



UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA
325 West "F" Street, San Diego, California 92101-6991

In re:
**BORREGO COMMUNITY HEALTH
FOUNDATION, A CALIFORNIA NONPROFIT PUBLIC
BENEFIT CORPORATION**
Debtor.

BANKRUPTCY NO. 22-02384-LT11

**BORREGO COMMUNITY HEALTH
FOUNDATION, A CALIFORNIA NONPROFIT PUBLIC**
Plaintiff.

ADVERSARY NO. 22-90056-LT

v.
**CALIFORNIA DEPARTMENT OF HEALTH CARE
SERVICES, BY AND THROUGH ITS DIRECTOR, MICHELLE BAAS**
Defendant.

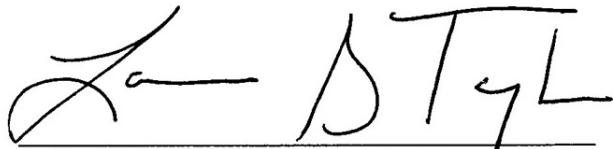
Date of Hearing: September 30, 2022
Time of Hearing: 11:00 a.m.
Name of Judge: Laura S. Taylor

**ORDER RE THE ISSUANCE OF A CLARIFYING LETTER BY THE CALIFORNIA DEPARTMENT
OF HEALTH CARE SERVICES TO HEALTH PLANS CONTRACTING WITH DEBTOR AS OF
PETITION DATE**

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through three (3).

Related Motion/Order Docket Entry No. 3, 10

DATED: September 30, 2022


Judge, United States Bankruptcy Court

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Debtor: BORREGO COMMUNITY HEALTH FOUNDATION
BORREGO COMMUNITY HEALTH FOUNDATION v. CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES

Bankruptcy No. 22-02384-LT11
Adversary No. 22-90056-LT

On September 30, 2022, the Court held an emergency hearing on the Debtor's Emergency Motion and Supplement relating to the California Department of Health Care Services' (the "Department") intention to affect a suspension of Medi-Cal payments to Debtor and the potential resulting block transfer of patients by health plans out of Debtor. Generally, in the Emergency Motion, Debtor sought: (1) a statement regarding the applicability of the automatic stay in relation to the actions of the Department seeking to terminate certain payments/reimbursements and enforcing or failing to rescind a prepetition letter encouraging block patient transfers; or (2) issuance of a temporary protective order providing an equivalent stay. Appearances at the emergency hearing were made as stated on the record.

The September 30 adversary proceeding hearing followed a September 27, 2022, bankruptcy proceeding hearing at which the Court discussed with the parties the scheduling for Debtor's Emergency Motion. At that hearing, the Court provided the Department with 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 Department elected the second option. Its papers are due on October 3, 2022; the hearing is scheduled for October 6, 2022.

The parties disputed what was required to maintain the status quo. The Court set this hearing based on that dispute and the tremendous potential for harm documented by the Patient Care Ombudsman and Debtor if this matter was not decided on an emergency basis. The harm includes not only catastrophic economic harm to Debtor but also serious harm to its patients. At the hearing, the Department made clear its position that it had not required health plans to terminate their contracts with and transfer patients out of Debtor. Debtor believes the Department should have taken steps to prevent the health plans from doing so given its prior communication with the health plans.

The Court determines that relief is appropriate given that decisions by health plans to unilaterally block transfer Debtor's patients have the potential to endanger health and life. The Court hereby ORDERS the Department to file and serve a clarifying letter on all health plans that were contracted with Debtor as of the petition date, September 12, 2022, which must explain:

- (1) Declaration by this Court is not required for the automatic stay to come into effect. The automatic stay arises in this case unless the Court finds that an exception to the stay exists. The Court is currently considering whether an exception applies that would permit the Department to suspend Medi-Cal payments, which will be heard on October 6.
- (2) One exception to the automatic stay, 11 U.S.C. § 362(b)(4), excepts actions by governmental units to enforce their police or regulatory power. Even the Court were to find that exception applicable to the Department, it would not be available to health

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plans.

- (3) Acts taken in violation of the automatic stay are void. *In re Schwartz*, 954 F.2d 569, 571 (9th Cir. 1992).
- (4) 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).).
- (5) Given the notices provided by the Department and the issuance of the Court's order, violators cannot avoid sanction in reliance on the prepetition actions of the Department.

IT IS SO ORDERED.

Notice Recipients

District/Off: 0974-3
Case: 22-90056-LT

User: Admin.
Form ID: pdfO1

Date Created: 9/30/2022
Total: 3

Recipients of Notice of Electronic Filing:

aty	Kenneth K. Wang	kenneth.wang@doj.ca.gov
aty	Tania M. Moyron	tania.moyron@dentons.com

TOTAL: 2

Recipients submitted to the BNC (Bankruptcy Noticing Center):
pla BORREGO COMMUNITY HEALTH FOUNDATION,
Springs, CA 92004

587 Palm Canyon Dr. Suite 208

Borrego

TOTAL: 1