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13 *Debtor and Debtor In Possession*

14 **UNITED STATES BANKRUPTCY COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 In re

17 **BORREGO COMMUNITY HEALTH**
FOUNDATION, a California nonprofit
18 **public benefit corporation,**

19 Debtor and Debtor in Possession.

20 **BORREGO COMMUNITY HEALTH**
FOUNDATION, a California nonprofit
21 **public benefit corporation,**

22 Plaintiff,

23 v.

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

26 Defendant.

Case No. 22-02384-11

Chapter 11 Case

Adv. Pro. No. 22-90056

**EMERGENCY MOTION: (I) TO
ENFORCE THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362; OR,
ALTERNATIVELY (II) FOR
TEMPORARY RESTRAINING
ORDER; MEMORANDUM OF
POINTS AND AUTHORITIES IN
SUPPORT THEREOF; AND
DECLARATIONS IN SUPPORT
THEREOF**

Judge: Honorable Laura S. Taylor

Date: TBD

Time: TBD

Place:



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EMERGENCY MOTION

1
2 Pursuant to §§ 105(a) and 362 of title 11 of the United States Code (the
3 “Bankruptcy Code”) and Local Bankruptcy Rule 9013-9, or, alternatively, Rule 65 of
4 the Federal Rules of Bankruptcy Procedure, made applicable by 7065 of the Federal
5 Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), Bankruptcy Rule 7001(7),
6 and Local Bankruptcy Rule 7065,¹ Borrego Community Health Foundation (the
7 “Debtor” or “Borrego”), the debtor and debtor in possession in the above-captioned
8 chapter 11 case (the “Case”) and plaintiff in the above-captioned adversary
9 proceeding (the “Adversary Proceeding”), hereby moves, on an emergency basis (the
10 “Motion”): (1) for the entry of an order (substantially in the form attached hereto as
11 **Exhibit “A,”** the “Proposed Order”) enforcing the automatic stay to prevent the
12 California Department of Health Care Services, acting by and through its director
13 Michelle Baas (collectively, “DHCS”), from suspending all Medi-Cal payments and
14 taking other related acts; or, alternatively; (2) for the entry of order restraining and
15 enjoining (substantially in the form attached hereto as **Exhibit “B,”** the “TRO”)
16 DHCS from causing immediate and irreparable harm to the Debtor, its estate, and
17 thousands of patients by suspending all Medi-Cal payments and taking other related
18 acts which will, inevitably, cause the Debtor to close its clinics and cease providing
19 essential medical services to low income and rural patients in Southern California.

20 In support of this Motion, the Debtor respectfully submits the Declarations of
21 Rose MacIsaac and Samuel R. Maizel (annexed hereto) and the Declaration of
22 Dr. Jacob Nathan Rubin (filed concurrently herewith) (collectively, the
23 “Declarations”). Additionally, the Debtor respectfully submits declarations and
24 statements from patients, clinic managers, community advocates for the elderly,
25 LGBTQ+, and Latinx communities, the Borrego Springs Fire Department, and the
26

27
28 ¹ All references to “§” or “sections” herein are to sections of the Bankruptcy Code unless otherwise stated.

1 Borrego Springs Unified School District, District, all demonstrating that the public
 2 interest is best served by ensuring that the Debtor continues to be able to provide
 3 patient care. The Debtor also relies on the *Declaration of Isaac Lee, the Debtor's*
 4 *Chief Restructuring Officer of Borrego Community Health Foundation, in Support of*
 5 *Debtor's First Day Motions* (the "Lee First Day Declaration") [Docket No. 7].

6 **BACKGROUND INFORMATION**

7 On September 12, 2022, the Debtor filed the voluntary petition for relief under
 8 chapter 11 of the Bankruptcy Code. On September, 26, 2022, the Debtor filed the
 9 complaint against DHCS [Adv. Docket No. 1]² (the "Complaint"), which commenced
 10 the Adversary Proceeding.

11 The Debtor is a nonprofit federally qualified health center ("FQHC") that
 12 provides health care services to low income and rural patients (collectively,
 13 "Patients") in San Diego and Riverside Counties through a system of eighteen clinics,
 14 two pharmacies, and six mobile units. In 2021, the Debtor provided approximately
 15 386,000 patient care visits to over 94,000 patients. Borrego's services include
 16 comprehensive primary care, urgent care, behavioral health, dental services, specialty
 17 care, transgender health, women's health, prenatal care, veteran's health, chiropractic
 18 services, tele-health, and pharmacy.

19 As set forth in the Lee First Day Declaration, the Debtor filed this Case to
 20 protect its patient population and explore all available restructuring options,
 21 particularly since its patient population faces risks as a result of recent steps taken by
 22 DHCS. DHCS administers the California Medicaid Program, which is called "Medi-
 23 Cal." Medi-Cal pays approximately 44% of the Debtor's revenue. Lee First Day
 24 Declaration, at ¶ 16. On August 26, 2022, DHCS notified the Debtor that its Medi-
 25 Cal payments would be suspended as of September 29, 2022. DCHS denied the
 26

27 _____
 28 ² References to the "Adv. Docket No. ___" are to this Adversary Proceeding and
 references to "Docket No. ___" are to the Debtor's Case.

1 Debtor’s request to extend the date or rescind the proposed suspension. Lee First Day
 2 Declaration, at ¶ 30. Further, the Debtor has been notified by health plans contracted
 3 with the Debtor, such as the Inland Empire Health Plan, that DCHS instructed them
 4 (i) to lodge “block transfer” plans with DHCS showing how the health plan would
 5 transfer all its insured patients to other providers of medical services, and (ii) not to
 6 assign new patients to the Debtor, despite contracts between the health plans and the
 7 Debtors. Lee First Day Declaration, at ¶ 30. These acts, if allowed to proceed, will
 8 result in the almost immediate shut-down of operations by the Debtor. *See id.*, at
 9 ¶¶ 30-31.

SUMMARY OF RELIEF REQUESTED

11 The enforcement and the implementation of the suspension violate the
 12 automatic stay, would cause irreparable harm to the Debtor, and would put tens of
 13 thousands of patients at risk, so the Debtor is moving on an emergency basis for a
 14 determination that the automatic stay applies, or, alternatively, issuance of a
 15 temporary restraining order to prevent the imposition of the suspension pending
 16 further review by the Court.

17 Specifically, the Debtor seeks a ruling, among other things, that: (i) DHCS’
 18 enforcement of its decision set forth in its prepetition letter, dated August 19, 2022,
 19 to suspend all payments under Medi-Cal to the Debtor effective September 29,
 20 2022, is a violation of the automatic stay under §§ 362(a)(1), (3), and (6);
 21 (ii) DHCS’ ongoing withholding of payments for in-house dental services is a
 22 violation of the automatic stay because it constitutes an act to take possession of
 23 property of the estate or from the estate, exercise control over property of the estate,
 24 or to collect, assess, or recover a claim against the Debtor that arose prepetition
 25 under §§ 362(a)(3) and (6); and (iii) DHCS’ efforts to compel parties that have
 26 contracts with the Debtor, including health plans such as Inland Empire Health
 27 Plan, to block transfer patients from the Debtor and refuse to assign new patients
 28 to the Debtor, are violations of the automatic stay because they constitute acts to

1 take possession of property of the estate or from the estate, exercise control over
2 property of the estate, and to collect, asses, or recover a claim against the Debtor
3 that arose prepetition under §§ 362(a)(3), and (6). Alternatively, the Debtor seeks
4 the entry of a temporary restraining order, pursuant to Rules 7001(7) and 7065 of
5 the Federal Rules of Bankruptcy Procedure, enjoining or restraining DHCS from
6 continuing with its suspension of Medi-Cal payments.

7 **ADDITIONAL INFORMATION**

8 The Motion is based on the annexed Memorandum of Points and Authorities
9 (the “Memorandum”) and the Declarations filed in support thereof, and the
10 arguments of counsel and other admissible evidence properly brought before the
11 Court at or before the hearing regarding the Motion. In addition, the Debtor
12 requests that the Court take judicial notice of all documents filed with the Court in
13 this Case, pursuant to Federal Rule of Evidence 201(b).

