schedule of Insureds or applicable *endorsement*.

In no event shall the Corporation be liable under this policy for more than the limits of liability stated in the Declarations Page, Schedule of Insureds or applicable *endorsement* of *this policy*.

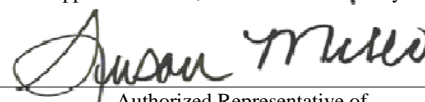
Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

Countersigned by: _____



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group
ver 0414

**AM
OCCURRENCE**

LSA_52A



**LONE STAR
ALLIANCE**

A RISK RETENTION GROUP

This endorsement forms a part of **POLICY NUMBER 4-453668**

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT

General Change

Cumberland County, Maine

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

This policy extends coverage to professional services rendered by Corizon/ Valitas employees at jail facilities located in Cumberland County, Maine, provided:

1. The services are limited to the administration of vaccinations, specifically excluding coverage for any product defect in the vaccines and any adverse reactions.
2. The vaccinations are part of a Pandemic Preparedness Plan instituted by the U.S. Centers for Disease Control at a time when the U. S. government has declared a public health emergency.
3. Vaccinations are only administered to jail inmates, jail staff and the staff's immediate families.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

Countersigned by: _____

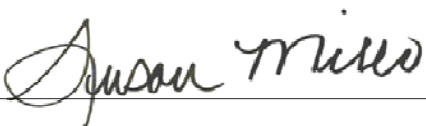
Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

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OCCURRENCE

ver 0414

LSA_GEN





**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT
Additional Insured, Blanket

In consideration of the premium charged for this policy and this endorsement, it is hereby understood and agreed, subject to all terms, conditions and exclusions of this policy:

This policy is amended as follows:

Section II. WHO IS AN INSURED of the MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART is amended by adding the following:

Any organization is included as additional insured if you are obligated by virtue of a written contract to provide indemnification or insurance as afforded by this Policy to such organization, but only with respect to liability arising out of operations conducted by you or on your behalf.

Notwithstanding any provision in the written contract between you and such organization to the contrary, the organization shall not be construed as an organization acting on your behalf and there shall be no coverage with respect to liability for injury or damages arising out of any act or omission of such organization.

In the event that the Limits of Insurance provided by this Policy exceed the Limits of Insurance required by the written contract, the insurance provided by this endorsement shall be limited to the Limits of Insurance (inclusive of any applicable self-insured retention) required by the written contract. The Limits of Insurance (inclusive of any applicable self-insured retention) provided by this Policy shall not be increased for any reason, including any failure, refusal or inability of any self-insurance/Insured to pay any amounts due thereunder. This endorsement shall not increase the Limits of Insurance shown in the Declarations pertaining to the coverage provided herein.

Any coverage provided by this endorsement to an additional insured organization shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis, unless the written contract with the additional insured specifically requires that this insurance be primary and non-contributory with any other insurance carried by the additional insured. In such case, this insurance shall be primary and non-contributory with any other insurance carried by the additional insured.

In the event of payment under the Policy, we waive our right of subrogation against an organization included as an additional insured where the Named Insured has waived liability of such person or organization as part of a written contractual agreement between the Named Insured and the organization entered into prior to the medical incident.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017****AM**

Countersigned by:

Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

ph 844 595 8866
www.lonestara.com

P.O. Box 160140
Austin, Texas 78716-0140

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

**POLICY ENDORSEMENT
Additional Insureds, Limited**

In consideration of the premium charged for this policy and this endorsement, it is hereby understood and agreed, subject to all terms, conditions and exclusions of this policy:

The following persons and entities are added as Additional Insureds:

1. Lakewood Healthcare Associates, LLC, is an insured, but only with respect to services rendered by healthcare providers covered by this policy within the scope of their employment for the First Named Insured or pursuant to their written contract with the First Named Insured, whichever is applicable.
2. Mexico Woman's Health Specialists in Missouri, but only pursuant to its written contract with the First Named Insured, and only as respect to claims or suits alleging a violation under 42 USC § 1983, et seq., provided that, such Civil Rights Violation arises out of a medical incident for which the additional Insured is legally liable.
3. Indiana Minority Health Coalition ("IMHC"), but only with respect to services rendered by the First Named Insured or any psychiatrist independently contracted with IMHC to work at a location staffed by the First Named Insured.
4. Gary Campbell, DO, but only as respect to consulting services performed on behalf of the First Named Insured.
5. Ernest W. Jackson, DMD, Institutional Dental Services, PC, a Missouri Professional Corporation, but only as respect to services performed on behalf of the First Named Insured.
6. Family Vision Center of Hobbs, NM, but only with respect to services rendered by optometrists and/or other healthcare providers covered by this policy within the scope of their employment for the First Named Insured or pursuant to their written contract with the First Named Insured, whichever is applicable.
7. Sheryl Salaris, M.D., but only as respect to consulting services performed on behalf of the First Named Insured.
8. Lee J. Browning, O.D., but only as respect to consulting services performed on behalf of the First Named Insured.
9. James Thorpe, D.M.D., but only as respect to consulting services performed on behalf of the First Named Insured.
10. Melvin Kolb, M.D., P.C., is an Insured, but only as respect to services provided by Melvin Kolb, M.D. on behalf of First Named Insured.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this *policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

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Countersigned by:

Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

ph 844 595 8866
www.lonestara.com

P.O. Box 160140
Austin, Texas 78716-0140

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**LONE STAR
ALLIANCE**

A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT

General Change

Class Actions and Mass Litigation

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

1. All **medical incidents, claims or suits** that become part of one or more class actions, mass tort litigation, multi-district litigation or similar proceedings in which a group of claimants with the same or similar injuries caused by the same conduct or product pursue litigation against an **Insured or Insureds** shall be subject to a Total Policy Aggregate Limit of \$2,000,000 and a Total Policy Aggregate Self-Insured Retention of \$2,000,000.

2. This *endorsement* shall be applied retroactively, meaning the endorsement shall be considered a part of *this policy* from inception, and shall be applied without regard to whether a **medical incident, claim or suit** has been previously reported.

3. The Policy Endorsement "State Requirements" is revised with respect to item 3. Arizona DOC, which is deleted and replaced with the following:

3. Arizona DOC – This insurance does not apply to any medical incident, claim, suit or administrative proceeding arising out of any professional services performed pursuant to the contract between the First Named Insured and State of Arizona Department of Corrections commencing March 4, 2013. However, this exclusion shall not apply to any **medical incidents, claims or suits** that are part of a class action, mass tort litigation, multi-district litigation or similar proceeding in which a group of claimants with the same or similar injuries caused by the same conduct or product pursue litigation against an **Insured or Insureds**. **All medical incidents, claims or suits subject to this paragraph, shall henceforth be covered under *this policy*, even if previously reported under another policy issued by Lone Star Alliance, Inc.**

4. Any damages paid under *this policy* shall not include plaintiff attorneys' fees awarded as damages or any award arising out of *claim* for a declaratory judgment or injunctive relief in a **medical incident, claim or suit** that becomes part of a class action, mass tort litigation, multi-district litigation or similar proceeding in which a group of claimants with the same or similar injuries caused by the same conduct or product pursue litigation against an **Insured or Insureds**.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

Countersigned by:

Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT

Limits of Insurance for Specific Contracts

The policy is amended as follows:

