

Name, Address, Telephone No. & I.D. No.
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Office of the Attorney General
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'22CV1751 GPC MSB

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 Benefit Corporation
Plaintiff(s)

ADVERSARY NO. 22-90056-LT

v.
California Department of Health Care Services, by and through
its Director, Michelle Baas
Defendant(s)

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

California Department of Health Care Services

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

- ☐ Plaintiff
☒ Defendant
☐ Other (describe) _____

For appeals in a bankruptcy case and not in an
adversary proceeding.

- ☐ Debtor
☐ Creditor
☐ Trustee
☐ Other (describe) _____

Part 2: Identify the subject of this appeal

(1) "Court Modified" Order on Plaintiff's Emergency Motion (Exhibit A attached hereto) and (2) Findings of Fact and Conclusions of Law (Exhibit B attached hereto)

1. Describe the judgment, order, or decree appealed from: See attached.

2. State the date on which the judgment, order, or decree was entered: October 26, 2022



Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone numbers of their attorneys (attach additional pages if necessary):

- | | |
|--|--|
| 1. Party: <u>Borrego Community Health Fdn.</u> | Attorney: <u>Samuel R. Maizel, Esq. (SBN189301)</u>
<u>Dentons US LLP, 601 South Figueroa St., Suite</u>
<u>2500, Los Angeles, CA 90017</u>
<u>(213) 623-9300, (213) 623-9924 (fax)</u> |
| 2. Party: <u>Borrego Community Health Fdn.</u> | Attorney: <u>Tania M. Moyron, Esq. (SBN235736)</u>
<u>Dentons US LLP, 601 South Figueroa St., Suite</u>
<u>2500, Los Angeles, CA 90017</u>
<u>(213) 623-9300, (213) 623-9924 (fax)</u> |

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to 28 U.S.C. §158(c)(1), a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

/s/ Kenneth K. Wang

Date: November 7, 2022

Signature of attorney for appellant(s) (or appellant(s)
If not represented by an attorney)

Name, address, and telephone number of attorney
(or appellant(s) if not represented by an attorney)

Kenneth K. Wang, SBN 201823

Office of the Attorney General

300 S. Spring Street, No. 1702

Los Angeles, CA 90013, Phone No. 213-269-6217

Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of Fed. R. Bankr. P. 8002(c)(1), complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

EXHIBIT A

Name, Address, Telephone No. & I.D. No.

SAMUEL R. MAIZEL (Bar No. 189301)

samuel.maizel@dentons.com

TANIA M. MOYRON (Bar No. 235736)

tania.moyron@dentons.com

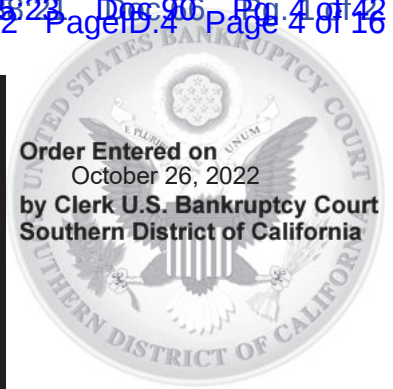
DENTONS US LLP

601 South Figueroa Street, Suite 2500

Los Angeles, California 90017-5704

Telephone: (213) 623.9300 | Facsimile: (213) 623-9924

Order Entered on
October 26, 2022
by Clerk U.S. Bankruptcy Court
Southern District of California



UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West F Street, San Diego, California 92101-6991

In Re

Borrego Community Health Foundation

Debtor.

BANKRUPTCY NO. 22-02384

Borrego Community Health Foundation

Plaintiff(s)

ADVERSARY NO. 22-90056

v.

California Department of Health Care Services

Defendant(s)

Date of Hearing: October 6, 2022

Time of Hearing: 2:00 p.m.

Name of Judge: Honorable Laura S. Taylor

COURT MODIFIED

ORDER ON

Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order

The court orders as set forth on the continuation pages attached and numbered 2 through 2 with exhibits, if any, for a total of 2 pages. Motion/Application Docket Entry No. 3.

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DATED: October 26, 2022


Judge, United States Bankruptcy Court

CSD 3000A [07/01/18](Page 2)

ORDER ON Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order

DEBTOR: Borrego Community Health Foundation

CASE NO.: 22-02384

ADV. NO.: 22-90056

At the above referenced date, time and location, the Court held an emergency hearing on the Debtor's Emergency Motion to (I) Enforce the Automatic Stay or, Alternatively, (II) for Temporary Restraining Order (the "Emergency Motion") [Adv. Docket No. 3] filed by Borrego Community Health Foundation (capitalized terms not otherwise defined herein have the meanings ascribed to them in the Emergency Motion), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the "Debtor"). Having considered the Emergency Motion, the declarations and evidence in support of the Emergency Motion **or otherwise on the record in this proceeding**, any responses or replies to the Emergency Motion, and the arguments of counsel on the record; and the Court having found that the relief requested in the Emergency Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest and necessary to avoid immediate and irreparable harm; and the Court having found that the Debtor provided appropriate notice of the Emergency Motion and the opportunity for a hearing on the Emergency Motion under the circumstances, for the reasons set forth in the concurrently-issued Findings of Fact and Conclusions of Law (collectively, the "Findings"),

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Emergency Motion is granted in part, as set forth in the Court's Findings.
2. The Court denies DHCS' motion to strike the entire declaration of the Patient Care Ombudsperson.
3. The payment suspension imposed by the California Department of Health Care Services (the "Payment Suspension") violates the automatic stay imposed pursuant to Section 362(a) of the Bankruptcy Code.
4. The Payment Suspension is not exempt from the automatic stay pursuant to Section 362(b)(4) of the Bankruptcy Code.
5. Because the automatic stay applies to DHCS' Payment Suspension, it is not necessary to reach the merits of the Debtor's request for a Temporary Restraining Order.
6. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Emergency Motion or the interpretation or implementation of this Order.

IT IS SO ORDERED.