14 In accordance with LBR 9013-9(d), Bankruptcy Rules 7004(b)(6) and 9013,
15 and Federal Rule of Civil Procedure 4(j), the Debtor will serve this Motion, the
16 attached Memorandum of Points and Authorities, the Declarations, any notice of
17 hearing, and all supporting papers on, and has provided telephonic notice, pursuant
18 to 9013-9(f) to: (i) the Office of the United States Trustee; (ii) the Attorney General
19 of California; (iii) DHCS, its director Michelle Baas, and its counsel; and (iv) the
20 California Health and Human Services Agency and its Secretary, Mark Ghaly. The
21 Debtor has further served by overnight delivery: (i) any alleged secured creditors;
22 (ii) the twenty largest general unsecured creditors appearing on the list filed in
23 accordance with Bankruptcy Rule 1007(d); and (iii) parties that filed with the Court
24 and served upon the Debtor requests for notice of all matters in accordance with
25 Bankruptcy Rule 2002(i).

26 In accordance with Bankruptcy Rule 7065 and LBR 7065-1, the Debtor has:
27 (i) commenced the Adversary Proceeding before filing this Motion and
28 Memorandum; (ii) attached a form of Proposed Order and TRO; and (iii) attached

1 the declaration evidencing service of the document.

2 Pursuant to LBR 9013(f), any party who opposes the Motion must
3 immediately notify the Bankruptcy Judge’s law clerk of its position by telephone.
4 Written opposition to the emergency motion is not required to be filed unless the
5 Court otherwise directs.

6 In the event the Court grants the relief requested by the Motion, the Debtor
7 shall provide notice of the entry of the order granting such relief upon each of the
8 foregoing parties and any other parties in interest as the Court directs. The Debtor
9 submits that such notice is sufficient and that no other or further notice be given.

10 **CONCLUSION**

11 **WHEREFORE**, for all the foregoing reasons and such additional reasons as
12 may be advanced at or prior to the hearing regarding this Motion, the Debtor
13 respectfully requests that the Court enter an order: (i) holding that the automatic stay
14 applies to the suspension threatened by DHCS, as set forth above, and entering the
15 Proposed Order; or, in the alternative, (ii) issuing a TRO to prevent the suspension
16 from going into effect pending further review by the Court; and (iii) granting such
17 other and further relief as is just and proper under the circumstances.

18
19 Dated: September 26, 2022

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21 By: /s/ Tania M. Moyron

22 Proposed Attorneys for the Chapter 11
23 Debtor and Debtor In Possession
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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Borrego Community Health Foundation (the “Debtor”) is a Federally Qualified Health Center (“FQHC”) operating a network of community clinics that provide a broad array of comprehensive primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic services, tele-health, and pharmacy services. The Debtor provides these services throughout parts of Southern California that the federal government formally recognizes as medically underserved areas (collectively, “MUAs” and each a “MUA”). The Debtor is a significant part (if not the only part) of the health care “safety net” in the communities in which it operates. Since the Debtor’s focus is providing care in underserved areas, the majority of the Debtor’s patients are Medi-Cal beneficiaries without meaningful access to other similar health care. The Department of Health Care Services and its director (the “Director”) Michelle Baass (collectively, “DHCS”) has notified the Debtor that Borrego will have all payments by the Medi-Cal program suspended, effective September 29, 2022. DHCS has inside knowledge of the Debtor’s operations and finances. As DHCS knows, Medi-Cal payments represent a significant percentage of the Debtor’s revenue. Despite the requirement that such a suspension be temporary, for the reasons set forth herein, this suspension will be the equivalent of a “death penalty” for the Debtor, to the detriment of its creditors and, importantly, its patients.

In response to this threat by DHCS, the Debtor commenced the Case to, among other things, obtain the protection of the automatic stay, protect its patient population, and explore all available restructuring options. However, despite being fully aware of the commencement of the Case and the imposition of the automatic stay, DHCS has told counsel for the Debtor that the suspension will go into effect on September 29, 2022. DHCS is taking this extraordinary step despite the fact that: (1) the actions that give rise to alleged fraud by the Debtor ceased years ago, and DHCS has knowledge

1 of this; (2) DHCS is closely watching the Debtor and its operations, including through
2 a full-time monitor embedded within the Debtor; and (3) the Debtor has at all times
3 been in substantial compliance with the conditions of its continued operation, as set
4 forth in the written settlement agreement between DHCS and the Debtor, dated
5 January 26, 2021. To avoid the destruction of the Debtor’s medical treatment system,
6 causing immediate and irreparable harm to it, as well as to tens of thousands of
7 patients, the Debtor is compelled to seek emergency relief.

8 As the suspension and other acts by DHCS set forth below violate the automatic
9 stay under § 362 of title 11 of the United States Code (the “Bankruptcy Code”), as
10 well as the Debtor’s due process rights, and would create irreparable harm, the Motion
11 seeks an order, pursuant to §§ 105 and 362, ruling that: (i) DHCS’ enforcement of
12 its decision set forth in its prepetition letter dated August 19, 2022, to suspend all
13 payments under Medi-Cal to the Debtor effective September 29, 2022, is a
14 violation of the automatic stay under §§ 362(a)(1), (3), and (6); (ii) DHCS’ ongoing
15 withholding of payments for in-house dental services is a violation of the automatic
16 stay because it constitutes an act to take possession of property of the estate or
17 from the estate, exercise control over property of the estate, or to collect, assess,
18 or recover a claim against the Debtor that arose prepetition and is in violation of
19 §§ 362(a)(3) and (6); and (iii) DHCS’ efforts to compel parties that have contracts
20 with the Debtor, including health plans such as Inland Empire Health Plan
21 (collectively, the “Health Plans” and each a “Health Plan”), to block transfer
22 patients from the Debtor and refuse to assign new patients to the Debtor, are
23 violations of the automatic stay because they constitute acts to take possession of
24 property of the estate or from the estate, exercise control over property of the estate,
25 or to collect, asses, or recover a claim against the Debtor that arose prepetition in
26 violation of §§ 362(a)(3), and (6). Alternatively, the Debtor seeks the entry of a
27 temporary restraining order, pursuant to Rules 7001(7) and 7065 of the Federal
28 Rules of Bankruptcy Rules (the “Bankruptcy Rules”), enjoining or restraining

1 DHCS from continuing with its suspension of Medi-Cal payments.

2 In support of the Motion, the Debtor respectfully submits the declarations of
 3 Rose MacIsaac (the “MacIsaac Declaration”), Samuel R. Maizel (the “Maizel
 4 Declaration,” annexed hereto with the MacIsaac Declaration), and the Declaration of
 5 Dr. Jacob Nathan Rubin (the “PCO Declaration”) (filed concurrently herewith), the
 6 Patient Care Ombudsman appointed in this Case. Additionally, the Debtor
 7 respectfully submits declarations and statements (collectively, the “Community
 8 Declarations”) from patients; clinic managers; community advocates for the elderly,
 9 LGBTQ+, and Latinx communities; the Borrego Springs Fire Department; and the
 10 Borrego Springs Unified School District, District, all demonstrating that the public
 11 interest is best served by ensuring that the Debtor continues to be able to provide
 12 patient care. The Debtor also relies on the *Declaration of Isaac Lee, the Debtor’s*
 13 *Chief Restructuring Officer of Borrego Community Health Foundation, in Support of*
 14 *Debtor’s First Day Motions* (the “Lee First Day Declaration”) [Docket No. 7].

15 **II. STATEMENT OF FACTS**

16 **A. GENERAL BACKGROUND**

17 1. On August 26, 2022, DHCS notified the Debtor that its Medi-Cal
 18 payment would be suspended as of September 29, 2022. Lee First Day Declaration,
 19 at ¶ 30. DCHS denied the Debtor’s request to extend the date or rescind the proposed
 20 suspension. *Id.*

21 2. On September 12, 2022 (“Petition Date”), the Debtor filed a voluntary
 22 petition for relief under chapter 11 of the Bankruptcy Code. The Debtor filed this Case
 23 to protect its patient population and explore all available restructuring options,
 24 particularly since its patient population faces material risks as a result of the
 25 threatened suspension. Lee First Day Declaration, at ¶ 31.

