

**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.)

**MOTION FOR LEAVE TO FILE *AMICI CURIAE* BRIEF IN SUPPORT OF
THE OFFICIAL COMMITTEE OF TORT CLAIMANTS’ MOTION FOR
STRUCTURED DISMISSAL OF CHAPTER 11 CASE**

The American Civil Liberties Union, Center for Constitutional Rights, Public Justice, Rights Behind Bars, The Human Rights Defense Center, and The UC Berkeley Center for Consumer Law & Economic Justice (together, the “proposed *amici*”), by and through undersigned counsel, hereby move the Court for leave to file an amicus brief in this case. In support of this Motion, proposed *amici* state as follows:

ARGUMENT

“The decision whether to permit a person to appear as amicus curiae is committed to the Court's discretion.” *Sec. Inv. Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 550 B.R. 241, 256 (Bankr. S.D.N.Y. 2016); *see also In re Ginaldi*, 463 B.R. 314, 316 (Bankr. E.D. Pa. 2011) (recognizing bankruptcy court has “broad Case 23-90086 Document 576 Filed in TXSB on 05/17/23 Page 1 of 10 discretion to

permit an amicus curiae to participate in a pending action”); *In re Edison Mission Energy*, 610 B.R. 871, 878 (Bankr. N.D. Ill. 2020) (same); *United States v. Alkaabi*, 223 F. Supp. 2d 583, 592 (D.N.J. 2002) (same).

This Court has inherent authority to appoint amicus curiae to assist in its proceedings. *See Liberty Res., Inc. v. Phila. Hous. Auth.*, 395 F.Supp. 2d 206, 209 (E.D.Pa. 2005). The decision to permit submissions from amicus curiae is within the broad discretion of this Court. *See United States v. Alkaabi*, 223 F.Supp. 2d 583, 592 (D.N.J. 2002).

Although there is no rule in the Federal Rules of Bankruptcy Procedure or the Local Bankruptcy Rules of this Court governing the appearance of amicus curiae in these proceedings, Federal Rule of Appellate Procedure 29 provides that a motion for leave to appear as amicus curiae “must be accompanied by the proposed brief and (A) state the movant’s interest and (B) the reason why an amicus brief is desirable and why the matters asserted are relevant to the disposition of the case.” F.R.A.P. 29(a)(3). The Fifth Circuit, in the context of a bankruptcy case, has explained: An *amicus* brief should normally be allowed when a party is not represented competently or is not represented at all, when the amicus has an interest in some other case that may be affected by the decision in the present case (though not enough affected to entitle the amicus to intervene and become a party in the present case), or when the *amicus* has unique information or perspective that can

help the court beyond the help that the lawyers for the parties are able to provide. *In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012) (quoting *Ryan v. CFTC*, 125 F.3d 1062, 1063 (7th Cir. 1997)). The Fifth Circuit has also explained that courts would be “well advised to grant motions for leave to file *amicus* briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted” because “if a good brief is rejected,” the court “will be deprived of a resource that might have been of assistance.” *Lefebure v. D’Aquila*, 15 F.4th 670, 676 (5th Cir. 2021). Here, the proposed *amicus curiae* brief satisfies the conditions set forth in Federal Rule of Appellate Procedure 29 because it helps represent the interests of pro se incarcerated litigants, and also offers a unique perspective regarding the barriers incarcerated people face in accessing the courts that raise unique due process concerns in the bankruptcy context.

i. Interests of *Amici*

Proposed *amici* are non-profit advocacy and research organizations with decades of experience advocating for the rights of incarcerated people and vulnerable populations, including involvement in litigation relating to Corizon’s failures to provide adequate care. As a result of that advocacy, proposed *amici* are familiar with the barriers that incarcerated people face in accessing the legal system. Proposed *amici* believe that those barriers will prevent incarcerated creditors from asserting their rights in these bankruptcy proceedings.

1. The **American Civil Liberties Union** (“ACLU”) is a nationwide, nonprofit, nonpartisan organization of more than 1.7 million members dedicated to protecting the fundamental rights guaranteed by the Constitution and the laws of the United States. Consistent with that mission, the ACLU established the National Prison Project (“NPP”) in 1972 to protect and promote the civil and constitutional rights of incarcerated people. NPP has decades of experience in complex prisoners’ rights class action suits, including multiple cases regarding minimal standards for correctional health care in jurisdictions where debtor Corizon has operated or continues to operate.