With respect to a **medical incident** governed by the **First Name Insured's** contract with the following, the Medical Group Professional Liability Limits of Insurance and Self-Insured Retention shown on the DECLARATIONS are deleted in their entirety and replaced with the following:

| Indiana Contracts (Patient's Compensation Fund Enrollees) | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident – Each Patient's Compensation Fund Enrolled Insured | \$ 250,000 | \$ 250,000 |
| Each Patient's Compensation Fund Enrolled Insured Aggregate | \$ 750,000 | \$ 750,000 |
| Each Medical Incident Aggregate – All Insureds Combined | N/A | N/A |

Limits of Insurance and Self-Insured Retention show above apply only if an **Insured** is a qualified healthcare provider and is enrolled in the Indiana Patient's Compensation Fund. The Total Policy Aggregate Limit shown on the DECLARATIONS does not apply to the Indiana Patient's Compensation Fund Enrolled **Insureds**, as per the rules of the Fund.

| Florida Department of Corrections | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident – Each Physician Insured | \$ 250,000 | \$ 250,000 |
| Each Medical Incident - All Other Non-Physician Insureds Combined | \$ 250,000 | \$ 250,000 |
| Each Medical Incident Aggregate – All Insureds Combined | N/A | N/A |
| Each Physician Insured Aggregate | \$ 750,000 | \$ 750,000 |

| State of Virginia | Limit of Insurance | Self-Insured Retention |
|---|---------------------|------------------------|
| Each Medical Incident – Each Physician Insured | \$ Per Statute | \$ Per Statute |
| Each Medical Incident - All Other Non-Physician Insureds Combined | \$ Per Statute | \$ Per Statute |
| Each Medical Incident Aggregate – All Insureds Combined | 2 x Statutory Limit | 2 x Statutory Limit |
| Each Physician Insured Aggregate | \$ Per Statute | \$ Per Statute |

| State of Missouri | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident - All Insureds Combined | \$ 2,000,000 | \$ 2,000,000 |
| Aggregate - All Insureds Combined | \$ 4,000,000 | \$ 4,000,000 |

| State of Idaho ** | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident - All Insureds Combined | \$ 3,000,000 | \$ 3,000,000 |
| Aggregate – All Insureds Combined | \$ 10,000,000 | \$10,000,000 |
| Each Medical Incident Aggregate Self-Insured Retention Erosion Maximum** | N/A | \$ 2,000,000 |

| Fulton County Jail, GA | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident - All Insureds Combined | \$ 2,000,000 | \$ 2,000,000 |
| Aggregate – All Insureds Combined | \$ 4,000,000 | \$ 4,000,000 |

| Santa Barbara County Jail, CA ** | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident - All Insureds Combined | \$ 3,000,000 | \$ 3,000,000 |
| Aggregate – All Insureds Combined | \$ 5,000,000 | \$ 5,000,000 |
| Each Medical Incident Aggregate Self-Insured Retention Erosion Maximum** | N/A | \$ 2,000,000 |

| Fresno County Jail, CA ** | Limit of Insurance | Self-Insured Retention |
|---|--------------------|------------------------|
| Each Medical Incident - All Insureds Combined | \$ 3,000,000 | \$ 3,000,000 |
| Aggregate – All Insureds Combined | \$ 5,000,000 | \$ 5,000,000 |
| Each Medical Incident Aggregate Self-Insured Retention Erosion Maximum** | N/A | \$ 2,000,000 |

State of MarylandEach **Medical Incident**- All **Insureds** CombinedAggregate – All **Insureds** CombinedLimit of Insurance Self-Insured Retention

\$ 2,000,000 \$ 2,000,000

\$ 7,000,000 \$ 7,000,000

The maximum amount that the Aggregate Self Insured Retention as shown on the DECLARATIONS shall be eroded by any single **medical incident is \$2,000,000. Until and unless the Aggregate Self Insured Retention is exhausted on a paid basis, any payments for damages in excess of \$2,000,000 for any single **medical incident** are the responsibility of the **First Named Insured**.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: 12/27/2017

AM

Countersigned by: _____



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

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www.lonestara.com

P.O. Box 160140
Austin, Texas 78716-0140

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LONE STAR
ALLIANCE
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT
Maximum Aggregate Self-Insured Retention Erosion

The policy is amended as follows:

The maximum amount that the Aggregate Self-Insured Retention shown on the DECLARATIONS shall be eroded by any single **medical incident** is \$2,000,000. Until and unless the Aggregate Self-Insured Retention is exhausted on a paid basis, any payments for damages in excess of \$2,000,000 for any single **medical incident** are the responsibility of the **First Named Insured**.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-100

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

**POLICY ENDORSEMENT
Minimum Earned Premium**

It is understood and agreed that the Premium shown on the DECLARATIONS is a minimum premium and is fully earned at policy inception.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

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Countersigned by: _____

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ver 1013

This endorsement forms a part of

POLICY NUMBER 4-453668**LONE STAR**Policy Term:
Endorsement Effective Date:
Insured:**01/01/2018 to 01/01/2019**
01/01/2018
Valitas Health Services, Inc.**POLICY ENDORSEMENT**
Pennsylvania Physician Coverage

The policy is amended as follows:

With respect to Each **Physician Insured** in the State of Pennsylvania, the Medical Group Professional Liability Limits of Insurance and Self-Insured Retention shown on the DECLARATIONS are deleted in their entirety and replaced with the following:

| <u>Pennsylvania Contracts (lyfcare Emoltees)</u> | <u>Limit of Insurance</u> | <u>Self-Insured Retention</u> |
|--|---------------------------|-------------------------------|
| Each Medical Incident - Each Mcare Emailed Physician Insured | \$500,000 | \$500,000 |
| Each Mcare Emailed Physician Insured Aggregate | \$1,500,000 | \$1,500,000 |
| Each Medical Incident Aggregate - All Insureds Combined | N/A | N/A |

Limits of Insurance and Self-Insured Retention show above apply only if a **Physician Insured** is emailed in the Pennsylvania Medical Care Availability and Reduction of Error ("Mcare") Fund.

The Total Policy Aggregate Limit shown on the DECLARATIONS does not apply to Mcare Emailed **Physician Insured** as per the rules of the Mcare Fund.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in this *policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

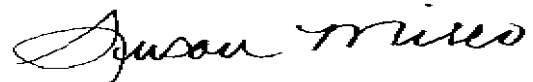
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Issue Date: 12/27/2017

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Countersigned by:



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

**POLICY ENDORSEMENT
Patient Bodily Injury Coverage**

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

I. SECTION I. INSURING AGREEMENT is amended to include the following coverage:

Bodily Injury to Patients

We will pay those sums that an **Insured** becomes legally obligated to pay as damages because of **bodily injury** to a **patient** to which this insurance applies. The amount we will pay for damages is limited as described in Section **IV. LIMITS OF INSURANCE**. *All bodily injury in any way sustained by a patient shall for the purposes of this endorsement be deemed a medical incident.*

This coverage applies to **bodily injury** to a patient only if:

1. The **bodily injury** is caused by an **occurrence** that takes place in the coverage territory; and
2. The **bodily injury** occurs during the **policy period**.

II. The exclusions set forth in Section **III. EXCLUSIONS** do not apply to coverage provided by the “**Bodily Injury to Patients**” section of the **MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART**. However, the following exclusions apply to coverage provided by the “**Bodily Injury to Patients**” section of the **MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART**:

This insurance does not apply to any **medical incident, occurrence, claim or suit** arising out of:

A. Workers Compensation and Similar Laws

Any obligation an **Insured** has under a workers compensation, disability benefits, or unemployment compensation law or any similar law.