Notice Recipients

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

User: Admin.
Form ID: pdfO10

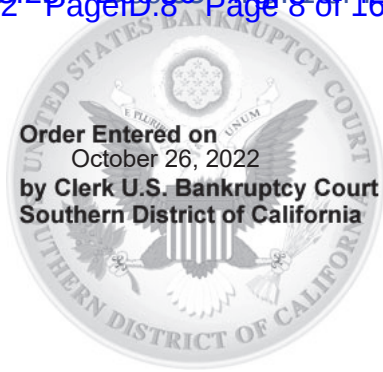
Date Created: 10/26/2022
Total: 1

Recipients of Notice of Electronic Filing:

aty Tania M. Moyron tania.moyron@dentons.com

TOTAL: 1

EXHIBIT B



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.

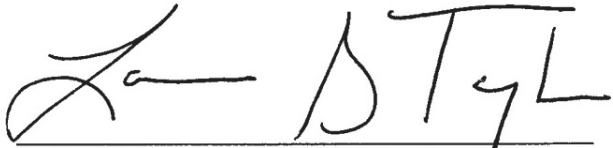
Date of Hearing: October 6, 2022
Time of Hearing: 2:00 p.m.
Name of Judge: Laura S. Taylor

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO (I)
ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER**

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through seven (7).

Related Motion/Order Docket Entry No. 3

DATED: October 26, 2022


Judge, United States Bankruptcy Court

Page 2 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

Findings of Fact¹

1. The Debtor filed its voluntary petition (the “Petition”) under Chapter 11 of the Bankruptcy Code on September 12, 2022 (the “Petition Date”). The creditor matrix has approximately 6,000 creditors as of the Petition Date.
2. The Debtor has approximately 700 employees and is a nonprofit federally qualified health center (“FQHC”) that provides health care services, including but not limited to primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care, and veteran’s health, to approximately 94,000 low income and rural patients (collectively, the “Patients”) and approximately 386,000 patient visits in San Diego and Riverside Counties through a system of eighteen clinics, two pharmacies, and six mobile units. Bk. **Dkt. No. 7** ¶ 9-10, 12, 14.
3. The Debtor specializes in providing care to underserved populations and aims to deliver high-quality, culturally- and linguistically-competent care, including care to specialized populations such as the LGBTQ and transgender communities. Bk. **Dkt. No. 7** ¶ 13.
4. The California Department of Health Care Services (“DHCS”) administers the California Medicaid Program, which is called “Medi-Cal.” The Medi-Cal program is California’s implementation of the federal Medicaid program, a joint federal and state program for rendering health care services to the needy and disabled under Title XIX of the Social Security Act. **42 U.S.C. §§ 1396**, et seq.
5. On November 18, 2020, DHCS imposed a payment suspension as a result of an ongoing investigation of allegations of fraud in the Debtor’s external contract dental services. Shortly thereafter, DHCS limited the suspension to dental claims only; this suspension remains in effect and the investigation into that fraud continues. The Debtor has ceased providing contract dental services in 2020, cooperated with civil and criminal investigations, replaced much of its leadership, and brought a lawsuit against former staff and contractors involved in the fraud. DHCS did not indicate any ongoing fraud as to any of Debtor’s current services, only an ongoing investigation into the prior external dental services fraud.

¹ Neither party requested an evidentiary hearing; consequently, these factual findings are based on declaratory evidence from the adversary proceeding and main bankruptcy.

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(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
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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

6. On January 27, 2021, the Debtor and DHCS entered into a settlement agreement (the “Agreement”), wherein, among other things, DHCS required the Debtor to retain Berkeley Research Group as an independent monitor that reported to DHCS.

7. In May of 2022, the Debtor requested that the Department limit the payment suspension to contract dental claims only and lift the requirement to maintain the independent monitor.

8. Prior to the Petition Date, on August 19, 2022, DHCS notified the Debtor that it intended to impose a full suspension of Medi-Cal program payments to the Debtor (the “Payment Suspension”), for both medical and dental services, effective September 29, 2022. In its letter to the Debtor, DHCS cited several factors to justify the full payment suspension: (i) concerns about quality of care, patient grievances, referrals, compliance, and billing; (ii) failure to “fully” comply with the Agreement; and (iii) the continuation of the investigation for fraud. **Dkt. No. 31**, Exh. E. The letter states, “A payment suspension may be lifted when a resolution of an investigation for fraud or abuse occurs.” *Id.* DHCS’s letter did not in any way limit Debtor’s continued provision of Debtor’s Medi-Cal medical or dental services.

9. On or about August 19, 2022, DHCS notified the various managed care plans (“MCP”) who had contracts with the Debtor for the Debtor to provide health care services to their members of its intention to suspend all Medi-Cal program payments to the Debtor effective September 29, 2022, and directed the MCP to provide plans for potential reassignment of their members. **Dkt. No. 33**, Exh. A. MCPs were not required to terminate their contracts with Debtor. **Dkt. No. 33**, Exhs. A, C. After the suspension date, health plans were explicitly permitted to adjudicate Debtor’s claims for services provided to Medi-Cal members but were required to withhold payment.

10. Medi-Cal pays approximately 44% of the Debtor’s revenue. Bk. **Dkt. No. 7** ¶ 16. The Court reasonably concludes that the loss of such revenue would be catastrophic to Debtor’s patient care and business operations. Much of Debtor’s remaining revenue derives from federal grants.

11. Given the proposed Payment Suspension, the Debtor filed the Petition to obtain the protection of the automatic stay, to protect its patient population, and to explore all available restructuring options.

12. Post-petition, DHCS reiterated its intent to enforce the Payment Suspension effective September 29, 2022, despite notification from counsel for the Debtors of its position that the automatic stay applied to the suspension. DHCS had the authority to, but did not, suspend the Debtor from the Medi-Cal program for quality-of-care issues.

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(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

13. On September 16, 2022, the Office of the United States Trustee appointed, pursuant to 11 U.S.C. § 333, Dr. Nathan Rubin as the Patient Care Ombudsperson (the “PCO”). Pursuant to § 333(b), the PCO is required to monitor patient care and report his findings as applicable to the Court as an advocate for the patients. The PCO is an independent party from the Debtor and DHCS.

14. The PCO visited the Debtor’s facilities on multiple days during the last week of September 2022. The PCO reported on his findings in several declarations,² and stated, among other things, that: (i) the Debtor is currently serving its patients when no one else can; (ii) the Debtor’s patients are well cared for; (iii) the Debtor’s health care providers are dedicated and compassionate; (iv) the Debtor’s clinics are state of the art and spotless; and (v) the consequences of a shut down or material drawback of services would be devastating to the communities served by the Debtor. Dkt. No. 20 ¶ 12. The PCO stated that he “witnessed the potential for serious, life-threatening deficiencies” as a result of MCPs’ transfer of patients, and further that:

DHCS’ total disregard for the patients and the providers is shocking. I cannot discern why DHCS, no matter what kind of financial facts it believes exist, has taken actions that are causing health plans to move patients from an organization that is providing healthcare consistent with the standard of care and with no reasonable alternatives for the patients.