26 3. The Debtor is a nonprofit FQHC providing high-quality, comprehensive,
 27 compassionate primary health care to the people in its communities, regardless of
 28 their ability to pay, by partnering with licensed medical professionals across Southern

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1 California. Lee First Day Declaration, at ¶ 10. In 2021, the Debtor provided
2 approximately 386,000 patient care visits to over 94,000 patients. Lee First Day
3 Declaration, at ¶ 12. The Debtor did so through its operation of 18 clinics, primarily
4 in underserved desert and inland communities throughout San Diego, Riverside,
5 and—until recently—San Bernardino counties. The Debtor provides essential
6 services in family practice, pediatrics, OB/GYN, internal medicine, urgent care,
7 HIV/Hepatitis C and Covid-19-related testing and vaccinations to over 94,000
8 patients, most of whom cannot obtain affordable comprehensive primary care from
9 other sources. *Id.* at ¶ 10. The Debtor specializes in culturally-competent care for a
10 number of specialized populations, including care for migrant farmworkers and the
11 LGBTQ and transgender communities. *Id.* at ¶ 13. During the recent pandemic, the
12 Debtor tested tens of thousands of Californians for Covid-19 infections and
13 vaccinated tens of thousands of people against Covid-19. The Debtor’s continued
14 operation is in the public interest—indeed, its very designation as an FQHC
15 demonstrates as much—and, despite the harm it has suffered and the way it has been
16 manipulated by its former executives and trustees, it delivers high-quality health care
17 to people who need it.

18 4. The Debtor’s services also include comprehensive primary care, urgent
19 care, behavioral health, dental services, specialty care, transgender health, women’s
20 health, prenatal care, veteran’s health, chiropractic services, tele-health, and
21 pharmacy. *Id.* at ¶ 14. Additional background regarding the Debtor, including an
22 overview of the Debtor’s business and additional events leading up to this Case, is set
23 forth in the Lee First Day Declaration.

24 5. Since the commencement of the Case, the Debtor has been operating its
25 business as debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy
26 Code.

27 6. On September 16, 2022, the Office of the United States Trustee
28 appointed Dr. Jacob Nathan Rubin as the Patient Care Ombudsmen (the “PCO”).

1 7. On September, 26, 2022, the Debtor filed the complaint against DHCS,
2 which commenced this Adversary Proceeding.

3 8. To date, no official committee or examiner has been appointed in this
4 Case by the Office of the United States Trustee.

5 **B. THE DEBTOR’S STATUS AS AN FQHC**

6 9. As set forth above, the Debtor is a nonprofit 501(c)(3) FQHC, which is
7 a health care provider that is located in a medically underserved area (an “MUA”) or
8 that serves a “special medically underserved population comprised of migratory and
9 seasonal agricultural workers, the homeless, and residents of public housing.” 42
10 U.S.C. §§ 1396(1)(2)(B) & 254b(a)(1). Only certain public and nonprofit private
11 entities who furnish health care services to medically underserved populations may
12 qualify as FQHCs. 42 U.S.C. § 254b(c)(1). In order to be designated as an FQHC and
13 receive federal grant funding, an entity must submit an application to United States
14 Department of Health & Human Services - Health Resources and Services
15 Administration (“HRSA”) that includes extensive information about, among other
16 things, the demographics of the patient population in the area served by the entity,
17 how the entity plans to furnish mandated types of care to the medically underserved
18 population, how the entity plans to potentially expand access to care in its service
19 areas, and how the entity will ensure that patients who speak languages other than
20 English can be adequately served in a culturally sensitive manner. 42 U.S.C.
21 § 254b(j)(5).

22 10. FQHCs constitute a Congressionally-created health care “safety net” for
23 people with no insurance coverage and/or little or no income, and continued operation
24 of the Debtor as an FQHC is in the public interest. To elaborate, FQHCs are required
25 by statute to offer a number of specified, core primary care services, including without
26 limitation health services related to family medicine, pediatrics, obstetrics, as well as
27 diagnostic laboratory and radiologic services and several types of preventive health
28 services. 42 U.S.C. § 254b(b)(1). FQHCs also may offer certain “additional health

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1 services,” like behavioral health and substance abuse treatment, upon obtaining
 2 approval from HRSA. 42 U.S.C. § 254b(b)(2). FQHCs are required to make services
 3 available to people residing in the MUA they service regardless of ability to pay. To
 4 this end, FQHCs must maintain a set fee schedule to which they can adjust based on
 5 and individual’s specific financial situation and are prohibited from denying services
 6 to anyone solely because the person cannot pay for the care even if a discount is
 7 offered. 42 U.S.C. § 254b(k)(3)(G).

8 11. Through a combination of federal statues, regulations and a “Compliance
 9 Manual” promulgated by HRSA, FQHCs are subject to extensive requirements
 10 regarding, among other things, clinical staffing, hours of operations and locations,
 11 quality improvement measures, management, contracting, sub-awards and entity
 12 governance.³ HRSA policies also state that FQHCs are responsible for complying
 13 with all applicable state licensing laws and coverage and payment rules imposed by
 14 any government health care benefit programs, such as Medicare and Medicaid. Along
 15 those lines, in order to maximize third-party reimbursement revenue, FQHCs also are
 16 expected to make “every reasonable effort” to enroll in state Medicaid programs and
 17 be able to bill and collect payment for services from such programs. 42 U.S.C.
 18 § 254(k)(3)(e); *see also* 42 Code of Federal Regulations (“C.F.R.”) § 51c.303(e), (f).
 19 Once an entity is approved as an FQHC and to receive federal grant funding, the entity
 20 remains subject to extensive supervision by HRSA, including through regular audits,
 21 known in HRSA parlance as “Operational Site Visits” or “OSVs,” to ensure the entity
 22 is complying with federal rules and grant conditions. In addition, as a general matter,
 23 HRSA actively monitors individual FQHCs and the MUAs they serve to ensure that
 24 people residing in MUAs have adequate access to care.

25
 26
 27 ³ *See generally* HRSA, Bureau of Primary Health Care, “Health Center Compliance
 28 Manual” available at <https://bphc.hrsa.gov/compliance/compliance-manual> (last visited September 22, 2022).

1 **C. PAYMENTS FOR DEBTOR’S SERVICES UNDER THE MEDI-CAL**
2 **PROGRAM**

3 12. The Medi-Cal program is California’s implementation of the federal
4 Medicaid program, a joint federal and state program for rendering health care services
5 to the needy and disabled under Title XIX of the Social Security Act. 42 U.S.C.
6 §§ 1396, *et seq.* California has enacted the Medi-Cal Act to implement Medi-Cal.
7 Welf. & Inst. Code §§ 14000, *et seq.* In addition to statutory constraints, the Medi-
8 Cal program is subject to extensive regulation. *See* 22 Cal. Code. Regs. (“C.C.R.”)
9 §§ 50000-59999.) Among other things, these regulations and statutes create an
10 administrative framework, determine beneficiary eligibility, and establish the delivery
11 system for certain beneficiaries and services. DHCS is the single state agency charged
12 with administering Medi-Cal.

13 13. In order for FQHCs like the Debtor to be paid for services furnished to
14 Medi-Cal beneficiaries, they must enter into agreements with state Medicaid agencies
15 like DHCS. *See* 42 C.F.R. § 431.107(b). Once providers enter into such agreements
16 with a Medicaid agency, they are considered “enrolled” in the program and then may
17 submit bills to the program to claim payment for services rendered to beneficiaries of
18 the program. DHCS is responsible for processing Medi-Cal provider enrollment
19 applications and, once a provider is enrolled in the Program, monitoring provider
20 compliance with program rules.