B. Employer’s Liability

1. **Bodily Injury** to an **employee** of **yours** arising out of and in the course of:
 - a. **Employment by you**; or
 - b. Performing **duties** related to the conduct of **your** business; or
 - c. Any Occupational Disease; or
2. Any **claims** or **suits** brought by a spouse, child, grandparent, parent, brother, or sister of that **employee** as a consequence of paragraph 1. above.

This exclusion applies:

1. Whether **you** may be liable as an employer or in any other capacity; and
2. To any **obligation** to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by **you** under an **insured contract**.

C. Property Damage and Personal and Advertising Injury

Property damage or **personal and advertising injury** of any kind or description, including the obligation to indemnify or hold harmless another person or organization for **property damage** or **personal and advertising injury** pursuant to any contract or agreement.

D. Bodily Injury to Any Person Other Than a Patient

Bodily injury to any person who does not qualify as **your patient** at the time that the injury is sustained.

E. War

War, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection, rebellion or revolution.

F. Pollution

1. The actual, alleged, or threatened, discharge, dispersal, seepage, migration, release, or escape of **pollutants**;
2. Any direction, request, demand, order or statutory or regulatory requirement to test for, monitor, investigate, cleanup, remove, contain, treat, detoxify, or neutralize **pollutants** or in any way respond to or assess the effects of **pollutants**; or
3. Any cost, charge, expense or request for reimbursement arising out of **1.** or **2.** above. This exclusion shall not apply to damages arising out of heat, smoke or fumes from a **hostile fire**. As used in this exclusion, **hostile fire** means a fire which becomes uncontrollable or breaks out from where it was intended to be.

G. Employment Practices

Any refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or other practices or policies related to employment or professional privileges.

H. Dishonest Practices

Dishonest, fraudulent, criminal or malicious acts, errors, or omissions; however, **we** will defend civil **claims** alleging such acts, errors or omissions until final adjudication.

I. Nuclear Hazards

Nuclear fission, nuclear fusion or radioactive contamination.

J. Asbestos

The manufacture, mining, use, sale, installation, removal, abatement, clean-up, distribution or exposure to asbestos, asbestos containing waste materials, asbestos waste, asbestos fibers, asbestos products and asbestos dust.

K. Sexual Misconduct

Any sexual act, including without limitation sexual intimacy (even if consensual), sexual contact, sexual advances, requests for sexual favors, sexual molestation, sexual assault, sexual abuse, sexual harassment, sexual exploitation or other verbal or physical conduct of a sexual nature. However, this exclusion does not apply to:

1. Any specific individual **Insured** who allegedly committed such sexual misconduct, unless it is judicially determined that the specific individual **Insured** committed the sexual misconduct. If it is judicially determined that the specific individual **Insured** committed the sexual misconduct **we** will not pay any damages.
2. Any other **Insured**, unless there is a judicial determination that such **Insured**:
 - a. Knew or should have known about the sexual misconduct allegedly committed by the specific individual **Insured**, but failed to prevent or stop it; or
 - b. Knew or should have known that the specific individual **Insured** who allegedly committed the sexual misconduct had a prior history of such sexual misconduct.

As used in this exclusion, specific individual **Insured** includes **employees** and authorized volunteer workers while performing duties related to the conduct of **your** business.

L. ERISA

The Employee Retirement Income Security Act (ERISA) of 1974 or amendments thereto, or any similar state law.

M. Discrimination/Humiliation

Discrimination based on, but not limited to race, color, creed, sex, religion, age, national origin, physical impairment, sexual preference, nor any **claims** involving humiliation or mental anguish, arising out of discrimination whether or not for alleged violation of any federal, state or local government law or regulation prohibiting such discrimination.

However, this exclusion does not apply to any Civil Rights Violation alleged pursuant to 42

USC § 1983, et seq., provided that, such Civil Rights Violation arises out of a **medical incident** for which the **Insured** is legally liable.

N. Insured vs. Insured

Any **claims** made by one **Insured** against another **Insured**.

This exclusion does not apply to **medical incidents** or **occurrences** involving **your employees**, students, volunteers or others that are considered within the policy definition of **Insureds** when they are registered as **patients** or when they are not acting within the scope of their duties on behalf of the Named Insured. However, this exception does not apply to any **Insured** for which workers compensation applies.

O. Other Coverage Parts

Any **claims** or **suits** brought under any Coverage Part of this Policy other than this **MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART**.

P. Unfair Trade Practices

Any allegations of price fixing, unfair competition or trade practices; a dispute over fees, income or revenue; the inducement to enter into, the interference with or the dissolution or termination of any business or economic relationship; or violations of any federal, state or local law (including but not limited to Title 15 of the United States Code or any similar state statute) that prohibits the unlawful restraint of trade, business or profession.

Q. U.S. Department of Health & Human Services (HHS)

Any administrative or judicial hearings pertaining to Medicare/Medicaid fraud or any other hearing initiated against an **Insured** by HHS or by any utilization or quality review organization under contract with HHS.

This exclusion does not apply to HHS proceedings that allege the violation of the Emergency Medical Treatment and Labor Act.

R. Expected or Intended Injury

Damages or harm expected or intended from an **Insured's** standpoint. This exclusion does not apply to **bodily injury** resulting from the use of reasonable force to protect persons or property.

S. Contractual Liability

Liability arising from **bodily injury** for which **you** are obligated to pay damages by reason of the assumption of liability in a contract or agreement except an **insured contract**. This exclusion does not apply to liability for damages:

1. That **you** would have in the absence of the contract or agreement; or
2. Assumed in a contract or agreement that is an **insured contract**, provided the **bodily injury** occurs subsequent to the execution of the contract or agreement, provided:
 - a. Liability to such party for, or for the cost of, that party's defense has also been assumed in the same **insured contract**; and
 - b. Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

T. Liquor Liability

Bodily injury for which an **Insured** may be held liable by reason of:

1. Causing or contributing to the intoxication of any person;
2. The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
3. Any statute, ordinance, or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if **you** are in the business of manufacturing, distributing, selling serving or furnishing alcoholic beverages.

U. Aircraft, Auto, or Watercraft

Ownership, maintenance, use or entrustment to others of any aircraft, **auto**, or watercraft owned or operated by or rented or loaned to **you**. Use includes operation and **loading or unloading**.

This exclusion shall not apply to:

1. A watercraft **while** ashore on premises **you** own or rent;
2. A watercraft **you** do not own that is:
 - a. Less than 26 feet long; and
 - b. Not being used to carry persons or property for a charge;
3. Parking an **auto** on, or on the ways next to premises **you** own or rent, provided the **auto** is not owned by or rented or loaned to **you**;
4. Liability assumed under any **insured contract** for the ownership, maintenance or use of aircraft or watercraft;
5. The operation of any of the equipment listed in paragraph 6.b or 6.c. of the definition of **mobile equipment**; or
6. **Loading or unloading of patients.**

V. Mobile Equipment

1. The transportation of **mobile equipment** by an **auto** owned or operated by or rented or loaned to any **Insured**; or
2. The use of **mobile equipment** in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

W. Penalties

Any fines or penalties.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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This *endorsement* takes effect as of the beginning day and hour for the *policy period of this policy* stated in the applicable initial, renewal or amendatory Declarations Page, unless a different *endorsement* effective date is inserted above.