Id. at ¶¶ 10, 11.

15. On September 26, 2022, the Debtor commenced this Adversary Proceeding. On the same day, the Debtor filed its Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; or, Alternatively (II) For Temporary Restraining Order (the “Emergency Motion”), and sought (i) a ruling that the Payment Suspension violated the automatic stay imposed pursuant to 11 U.S.C. § 362 of the Bankruptcy Code, or, alternatively, (ii) issuance of a temporary restraining order enjoining the Payment Suspension under Rule 7065 of the Federal Rules of Bankruptcy Procedure. In support of the Emergency Motion, the Debtors filed multiple declarations evidencing the irreparable harm to the Debtor, the Debtor’s estate, and its patients.

16. The Emergency Motion demonstrated a critical “emergency” given the evidence provided by the PCO that, among other things, DHCS’ proposed Payment Suspension has potential to cause serious, life-threatening harm to patients, including pregnant patients and HIV/AIDS patients who need immediate and/or constant care. Many of

² The Court denied DHCS’s motions to strike the PCO’s declarations. While performing his duties under § 333(b), Dr. Rubin personally visited Debtor’s facilities and conducted an investigation. Dkt. No. 20.

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(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

Debtor's patients have no reasonable alternative for care, risking "debility, deterioration in quality of life, worsening of otherwise controlled comorbid conditions and death without access to the Debtor's services."

17. On October 3, 2022, DHCS filed its opposition to the Emergency Motion (the "Opposition"), which Opposition asserted that the Payment Suspension was based on: (i) patient-care deficiencies; (ii) improper billing practices; (iii) a breach of the Agreement, and (iv) the fraud investigation.

18. On October 4, 2022, the Debtor filed its reply to the Opposition and a declaration in support thereof, including specific evidence to counter the alleged patient care deficiencies.

Conclusions of Law

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2) and 1334(b).
2. The evidence in the record establishes that the circumstances required an emergency hearing on the Emergency Motion given that the Payment Suspension would have a detrimental impact and cause irreparable harm to the Debtor and its patients, employees, and creditors.
3. The Debtor was not required to exhaust administrative remedies before seeking the relief in the Emergency Motion before this Court.
4. The Payment Suspension relates to payments that are property of the estate, pursuant to 11 U.S.C. § 541, for post-petition services rendered.
5. Section 362(a)(1) applies to the intended Payment Suspension in that it is the continuation of a prepetition administrative action intended to recover a claim that arose prepetition.
6. Section 362(a)(3) applies to the intended Payment Suspension in that it is an act to exercise control over property of the Debtor's estate.
7. Section 362(a)(6) likely applies to the Payment Suspension in that it is an act to collect, assess, or recover a prepetition claim from the Debtor.
8. The Payment Suspension is not exempt from the automatic stay, pursuant to 11 U.S.C. § 362(b)(4), under the "pecuniary purpose" test because the Payment Suspension (i) is intended to protect DHCS's pecuniary interest and is not related to

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(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
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BORREGO COMMUNITY HEALTH FOUNDATION v. CALIFORNIA DEPARTMENT OF HEALTH
CARE SERVICES

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

matters of public safety or health, and (ii) would allow DHCS to obtain an advantage over other creditors.

9. The Payment Suspension is not exempt from the automatic stay, pursuant to **11 U.S.C. § 362(b)(4)**, under the “public purpose” test because (i) the Payment Suspension is intended to effectuate DHCS’s private rights rather than effectuate public policy, and (ii) DHCS’ pursuit of its alleged breach of contract claim under the Agreement does not serve a public purpose.

10. There is no evidence in the record that DHCS is supporting a public interest rather than its own financial interest. DHCS’s conclusory claims otherwise are illusory and pretextual.

11. DHCS’s Payment Suspension sought to implement cessation of payments but did not limit the Debtor’s continued provision of services—rather, the Debtor must continue to provide services until terminated by a health plan. Meanwhile, MCPs cannot terminate their contracts with Debtor without relief from stay. Refusing to pay for properly performed post-petition work thus represents an attempt to control assets of the estate to the detriment of all creditors and stake-holders other than the Department.

12. On the other hand, the record extensively documents risks to the public if the DHCS’s financial interest leaves patients without care. The statements of public support for Debtor’s continued operation are voluminous and compelling.

13. The record establishes that the Debtor provides adequate patient care, at a minimum, and that its patient services in the Communities are important and irreplaceable.

14. DHCS failed to provide evidence that the Debtor’s alleged care deficiencies rendered Debtor’s care below a reasonable standard of care in the industry. DHCS provided statistics relating to Debtor’s “Third Next Available Appointment” time, patient referrals, patient-ended phone calls, and patient grievances but failed to compare them to acceptable standards. **Dkt. No. 31**. DHCS provided no evidence of the content of the grievances.

15. Debtor, meanwhile, supplied evidence in response to DHCS’s claims that its performance is reasonable. For example, Debtor provided evidence that the 584 patient grievances cited by DHCS arose from 213,000 patient encounters for a .27% grievance rate per encounter. Debtor also provided evidence that the vast majority of next available appointments are the same-day and second next available appointments are days later. Debtor also provided evidence that the referral wait times and closures

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Debtor: BORREGO COMMUNITY HEALTH FOUNDATION
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CARE SERVICES

Bankruptcy No. 22-02384-LT11
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depend on external specialists and/or health plans, not on Debtor. Based on Debtor's evidence and DCHS's lack of evidence, the Court reasonably concludes these alleged standard of care concerns are pretextual.

16. Breaches of the Agreement do not permit application of § 362(b)(4). Moreover, the alleged Agreement breaches relate to a business plan, employee time entries, and provision of board meeting records—matters that do not indicate a public purpose.

17. DHCS provided no evidence of currently existing fraud, but rather cited the ongoing investigation into the prior fraud to justify the Payment Suspension. As described above, Debtor took affirmative steps to ensure the prior fraud did not continue, including eliminating the contract dental program and removing individuals involved.

