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8 *Department of Health Care Services*

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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  
16 Debtor and Debtor in Possession,  
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18  
19 BORREGO COMMUNITY HEALTH  
FOUNDATION, a California nonprofit  
20 public benefit corporation,  
21  
22 Plaintiff,  
23  
24 v.  
25 CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICES, by and  
through its Director, Michelle Baass,  
26  
27 Defendant.

No. 22-90056  
**DEFENDANT CALIFORNIA  
DEPARTMENT OF HEALTH  
CARE SERVICES' OBJECTIONS  
AND MOTIONS TO STRIKE  
INITIAL RUBIN DECLARATION  
IN SUPPORT OF EMERGENCY  
MOTION**  
Date: October 6, 2022  
Time: 2 p.m.  
Dept: Courtroom: Dept. 3  
Judge: Hon. Laura S. Taylor

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**INTRODUCTION**



1 Defendant California Department of Health Care Services (Department)  
2 objects to and moves to strike Paragraphs 5, 7, and 19-46 of the initial Rubin  
3 Declaration (Declaration) in Support of Debtor’s Emergency Motion, Dkt. 4.

#### 4 **OBJECTIONS**

5 **Paragraph 5** – The Department objects to, and moves to strike, Dr. Rubin’s  
6 statement in Paragraph 5—that closure of the Debtor’s clinics would be adverse to  
7 the interests of thousands of patients (Rubin Decl, 2:18-20)—on the grounds that:  
8 (1) the statement lacks foundation; (2) Dr. Rubin lacks personal knowledge, as  
9 required by Federal Rules of Evidence, Rule 602; (3) the statement is premised on  
10 inadmissible hearsay under Federal Rules of Evidence, Rules 801-802, and (4) it is  
11 speculative and based on unsupported assumptions.

12 Moreover, the hearsay information upon which he relies is entirely one-sided,  
13 namely what Debtor Borrego’s officers and staff have told him and reported in their  
14 bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
15 *admits* that his statements are entirely based on what the Debtor relayed to him.  
16 (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
17 surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
18 Rubin’s statements can hardly be considered objective when there is no indication  
19 that his conclusions reflect any information provided by the plans or the  
20 Department. As such, the statement in Paragraph 5 of Dr. Rubin’s declaration  
21 should be stricken.

22 **Paragraph 7** - The Department objects to, and moves to strike, Dr. Rubin’s  
23 statement in Paragraph 7—that forcing the Debtor to close will create avoidable  
24 harm to patients (Rubin Decl., 3:1-3)—on the grounds that: (1) the statement lacks  
25 foundation; (2) Dr. Rubin lacks personal knowledge, as required by Rule 602; (3)  
26 the statement is premised on inadmissible hearsay statements under Rules 801-802;  
27 and (4) it is speculative and based on unsupported assumptions.

1           Moreover, the hearsay information upon which he relies is entirely one-sided,  
2           namely what Debtor Borrego’s officers and staff have told him and reported in their  
3           bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
4           *admits* that his statements are entirely based on what the Debtor relayed to him.  
5           (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
6           surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
7           Rubin’s statements can hardly be considered objective when there is no indication  
8           that his conclusions reflect any information provided by the plans or the  
9           Department. As such, the statement in Paragraph 7 of Dr. Rubin’s declaration  
10          should be stricken.

11           **Paragraphs 19-26** - The Department objects to, and moves to strike, Dr.  
12          Rubin’s statements in Paragraphs 19-26 regarding the Debtor’s patients—including  
13          but not limited to, the Debtor’s patients only being able to obtain care from the  
14          Debtor’s nearby clinics and with Debtor’s transportation services (Rubin Decl.,  
15          4:24-5:3), dental services in the surrounding area are unobtainable but for the  
16          Debtor’s dental services (*Id.*, 5:9-10), and there are no alternatives for patients other  
17          than to use the severely stressed emergency departments of local hospitals (*Id.*,  
18          5:15-18)—on the grounds that: (1) the statements lack foundation; (2) Dr. Rubin  
19          lacks personal knowledge, as required by Rule 602; (3) the statements are premised  
20          on inadmissible hearsay statements under Rules 801 and 802; and (4) they are  
21          speculative and based on unsupported assumptions.

22           Moreover, the hearsay information upon which he relies is entirely one-sided,  
23           namely what Debtor Borrego’s officers and staff have told him and reported in their  
24           bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
25           *admits* that his statements are entirely based on what the Debtor relayed to him.  
26           (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
27           surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
28           Rubin’s statements can hardly be considered objective when there is no indication

1 that his conclusions reflect any information provided by the plans or the  
2 Department. As such, the statements in Paragraphs 19-26 of Dr. Rubin’s  
3 declaration should be stricken.

4 **Paragraphs 27-30** - The Department objects to, and moves to strike, Dr.  
5 Rubin’s statements in Paragraphs 27-30 regarding the severity of harm that would  
6 result if the Debtor closed—including but not limited to, his statements that it is  
7 guaranteed that without the Debtor, access to care will be severely limited (Rubin  
8 Decl., 5:25-26), a large number of patients will have worsening of comorbid  
9 conditions and death without access to the Debtor’s services (*Id.*, 5:25-27.),  
10 pharmaceuticals will become unavailable (*Id.*, 6:5-6)—on the grounds that: (1) the  
11 statements lack foundation; (2) Dr. Rubin lacks personal knowledge, as required by  
12 Rule 602; (3) the statements are premised on inadmissible hearsay statements under  
13 Rules 801-802; and (4) they are speculative and based on unsupported assumptions.