Issue Date: 12/27/2017

AM

Countersigned by:



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

ph 844 595 8866
www.lonestara.com

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Austin, Texas 78716-0140

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT

Policy Audit

In consideration of the premium charged for this policy and this endorsement, it is hereby understood and agreed, subject to all terms, conditions and exclusions of this policy:

Exposure Audit (Applicable to Policy Aggregate Limit and Aggregate SIR)

Exposure Base:

Service Adjusted Annual Average Inmates

Estimated Exposure Base at Policy Inception:

109,141 (see below table for allocation and adjustment factors)

The First Named Insured will provide RRG with the Audited Service Adjusted Annual Average Inmates for the policy period within 30 days after the end of the policy period. The premium will not be adjusted up or down as a result of the exposure audit.

If the Audited Service Adjusted Annual Average Inmates are less than or equal to 109,141, the Total Policy Aggregate Limit and Aggregate SIR will not change. If the Audited Service Adjusted Annual Average Inmates are in excess of 109,141, the total will be divided by 109,141 and RRG will multiply such quotient by the Total Policy Aggregate Limit and Aggregate Self-Insured Retention to get an adjusted amount.

EXAMPLE: If audited adjusted exposures are 175,000, quotient = $175,000 / 131,234 = 1.33$

Total SIR Aggregate \$20.5M x 1.3 = \$26.65M

Total Policy Aggregate Limit \$26.65M x \$4M = \$30.65M

Exposure Service Adjustment Factors and Formulas

| Service Type | Annual Average Inmates (a) | Service Type Adjustment (b) | Limit Adjustment Factor (c) | Adjusted Annual Average Inmates = (a) x (b) x (c) |
|----------------------------|------------------------------------|-------------------------------------|-------------------------------------|---|
| Comprehensive | 41,064 | 1.000 | 1.000 | 41,064 |
| Excluding Mental Health | 48,915 | .800 | 1.000 | 39,132 |
| Excluding Physicians | 10,536 | .500 | 1.000 | 5,268 |
| Indemnification (Rikers) | 0 | .200 | 1.000 | 0 |
| Mental Health Only | 14,282 | .200 | 1.000 | 2,856 |
| Pharmacy Only | 0 | .010 | 1.000 | 0 |
| Physicians Only | 41,641 | .500 | 1.000 | 20,821 |
| Florida DOC (5/31/16 Term) | 0 | 1.000 | .591 | 0 |
| Total | 156,439 | | | 109,141 |

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

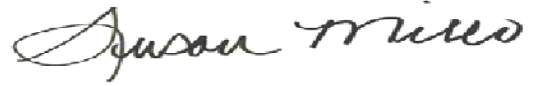
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Issue Date: 12/27/2017

AM

Countersigned by: _____



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT
Polk County Iowa

The policy is amended as follows:

In order to preserve the governmental immunities available as defenses to contractor (or Licensor) and its officials and employees, any insurance policy must contain an endorsement with the following language:

"The Company and the Insured expressly agree and state that the purchase of this policy of insurance by the Insured does not provide coverage for torts specified in Iowa Code 670.4, and that the Insured does not waive any of the defenses of governmental immunity available to the Insured under Iowa Code 670.4 as it now exists and as it may be amended from time to time. The Company and the Insured further expressly agree and state that the Insured may, at any time, assert any of the governmental immunity defenses available to it without affecting the coverage afforded under this policy."

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

AM

Countersigned by: _____

Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group



**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT Self-Insured Retention

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

This endorsement modifies insurance provided under all Coverage Parts:

- A.** The **First Named Insured** shall be solely responsible for the following as shown in the Declarations:
 - 1. The Each Medical Incident – Each Physician Insured Self-Insured Retention;
 - 2. The All Other Non-Physician Insured Self Insured Retention; and
 - 3. The Aggregate Self Insured Retention which is eroded by No. 1 and No. 2 above.
- B.** The Aggregate Self-Insured Retention is included within and reduces the Total Policy Aggregate Limit shown in the Declarations of this Policy.
- C.** This Aggregate Self-Insured Retention shall be reduced solely by the payment of damages and not defense costs by the **First Named Insured** for a covered **medical incident** under MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART.
- D.** With respect to the MEDICAL GROUP PROFESSIONAL LIABILITY OCCURRENCE COVERAGE PART, **our** obligation to pay damages applies only when the Aggregate Self-Insured Retention is exhausted by the payments set forth in Paragraph C. above and then only up to the applicable Limit of Insurance.

We shall have the right, at our own expense, but not the obligation to associate with the **Insured** in the defense, negotiation, and settlement of any **claim**. The Insured shall give us full cooperation and such information as we may reasonably require.

- E.** The **First Named Insured** shall handle all **claims** or **suits** within the applicable Self-Insured Retention of this policy. **We** do not have the duty to investigate or defend any **medical incident, claim** or **suit**. However, we may, at **our** discretion and expense, participate with **you** in the investigation of any such **medical incident** and the defense of any such **claim** or **suit** that may result and **you** shall provide **us** with **your** full cooperation. No **Insured** shall settle any **claim** or **suit** which obligates **us** to pay any amount under this policy without **our** prior written consent.
- F.** Under no circumstances will we make any payment under this policy unless and until the First Named Insured has exhausted the Aggregate Self-Insured Retention by the payment of damages arising from covered **medical incidents**. If the First Named Insured is unable to pay any part of the Self-Insured Retention due to bankruptcy, insolvency, or other financial difficulty, then this policy will not be required to “drop down” to make payments of policy limits and/or defense costs, and no payment of any kind will be available to the First Named Insured or any Insured under this policy.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: 12/27/2017

AM

Countersigned by:



Authorized Representative of
Lone Star Alliance Inc., A Risk Retention Group

OCCURRENCE

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www.lonestara.com

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Austin, Texas 78716-0140

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**LONE STAR
ALLIANCE**
A RISK RETENTION GROUP

This endorsement forms a part of

POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

**POLICY ENDORSEMENT
Sexual Misconduct Exclusion**

In consideration of the premium charged for *this policy* and this *endorsement*, it is hereby understood and agreed, subject to all terms, conditions and exclusions of *this policy*:

Section III.M of the Medical Professional Liability Insurance Policy and Section II.K of the Patient Bodily Injury Coverage endorsement are deleted and the following is substituted in lieu thereof:

M. Sexual Misconduct

Any sexual act, including without limitation sexual intimacy (even if consensual), sexual contact, sexual advances, requests for sexual favors, sexual molestation, sexual assault, sexual abuse, sexual harassment, sexual exploitation or other verbal or physical conduct of a sexual nature. However, this exclusion does not apply to:

1. Any specific individual Insured who allegedly committed such sexual misconduct, unless there is an admission of guilt or it is judicially determined that the specific individual Insured committed the sexual misconduct. If there is an admission of guilt or it is judicially determined that the specific individual Insured committed the sexual misconduct we will not pay any damages.
2. Any other Insured, unless there is an admission of guilt or a judicial determination that such Insured:
 - a. Knew or should have known about the sexual misconduct allegedly committed by the specific individual Insured, but failed to prevent or stop it; or
 - b. Knew or should have known that the specific individual Insured who allegedly committed the sexual misconduct had a prior history of such sexual misconduct.

As used in this exclusion, specific individual Insured includes employees and authorized volunteer

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

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POLICY NUMBER 4-453668

Policy Term:

01/01/2018 to 01/01/2019

Endorsement Effective Date:

01/01/2018

Insured:

Valitas Health Services, Inc.