18. Consequently, DHCS does not satisfy either the pecuniary interest or public purpose tests, and, thus, 11 U.S.C. § 362(b)(4) does not apply, and the stay bars DHCS's proposed Payment Suspension.

TOTAL: 1

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Borrego Community Health Foundation v. California Department of Health Care Services**

Case No.: 22-90056

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On November 7, 2022, I served the attached by transmitting a true copy via electronic mail.

NOTICE OF APPEAL AND STATEMENT OF ELECTION AND ATTACHMENTS

I transmitted the above-referenced document via electronic mail to:

Samuel R. Maizel, attorney for the Plaintiff Borrego Community Health Foundation at Samuel.maizel@dentons.com;

Tania M. Moyron, attorney for Plaintiff Borrego Community Health Foundation at tania.moyron@dentons.com;

David Ortiz, Esq., at the Office of the United States Trustee at david.a.ortiz@usdoj.gov;

Region 15 of the Office of the United States Trustee at ustp.region15@usdoj.gov;

Steven Golden, Esq. attorney for the Unsecured Creditors Committee at sgolden@pszjlaw.com; and

Bernard Hansen, Esq. at bernardmhansen@sbcglobal.net, attorney for Premier Healthcare.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 7, 2022, at Los Angeles, California.

Kenneth K. Wang

Declarant

/s/ Kenneth K. Wang

Signature

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

Borrego Community Health Foundation, A California

(b) County of Residence of First Listed Plaintiff _____
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorney's (Firm Name, Address, and Telephone Number)

Kenneth K. Wang, 300 S. Spring Street, No. 1702 LA,CA90013

DEFENDANTS

CA Dept. of Health Care Services, by and through its Director

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE
LAND INVOLVED.

Attorneys (If Known)

'22CV1751 GPC MSB**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|--|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated <i>or</i> Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated <i>and</i> Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus - Alien Detainee <input type="checkbox"/> 465 Other Immigration Actions	<input checked="" type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights PRISONER PETITIONS <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition			

V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from another district (specify) ☐ 6 Multidistrict Litigation ☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
28:0158

Brief description of cause:
Bankruptcy Notice of Appeal

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

22-02384-LT11

DATE

SIGNATURE OF ATTORNEY OF RECORD

11/09/2022

s/ GGV

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44**Authority For Civil Cover Sheet**

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

I. (a) Plaintiffs-Defendants. Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.

(b) County of Residence. For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)

(c) Attorneys. Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".

II. Jurisdiction. The basis of jurisdiction is set forth under Rule 8(a), F.R.C.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.

United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.

United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.

Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.

Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; federal question actions take precedence over diversity cases.)

III. Residence (citizenship) of Principal Parties. This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.

IV. Nature of Suit. Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerks in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.

V. Origin. Place an "X" in one of the seven boxes.

Original Proceedings. (1) Cases which originate in the United States district courts.

Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.

Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.

Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.

Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.

Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.

Appeal to District Judge from Magistrate Judgment. (7) Check this box for an appeal from a magistrate judge's decision.

VI. Cause of Action. Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553
Brief Description: Unauthorized reception of cable service

VII. Requested in Complaint. Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.

Demand. In this space enter the dollar amount (in thousands of dollars) being demanded or indicate other demand such as a preliminary injunction.

Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.

VIII. Related Cases. This section of the JS 44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

Name, Address, Telephone No. & I.D. No.
Kenneth K. Wang, SBN 201823
Office of the Attorney General
300 S. Spring Street, No. 1702
Los Angeles, CA 90013
Kenneth K. Wang@doj.ca.gov
213-269-6217
213-897-2805 - Fax

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

'22CV1751 GPC MSB

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 Benefit Corporation Plaintiff(s)

ADVERSARY NO. 22-90056-LT

v.
California Department of Health Care Services, by and through
its Director, Michelle Baas Defendant(s)

NOTICE OF APPEAL AND STATEMENT OF ELECTION

Part 1: Identify the appellant(s)

1. Name(s) of appellant(s):

California Department of Health Care Services

2. Position of appellant(s) in the adversary proceeding or bankruptcy case that is the subject of this appeal:

For appeals in an adversary proceeding.

For appeals in a bankruptcy case and not in an
adversary proceeding.

- ☐ Plaintiff
☒ Defendant
☐ Other (describe) _____

- ☐ Debtor
☐ Creditor
☐ Trustee
☐ Other (describe) _____

Part 2: Identify the subject of this appeal

(1) "Court Modified" Order on Plaintiff's Emergency Motion (Exhibit A attached hereto) and (2) Findings of Fact and Conclusions of Law (Exhibit B attached hereto)

1. Describe the judgment, order, or decree appealed from: See attached.

2. State the date on which the judgment, order, or decree was entered: October 26, 2022

Part 3: Identify the other parties to the appeal

List the names of all parties to the judgment, order, or decree appealed from and the names, addresses, and telephone Numbers of their attorneys (attach additional pages if necessary):

- | | |
|--|--|
| 1. Party: <u>Borrego Community Health Fdn.</u> | Attorney: <u>Samuel R. Maizel, Esq. (SBN189301)</u>
<u>Dentons US LLP, 601 South Figueroa St., Suite</u>
<u>2500, Los Angeles, CA 90017</u>
<u>(213) 623-9300, (213) 623-9924 (fax)</u> |
| 2. Party: <u>Borrego Community Health Fdn.</u> | Attorney: <u>Tania M. Moyron, Esq. (SBN235736)</u>
<u>Dentons US LLP, 601 South Figueroa St., Suite</u>
<u>2500, Los Angeles, CA 90017</u>
<u>(213) 623-9300, (213) 623-9924 (fax)</u> |

Part 4: Optional election to have appeal heard by District Court (applicable only in certain districts)

If a Bankruptcy Appellate Panel is available in this judicial district, the Bankruptcy Appellate Panel will hear this appeal unless, pursuant to **28 U.S.C. §158(c)(1)**, a party elects to have the appeal heard by the United States District Court. If an appellant filing this notice wishes to have the appeal heard by the United States District Court, check below. Do not check the box if the appellant wishes the Bankruptcy Appellate Panel to hear the appeal.

- ☒ Appellant(s) elect to have the appeal heard by the United States District Court rather than by the Bankruptcy Appellate Panel.