21 14. There are both “fee-for-service” and managed care components of
22 California’s Medi-Cal program. Under the managed care component, commercial
23 health plans contract with DHCS to administer medical benefits to patients who enroll
24 in particular managed care programs. *See generally* 22 C.C.R. §§ 53000, *et seq.* Medi-
25 Cal managed care plans are subject to special rules about maintaining an adequate
26 network of providers to ensure beneficiary access to services, communications with
27 contracted providers and communications with managed care enrollees. *See id.*
28 Among other requirements, all such health plans must see to it that care within their

1 service area is delivered in a manner which provides continuity of care. 28 C.C.R.
2 § 1300.67.1. Under both Medicaid managed care rules and more general managed
3 care rules, health plans are charged with protecting beneficiary access to care and
4 improving the overall care experience of managed care enrollees. The Medi-Cal
5 managed care programs that contracted with the Debtor are referred to herein as the
6 “Health Plans.”

7 15. Pursuant to California Welfare and Institutions Code § 14107.11, the
8 Director may suspend making payments to a provider if there are “credible allegations
9 of fraud” against the provider, unless it is determined that a “good cause” exception
10 applies. Cal. Welf. & Inst. Code § 14107.11(a). Under § 14107.11, DHCS has the
11 duty to evaluate the appropriateness of a suspension based on whether there is good
12 cause. *See* Cal. Welf. & Inst. Code § 14107.11(a). What constitutes good cause is
13 established by a federal Medicaid regulation specifically incorporated by reference
14 into the California statute. Particularly relevant for the present case, that federal
15 regulation states that “good cause” is present when beneficiary access to items or
16 services may be jeopardized because the provider serves a large number of
17 “beneficiaries within a HRSA designated medically underserved area.” 42 C.F.R.
18 § 455.23(e)(4)(ii).

19 **D. THE FIRST MEDI-CAL SUSPENSION**

20 16. On October 20, 2020, the California Department of Justice (“DOJ”),
21 Division of Medi-Cal Fraud and Elder Abuse (“DMFEA”), executed search warrants
22 at two of the Debtor’s administrative offices. MacIsaac Declaration, at ¶ 9. The DOJ
23 had been previously scheduled to meet at the Debtor’s offices that day for a meeting
24 where the Debtor was going to voluntarily present its concerns regarding dental
25 providers contracted with it. *Id.*

26 17. Thereafter, by letter, dated November 18, 2020, the Debtor was advised
27 that DHCS was temporarily suspending the Debtor’s Medi-Cal provider numbers,
28 pursuant to Welfare and Institutions Code § 14107.11 and 42 C.F.R. § 455.23,

1 effective that same day, due to an ongoing investigation by the DMFEA. MacIsaac
 2 Declaration, at ¶ 10. A suspension of a provider number has the effect of preventing
 3 a provider from being paid for services provided to Medicaid beneficiaries.

4 18. The Debtor appealed the temporary suspension through a meet-and-
 5 confer process. MacIsaac Declaration, at ¶ 11. The Debtor and its representatives met
 6 with DHCS and explained how a narrowly-tailored payment suspension would be
 7 more appropriate than an outright suspension of all payments and how there was good
 8 cause to permit the Debtor to continue to operate because, among other reasons, was
 9 delivering services to MUAs by HRSA. *Id.*

10 19. A short time later, by letter dated January 29, 2021, DHCS notified the
 11 Debtor that it was modifying the payment suspension to apply to dental claims only.
 12 MacIsaac Declaration, at ¶ 12. DHCS was able to narrowly draw the suspension,
 13 because the only area under investigation was the Debtor's contract dental services
 14 where the Debtor contracted with area dentists who were not employed by the Debtor
 15 to provide dental services on behalf of the Debtor and for its patients. *Id.*

16 20. While the payment suspension was in place from November 18, 2020
 17 until January 29, 2021, DHCS retained approximately \$15,000,000 in billed services
 18 that would otherwise have been payable to the Debtor. MacIsaac Declaration, at ¶ 13.
 19 The modified payment suspension for dental claims has remained in place at all times
 20 since the November 18, 2020, and it still in place today. Despite this, and in order to
 21 further its charitable mission, the Debtor has continued to provide dental services
 22 despite the payment suspension, because patients desperately need the services.

23 21. The Debtor estimates that DHCS has withheld at least an additional
 24 \$6,700,000 dollars owed for dental claims since the suspension went into effect
 25 prepetition. MacIsaac Declaration, at ¶ 14.

26 **E. THE SETTLEMENT AGREEMENT AND MONITOR RESOLVING**
 27 **THE FIRST MEDI-CAL SUSPENSION**

28 22. The Debtor executed a formal settlement agreement with DHCS on

1 January 27, 2021 (the “Settlement Agreement”). MacIsaac Declaration, at ¶ 15. The
2 Debtor had no option other than to sign the Settlement Agreement and no substantive
3 terms were negotiable. *Id.* There was no meaningful opportunity to avoid a temporary
4 suspension without acceding to DHCS’ demands. *Id.* The Settlement Agreement
5 required the Debtor to retain an independent monitor. *Id.* DHCS selected Berkely
6 Research Group (“BRG”) as the compliance consultant or monitor. Without any
7 viable alternative or an option to refuse, the Debtor acquiesced and retained BRG
8 pursuant to the Settlement Agreement. *Id.*

9 23. Nonetheless, the Debtor worked diligently with BRG and DHCS to
10 improve the Debtor’s quality and operations, including billing and compliance.
11 Despite the Debtor’s best efforts, BRG’s subsequent reports resulted in DHCS
12 demanding the Debtor execute two separate Corrective Action Plans (“CAPs”) that
13 were drafted by BRG, were not negotiable, and the Debtor had to accept the
14 continuation of a partial temporary suspension. MacIsaac Declaration, at ¶ 17. Any
15 refusal would have resulted in a full payment suspension, thereby putting the Debtor
16 out of business.

17 24. The Debtor diligently endeavored to comply with the Settlement
18 Agreement and CAPs. MacIsaac Declaration, at ¶ 18. It substantially and materially
19 complied with the terms of the agreements. DHCS’ asserted ability to reimpose the
20 full payment suspension at any time meant that the Debtor had no meaningful
21 opportunity to resist DHCS and BRG, even when their allegations were flawed or
22 based on misinterpretations. *Id.* BRG and DHCS imposed a standard of performance
23 on the Debtor that is not only unattainable, but not legally required to participate in
24 Medi-Cal. *Id.*

25 25. Regardless, the Debtor made great strides and performed what was
26 necessary to comply with the Settlement Agreement and CAPs. MacIsaac
27 Declaration, at ¶ 18. The performance was such that in the summer of 2022 the Debtor
28 concluded that the Monitor and BRG were no longer appropriate and that DHCS

1 should further tailor the payment suspension to apply only to contract dental claims;
2 in other words, DCHS should start paying for dental claims provided by the Debtor
3 itself. *Id.*

4 26. During the suspension, the Debtor has provided 30,347 dental visits that
5 were uncompensated. MacIsaac Declaration, at ¶ 20. These services were provided
6 through an in-house program entirely disconnected from the contract dental program
7 under investigation, and to date the Debtor is aware of no allegation of fraud with this
8 program.

9 27. Thus, in May 2022, the Debtor requested that DHCS meet with it to
10 discuss further modifying the payment suspension to permit payment of in-house
11 dental claims and to consider whether the Monitor and BRG, which was extremely
12 expensive and paid for by the Debtor (fees for BRG to date exceed \$2.6 million), were
13 still necessary. MacIsaac Declaration, at ¶ 21. DHCS and the Debtor met on July 7,
14 2022, and DHCS requested that, within two weeks, the Debtor submit any
15 documentation to support its position that the Debtor's performance under the
16 Settlement Agreement and CAPs was sufficient. *Id.* at ¶ 21. On July 22, 2022, the
17 Debtor submitted voluminous documentation in response to DHCS' areas of
18 identified concerns under the Settlement Agreement, CAPs, and other areas that
19 DHCS and the Monitor identified at the July 7, 2022 meeting. *Id.* at ¶ 23. The Debtor
20 followed up several times with the Department on the written submission, including
21 asking for DHCS to agree to proposed audit methodologies, and to address open areas
22 under the Settlement Agreement and CAPs. *Id.* By way of example, the Settlement
23 Agreement called for the Debtor to conduct an internal audit of contracted dental
24 claims that were billed to DHCS. The Debtor proposed a sampling and extrapolation
25 methodology that was in conformity with state auditing standards, but DHCS would
26 not respond with any feedback, much less any approval. *Id.*

27 28. The purpose of the audit was to inform DHCS of any potential
28 overpayment amount impacted by contract dental. MacIsaac Declaration, at ¶ 24.