POLICY ENDORSEMENT **State Requirements**

In consideration of the premium charged for this policy and this endorsement, it is hereby understood and agreed, subject to all terms, conditions and exclusions of this policy:

1. Indiana - In Indiana, the limits of liability applicable to this policy are not subject to the Total Policy Aggregate Limit.
2. Rikers Island Correctional, NY - This policy is excess over any indemnification provided to the First Named Insured by The City of New York for any covered claim or suit arising out of services or products provided by any Insured at any of the Rikers Island correctional facilities in the State of New York.
3. Arizona DOC - This insurance does not apply to any medical incident, claim, suit or administrative proceeding arising out of any professional services performed pursuant to the contract between the First Named Insured and State of Arizona Department of Corrections commencing March 4, 2013.
4. Florida DOC – Total Policy Aggregate Limit and Aggregate SIR are based on the Florida DOC contract terminating on 05/31/16. Should the contract not terminate or be extended in any way, the Total Policy Aggregate Limit and/or Aggregate SIR may increase proportionally and accordingly to the FL DOC actuarial estimates.

Nothing in this *endorsement* shall be held to amend, vary, extend or waive any of the terms, conditions, exclusions, representations, warranties and/or agreements in *this policy*, any other *endorsement* or any Declarations Page, except as expressly stated in this *endorsement*.

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Issue Date: **12/27/2017**

AM

Countersigned by: _____

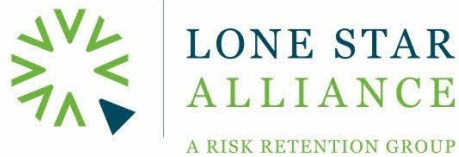
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MEDICAL GROUP COVERAGE GENERAL POLICY PROVISIONS AND CONDITIONS APPLICABLE TO ALL COVERAGE PARTS

NOTICE: VARIOUS PROVISIONS IN THE GENERAL POLICY PROVISIONS AND CONDITIONS AND COVERAGE PARTS RESTRICT COVERAGE. PLEASE READ ALL GENERAL POLICY PROVISIONS AND CONDITIONS AND COVERAGE PARTS CAREFULLY TO DETERMINE YOUR RIGHTS, DUTIES, AND WHAT IS AND WHAT IS NOT COVERED. A COMPLETE POLICY INCLUDES THE DECLARATIONS, GENERAL POLICY PROVISIONS AND CONDITIONS, AND THE APPLICABLE COVERAGE PARTS.

Throughout this policy the words **you** and **your** mean the **First Named Insured**, including any other Named Insured. The words **we**, **us** and **our** mean the Company providing insurance under this policy. Other words and phrases are defined in Section I. DEFINITIONS APPLICABLE TO GENERAL POLICY PROVISIONS AND CONDITIONS AND ALL COVERAGE PARTS. Further, words that appear in the GENERAL POLICY PROVISIONS AND CONDITIONS may be defined in other Coverage Parts forming part of this policy.

In consideration of the payment of the premium and in reliance upon the statements in the Application and upon the Declarations, **we** agree as follows:

I. DEFINITIONS APPLICABLE TO GENERAL POLICY PROVISIONS AND CONDITIONS AND ALL COVERAGE PARTS

- A. **Auto** means a land motor vehicle, trailer, or semitrailer designed for travel on public roads, including any attached machinery or equipment. **Auto**, however, does not include **mobile equipment**.
- B. **Biomedical Waste** means a biological agent or condition including, but not limited to, an infectious organism or unsafe laboratory condition that may cause or result in **bodily injury** or property damage.
- C. **Bodily injury** means physical injury, sickness or disease sustained by any person, including death resulting from any of these at any time. **Bodily injury** does not include emotional distress or mental anguish unless due to physical injury, sickness or disease.
- D. **Claim** means:
 - 1. A written demand against an Insured for monetary damages, including a **suit**.
 - 2. Written notice to **us** regarding a **medical incident** or **occurrence** which may reasonably be expected to give rise to a written demand against an Insured for monetary damages.

- E. **Defense Costs** means the cost incurred in connection with the investigation and/or defense of any **claim** or **suit** brought against any Insured including, but not limited to, legal fees and other defense expenses.
- F. **Employee** means a person paid by **you** in connection with **your** business. It includes a **leased worker** or **temporary worker**.
- G. **Executive Officer** means a person holding any of the officer positions created by **your** charter, constitution, by-laws or any other similar governing document.
- H. **First Named Insured** means the Named Insured designated first on the Declarations attached to this policy.
- I. **Insured Contract** means:
1. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to **you** or temporarily occupied by **you** with permission of the owner is not an **insured contract**;
 2. A sidetrack agreement;
 3. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
 4. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
 5. An elevator maintenance agreement; or
 6. That part of any other contract or agreement pertaining to **your** business (including an indemnification of a municipality in connection with work performed for a municipality) under which **you** assume the tort liability of another party to pay for **bodily injury** or property damage to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.
Paragraph 6. does not include that part of any contract or agreement:
 - a. That indemnifies a railroad for **bodily injury** or property damage arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
 - b. That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - i. Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings, designs and specifications; or
 - II. Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

- III. Under which **you**, if an architect, engineer or surveyor, assumes liability for **bodily injury** or property damage arising out of **your** rendering or failure to render **professional services**, including those listed in b. above and supervisory, inspection, architectural or engineering activities.
- J. **Leased Worker** means a person leased to **you** by a labor leasing firm, under an agreement between **you** and the labor leasing firm, to perform duties related to the operations as described in the Declarations and which are at **your** direction. **Leased worker** does not include a **temporary worker**.
- K. **Loading or Unloading** means the handling of property:
1. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or **auto**; or
 2. While it is in or on an aircraft, watercraft or **auto**; or
 3. While it is being moved from an aircraft, watercraft or **auto** to the place where it is finally delivered;
- But **loading** or **unloading** does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft, or **auto**.
- L. **Locum Tenens** means a physician, surgeon or other healthcare professional who is temporarily serving as a relief or substitute physician, surgeon or healthcare professional for a **Physician insured** or Insured healthcare professional.
- M. **Medical Incident** means any act, error or omission in the providing of or failure to provide **professional services** to any one **patient**.

All damages arising from any act, error or omission in the providing of or failure to provide **professional services** to a woman and/or her unborn child or children during the course of a pregnancy (including pre-natal, delivery and post-natal care) will be deemed to be a single **medical incident**.

Medical incident includes allegations of Civil Rights Violations by a **patient**, provided that, such allegations arise out of the providing of or failure to provide **professional services**.

- N. **Mobile Equipment** means any of the following types of land vehicles, including any attached machinery or equipment and including, but not limited to:
1. Bulldozers, farm machinery, forklifts, and other vehicles designed for use principally off public roads;
 2. Vehicles maintained for use solely on or next to premises **you** own or rent;
 3. Vehicles that travel on crawler treads;
 4. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
 - a. Power cranes, shovels, loaders, diggers or drills; or

- b. Road construction or resurfacing equipment such as graders, scrapers or rollers;
 - 5. Vehicles other than those described in Items 1, 2, 3, or 4 above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - a. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
 - b. Cherry pickers and similar devices used to raise or lower workers;
 - 6. Vehicles other than those described in Items 1, 2, 3, or 4 above that are maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not **mobile equipment** but will be considered **autos**:
 - a. Equipment designed primarily for:
 - I. Snow removal;
 - II. Road maintenance, but not construction or resurfacing; or
 - III. Street cleaning;
 - b. Cherry pickers and similar devices mounted on **auto** or truck chassis and used to raise or lower workers; and
 - c. Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.
- O. **Occurrence** means:
 - 1. As respects **bodily injury**, property damage or medical expense, an accident, including continuous or repeated exposure to substantially the same general conditions, which results in **bodily injury** or property damage neither expected nor intended from the standpoint of the Insured. All such exposure to substantially the same general conditions shall be considered as arising out of one **occurrence**.
 - 2. As respects personal injury, an offense arising out of **your** business that results in personal injury. All damages that arise from the same or related injurious material or act shall be considered as arising out of one **occurrence**, regardless of the frequency of repetition thereof, the number and kind of media used and the number of claimants.
- P. **Patient** means a person seeking or receiving, either on an inpatient, outpatient or emergency basis, any form of medical, surgical, dental or nursing care or any service or treatment.
- Q. **Physician Insured** or **Physician Insureds** means a physician, employed by or under contract or agreement with a Named Insured, while acting within the scope of that person's duties as such in rendering **professional services** in accordance with the scope of their duties for the Named Insured.
- R. **Policy Period** means the period commencing on the inception date shown on the Declarations and ending on the earlier of the expiration date or the effective date of cancellation of the policy.