Part 5: Sign below

<u>/s/ Kenneth K. Wang</u> Signature of attorney for appellant(s) (or appellant(s) If not represented by an attorney) Name, address, and telephone number of attorney (or appellant(s) if not represented by an attorney) <u>Kenneth K. Wang, SBN 201823</u> <u>Office of the Attorney General</u> <u>300 S. Spring Street, No. 1702</u> <u>Los Angeles, CA 90013, Phone No. 213-269-6217</u>	<u>Date: November 7, 2022</u>
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Fee waiver notice: If appellant is a child support creditor or its representative and appellant has filed the form specified in § 304(g) of the Bankruptcy Reform Act of 1994, no fee is required.

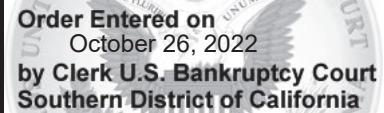
[Note to inmate filers: If you are an inmate filer in an institution and you seek the timing benefit of **Fed. R. Bankr. P. 8002(c)(1)**, complete Director's Form 4170 (Declaration of Inmate Filing) and file that declaration along with the Notice of Appeal.]

EXHIBIT A

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West F Street, San Diego, California 92101-6991



Order Entered on
October 26, 2022
by Clerk U.S. Bankruptcy Court
Southern District of California

In Re

Borrego Community Health Foundation

Debtor.

BANKRUPTCY NO. 22-02384

Borrego Community Health Foundation

Plaintiff(s)

ADVERSARY NO. 22-90056

v.

California Department of Health Care Services

Defendant(s)

Date of Hearing: October 6, 2022

Time of Hearing: 2:00 p.m.

Name of Judge: Honorable Laura S. Taylor

COURT MODIFIED**ORDER ON****Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order**

The court orders as set forth on the continuation pages attached and numbered 2 through 2 with exhibits, if any, for a total of 2 pages. Motion/Application Docket Entry No. 3.

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DATED: October 26, 2022



Judge, United States Bankruptcy Court

CSD 3000A [07/01/18](Page 2)

ORDER ON Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order

DEBTOR: Borrego Community Health Foundation

CASE NO.: 22-02384

ADV. NO.: 22-90056

At the above referenced date, time and location, the Court held an emergency hearing on the Debtor's Emergency Motion to (I) Enforce the Automatic Stay or, Alternatively, (II) for Temporary Restraining Order (the "Emergency Motion") [Adv. Docket No. 3] filed by Borrego Community Health Foundation (capitalized terms not otherwise defined herein have the meanings ascribed to them in the Emergency Motion), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the "Debtor"). Having considered the Emergency Motion, the declarations and evidence in support of the Emergency Motion **or otherwise on the record in this proceeding**, any responses or replies to the Emergency Motion, and the arguments of counsel on the record; and the Court having found that the relief requested in the Emergency Motion is in the best interests of the Debtor's estate, its creditors, and other parties in interest and necessary to avoid immediate and irreparable harm; and the Court having found that the Debtor provided appropriate notice of the Emergency Motion and the opportunity for a hearing on the Emergency Motion under the circumstances, for the reasons set forth in the concurrently-issued Findings of Fact and Conclusions of Law (collectively, the "Findings"),

IT IS HEREBY ORDERED AS FOLLOWS:

1. The Emergency Motion is granted in part, as set forth in the Court's Findings.
2. The Court denies DHCS' motion to strike the entire declaration of the Patient Care Ombudsperson.
3. The payment suspension imposed by the California Department of Health Care Services (the "Payment Suspension") violates the automatic stay imposed pursuant to Section 362(a) of the Bankruptcy Code.
4. The Payment Suspension is not exempt from the automatic stay pursuant to Section 362(b)(4) of the Bankruptcy Code.
5. Because the automatic stay applies to DHCS' Payment Suspension, it is not necessary to reach the merits of the Debtor's request for a Temporary Restraining Order.
6. This Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the Emergency Motion or the interpretation or implementation of this Order.

IT IS SO ORDERED.

Notice Recipients

District/Off: 0974-3

User: Admin.

Date Created: 10/26/2022

Case: 22-90056-LT

Form ID: pdfO10

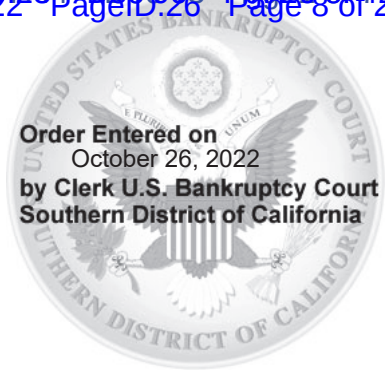
Total: 1

Recipients of Notice of Electronic Filing:

aty Tania M. Moyron tania.moyron@dentons.com

TOTAL: 1

EXHIBIT B



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.

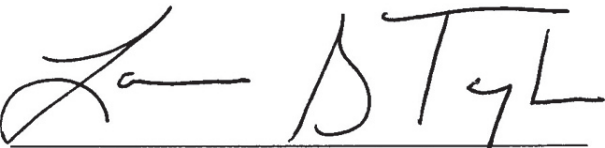
Date of Hearing: October 6, 2022
Time of Hearing: 2:00 p.m.
Name of Judge: Laura S. Taylor

**FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO (I)
ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER**

IT IS HEREBY ORDERED as set forth on the continuation page(s) attached, numbered two (2) through seven (7).