1 Such work calculating an overpayment amount would be useless, if DHCS did not
 2 agree with the audit methodology. *Id.* However, neither BRG nor DHCS approved
 3 the audit plans, and the Debtor could not perform the audit. Multiple written requests
 4 for feedback have been entirely ignored. *Id.*

5 **F. THE SECOND MEDI-CAL PAYMENT SUSPENSION**

6 29. On August 19, 2022, DHCS provided two separate letters to the Debtor’s
 7 CEO. The first letter was from Bruce Lim, DHCS’ Deputy Director. The letter from
 8 Mr. Lim explained that DHCS did not find the Debtor’s written submission
 9 persuasive, and stated, in relevant part, that DHCS was going to reimpose a 100%
 10 Medi-Cal suspension on all the Debtor’s services effective September 29, 2022. *See*
 11 MacIsaac Declaration, at ¶ 5; Lee First Day Declaration, at ¶ 30.

12 30. In a separate letter stamped “CONFIDENTIAL,” Bob Sands, Assistant
 13 Deputy Director for DHCS, provided additional notice of the temporary suspension
 14 for the same reasons alleged in Mr. Lim’s letter, clearly intended to comply with
 15 federal law, including 42 C.F.R. §455.23.⁴ MacIsaac Declaration, at ¶ 26.

16 31. The Debtor is also informed and believes that DHCS (i) provided the
 17 August 19, 2022 letter to health plans whose beneficiaries are assigned to the Debtor
 18 pursuant to contracts between the Debtor and those health plans, and (ii) demanded
 19 the health plans establish a plan to move all of their beneficiaries to other providers
 20

21 ⁴ DHCS typically does not publicize a temporary suspension, because the Ninth
 22 Circuit has recognized a liberty interest when DHCS publicizes charges. *See, e.g.,*
 23 *Guzman v. Shewry*, 552 F.3d 941, 955 (9th Cir. 2009). In this case, however, not only
 24 did DHCS publicize the temporary suspension in the letter from Mr. Lim, which was
 25 publicly available to anyone who requested it, but it took the unprecedented step of
 26 providing a spokesperson to the media to make sure the public was aware of the
 27 temporary suspension. For example, the San Diego Union Tribune reported on
 28 Aug. 30, 2022, “State health officials will halt all Medi-Cal reimbursements to the
 Borrego Community Healthcare Foundation for the second time in two years, saying
 the nonprofit provider has failed to meet its obligations under a settlement reached
 early last year.” *See* <https://www.sandiegouniontribune.com/news/watchdog/story/2022-08-30/borrego-health-medi-cal-suspension>. DHCS did this knowing that the
 Debtor had no meaningful opportunity for a name-clearing hearing to respond to
 DHCS and that such action violated, among other things, the Debtor’s liberty
 interests.

1 through a “bulk transfer of lives.” MacIsaac Declaration, at ¶ 27. A bulk transfer of
2 lives is irreversible. Once the bulk transfer is implemented, the Debtor will have no
3 patients and will cease to be able to operate. This is an additional action by DHCS
4 with a permanent impact. *Id.* When the Debtor’s Medi-Cal payments were suspended
5 in 2020, it continued to provide uninterrupted care to its patients without payment. *Id.*

6 32. Notably, the allegations made by DHCS and reported by the San Diego
7 Union Tribune were untrue. MacIsaac Declaration, at ¶ 28. Even more problematic,
8 the spokesperson for DHCS cited an inappropriate basis for a temporary suspension.
9 *Id.* A lack of performance under the Settlement Agreement was not a permissible basis
10 for a 100% temporary suspension under the statutory provisions cited by DHCS in
11 the suspension letter. *Id.* DHCS’ imposition of a 100% payment suspension is not
12 based on a credible allegation of fraud or an ongoing investigation. *Id.* Instead, DHCS
13 is effectively terminating the Debtor’s participation in the Medi-Cal program for
14 reasons it would not be able to otherwise.

15 34. As explained above, DHCS was already aware that the Debtor had been
16 under investigation since 2020. MacIsaac Declaration, at ¶ 31. In response, the Debtor
17 stopped all contract dental programs and had not submitted any contract dental claims.
18 *Id.* The Debtor was also cooperating with criminal and civil investigators. There is no
19 plausible theory that the Debtor was engaging in ongoing fraud with so much scrutiny
20 – it had DHCS, BRG, and civil and criminal DOJ scrutinizing its practices. *Id.* The
21 Debtor even recently brought its own lawsuit against the former staff and contractors
22 who were committing fraud for their own benefit at the expense of the Debtor for
23 years under the contract dental program, until new leadership and management took
24 over. *Id.*

25 35. In short, there was no justification under the law to reimpose a 100%
26 payment withhold. MacIsaac Declaration, at ¶ 32. The limited payment suspension
27 already addressed the concern DHCS had with what the government was investigating
28 criminally – dental services. *Id.* There is no allegation of any other criminal

1 investigation and no explanation why a tailored suspension would not be sufficient,
 2 much less how there was no longer good cause to permit the Debtor to continue to
 3 provide services to patients in underserved areas. *Id.*

4 36. There is not a “credible” allegation of fraud at issue for the new
 5 suspension, rather there is a disingenuous allegation of fraud to try to justify an
 6 improper termination. MacIsaac Declaration, at ¶ 33. There also is no risk to Medi-
 7 Cal’s financial security. In fact, the previous partial withhold was a way for DHCS to
 8 recoup some losses that may have occurred from current Medi-Cal revenue.

9 37. With a 100% payment suspension reimposed, there is no more revenue
 10 to recoup. MacIsaac Declaration, at ¶ 34.

11 **G. THE MEDI-CAL SUSPENSION WILL CAUSE IRREPARABLE**
 12 **HARM TO THE DEBTOR, ITS PATIENTS AND THE ESTATE**

13 38. DHCS has been informed that the automatic stay applies to the
 14 threatened suspension of all Medi-Cal payments, and DHCS has been informed of the
 15 substantial risks to the Debtor’s patients. *See* Maizel Declaration, at ¶ 4. Nonetheless,
 16 on September 19, 2022, DHCS informed the Debtor, through counsel, that DHCS
 17 intended the suspension to go into effect as threatened. *Id.* Consequently, the Debtor
 18 sent DHCS precedent to support the Debtor’s position that the automatic stay prevents
 19 DHCS from suspending Medi-Cal payments and taking other acts against the Debtor
 20 and property of the estate. *Id.*, at ¶ 5. Despite the foregoing, postpetition, on
 21 September 22, 2022, counsel for DHCS informed counsel for the Debtor that DHCS
 22 intended the suspension to go into effect as threatened. *Id.*, at ¶ 6. On Sunday,
 23 September 25, 2022, Joseph R. LagMagna, from Hooper, Lundy & Bookman,
 24 corresponded by email with DHCS representatives as part of the “ongoing meet and
 25 confer” process. In that correspondence, he requested that DHCS agree to postpone
 26 the planned suspension for a “reasonable period of time” and stated that if the
 27 suspension were not postponed, bankruptcy counsel would be filing a complaint and
 28 seeking a temporary restraining order in the bankruptcy case. Mr. Wang was

1 forwarded that email by me shortly after the email was sent. On Monday, September
 2 26, 2022, an attorney from the Office of Legal Services for the DHCS replied by email
 3 that “DHCS denies the characterization ... of the Department’s communications.” *Id.*,
 4 at ¶ 7.

5 39. If the suspension is not enjoined, the Debtor will have to immediately:

- 6 • Shut down all 18 clinics and two pharmacies;
- 7 • Close six administrative office locations;
- 8 • Cease operating and park its six mobile units;
- 9 • Cease all services, including pediatric care, urgent care, behavioral health, dental services, specialty care, transgender health, women's health, prenatal care, veteran's health and telehealth for our approximately 77,000 patient population;
- 10 • Cancel all patient appointments;
- 11 • Terminate all of its approximately 700 employees; and
- 12 • Cease operations.