- S. **Pollutants** means any solid, liquid, gaseous, or thermal irritant or contaminant, including, but not limited to: smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes, but is not limited to, **biomedical waste** and materials to be recycled, reconditioned or reclaimed.
- T. **Professional Services** means:
1. Medical, surgical, dental, nursing or other health care services including but not limited to the furnishing of food or beverages in connection with such services; the practice of nuclear medicine; the furnishing or dispensing of drugs or medical, dental or surgical supplies or appliances; or the handling or treatment of deceased human bodies, including, but not limited to, autopsies, organ donation or other procedures;
 2. Services by any person as a member of a formal accreditation, standards review or similar professional board or committee of any Insured; or
 3. Services by any person as a member of any committee of any licensed hospital or other healthcare facility, professional medical association or society or of a legally constituted professional standards review organization when at **your** request.
 4. Supervising, teaching, proctoring others at **your** request.
- U. **Suit** means a civil action in which damages are alleged because of an **occurrence, claim, medical incident, bodily injury, property damage, personal injury and advertising injury** to which this insurance applies. **Suit** includes:
1. An arbitration proceeding in which such damages are claimed and to which an Insured must submit or does submit with **our** consent; or
 2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which an Insured submits with **our** consent.
- V. **Temporary Worker** means a person who is furnished to **you** to substitute for a permanent **employee** on leave or to meet seasonal or short-term work load requirements.

II. CONDITIONS APPLICABLE TO ALL COVERAGE PARTS

The following conditions apply to all Coverage Parts:

- A. **Assistance and Cooperation**
- The Insured shall assist **us**, upon **our** request, in the enforcement of any right against any person or organization which may be liable to the Insured because of injury or damage to which this insurance may also apply.
- B. **Audit**
- We** may audit and examine **your** books and records as they relate to this policy at any time during the period of this policy and for up to three years after the expiration or termination of this policy.

C. Changes

Notice to any agent or knowledge possessed by any agent or any other person will not affect a waiver or a change in any part of this policy. This policy can only be changed by a written endorsement that becomes a part of this policy and that is signed by one of **our** authorized representatives.

D. Coverage Territory

We will cover an **occurrence, medical incident** or offense, in the United States of America, its territories and possessions, Canada and Puerto Rico, provided a **claim** is made or **suit** is brought in the United States of America, its territories and possessions, Canada or Puerto Rico.

E. Mergers/Acquisitions

We will cover any organization **you** newly acquire or form, other than a partnership, joint venture or limited liability company, and over which **you** maintain ownership or at least a majority interest, only for sixty (60) days or for the remainder of the **policy period**, whichever is less, from the date that **you** acquire or form it. **You** are not covered for damages that arise out of **bodily injury**, property damage, or **medical incidents** that occurred before **you** acquired or formed the organization, or personal and advertising injury arising out of an **occurrence** which took place before **you** acquired or formed the organization.

If any person or organization became an additional Named Insured under this policy after the inception date, the **policy period** for that person or organization begins on the date that such person or organization became an additional Named Insured and ends on the earlier of the expiration date or the effective date of cancellation of the policy.

F. Legal Action Against Us

No person or organization has a right under this Policy:

1. To join **us** as a party or otherwise bring **us** into a **suit** asking for damages from **you**; or
2. To sue **us** under this policy, unless all this policy's terms have been complied with in full.

A person or organization may sue **us** to recover on an agreed settlement or on a final judgment against **you** obtained after an actual trial; but **we** will not be liable for damages that are not payable under the terms of any Insuring Agreement or that are in excess of the applicable Limit of Insurance. An agreed settlement means a settlement and release of liability signed by **us**, **you** and the claimant or the claimant's legal representative.

G. Other Insurance

If the **First Named Insured** has elected by written contract to provide primary and non-contributory insurance to any Insured, then this insurance shall be primary and non-contributory insurance with respect to any **claim** or **suit** for which coverage is provided under this Policy to such Insured.

However, in the event an Insured has Healthcare or Malpractice Professional Liability Insurance in force at the time of a loss which provides coverage for a **claim** or **suit** for which coverage would also be provided to such Insured by this Policy and the Insured has elected in writing to provide his/her own coverage for work on behalf of a Named Insured, then this Policy will not provide coverage on any basis, including, but not limited to, providing coverage on a primary, excess, or contingent basis for such Insured.

With respect to all other Insureds, this insurance shall be primary insurance. If, with respect to such other Insureds, this insurance is primary, **our** obligations are not affected unless other insurance, pertaining to such other Insureds, is also primary. In such case, this insurance will share with such other insurance either:

1. by each insurer contributing equal shares until it has paid its limit of insurance or none of the loss remains or
2. based upon the ratio of **our** applicable limit of insurance to the total applicable limits of insurance of all insurers, whichever is determined to be applicable by agreement between the insurers or, if no agreement can be reached, by a court.

A Self-Insured Trust Plan or other Self-Insured Plan will be treated as other insurance for the purpose of applying these provisions.

H. Separation of Insureds

Except with respect to the Limits of Insurance and deductible, and except with respect to any rights or duties specifically assigned in this policy to the Named Insured, this insurance applies: As if each Insured were the only Insured; and Separately to each Insured against whom a **claim** is made or **suit** is brought.

I. Bankruptcy/Insolvency

Your bankruptcy or insolvency will not relieve **us** of **our** obligations under this policy, subject to the provisions of the policy Self-Insured Retention Endorsement.

J. Representations

By accepting this policy, the **First Named Insured** agrees that:

1. The statements in the Declarations and/or Applications are accurate and complete;
2. Those statements are based upon representations made to **us** by **you**; and
3. **We** have issued this policy in reliance upon **your** representations.

K. Notice

The **First Named Insured** is the appointed and irrevocable agent for all Named Insureds, including, for the purpose of receipt of any notice of cancellation, notice of nonrenewal (if applicable), and the payment or return of any premium under this policy.

L. Special Rights and Duties of First Named Insured

It is agreed by all Insures that the **First Named Insured** is authorized to act on behalf of all Insureds as to:

1. Payment of premiums and receipt of return premiums;
2. Acceptance of any endorsements to this policy;
3. Making changes in this policy or any coverage part with **our** consent;
4. Making representations with respect to the issuance by **us** of this policy;
5. Settling all **claims** or **suits** on behalf of any Insured.
6. This policy can only be changed by a written endorsement **we** issue and make a part of this policy.

M. Punitive Damages

Coverage provided by this policy includes punitive and/or exemplary damages if insurable under the law of the applicable jurisdiction.