Related Motion/Order Docket Entry No. 3

DATED: October 26, 2022


Judge, United States Bankruptcy Court

Page 2 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

Findings of Fact¹

1. The Debtor filed its voluntary petition (the “Petition”) under Chapter 11 of the Bankruptcy Code on September 12, 2022 (the “Petition Date”). The creditor matrix has approximately 6,000 creditors as of the Petition Date.
2. The Debtor has approximately 700 employees and is a nonprofit federally qualified health center (“FQHC”) that provides health care services, including but not limited to primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care, and veteran’s health, to approximately 94,000 low income and rural patients (collectively, the “Patients”) and approximately 386,000 patient visits in San Diego and Riverside Counties through a system of eighteen clinics, two pharmacies, and six mobile units. Bk. **Dkt. No. 7** ¶ 9-10, 12, 14.
3. The Debtor specializes in providing care to underserved populations and aims to deliver high-quality, culturally- and linguistically-competent care, including care to specialized populations such as the LGBTQ and transgender communities. Bk. **Dkt. No. 7** ¶ 13.
4. The California Department of Health Care Services (“DHCS”) administers the California Medicaid Program, which is called “Medi-Cal.” The Medi-Cal program is California’s implementation of the federal Medicaid program, a joint federal and state program for rendering health care services to the needy and disabled under Title XIX of the Social Security Act. **42 U.S.C. §§ 1396**, et seq.
5. On November 18, 2020, DHCS imposed a payment suspension as a result of an ongoing investigation of allegations of fraud in the Debtor’s external contract dental services. Shortly thereafter, DHCS limited the suspension to dental claims only; this suspension remains in effect and the investigation into that fraud continues. The Debtor has ceased providing contract dental services in 2020, cooperated with civil and criminal investigations, replaced much of its leadership, and brought a lawsuit against former staff and contractors involved in the fraud. DHCS did not indicate any ongoing fraud as to any of Debtor’s current services, only an ongoing investigation into the prior external dental services fraud.

¹ Neither party requested an evidentiary hearing; consequently, these factual findings are based on declaratory evidence from the adversary proceeding and main bankruptcy.

Page 3 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

6. On January 27, 2021, the Debtor and DHCS entered into a settlement agreement (the “Agreement”), wherein, among other things, DHCS required the Debtor to retain Berkeley Research Group as an independent monitor that reported to DHCS.

7. In May of 2022, the Debtor requested that the Department limit the payment suspension to contract dental claims only and lift the requirement to maintain the independent monitor.

8. Prior to the Petition Date, on August 19, 2022, DHCS notified the Debtor that it intended to impose a full suspension of Medi-Cal program payments to the Debtor (the “Payment Suspension”), for both medical and dental services, effective September 29, 2022. In its letter to the Debtor, DHCS cited several factors to justify the full payment suspension: (i) concerns about quality of care, patient grievances, referrals, compliance, and billing; (ii) failure to “fully” comply with the Agreement; and (iii) the continuation of the investigation for fraud. **Dkt. No. 31**, Exh. E. The letter states, “A payment suspension may be lifted when a resolution of an investigation for fraud or abuse occurs.” *Id.* DHCS’s letter did not in any way limit Debtor’s continued provision of Debtor’s Medi-Cal medical or dental services.

9. On or about August 19, 2022, DHCS notified the various managed care plans (“MCP”) who had contracts with the Debtor for the Debtor to provide health care services to their members of its intention to suspend all Medi-Cal program payments to the Debtor effective September 29, 2022, and directed the MCP to provide plans for potential reassignment of their members. **Dkt. No. 33**, Exh. A. MCPs were not required to terminate their contracts with Debtor. **Dkt. No. 33**, Exhs. A, C. After the suspension date, health plans were explicitly permitted to adjudicate Debtor’s claims for services provided to Medi-Cal members but were required to withhold payment.

10. Medi-Cal pays approximately 44% of the Debtor’s revenue. Bk. **Dkt. No. 7** ¶ 16. The Court reasonably concludes that the loss of such revenue would be catastrophic to Debtor’s patient care and business operations. Much of Debtor’s remaining revenue derives from federal grants.

11. Given the proposed Payment Suspension, the Debtor filed the Petition to obtain the protection of the automatic stay, to protect its patient population, and to explore all available restructuring options.

12. Post-petition, DHCS reiterated its intent to enforce the Payment Suspension effective September 29, 2022, despite notification from counsel for the Debtors of its position that the automatic stay applied to the suspension. DHCS had the authority to, but did not, suspend the Debtor from the Medi-Cal program for quality-of-care issues.

Page 4 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

13. On September 16, 2022, the Office of the United States Trustee appointed, pursuant to 11 U.S.C. § 333, Dr. Nathan Rubin as the Patient Care Ombudsperson (the “PCO”). Pursuant to § 333(b), the PCO is required to monitor patient care and report his findings as applicable to the Court as an advocate for the patients. The PCO is an independent party from the Debtor and DHCS.

14. The PCO visited the Debtor’s facilities on multiple days during the last week of September 2022. The PCO reported on his findings in several declarations,² and stated, among other things, that: (i) the Debtor is currently serving its patients when no one else can; (ii) the Debtor’s patients are well cared for; (iii) the Debtor’s health care providers are dedicated and compassionate; (iv) the Debtor’s clinics are state of the art and spotless; and (v) the consequences of a shut down or material drawback of services would be devastating to the communities served by the Debtor. Dkt. No. 20 ¶ 12. The PCO stated that he “witnessed the potential for serious, life-threatening deficiencies” as a result of MCPs’ transfer of patients, and further that:

DHCS’ total disregard for the patients and the providers is shocking. I cannot discern why DHCS, no matter what kind of financial facts it believes exist, has taken actions that are causing health plans to move patients from an organization that is providing healthcare consistent with the standard of care and with no reasonable alternatives for the patients.

Id. at ¶¶ 10, 11.

15. On September 26, 2022, the Debtor commenced this Adversary Proceeding. On the same day, the Debtor filed its Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; or, Alternatively (II) For Temporary Restraining Order (the “Emergency Motion”), and sought (i) a ruling that the Payment Suspension violated the automatic stay imposed pursuant to 11 U.S.C. § 362 of the Bankruptcy Code, or, alternatively, (ii) issuance of a temporary restraining order enjoining the Payment Suspension under Rule 7065 of the Federal Rules of Bankruptcy Procedure. In support of the Emergency Motion, the Debtors filed multiple declarations evidencing the irreparable harm to the Debtor, the Debtor’s estate, and its patients.

16. The Emergency Motion demonstrated a critical “emergency” given the evidence provided by the PCO that, among other things, DHCS’ proposed Payment Suspension has potential to cause serious, life-threatening harm to patients, including pregnant patients and HIV/AIDS patients who need immediate and/or constant care. Many of

² The Court denied DHCS’s motions to strike the PCO’s declarations. While performing his duties under § 333(b), Dr. Rubin personally visited Debtor’s facilities and conducted an investigation. Dkt. No. 20.

Page 5 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

Debtor's patients have no reasonable alternative for care, risking "debility, deterioration in quality of life, worsening of otherwise controlled comorbid conditions and death without access to the Debtor's services."