14 Moreover, the hearsay information upon which he relies is entirely one-sided,  
15 namely what Debtor Borrego’s officers and staff have told him and reported in their  
16 bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
17 *admits* that his statements are entirely based on what the Debtor relayed to him.  
18 (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
19 surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
20 Rubin’s statements can hardly be considered objective when there is no indication  
21 that his conclusions reflect any information provided by the plans or the  
22 Department. As such, the statements in Paragraphs 27-30 of Dr. Rubin’s  
23 declaration should be stricken.

24 **Paragraphs 31-35** - The Department objects to, and moves to strike, Dr.  
25 Rubin’s statements in Paragraphs 31-35 regarding the inability of patients to obtain  
26 specialty care if the Debtor were to close and the resulting severe harm—including  
27 but not limited to, the lifelong transfer trauma that will occur to LGBTQIA patients  
28 (Rubin Decl., 6:25-27), the personal and family trauma to mental health patients

1 (*Id.*, 7:5-7), maternal and infant outcomes will be jeopardized (*Id.*, 7:10-11), and  
2 more advanced cancers and cancer fatalities will occur (*Id.*, 7:14-18)—on the  
3 grounds that: (1) the statements lack foundation; (2) Dr. Rubin lacks personal  
4 knowledge, as required by Rule 602; (3) the statements are premised on  
5 inadmissible hearsay statements under Rules 801-802; and (4) they are speculative  
6 and based on unsupported assumptions.

7 Moreover, the hearsay information upon which he relies is entirely one-sided,  
8 namely what Debtor Borrego’s officers and staff have told him and reported in their  
9 bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
10 *admits* that his statements are entirely based on what the Debtor relayed to him.  
11 (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
12 surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
13 Rubin’s statements can hardly be considered objective when there is no indication  
14 that his conclusions reflect any information provided by the plans or the  
15 Department. As such, the statements in Paragraphs 31-35 of Dr. Rubin’s  
16 declaration should be stricken.

17 **Paragraphs 36-42** - The Department objects to, and moves to strike, Dr.  
18 Rubin’s statements in Paragraphs 36-42 regarding the lack of alternatives if the  
19 Debtor closes—including but not limited to, there is a lack of local capacity for  
20 patients that currently seek care at Debtor Borrego’s clinics (Rubin Decl., 7:20-22),  
21 specialty care clinics cannot be reproduced locally (*Id.*, 7:28), and there is  
22 inadequate capacity within a two hour drive of Debtor Borrego’s clinics to  
23 accommodate its patients (*Id.*, 8:10-13)—on the grounds that: (1) the statements  
24 lack foundation; (2) Dr. Rubin lacks personal knowledge, as required by Rule 602;  
25 (3) the statements are premised on inadmissible hearsay statements under Rules  
26 801-802; and (4) they are speculative and based on unsupported assumptions.

27 Moreover, the hearsay information upon which he relies is entirely one-sided,  
28 namely what Debtor Borrego’s officers and staff have told him and reported in their

1 bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
2 *admits* that his statements are entirely based on what the Debtor relayed to him.  
3 (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
4 surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
5 Rubin’s statements can hardly be considered objective when there is no indication  
6 that his conclusions reflect any information provided by the plans or the  
7 Department. As such, the statements in Paragraphs 36-42 of Dr. Rubin’s  
8 declaration should be stricken.

9 **Paragraphs 43-46** - The Department objects to, and moves to strike, Dr.  
10 Rubin’s statements in Paragraphs 43-46 regarding his conclusions—including but  
11 not limited to, patients will have only limited access to care (Rubin Decl, 8:16-17),  
12 the contemplated shuttering of the Debtor is not for quality of care issues but rather  
13 economic issues (*Id.*, 8:17-18, 9:2-3), closing Debtor Borrego’s clinics will  
14 devastate the patients and overwhelm the health care delivery systems of their  
15 communities (*Id.*, 8:18-20, 26-27)—on the grounds that: (1) the statements lack  
16 foundation; (2) Dr. Rubin lacks personal knowledge, as required by Rule 602; (3)  
17 the statements are premised on inadmissible hearsay statements under Rules 801-  
18 802; and (4) they are speculative and based on unsupported assumptions.

19 Moreover, the hearsay information upon which he relies is entirely one-sided,  
20 namely what Debtor Borrego’s officers and staff have told him and reported in their  
21 bankruptcy filings. (Rubin Decl., 2:21-22.) At one point, Dr. Rubin explicitly  
22 *admits* that his statements are entirely based on what the Debtor relayed to him.  
23 (Rubin Decl., 5:9-10 [“The Debtor informed me that dental services in the  
24 surrounding area are unobtainable but for the Debtor’s dental services.”].) Dr.  
25 Rubin’s statements can hardly be considered objective when there is no indication  
26 that his conclusions reflect any information provided by the plans or the  
27 Department. As such, the statements in Paragraphs 43-46 of Dr. Rubin’s  
28 declaration should be stricken.

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**CONCLUSION**

Based on the foregoing grounds, the Department objects to, and moves to strike, Paragraphs 5, 7, 19-46 of the initial Rubin Declaration in Support of Debtor’s Emergency Motion.

Dated: October 3, 2022

Respectfully submitted,

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