N. Titles of Paragraphs

Titles of paragraphs are inserted solely for convenience of reference and shall not be deemed to limit, expand or otherwise affect the provisions to which they relate.

IN WITNESS WHEREOF, the Risk Retention Group identified on the Declarations has caused this policy to be signed by its President, Secretary and duly authorized representative of the Risk Retention Group.



PRESIDENT



SECRETARY

LONE STAR

SELF-ADMINISTRATION OF CLAIMS AND INDEMNITY AGREEMENT

THIS SELF-ADMINISTRATION OF CLAIMS AND INDEMNITY AGREEMENT (the "Agreement"), is made and entered into by and between CORIZON HEALTH, a Delaware corporation with offices located in Brentwood, Tennessee (the "Insured") and LONE STAR ALLIANCE, INC., A RISK RETENTION GROUP (the "Insurer"), effective as of January 1, 2016 (the "Effective Date").

WHEREAS, the "Insurer" has, commencing with calendar year 2016, issued a policy of healthcare professional liability insurance to the "Insured" with a commencement date of January 1, 2016, (the "Policy"); and

WHEREAS, the Policy imposes a duty on the "Insurer" to reimburse the insured for indemnity payments for covered "Claims" and occurrences subject to the "Self-Insured Retention" ("SIR") and the Policy coverage limits; and

WHEREAS, the "Insured", as of the "Effective Date", desires to self-administer claims handling services; and

WHEREAS, the Policy (i) imposes upon the "Insured" the duty to defend and reimburse covered "Claims", occurrences and suits open or reported on or after the "Effective Date" and (ii) requires the "Insurer" to reimburse only indemnity payments pertaining to such "Claims", occurrences and suits in excess of the SIR which shall only be eroded by the payment of settlements or judgments, but not Allocated Loss Expenses ("LAE") in accordance with the Policy's terms, provisions and coverage limits; and

WHEREAS, the "Insured" shall perform claim services subject to the terms, conditions and restrictions contained in this "Agreement", the Policy, and otherwise in a professional manner and in accordance with all applicable laws and regulations.

NOW, THEREFORE, in exchange for the mutual covenants contained in this "Agreement" and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I - TERM

Commencing on the "Effective Date", unless otherwise terminated as provided herein, the "Insured" agrees to perform all services agreed to herein in connection with "Claims", occurrences and suits covered by the Policy.

ARTICLE II - CERTAIN DEFINITIONS

A. "Loss Adjustment Expense" shall mean any cost, fee or expense reasonably chargeable to the investigation, negotiation, settlement or defense of a "Claim" or alleged loss or to the protection or perfection of the subrogation rights of the "Insurer" and/or the "Insured";

B. "Claim" shall mean any "Claim" or occurrence which (i) involves an actual or alleged loss resulting from an allegedly covered peril under the Policy, and (ii) is reported on or after the "Effective Date".

C. "Claims Administration Services" shall mean and include, but not limited to, the following services in compliance with the terms of the Policy and all applicable laws and regulations:

1. paying all "Claims" that involve actual loss and Allocated "Loss Adjustment Expenses" on a timely basis;
2. reviewing all "Claims", complying with "Claim" reporting requirements of the Policy, and preparing loss reports;
3. establishing a "Claim" file for each "Claim" and maintaining all "Claim" data necessary for proper "Claims" administration, including assessment and confirmation of coverage for allegations made and relief sought for each "Claim";
4. conducting an investigation of each "Claim" to the extent deemed necessary and appropriate in accordance with industry standards;
5. providing the "Insurer", upon request with periodic detailed narrative reports on the status of each "Claim"; and
6. adjusting, compromising, settling or resisting "Claims" in accordance with applicable Policy coverage and within the Self Insured Retention.

D. "Self-Insured Retention" shall mean the payments made the responsibility of the "Insured" as set forth in the Policy.

ARTICLE III - OBLIGATIONS OF THE INSURED

A. The "Insured" shall keep complete and accurate records of its "Claims Administration Services" and disposition of "Claims". The "Insured" will permit the "Insurer", at its sole discretion, to review or audit such of the "Insured's" books, records and files as pertain to "Claims Administration Services", "Claims", and any financial information pertaining to reserves and projections prepared by the "Insured" in accordance with this "Agreement" hereto upon 10 business days' prior written notice. Upon the "Insurer's" request for a review or audit, the "Insured" agrees to make such of its books, records and files available for review during regular business hours at the place or places of business where such books, records and files are regularly maintained by the "Insured".

B. The "Insured" shall prepare and submit to the "Insurer" reports, loss runs and other statistical information and data pertaining to "Claims" as may reasonably be requested by the "Insurer".

Notwithstanding the preceding sentence, the "Insured" shall prepare and submit a loss run report and a Loss Fund activity report pertaining to "Claims" on a monthly basis. Each loss run report shall consist of a listing of "Claims" that have been posted by the "Insured". If requested by the "Insurer", the loss run reports shall consist of computer generated listings, including posting dates, and shall be submitted to the "Insurer" by a mutually agreed upon electronic format. The "Insured" shall provide as many copies of reports submitted pursuant to this section as the "Insurer" may reasonably request and shall abide such other specific written instructions for such reports as the "Insurer" may reasonably require, including but not limited to categorizing "Claims" by cause.

C. The "Insured" agrees to promptly reimburse the "Insurer" for all fines and penalties paid by the "Insurer" may have paid or be required to pay as a result of the "Insured's" actions.

ARTICLE IV- LIMITATION OF INSURED'S AUTHORITY

In addition to any other limitations expressly or impliedly contained in this "Agreement", any exhibit or addendum hereto, or any instruction which may be issued in writing from time to time by the "Insurer" to the "Insured", the "Insured" shall have no authority to do, nor shall it represent itself as having authority to do, nor shall it do, any of the following:

1. Make any agreements rendering or purporting to render the "Insurer" liable for the payment or repayment of expenses, commissions, administrative fees, or service fees, or any other sum, other than validly authorized "Claims" payments;
2. Conduct "Claims Administration Services" or settle or pay "Claims" in contravention of any instructions issued by the "Insurer";
3. Withhold any monies or property of or owing to the "Insurer";
4. Bind, subject, or obligate the "Insurer" to any liability in excess of the Discretionary Settlement Authority Limit, unless specifically authorized to do so in writing by the **(/Insurer"**;
5. Engage any attorney to represent the "Insurer" for any purpose whatsoever without the "Insurer's" prior written approval, except in a direct-action state in defense of a "Claim";
6. Make any payments for extra-contractual damages or ex gratia payments on behalf of the **(/Insurer" without the (/Insurer's" prior written approval; nor**
7. Represent by any means or purported agreement that the "Insurer" will **(i)** make any indemnity payment prior to the exhaustion of the SIR by means of settlements or judgments or **(ii)** make any defense or indemnity payment in the event of the "Insured's" bankruptcy or other insolvency, or if the "Insured" is unable to pay the SIR for any reason whatsoever.