17. On October 3, 2022, DHCS filed its opposition to the Emergency Motion (the "Opposition"), which Opposition asserted that the Payment Suspension was based on: (i) patient-care deficiencies; (ii) improper billing practices; (iii) a breach of the Agreement, and (iv) the fraud investigation.

18. On October 4, 2022, the Debtor filed its reply to the Opposition and a declaration in support thereof, including specific evidence to counter the alleged patient care deficiencies.

Conclusions of Law

1. The Court has jurisdiction pursuant to 28 U.S.C. §§ 157(b)(2) and 1334(b).
2. The evidence in the record establishes that the circumstances required an emergency hearing on the Emergency Motion given that the Payment Suspension would have a detrimental impact and cause irreparable harm to the Debtor and its patients, employees, and creditors.
3. The Debtor was not required to exhaust administrative remedies before seeking the relief in the Emergency Motion before this Court.
4. The Payment Suspension relates to payments that are property of the estate, pursuant to 11 U.S.C. § 541, for post-petition services rendered.
5. Section 362(a)(1) applies to the intended Payment Suspension in that it is the continuation of a prepetition administrative action intended to recover a claim that arose prepetition.
6. Section 362(a)(3) applies to the intended Payment Suspension in that it is an act to exercise control over property of the Debtor's estate.
7. Section 362(a)(6) likely applies to the Payment Suspension in that it is an act to collect, assess, or recover a prepetition claim from the Debtor.
8. The Payment Suspension is not exempt from the automatic stay, pursuant to 11 U.S.C. § 362(b)(4), under the "pecuniary purpose" test because the Payment Suspension (i) is intended to protect DHCS's pecuniary interest and is not related to

Page 6 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
(I) ENFORCE THE AUTOMATIC STAY OR (II) ALTERNATIVELY FOR TEMPORARY
RESTRAINING ORDER

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

matters of public safety or health, and (ii) would allow DHCS to obtain an advantage over other creditors.

9. The Payment Suspension is not exempt from the automatic stay, pursuant to **11 U.S.C. § 362(b)(4)**, under the “public purpose” test because (i) the Payment Suspension is intended to effectuate DHCS’s private rights rather than effectuate public policy, and (ii) DHCS’ pursuit of its alleged breach of contract claim under the Agreement does not serve a public purpose.

10. There is no evidence in the record that DHCS is supporting a public interest rather than its own financial interest. DHCS’s conclusory claims otherwise are illusory and pretextual.

11. DHCS’s Payment Suspension sought to implement cessation of payments but did not limit the Debtor’s continued provision of services—rather, the Debtor must continue to provide services until terminated by a health plan. Meanwhile, MCPs cannot terminate their contracts with Debtor without relief from stay. Refusing to pay for properly performed post-petition work thus represents an attempt to control assets of the estate to the detriment of all creditors and stake-holders other than the Department.

12. On the other hand, the record extensively documents risks to the public if the DHCS’s financial interest leaves patients without care. The statements of public support for Debtor’s continued operation are voluminous and compelling.

13. The record establishes that the Debtor provides adequate patient care, at a minimum, and that its patient services in the Communities are important and irreplaceable.

14. DHCS failed to provide evidence that the Debtor’s alleged care deficiencies rendered Debtor’s care below a reasonable standard of care in the industry. DHCS provided statistics relating to Debtor’s “Third Next Available Appointment” time, patient referrals, patient-ended phone calls, and patient grievances but failed to compare them to acceptable standards. **Dkt. No. 31**. DHCS provided no evidence of the content of the grievances.

15. Debtor, meanwhile, supplied evidence in response to DHCS’s claims that its performance is reasonable. For example, Debtor provided evidence that the 584 patient grievances cited by DHCS arose from 213,000 patient encounters for a .27% grievance rate per encounter. Debtor also provided evidence that the vast majority of next available appointments are the same-day and second next available appointments are days later. Debtor also provided evidence that the referral wait times and closures

Page 7 | FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: EMERGENCY MOTION TO
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CARE SERVICES

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

depend on external specialists and/or health plans, not on Debtor. Based on Debtor's evidence and DCHS's lack of evidence, the Court reasonably concludes these alleged standard of care concerns are pretextual.

16. Breaches of the Agreement do not permit application of § 362(b)(4). Moreover, the alleged Agreement breaches relate to a business plan, employee time entries, and provision of board meeting records—matters that do not indicate a public purpose.

17. DHCS provided no evidence of currently existing fraud, but rather cited the ongoing investigation into the prior fraud to justify the Payment Suspension. As described above, Debtor took affirmative steps to ensure the prior fraud did not continue, including eliminating the contract dental program and removing individuals involved.

18. Consequently, DHCS does not satisfy either the pecuniary interest or public purpose tests, and, thus, 11 U.S.C. § 362(b)(4) does not apply, and the stay bars DHCS's proposed Payment Suspension.

Notice Recipients

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Date Created: 10/26/2022

Case: 22-90056-LT

Form ID: pdfO1

Total: 5

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TOTAL: 4

Recipients submitted to the BNC (Bankruptcy Noticing Center):

pla	BORREGO COMMUNITY HEALTH FOUNDATION, Springs, CA 92004	587 Palm Canyon Dr.	Suite 208	Borrego
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TOTAL: 1

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Borrego Community Health Foundation v. California Department of Health Care Services**

Case No.: 22-90056

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On November 7, 2022, I served the attached by transmitting a true copy via electronic mail.

NOTICE OF APPEAL AND STATEMENT OF ELECTION AND ATTACHMENTS

I transmitted the above-referenced document via electronic mail to:

Samuel R. Maizel, attorney for the Plaintiff Borrego Community Health Foundation at Samuel.maizel@dentons.com;

Tania M. Moyron, attorney for Plaintiff Borrego Community Health Foundation at tania.moyron@dentons.com;

David Ortiz, Esq., at the Office of the United States Trustee at david.a.ortiz@usdoj.gov;

Region 15 of the Office of the United States Trustee at ustp.region15@usdoj.gov;

Steven Golden, Esq. attorney for the Unsecured Creditors Committee at sgolden@pszjlaw.com; and

Bernard Hansen, Esq. at bernardmhansen@sbcglobal.net, attorney for Premier Healthcare.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on November 7, 2022, at Los Angeles, California.