13 MacIsaac Declaration, at ¶ 41; *see also* PCO Declaration, at ¶¶ 36-46.

14 **H. IRREPARABLE HARM TO PATIENTS AND COMMUNITIES**

15 40. The Debtor is informed and believes that there is simply no meaningful
 16 way to ensure its 94,000 plus patients have access to care in the event it must
 17 discontinue services. MacIsaac Declaration, at ¶ 35. Without the Debtor and its
 18 clinics, patients will have to travel hours and extreme distances to seek care, which
 19 is exacerbated by the lack of public transportation options. *Id.*

20 41. Even if patients were able to travel to other providers, the alternate
 21 providers likely do not have capacity to handle the influx of patients. MacIsaac
 22 Declaration, at ¶ 36. It is well-established that the areas in which the Debtor operates
 23 are underserved areas. The care network, even with the Debtor, is inadequate. There
 24 are simply not other providers to absorb Borrego’s patients. *Id.*

25 42. Even there were sufficient capacity (there is not), the alternate
 26 providers do not have the expertise to serve the Debtor’s unique patient population.
 27
 28

1 MacIsaac Declaration, at ¶ 37. The Debtor is intimately familiar with the unique
2 needs of its patient population, and provides critically important and culturally-
3 competent care to meet those unique needs. For example, the Debtor serves many
4 transgender patients and even has transgender patient advocates on staff to assist
5 with their unique healthcare needs. *Id.*

6 43. The Debtor is a trusted care provider for the migrant farmworker
7 community thanks to its efforts to meet them where they live, work, and play to
8 provide care. MacIsaac Declaration, at ¶ 38. During the pandemic, the Debtor ran
9 COVID-19 testing sites that started at dawn and were located at the gas station on
10 the farmworkers' route to the fields to make it accessible to the farmworkers, even
11 doing drive-through testing for those riding on tractors and combines. *Id.*

12 44. The Debtor provides this type of culturally competent care to numerous
13 hard-to-reach populations, including undocumented immigrants, people living with
14 HIV/AIDS, and many others. MacIsaac Declaration, at ¶ 38. An attempt to transfer
15 care to another provider will break these patient connections. These patient
16 relationships, when broken, are not easily re-established. *Id.*

17 45. Based on the foregoing, and as set forth in the MacIsaac Declaration,
18 the Debtor, its estates, and patients will suffer irreparable harm if the automatic stay
19 is not enforced and DHCS is not enjoined by suspending Medi-Cal payment.
20 MacIsaac Declaration, at ¶ 40. In further support of the Motion, and as set forth
21 above, the Debtor submits the Community Declarations and hereby incorporates
22 the statements therein from patients, clinic managers, community advocates for the
23 elderly, LGBTQ+, and Latinx communities, the Borrego Springs Fire Department,
24 and the Borrego Springs Unified School District which demonstrate the significant
25 harm that will be suffered by DHCS' enforcement of actions against the Debtor and
26 the suspension of Medi-Cal payments.

27
28

1 **III. DISCUSSION**

2 **A. DHCS HAS AND WILL VIOLATE THE AUTOMATIC STAY BY THE**
3 **CONTINUED ENFORCEMENT OF ACTIONS AGAINST THE**
4 **DEBTOR, THE PROPOSED SUSPENSION, WITHHOLDING**
5 **REIMBURSEMENT, AND EXERCISING CONTROL OVER**
6 **CONTRACTS WITH HEALTH PLANS**

7 **I. *Overview of the Automatic Stay and Request for Relief without***
8 ***Further Proceedings***

9 At its core, this adversary proceeding and Motion seek to enforce the automatic
10 stay under § 362 of the Bankruptcy Code to stop the threatened intentional violation
11 of the automatic stay by DHCS—a party that is familiar with bankruptcy and its
12 mandates but has indicated that it is simply going to ignore the requirements of the
13 Bankruptcy Code in this instance.

14 The Complaint first requests declaratory relief, pursuant to Bankruptcy Rule
15 7001(9), and 28 U.S.C. § 2201, *et seq.*, that the automatic stay bars DHCS from
16 (a) suspending Medi-Cal payments to the Debtor and (b) exercising control over
17 property of the Debtor’s estate by (i) withholding payments for in-house dental
18 services, and (ii) directing the Health Plans to block transfer patients elsewhere and
19 refuse to assign new patients to the Debtor, both in violation of the Health Plan’s
20 contractual obligations to the Debtor. *See* Complaint, Claim I.

21 The Debtor has also asserted a claim for enforcement of the automatic stay for
22 these stay violations. *See* Complaint, Claim II. In this case, not only are DHCS’
23 intentional stay violations already harming the Debtor and its creditors—which is
24 sufficient for the Court to order that they stop and schedule further proceedings for
25 damages—but DHCS’ conduct threatens to harm the Debtor’s patients, the majority
26 of whom have no meaningful alternative for regular primary care within their
27 communities.

28 Relief is proper in this instant because the automatic stay is “self-executing,
effective upon the filing of the bankruptcy petition[,]” and each of the complained-of
acts is or will be in knowing violation of the automatic stay. *Gruntz v. County of Los*

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1 *Angeles (In re Gruntz)*, 202 F.3d 1074, 1081 (9th Cir. 2000). Thus the Court has
 2 power to—and should, for the sake of efficiency—determine that DHCS has and will
 3 violate the automatic stay without further proceedings. *See In re Extraction Oil &*
 4 *Gas, Inc.*, No. 20-11548 (CSS), 2020 WL 7074142, at *4 (Bankr. D. Del. Dec. 3,
 5 2020) (determining that the bankruptcy court can enforce the automatic stay by
 6 motion rather than requiring an adversary proceeding because it is enforcement of an
 7 existing, statutorily-created injunction).

8 **2. Basis for Relief under Section 362 of the Bankruptcy Code**

9 The automatic stay is one of the most fundamental protections provided by the
 10 Bankruptcy Code. *True Health Diagnostics LLC v. Alex M. Azar et al. (In re THG*
 11 *Holdings LLC)*, 604 B.R. 154, 160 (Bankr. D. Del. 2019) (citing *Cuffee v. Atlantic*
 12 *Bus. & Cmt. Dev. Corp.*, 901 F.2d 325, 327 (3rd Cir. 1990)). As the Ninth Circuit
 13 recognized:

14 [T]he purpose of the automatic stay is to give the debtor a breathing
 15 spell from creditors, to stop all collection efforts, and to permit the
 16 debtor to attempt repayment or reorganization. Congress intended the
 scope of the stay to be broad. All proceedings are stayed, including
 arbitration, license revocation, administrative, and judicial proceedings.

17 *Computer Commc'ns, Inc. v. Codex Corp. (In re Computer Commc'ns, Inc.)*, 824 F.2d
 18 725, 729 (9th Cir. 1987) (internal citations and quotations omitted).

19 Section 362 makes clear that filing a voluntary petition for relief under the
 20 Bankruptcy Code “operates as a stay, applicable to *all entities*” against:

21 *the commencement or continuation, including the issuance or*
 22 *employment of process, of a judicial, administrative, or other action or*
 23 *proceeding against the debtor that was or could have been commenced*
before the commencement of the case under this title, or to recover a
claim against the debtor that arose before the commencement of the
 24 *case under this title;*

25 *any act to obtain possession of property of the estate or of property*
from the estate or to exercise control over property of the estate;

26 *any act to collect, assess, or recover a claim against the debtor that arose*
 27 *before the commencement of the case under this title[.]*

1 11 U.S.C. §§ 362(a)(1), (3), & (6) (emphasis added).⁵

2 DHCS' conduct has and will violate these provisions of § 362 as set forth
3 below.

4 **a. DCCHS's Continuation of Actions Against the Debtor**
5 **Violate the Stay & The Implementation of the**
6 **Proposed Suspension of Medi-Cal Payments Would**
7 **Violate the Automatic Stay**

8 First, DHCS' continuation of actions against the Debtor, including the
9 enforcement of the prepetition proposed suspension, violate the automatic stay. 11
10 U.S.C. § 362(a)(1).