2. The **Center for Constitutional Rights** (“CCR”) is a national, not-for-profit legal, educational, and advocacy organization dedicated to protecting and advancing rights guaranteed by the U.S. Constitution and international law. Founded in 1966 to represent civil rights activists in the South, CCR has litigated numerous landmark civil and human rights cases. CCR has represented numerous incarcerated people in state and federal custody across the country challenging their conditions of confinement. As such, CCR is deeply familiar with the barriers to participation in court proceedings—bankruptcy or otherwise—faced by incarcerated people and is committed to dismantling those barriers.

3. **Public Justice** is a national public interest legal organization that specializes in precedent-setting, socially significant civil litigation, with a focus on

fighting corporate and governmental misconduct. The organization maintains an Access to Justice Project that pursues litigation and advocacy efforts to remove procedural obstacles that unduly restrict the ability of consumers, workers, and people whose civil rights have been violated to seek redress in the civil court system. Public Justice has engaged in significant advocacy efforts to prevent abuse of the bankruptcy system to evade the civil justice system, which hinders and delays justice for survivors of corporate wrongdoing. For example, Public Justice filed an amicus brief opposing Johnson & Johnson's use of the Texas Two Step; the Third Circuit recently dismissed that bankruptcy. *In re LTL Mgmt., LLC*, 64 F.4th 84 (3d Cir. 2023).

4. **Rights Behind Bars (RBB)** legally advocates for people in prison to live in humane conditions and contributes to a legal ecosystem in which such advocacy is more effective. RBB seeks to create a world in which people in prison do not face large structural obstacles to effectively advocating for themselves in the courts. RBB helps incarcerated people advocate for their own interests more effectively and through such advocacy push towards a world in which people in prison are treated humanely.

5. **The Human Rights Defense Center (HRDC)** is a nonprofit charitable organization conceived and incorporated in Washington, now headquartered in Florida, that advocates on behalf of the human rights of people held in state and

federal prisons, local jails, immigration detention centers, civil commitment facilities, Bureau of Indian Affairs jails, juvenile facilities, and military prisons. HRDC engages in state and federal court litigation on prisoner rights issues, including public records, class actions, and Section 1983 civil rights litigation concerning the First Amendment rights of prisoners and their correspondents. HRDC's advocacy efforts include publishing two monthly publications, *Prison Legal News*, which covers national and international news and litigation concerning prisons and jails, as well as *Criminal Legal News*, which is focused on criminal law and procedure and policing issues. HRDC also publishes and distributes self-help and legal reference books for prisoners.

6. **The UC Berkeley Center for Consumer Law & Economic Justice** is the leading law school research and advocacy center dedicated to ensuring safe, equal, and fair access to the marketplace. Through regular participation as an amicus before the United States Supreme Court, the federal courts of appeals, and state appellate courts, the Center seeks to develop and enhance economic protections for all consumers, especially those who compose particularly vulnerable segments of the population. The Center appears in this proceeding to underscore the importance of the bankruptcy process being both fair and accessible to all creditors.

ii. Desirability and Relevance

The proposed *amici curiae* brief is also desirable and relevant, in accordance with how that standard has been interpreted by the Fifth Circuit. The Fifth Circuit has recognized that amicus curiae briefs are particularly desirable, relevant, and proper when they support parties that are not adequately represented in these proceedings and then they present unique information or a unique perspective that can aid the court. *See In re Halo Wireless, Inc.*, 684 F.3d 581, 596 (5th Cir. 2012). This brief does both.

First, the primary purpose of the brief is to further advance the arguments of incarcerated pro se litigants regarding the unique barriers they have face in accessing and participating in this bankruptcy proceeding. The brief also makes arguments regarding notice and due process on behalf of both known and unknown incarcerated creditors that are not aware that these proceedings are happening or do not understand how their rights will be impacted by these proceedings. The nonprofit advocacy organizations submitting this brief are well-positioned to represent those interests that may not otherwise be adequately represented in the bankruptcy proceeding.

Second, proposed *amici* present a unique perspective that will aid the court in effectively safeguarding the rights of incarcerated creditors. These bankruptcy proceedings present a unique situation where many of the creditors are unrepresented and currently incarcerated. The perspective of proposed *amici* will be

useful because they have decades of experience advocating for the rights of incarcerated people and are familiar with the barriers that incarcerated people face in accessing the legal system. Proposed *amici* have a unique perspective regarding how those barriers may pose a threat to the due process rights of incarcerated people in these bankruptcy proceedings.

CONCLUSION

For the reasons stated above, proposed *amici* request that this Court grant this motion.

Dated: February 23, 2024

Signed:

/s/ Jaqueline Aranda Osorno

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Certificate of Service

I hereby certify that a true and correct copy of the foregoing motion and related attachments were served on February 23, 2024, via this Court's electronic case filing (ECF) system on all parties receiving ECF notices in this case.

/s/ Jaqueline Aranda Osorno
Jaqueline Aranda Osorno