Kenneth K. Wang

Declarant

/s/ Kenneth K. Wang

Signature

1251a
10/15

United States Bankruptcy Court
Southern District of California
Jacob Weinberger U.S. Courthouse
325 West F Street
San Diego, CA 92101-6991

Telephone: 619-557-5620
Website: www.casb.uscourts.gov
Hours: 8:30am – 4:30pm Monday-Friday

BORREGO COMMUNITY HEALTH FOUNDATION, Debtor(s)	BANKRUPTCY NO. 22-02384-LT11
Borrego Community Health Foundation, A California Nonprofit Public Benefit Corporation Appellant(s)	ADVERSARY NO. 22-90056-LT
California Department of Health Care Services, by and through its Director, Michelle Baas Appellee(s)	BANKRUPTCY APPEAL NO. 1

**NOTICE OF REFERRAL OF APPEAL TO UNITED STATES DISTRICT COURT
COMBINED WITH SERVICE OF NOTICE OF APPEAL**

TO: **BORREGO COMMUNITY HEALTH FOUNDATION,
587 Palm Canyon Dr.
Suite 208
Borrego Springs, CA 92004**

**Samuel R. Maizel, Esq.
Dentons US LLP, 601 South Figueroa St., Suite 2500
Los Angeles, CA 90017**

**Tania M. Moyron, Esq.
Dentons US LLP, 601 South Figueroa St., Suite 2500
Los Angeles, CA 90017**

**NOTICE IS HEREBY GIVEN that a Notice of Appeal has been filed by
California Department of Health Care Services, by and through its Director, Michelle Baas**

with the Clerk of the Bankruptcy Court. By virtue of orders of the Judicial Council of the Ninth Circuit and the District Court for this district, the above appeal has been referred to the United States District Court for the Southern District of California.

For further information, you may contact the Clerk of the United States District Court at 880 Front Street, Suite 4290, San Diego, California 92101, from the USDC website at www.casd.uscourts.gov, or by calling (619) 557-5600.

I hereby certify that on this date copies of the Notice of Appeal and the within Notice of Referral were mailed to the above-named person(s).

DATED: 11/9/22

Michael Williams
Clerk of the U.S. Bankruptcy Court

Notice Recipients

District/Off: 0974-3

User: Admin.

Date Created: 11/9/2022

Case: 22-90056-LT

Form ID: 1251a

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Recipients submitted to the BNC (Bankruptcy Noticing Center):

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	Springs, CA 92004			
ust	United States Trustee	Office of the U.S. Trustee	880 Front Street	Suite 3230 San Diego, CA
	92101			
ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	
ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	

TOTAL: 4

1254
08/22

United States Bankruptcy Court
Southern District of California
Jacob Weinberger U.S. Courthouse
325 West F Street
San Diego, CA 92101-6991

IMPORTANT TIPS REGARDING THE ATTACHED NOTICE OF APPEAL

1. Ensure the U.S. Bankruptcy Court's (USBC) internal control appeal number is listed on the face page of any further documents or pleadings filed in reference to this appeal.

The USBC internal control appeal number for this appeal is **1**

2. The deadlines for this appeal are:
 - Appellant Designation of Record Due By 11/21/22
 - Statement of Issues Due By 11/21/22
 - Appellee Designation of Record Due By 12/5/22
 - Court Follow-up/Transmission of Record to BAP/USDC Due By 12/22/22
3. If requesting transcripts as part of perfecting the record on appeal, you must file the form **Request for Production of Transcript on Appeal (CSD 1253)** as a separate document. This form can be found on the Court's Web site: https://www.casb.uscourts.gov/forms/request_production_transcripts_appeal. To order transcripts, call Court Reporter Jennifer Gibson at (760) 807-2221.

4. Appeals referred to:

United States District Court (USDC):

The record on appeal must be filed with the U.S. Bankruptcy Court. Follow these guidelines: The record on appeal must be submitted by electronic media, with a label on the media itself or its cover indicating the bankruptcy case number, adversary number, if applicable, the USDC case number and the title "BK Record on Appeal". Multiple documents listed on the designation of record may be combined into a single PDF file. The documents should be combined in chronological order as indicated on the designation of record. Each pdf file should not exceed 35 megabytes. The documents do not need tabs or anything separating them.

Bankruptcy Appellate Panel (BAP):

Follow the instructions that you will receive in the Opening Letter sent directly from the BAP.

5. For information on appellate rules and procedures for the BAP, USDC, or the Ninth Circuit Court of Appeals, visit their websites at:

BAP	https://ecf.ca9.uscourts.gov
USDC	https://ecf.casd.uscourts.gov
Court of Appeals	https://ecf.ca9.uscourts.gov

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User: Admin.

Date Created: 11/9/2022

Case: 22-90056-LT

Form ID: 1254

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ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	
ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	

TOTAL: 4

Notice Recipients

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Date Created: 11/9/2022

Case: 22-90056-LT

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ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	
ust	Office of the U.S. Trustee for Region 17	501 I Street, Suite 7-500	Sacramento, CA 95814	
	Samuel R. Maizel, Esq.	Dentons US LLP, 601 South Figueroa St., Suite 2500, Los Angeles, CA 90017		

TOTAL: 5

1252a
06/17

United States Bankruptcy Court
Southern District of California
Jacob Weinberger U.S. Courthouse
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BORREGO COMMUNITY HEALTH FOUNDATION, Debtor(s)	BANKRUPTCY NO. 22-02384-LT11
Borrego Community Health Foundation, A California Nonprofit Public Benefit Corporation Appellant(s)	ADVERSARY NO. 22-90056-LT
California Department of Health Care Services, by and through its Director, Michelle Baas Appellee(s)	BANKRUPTCY APPEAL NO. 1 USDC CASE No.

TRANSMITTAL MEMORANDUM

TO CLERK OF THE UNITED STATES DISTRICT COURT

BANKRUPTCY FILED DATED: 9/26/22

BANKRUPTCY JUDGE: Laura S. Taylor

NOTICE OF APPEAL FILED ON: 11/7/2022

FEE PAID: Paid

DATE OF ENTRY OF APPEALED ORDER: 10/26/2022

DATED: 11/9/22

Michael Williams
Clerk of the U.S. Bankruptcy Court

Notice Recipients

District/Off: 0974-3

User: Admin.

Date Created: 11/9/2022

Case: 22-90056-LT

Form ID: 1252a

Total: 6

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TOTAL: 4