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UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF CALIFORNIA

In re

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

Debtor and Debtor in Possession,

BORREGO COMMUNITY HEALTH
 FOUNDATION, a California nonprofit
 public benefit corporation,

Plaintiff,

v.

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

Defendant.

Case No. 22-02384-LT11

Chapter 11 Case

Adv. Pro. No. 22-90056

**DEFENDANT CALIFORNIA
 DEPARTMENT OF HEALTH
 CARE SERVICES' OBJECTIONS
 TO PLAINTIFF'S PROPOSED
 FINDINGS OF FACT FOR THE
 COURT'S ORDER ON THE
 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 the following proposed Findings of Fact and Conclusions of Law by plaintiff Borrego Community Health Foundation (“Debtor”) on evidentiary grounds:

FINDINGS OF FACT:

Paragraph 2 - The Department objects to Paragraph 2 in that it lacks foundation. The information stated in Paragraph 2 merely repeats information on page 2 of the Emergency Motion. The information stated on page 2 of the Emergency Motion was stated without any evidentiary support.

Paragraph 3 – The Department objects to Paragraph 3 on the ground that it lacks foundation. The information stated in Paragraph 3 repeats information on page 9 of the Debtor’s Emergency Motion (Dkt. No. 3, page 17 of 73). The Emergency Motion cites Paragraph 13 of Isaac Lee’s declaration (Dkt. No. 7, Case No. 22-02384) as evidentiary support of the information. However, Paragraph 13 of Mr. Lee’s declaration does not support the information stated in Paragraph 3. Paragraph 13 of Mr. Lee’s declaration does not state that the Debtor “specializes” in culturally-competent care. “Aim to deliver,” as stated in Paragraph 13 of Mr. Lee’s declaration does not equate to “specialize.”

Paragraph 7 - The Department objects to Paragraph 7 on the ground that it lacks foundation and misstates the evidence. Paragraph 7 states that the payment suspension effective September 29, 2022, is based on an “ongoing investigation into fraud[.]” This statement is inaccurate, incomplete, and misleading. As reflected in Exhibit E of Stuart Busby’s declaration (Dkt. No. 31, ¶ 38), on August 19, 2022, the Department notified the Debtor that, pursuant to Welfare and Institutions (W&I) Code section 14107.11 and the Code of Federal Regulations, Title 42, section 455.23, it was reimposing a full payment suspension, effective September 29, 2022, for, among other things, the ongoing civil and criminal

1 investigations by the California Department of Justice, ongoing concerns regarding
2 the Debtor's quality of care, member grievances, referrals, implementation of a
3 robust corporate compliance program, and unresolved inappropriate billings to the
4 Medi-Cal program.

5 **Paragraph 9** – The Department objects to Paragraph 9 on the ground that it
6 is vague as to DHCS' authority. It also misrepresents facts. DHCS was aware of
7 ongoing quality of care issues prior to the bankruptcy filing and acted based on
8 those issues. Declaration of Stuart Busby, Dkt. No. 31, ¶¶ 16-23, 36-41.

9 **Paragraph 11** - The Department objects to Paragraph 11 on the ground that
10 it lacks foundation. Paragraph 11 states “without the ordinary course payment of
11 Medi-Cal funds, the Debtor will cease operations and will not be able to continue to
12 provide care to its patients.” In the Emergency Motion, the Debtor did not provide
13 any information of its available funds including its grant funds. The missing
14 information and the allegation that the Debtor “will cease operations” contradict
15 information in the record, which is that the Debtor “has over \$5.2 million of cash
16 on hand, \$24 million of anticipated future revenue from HRSA and other grants
17 over the next twelve months, and over \$6 million of collectible patient and
18 pharmacy related receivables.” Declaration of Isaac Lee, Dkt. 7, Case No. 22-
19 02384, ¶ 18.

20 **Paragraph 12** – The Department objects to Paragraph 12 on the ground that
21 it lacks foundation and misstates the evidence. The Department directed the
22 managed care plans (MCPs) to provide plans for *potential* reassignment of their
23 members. This is reflected in the email provided to plans, which is attached as Ex.
24 A to Dana Durham's declaration. Declaration of Dana Durham (Durham Decl.),
25 Dkt. No. 33, ¶ 6. For example, it states that MCPs must have a plan “to monitor
26 and oversee a potential transition of members on an ongoing basis.” Durham Decl.,
27 Dkt. No. 33, ¶¶ 6 – 8.

Paragraph 16 - The Department objects to Paragraph 16 on the ground that it lacks foundation and is wholly speculative. There is no evidence in the record showing that the payment suspension would “endanger ‘thousands’ of patients and result in the loss of employment for over 700 employees.” There is also no evidence in the record showing that “patients could not receive alternative patient care and employees could not easily find alternative employment.” It is wholly speculative to generalize that “alternative employment” is not available and hypothesize on the number of patients who will not be able to receive alternate care.

Paragraph 17 - The Department objects to Paragraph 17 on the ground that it lacks foundation. Mr. Stuart Busby explicitly states in his declaration that the full payment suspension was being re-imposed “due, in large part, to the various continuing concerns and deficiencies . . . In addition, the Debtor continues to be under investigations for alleged fraud against the Medi-Cal program.” Declaration of Stuart Busby, Dkt. No. 31, ¶ 40.

CONCLUSIONS OF LAW:

Paragraph 2 - The Department objects to Paragraph 2 on the ground that it lacks foundation. The evidence in the record does not establish that the payment suspension would have “a detrimental impact and cause irreparable harm to the Debtor, patients, employees, and creditors.” The record also does not establish that the Debtor provides “high-quality patient care and that its patient services in the communities are irreplaceable.”

Paragraph 3 – The Department objects to Paragraph 3 on the ground that it lacks foundation. There is no evidence in the record showing that the Department was reimposing the full payment suspension based solely on “ongoing allegations of fraud.” Furthermore, there is evidence in the record showing that the full payment suspension was being reimposed for public policy reasons, including health and safety concerns of Medi-Cal patients. Such evidence includes Exhibits

1 A through E of Mr. Stuart Busby's declaration, Dkt. No. 31.

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3 Dated: October 14, 2022

Respectfully submitted,

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7
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