

TENTATIVE RULING

ISSUED BY JUDGE LAURA S. TAYLOR

Adversary Case Name: BORREGO COMMUNITY HEALTH FOUNDATION, v.
CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES

Adversary Number: 22-90056

Case Number: 22-02384-LT11

Hearing: 11:00 AM Friday, September 30, 2022

Motion: HEARING SET BY COURT RE: EX PARTE APPLICATION
SUPPLEMENTING EMERGENCY MOTION: (I) TO ENFORCE THE
AUTOMATIC STAY PURSUANT TO 11 U.S.C. 362; OR, IN THE
ALTERNATIVELY (II) FOR TEMPORARY RESTRAINING ORDER FILED ON
BEHALF OF BORREGO COMMUNITY HEALTH FOUNDATION

HEAR.

On September 27, 2022, the Court held an initial hearing on Debtor's emergency motion seeking in general terms: (1) a statement regarding the applicability of the automatic stay in relation to the actions of the California Department of Health Care Services (the "State") seeking to terminate certain payments/reimbursements and enforcing or failing to rescind a prepetition order requiring block patient transfers; or (2) issuance of a temporary protective order providing an equivalent stay. The Debtor documented tremendous harm, beginning if not concluding on September 29, 2022, if this matter was not decided on an emergency basis including not only catastrophic economic harm to Debtor but also serious harm to its patients.

The State wished to oppose, but given the documented harm, the Court could not provide its requested time for written opposition. Thus, the State was given two options: (1) file written opposition by noon on September 28, 2022, with the Court deciding the matter on the papers; or (2) refrain from withholding payment and otherwise take steps to ensure status quo maintenance in order to allow for its requested time for response and a hearing slightly more than a week later. The attorney for the State reasonably requested an opportunity to consult with his client, but, by the next morning, the Court was advised that the State elected the second option. Its papers are now due Monday; the hearing is on Thursday, October 6, 2022.

On September 29, 2022, however, the Debtor filed a supplemental



22023842209300000000000003

emergency request indicating that some third parties were, nonetheless, withholding payments and terminating contracts. The motion suggested lack of action by the State. The state promptly responded, advising that it sent appropriate notices and was not responsible for these actions.

The Court is strongly inclined resolve this interim dispute through an order that documents the State's agreement and advises third parties that:

(1) Declaration by this Court is not required for the automatic stay to come into effect. And the automatic stay arises in this case unless the Court finds that an exception to the stay exists. The Court is currently considering the matter and parties act at their own risk if they violate the stay while this decision is pending.

(2) Acts taken in violation of the automatic stay are void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).

(3) Actions taken in violation of the stay may subject the violator to compensatory or coercive sanctions including reimbursement of Debtor's, no doubt reasonably large, attorneys' fees. *In re Pace*, 67 F.3d 187, 193 (9th Cir. 1995) (stating that courts have discretion under § 105(a) to sanction stay violators by awarding attorney's fees and costs to non-individuals, including bankruptcy trustees and corporate debtors, who do not qualify for an award of sanctions under § 362(h).).

(4) Given the notices provided by the State and the issuance of this order, violators cannot avoid sanction in reliance on the prepetition actions of the State.