11 Second, implementing the proposed suspension of the Debtor's Medi-Cal
12 payments post-petition would violate §362(a)(3) of the Bankruptcy Code, as an
13 impermissible effort to obtain possession of or exercise control over property of the
14 estate. *In re THG Hldgs LLC*, 604 B.R. at 161 (“[T]he Court finds that the Defendants’
15 withholding of post-petition reimbursement payments is a violation of the automatic
16 stay as it does not fall within the police power exception.”); *Medicar Ambulance Co.,*
17 *Inc. v. Shalala (In re Medicar Ambulance Co., Inc.)*, 166 B.R. 918, 928 (Bankr. N.D.
18 Cal. 1994) (fiscal intermediary ordered to discontinue its suspension of Medicare
19 payments and to turn over to the debtor all amounts placed in the suspense account.).
20 Alternatively, to the extent DHCS asserts that it is attempting to collect against a
21 prepetition claim—a point the Debtor does not concede—this also would violate
22 §§362(a)(1) or (6).

23 Property of the estate is broadly defined to include any and “all legal or
24 equitable interests of the debtor in property as of the commencement of the case[,]”
25 proceeds of the same, and “[a]ny interest in property that the estate acquires after
26 commencement of the case.” 11 U.S.C. §§ 541(a)(1), (6), and (7). “It is also well

27 ⁵ By its terms, § 362 applies to “all entities,” and § 101 of the Bankruptcy Code defines
28 “entity” to include a “governmental unit[.]” The term “governmental unit,” in turn,
includes an “instrumentality of... a State[.]” such as DHCS. 11 U.S.C. § 101(15),
(27).

1 established that [even] the mere opportunity to receive an economic benefit in the
 2 future is property with value under the Bankruptcy Code.” *In re Fruehauf Trailer*
 3 *Corp.*, 444 F.3d 203, 211 (3d Cir.2006) (quoting *Segal v. Rochelle*, 382 U.S. 375, 379,
 4 86 S.Ct. 511, 15 L.Ed.2d 428 (1966)).

5 Here, the Debtor’s right to bill for and be paid for services provided to patients,
 6 is a property interest that falls squarely within §541 and the Supreme Court’s
 7 instruction in *Segal v. Rochelle*. Thus, just as “post-petition Medicare reimbursements
 8 are indisputably property of the estate[,]” so too are post-petition Medi-Cal payments.
 9 *In re THG Holdings LLC*, 604 B.R. at 160. Indeed, collections of reimbursements
 10 from Medi-Cal are the very life-blood of the Debtor’s business, and DHCS’ planned
 11 suspension would quickly cause the Debtor to cease operations, thereby harming the
 12 Debtor, its creditors and estate, and, most importantly, the patients and communities
 13 it serves.

14 **b. DHCS’ Refusal to Pay the Debtor for “In House”**
 15 **Dental Services Violates the Automatic Stay**

16 *Third*, both before and after the Petition Date, DHCS has improperly and
 17 impermissibly refused to pay the Debtor millions of dollars for “in house” dental
 18 services provided to patients. These funds are needed now to ensure continued
 19 delivery of health care services, thereby protecting patients and preserving the value
 20 of the Debtor’s estate for repayment of claims to creditors. Refusal to pay the Debtor
 21 for services rendered violates § 362(a) for the same reasons that suspension of
 22 payments does, as set forth immediately above.

23 In summary, DHCS is exercising control or dominion over property of the
 24 estate—collections of accounts receivable owed to the Debtor for services delivered
 25 prepetition and postpetition. DHCS has done so without permission from this Court.
 26 DHCS’ acts, which are in knowing violation of the automatic stay, are harming the
 27 Debtor and its ability to provide care to patients by depriving it of revenue needed
 28 *right now* to provide essential medical services and further its reorganization.

1 Lastly, given that the funds impermissibly withheld by DHCS are for “in
2 house” dental services rather than contracted with outside providers, there is no
3 credible argument that withholding such funds is being done to prevent fraud or abuse
4 of Medi-Cal, as all fraud and billing irregularity stopped long ago (and the Debtor
5 itself has implemented steps to recover funds from those who are actually responsible
6 for any fraud).

7 **c. DHCS Is Impermissibly Attempting to Terminate the**
8 **Debtor’s Contracts with the Health Plans**

9 *Fourth*, DHCS has violated § 362(a)(3)’s prohibition against taking any and all
10 acts to obtain possession over or exercise control over property of the estate by virtue
11 of DHCS’ direction to the Health Plans to “block transfer” patients to new providers
12 and to assign patients that would normally be assigned to the Debtor based on their
13 location to another provider. DHCS’ directives amount to an impermissible attempt
14 to terminate the Debtor’s contracts with the Health Plans.

15 The Ninth Circuit has “construed section 541 of the Bankruptcy Code... to
16 include contract rights as ‘property’ of the bankruptcy estate.” *TransWorld Airlines,*
17 *Inc. v. Am. Coupon Exch., Inc.*, 913 F.2d 676, 688 (9th Cir. 1990) (*citing In re*
18 *Computer Commc'ns, Inc.*, 824 F.2d at 729). Thus the Debtor’s contracts with the
19 Health Plans are contracts that are property of the estate. During a bankruptcy case,
20 contracts between debtors and third parties remain “in effect,” and nondebtor parties
21 are bound to honor and perform such contracts. *See In re Public Serv. Co. of N.H.*,
22 884 F.2d 11, 14 (1st Cir. 1989). Any effort to terminate a contract without court
23 permission violates the automatic stay. *See generally, In re Minoco Grp. of Cos., Ltd.*,
24 799 F.2d 517 (9th Cir. 1986) (holding effective termination of a contract is subject to
25 the automatic stay).

26 This is true even if a governmental agency that is not a party to the contract
27 purports to interfere with and terminate the contract because “section 362(a)(3)
28 applies to actions against third parties as well as actions against the debtor, unlike

1 subsection (a)(1) which ordinarily stays only actions against the debtor.” *See Krystal*
 2 *Cadillac Oldsmobile GMC Truck, Inc. v. Gen. Motors Corp. (In re Krystal Cadillac*
 3 *Oldsmobile GMC Truck, Inc)*, 142 F.3d 631, 637 & n.11 (3d Cir. 1998) (state motor
 4 vehicle board’s determinations effectively ordering termination of a franchise
 5 agreement in violation of the automatic stay).

6 Against this backdrop, DHCS is acting in clear violation of the automatic stay.
 7 DHCS has dictated that the Health Plans, which have contracts with the Debtor, must
 8 move patients to new providers, although there are basically none in the Debtor’s
 9 service area. DHCS has further mandated that the Health Plans cannot assign new
 10 patients to the Debtor, despite contractual provisions that they do so. Although the
 11 patients themselves are not property of the Debtor’s estate, the right to continue to
 12 provide treatment and be paid for those treatments pursuant to contracts between the
 13 Debtor and the Health Plans is a property right of the Debtor within the ambit of § 541
 14 of the Bankruptcy Code and protected by §§ 362 and 365 of the Bankruptcy Code.

15 3. Section 362(b)(4) Does Not Apply

16 DHCS should not be able to rely on § 362(b)(4) to avoid liability for violating
 17 the automatic stay. Section 362(b)(4) simply does not apply to the facts before the
 18 Court.

19 Section 362(b)(4) states that the filing of a bankruptcy petition “does not
 20 operate as a stay— ...of an action or proceeding by a governmental unit . . . to enforce
 21 such governmental unit’s... police and regulatory power[.]” Consistent with
 22 Congressional policy that the automatic stay have a broad reach, “[e]xceptions to the
 23 automatic stay[.]” such as section 362(b)(4), “should be read narrowly.” *Hillis*
 24 *Motors, Inc. v. Hawaii Auto. Dealers’ Ass’n*, 997 F.2d 581, 590 (9th Cir. 1993).
 25 Courts reviewing arguments about the applicability of § 362(b)(4) apply two
 26 alternative tests: the pecuniary purpose test and the public policy test.

