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9
10 UNITED STATES BANKRUPTCY COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re

13 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
14 public benefit foundation,

15 Debtor and Debtor in Possession,
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21 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
22 public benefit corporation,

23 Plaintiff,
24

25 v.
26

27 CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
through its Director, Michelle Baass,
28

Defendant.

Case No. 22-02384-LT11

Chapter 11 Case

Adv. Pro. No. 22-90056

**DEFENDANT CALIFORNIA
DEPARTMENT OF HEALTH
CARE SERVICES' OBJECTIONS
AND MOTIONS TO STRIKE
SUPPLEMENTAL RUBIN
DECLARATION IN SUPPORT OF
EMERGENCY MOTION**

Date: October 6, 2022

Time: 2 p.m.

Dept: Courtroom: Dept. 3

Judge: Hon. Laura S. Taylor



INTRODUCTION

Defendant California Department of Health Care Services (Department) objects to and moves to strike the following portions of the Supplemental Rubin Declaration (Declaration) in support of Debtor's Emergency Motion, Dkt. 20.

Paragraph 5 - The Department objects to, and moves to strike, Paragraph 5 of the Declaration on the grounds that: (1) the paragraph lacks foundation; (2) Dr. Rubin lacks personal knowledge; (3) the paragraph is premised on hearsay statements; and (4) it is speculative. Dr. Rubin lacks personal knowledge, as required under Federal Rules of Evidence, Rule 602, to make his statement regarding Inland Empire Health Plan (IEHP) purportedly transferring patients to other providers and/or hospitals without notice to, or knowledge of, such patients. That statement is speculative and premised upon inadmissible hearsay and is therefore inadmissible under Federal Rules of Evidence, Rules 801 and 802. Because the said statements in Paragraph 5 are inadmissible, the paragraph should be stricken.

Paragraph 6 – The Department objects to, and moves to strike, Paragraph 6 of the Declaration on the grounds that: (1) Dr. Rubin lacks personal knowledge; (2) the paragraph lacks foundation; (3) it is premised on hearsay statements; and (4) it is speculative. Dr. Rubin lacks personal knowledge, as required under Federal Rules of Evidence, Rule 602, to make his statements regarding the distance that patients allegedly need to travel to new providers, their income status, and the situation facing pregnant patients who are being transferred. Those statements are speculative and based on his review of insurance cards and discussions with the Debtor's women's clinic, and as such constitute inadmissible hearsay under Rules 801 and 802. Because the statements in Paragraph 6 are inadmissible, they should be stricken.

Paragraph 7 - The Department objects to, and moves to strike, Paragraph 7 of the Declaration on the grounds that: (1) the paragraph lacks foundation; (2) Dr.

1 Rubin lacks personal knowledge; (3) the paragraph is premised on hearsay
2 statements; and (4) it is speculative. Dr. Rubin lacks personal knowledge, as
3 required under Federal Rules of Evidence, Rule 602, to make his statements
4 regarding the alleged lack of alternative treatment options for hepatitis C and
5 HIV/AIDS and transgender health patients, and the irreparable harm that will
6 allegedly result if those patients are not returned to Debtor's care immediately.
7 Because Dr. Rubin admits that his statements are based on information and belief
8 (see paragraph 7), those statements are speculative and premised upon inadmissible
9 hearsay under Rule 801 and 802. The statements in Paragraph 7 should therefore
10 be stricken.

11 **Paragraphs 8-9** - The Department objects to, and moves to strike, Paragraphs
12 8-9 of the Declaration on the grounds that: (1) these paragraphs lack foundation; (2)
13 Dr. Rubin lacks personal knowledge; (3) these paragraphs are premised on hearsay
14 statements; and (4) they are speculative. Dr. Rubin lacks personal knowledge, as
15 required under Federal Rules of Evidence, Rule 602, to make his statements
16 regarding the age of the HIV patients, the alleged need and difficulty for them to
17 find new providers and travel long distances to get their medication, and the alleged
18 resulting harm to them and the public in general. Because Dr. Rubin admits that
19 those statements are based on information and belief (see paragraph 7), those
20 statements are speculative and premised upon inadmissible hearsay under Rule 801
21 and 802. The statements in Paragraph 7-8 should therefore be stricken.

22 **Paragraphs 10-12** - The Department objects to, and moves to strike,
23 Paragraphs 10-12 of the Declaration on the grounds that: (1) these paragraphs lack
24 foundation; (2) Dr. Rubin lacks personal knowledge; (3) these paragraphs are
25 premised on hearsay statements; and (4) they are speculative. Dr. Rubin lacks
26 personal knowledge, as required under Federal Rules of Evidence, Rule 602, to
27 make his conclusory statements about purportedly witnessing the potential for
28 severe harm caused by plans moving patients based on representations and

subsequent inaction by the Department. Because Dr. Rubin admittedly bases his statements on speaking with the Debtor's staff, looking at insurance cards, and information and belief, his conclusory statements in paragraph 10-12 are speculative and premised upon inadmissible hearsay under Rule 801 and 802. The statements in Paragraphs 10-11 should therefore be stricken.

Paragraphs 13-15 - The Department objects to, and moves to strike, Paragraphs 13-15 of the Declaration on the grounds that: (1) these paragraphs lack foundation; (2) Dr. Rubin lacks personal knowledge; (3) these paragraphs are premised on hearsay statements; and (4) they are speculative. Dr. Rubin lacks personal knowledge, as required under Federal Rules of Evidence, Rule 602, to make his conclusory statements attributed to him in paragraph 9 of Mr. Maizel's Supplemental Declaration. Because Dr. Rubin admittedly bases his statements on speaking with Debtor's staff, looking at insurance cards, and information and belief, his conclusory statements in paragraph 13-15 regarding the statements attributed to him in paragraph 9 of Mr. Maizel's Supplemental Declaration are speculative and premised upon inadmissible hearsay under Rule 801 and 802. The statements in Paragraphs 13-15 should therefore be stricken.

Dated: October _3_, 2022

Respectfully submitted,

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