ARTICLE V- INDEMNIFICATION

The "Insured" agrees to indemnify, defend, and hold harmless the "Insurer", its parent, subsidiaries and affiliates and their respective directors, officers, employees and agents from and against

any and all liabilities, "Claims", suits, actions, demands, settlements, losses, judgments, costs, damages, expenses (including reasonable attorneys' fees), fines, penalties, including punitive or exemplary damages and all costs of defense (collectively, "Losses") arising out of or resulting from (i) any act or omission, whether intentional or unintentional, by the "Insured" or its officers, directors, employees or sub-administrators, related to or arising out of the "Insured's" performance of "Claims Administration Services" or any other act or omission relating to or arising from the handling and disposition of "Claims", (including, without limitation, any failure of the "Insured" to comply with local, state or federal laws or regulations applicable to the performance of "Claims Administration Services", including licensing and "Claim" reporting requirements, or to pay "Claims" in good faith and in accordance with the provisions of the Policy) or (ii) a breach by the "Insured" of any of its representations, warranties, obligations or covenants contained in this "Agreement" (including, without limitation, any failure of the "Insured" to comply with applicable local, state or federal laws or regulations applicable to the use and disclosure of Nonpublic Personal Information).

ARTICLE VII - NOTICES

All notices and other communications required or permitted to be given under this "Agreement" (other than notices and other communications for which specific notice instructions are provided by the "Insurer" to the "Insured" with respect to "Claim" matters) shall be in writing and shall be deemed to have been duly given on the date delivered by hand, by overnight courier service or by messenger, or upon receipt by facsimile transmission, or upon delivery by registered or certified mail (return receipt requested) postage prepaid, to any party at the following addresses and facsimile numbers:

If to the "Insured":

Corizon Health
Corporate Office
103 Powell Court
Brentwood, TN 37027

If to the Insurer:

Lone Star Alliance, Inc., a Risk Retention Group
P. O. Box 160140
Austin, Texas 78716-0140
Telephone: (512) 425-5800
Facsimile: (512) 328-8067
Attn.: Vice President - Claims

Any party may change the address or facsimile number to which notices are to be sent by providing written notice of such change, such notice to be effective upon receipt only.

ARTICLE VIII -TERMINATION

A. Either party hereto will have the right at any time to terminate this "Agreement" by written notice sent in accordance with Article XI specifying the "Effective Date" of termination, which shall not be less than sixty (60) days thereafter.

B. This "Agreement" may be terminated immediately at the "Insurer's" option in the event that any license the "Insured" utilizes to fulfill the requirements of this "Agreement" is suspended for any reason, ((ii) the "Insured" performs its services hereunder in such a manner as to subject the "Insurer" to the unnecessary risk of loss or liability; (iii) the "Insured" has committed a fraudulent act or illegal conduct; (iv) there is a sale, transfer or merger involving all or a substantial portion of the "Insured's" business; (v) there exists a violation by the "Insured" (or any person for whom the "Insured" may be responsible) of any provision, term or condition of this "Agreement". The "Insurer" may, with respect to subclause; (v), permit the "Insured" to rectify such breach, non-performance, or violation within ten (10) days after written **notice from the (/Insurer"**

C. Any termination of this "Agreement" will not affect the rights and obligations of the parties hereto as to transactions, acts or things done by either party prior to the "Effective Date" of termination,

D. Upon termination of this "Agreement", unless otherwise agreed to in writing by the "Insurer", the "Insured" will account to the "Insurer" for all transactions unaccounted for at the time of termination or arising thereafter with respect to services covered by this "Agreement".

E. If this "Agreement" is terminated or not renewed, the "Insurer" may exercise one of the following options:

1. the "Insurer" may require the "Insured" to complete the handling of all "Claims" arising prior to the date of notice of termination of this "Agreement", in which case adequate funds shall continue to be made available by the "Insurer" to the "Insured" for the payment of "Claims" and Allocated "Loss Adjustment Expense" until all "Claims" are closed; or
2. the "Insurer" may require the "Insured" to transfer all open and closed files to the "Insurer" or to a designated facility for future handling.

Either upon the "Insurer's" election of the termination option specified in subparagraph 2, above, or upon the date that all "Claims" are closed, as applicable, the "Insured" shall deliver to the "Insurer" all "Claim" files that are in the "Insured's" possession or control. The "Insured" shall bear all costs and expenses incurred by the "Insurer" relating to such transfer, and upon written demand shall promptly reimburse the "Insurer" for such costs and expenses

G. Notwithstanding any termination of this "Agreement", the "Insured" will not be released from its obligations until all "Claims" are closed including, without limitation, its obligation to provide "Claims Administration Services" with respect to "Claims" (unless the "Insurer" elects the termination option in paragraph E.2 above), or any other of its obligations under provisions of this "Agreement" that shall survive termination.

ARTICLE IX -ASSIGNMENTS: SUCCESSORS: NO THIRD PARTY RIGHTS

None of the parties hereto may assign any of such party's rights under this "Agreement" (including by merger or other operation of law) without the prior written consent of the other parties hereto (which may not be unreasonably withheld or delayed) and any purported assignment without such consent shall be void, except that the "Insured" hereby agrees that the "Insurer" may assign all of its rights and obligations under this "Agreement" to an affiliate or to any entity that may acquire substantially all of the stock or assets of the "Insurer" or its parent corporation. Subject to the foregoing, this "Agreement" and all of the provisions hereof shall apply to, be binding upon, and inure to the benefit of the parties hereto and their successors and permitted assigns.

ARTICLE X -GOVERNING LAW

THIS "AGREEMENT" SHALL BE DEEMED TO BE MADE IN, AND IN ALL RESPECTS SHALL BE INTERPRETED, CONSTRUED AND GOVERNED BY AND IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAWS PRINCIPLES THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY OTHER JURISDICTION.

ARTICLE XI - COUNTERPARTS

For the convenience of the parties hereto, this "Agreement" may be executed in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

IN WITNESS WHEREOF, the parties hereto have caused this "Agreement" to be executed by their duly authorized representatives.

Insured:

CORIZON HEALTH

By: _____

Printed Name: _____

Title:

Date: _____

Insurer:

LONE STAR ALLIANCE, INC., A RISK RETENTION GROUP

By:  _____

Printed Name. Susan Mills _____

Title : Sec re t= a r v _____

Date: 12/27/2017 _____

2023 FLORIDA LIMITED LIABILITY COMPANY REINSTATEMENT**FILED**

DOCUMENT# L20000164216

Jan 18, 2023**Entity Name:** M2 LOANCO, LLC**Secretary of State****9754466797CR****Current Principal Place of Business:**666 NE 125TH ST
STE 212
NORTH MIAMI, FL 33161**Current Mailing Address:**666 NE 125TH ST
STE 212
NORTH MIAMI, FL 33161 US**FEI Number: NOT APPLICABLE****Certificate of Status Desired: No****Name and Address of Current Registered Agent:**VOGEL, LEVI
9507 NW 38TH STREET
CORAL SPRINGS, FL 33065 US*The above named entity submits this statement for the purpose of changing its registered office or registered agent, or both, in the State of Florida.***SIGNATURE:** LEVI VOGEL

01/18/2023

Electronic Signature of Registered Agent

Date

Authorized Person(s) Detail :

| | |
|-----------------|----------------------------|
| Title | AUTHORIZED MEMBER |
| Name | GOLDBERGER, ABRAHAM |
| Address | 666 NE 125TH ST STE 212 |
| City-State-Zip: | NORTH MIAMI FL 33161 |

*I hereby certify that the information indicated on this report or supplemental report is true and accurate and that my electronic signature shall have the same legal effect as if made under oath; that I am a managing member or manager of the limited liability company or the receiver or trustee empowered to execute this report as required by Chapter 605, Florida Statutes; and that my name appears above, or on an attachment with all other like empowered.***SIGNATURE:** ABRAHAM GOLDBERGER**AUTHORIZED MEMBER**

01/18/2023

Electronic Signature of Signing Authorized Person(s) Detail

Date