27 Under the pecuniary purpose test, the court must determine whether the
 28 government action relates primarily to the protection of the
 government's pecuniary interest in the debtor’s property or to matters

1 of public safety and welfare. By contrast, under the public policy test,
2 the court must determine whether the government's action is intended
3 to either effectuate public policy or to adjudicate private rights. If the
4 court determines that the government's action is intended either to
5 protect the government's pecuniary interest in the debtor's property or
6 to adjudicate private rights, the government regulatory exemption will
7 not apply and the automatic stay will be imposed.

8 *Id.* at 591 (internal citations and quotations omitted); *In re Mediacar Ambulance Co.*,
9 166 B.R. at 926 (describing the pecuniary purpose test and the public policy test in
10 the context of a suspension of Medicare payments postpetition). DHCS satisfies
11 neither test.

12 Here, DHCS' conduct cannot be for any purpose other than protecting its
13 pecuniary interest. As set forth in the discussion of facts above and in the Complaint,
14 there are no allegations that the Debtor has engaged in fraud postpetition. To the
15 contrary, upon learning of concerning facts regarding billings for contracted dental
16 services, the Debtor initiated a meeting with DHCS to disclose relevant facts and work
17 to resolve issues. Subsequently, the Debtor agreed to installation of a monitor, who
18 provided regular reports and updates to DHCS.

19 On similar facts involving allegations of prepetition fraud, the court in *THG*
20 *Holdings* determined that the federal government violated the automatic stay by
21 withholding postpetition reimbursements where there was no allegation of
22 postpetition fraud. *In re THG Holdings LLC*, 604 B.R. at 161. Specifically, the Court
23 held:

24 [A]s discussed above, the Defendants have not put forth any evidence
25 that [the debtor] engaged in fraud post-petition or that there have been
26 any overpayments post-petition. ... The only reasonable conclusion is
27 that the Defendants are withholding post-petition payments on account
28 of pre-petition overpayment determinations—the exact conduct that the
29 pecuniary interest test was designed to prohibit. Therefore, the Court
30 finds that the Defendants' withholding of post-petition reimbursement
31 payments is a violation of the automatic stay as it does not fall within
32 the police power exception.

33 *Id.*

34 Similarly, in *In re Mediacar Ambulance Co.* the court reviewed the argument

1 that the police or regulatory exception to the automatic stay excused a Medicare fiscal
2 intermediary's suspension of Medicare payments to a Medicare provider where there
3 were allegations of prepetition fraud. The court rejected the arguments, holding that
4 "[t]he suspension of Medicare payments is not exempted under either test. Applying
5 the pecuniary purpose test, HHS concedes that the suspended payments are property
6 of the estate. Enforcement of the suspension directly and impermissibly conflicts with
7 the court's control of property of the estate. Under the public policy test, HHS would
8 be allowed to take actions to fix the amount of civil penalties or to determine
9 Medica's continued eligibility to participate in the Medicare system since these
10 actions enforce public policy, not private rights. However, inasmuch as the suspension
11 is an attempt to enforce a monetary claim, it exceeds the scope of the police power
12 exception no matter which test is used." *Medicar Ambulance*, 166 B.R. at 927.

13 This Court should reach the same conclusion as the courts in *THG Holdings*
14 and *Medicar Ambulance*; the police or regulatory exception does not protect DHCS.
15 To the contrary, DHCS, a sophisticated and regular participant in health care
16 bankruptcy cases, is impermissibly refusing to provide the Debtor reimbursement that
17 the Debtor is owed and needs in order to preserve its business and estate, as well as
18 to continue to protect and provide services to patients in furtherance of its charitable
19 mission.

20 4. Conclusion

21 The Court should determine that DHCS violates the automatic stay by imposing
22 the threatened suspension, by refusing to turn over prepetition payments due to the
23 Debtor and mandating that the Health Plans cease assigning new patients to the Debtor
24 and initiating a block transfer of existing patients, which is tantamount to an
25 impermissible effort to terminate or exercise control over the Debtor's contracts with
26 the Health Plans.

27 Lastly, as set forth above, while the relief requested is presented through an
28 adversary proceeding and this Motion, the Court has power to and should take

1 immediate steps to protect the Debtor’s estate—not only in the furtherance of the
 2 Debtor’s reorganization efforts but also to ensure that patients who depend on the
 3 Debtor’s services for their health and safety are not harmed by DHCS’ knowing
 4 violation of the automatic stay.

5 **B. ALTERNATIVELY, A TEMPORARY RESTRAINING ORDER**
 6 **SHOULD BE ISSUED BECAUSE THE DEBTOR WILL SUFFER**
 7 **IMMEDIATE AND IRREPARABLE INJURY IF THE SUSPENSION**
 8 **IS ENFORCED**

9 The Court has authority to enjoin DHCS pursuant to section 105 of the
 10 Bankruptcy Court, which permits courts to issue “any order, process or judgment that
 11 is necessary or appropriate to carry out the provisions of [the Code].” 11 U.S.C.
 12 § 105(a). “Section 105(a) gives the bankruptcy courts the power to stay actions that
 13 are not subject to the 11 U.S.C. § 362(a) automatic stay but ‘threaten the integrity of
 14 a bankrupt’s estate.’” *In re Excel Innovations, Inc.*, 502 F.3d 1086, 1093 (9th Cir.
 15 2007) (quoting *Canter v. Canter (In re Canter)*, 299 F.3d 1150, 1155 (9th Cir. 2002)).
 16 Bankruptcy courts, thus, may use their powers under § 105 “to assure the orderly
 17 conduct of the reorganization process.” *Carabetta Enters., Inc. v. City of Ashbury*
 18 *Park (In re Carabetta Enters., Inc.)*, 162 B.R. 399, 406 (Bankr. D. Conn. 1993)
 19 (quoting *Erti v. Paine Webber Jackson & Curtis, Inc. (In re Baldwin United Corp.*
 20 *Litig.)*, 765 F.2d 343, 348 (2d Cir. 1985)). Pursuant to section 105 of the Bankruptcy
 21 Code, and under Rule 65 of the Federal Rules of Civil Procedure (the “Civil Rules”),
 22 the Court has authority to issue a temporary restraining order until such time as a
 23 hearing can be held on a motion for a preliminary injunction. Fed. R. Civ. P. 65(b)(1);
 24 Fed. R. Bankr. P. 7065; *see, e.g., NLRB v. Superior Forwarding, Inc.*, 762 F.2d 695,
 25 698 (8th Cir. 1985) (bankruptcy court is empowered under § 105 to enjoin federal
 26 regulatory proceedings when those proceedings would threaten the assets of the
 27 debtor’s estate).

28 To obtain a TRO where, as here, the nonmoving party has notice of the relief
 sought, the Debtor must satisfy one of two “variants of the same standard.” *Habibi v.*

1 *Barr*, 445 F. Supp. 3d 990, 994-95 (S.D. Cal. 2020) (quoting *Alliance for the Wild*
2 *Rockies v. Pena*, 865 F.3d 1127, 1135 (9th Cir. 2020)). The Debtor must either
3 establish that: (1) it is likely to succeed on the merits, (2) it is likely to suffer
4 irreparable harm in the absence of preliminary relief, (3) the balance of equities tips
5 in its favor, and (4) an injunction is in the public interest, or, alternatively, a TRO is
6 appropriate where there are “serious questions going to the merits’ and a balance of
7 hardships that tips sharply towards the plaintiff..., so long as the plaintiff also shows
8 that there is a likelihood of irreparable injury and that the injunction is in the public
9 interest.” *Habibi*, 445 F. Supp. 3d at 995; *see also Friends of the Wild Swan v. Weber*,
10 767 F.3d 936, 942 (9th Cir. 2014) (“[I]f a plaintiff can only show that there are serious
11 questions going to the merits — a lesser showing than likelihood of success on the
12 merits — then a preliminary injunction may still issue if the balance of hardships tips
13 sharply in the plaintiff’s favor, and the other two *Winter* factors are satisfied.”)
14 (internal quotation marks and citations omitted). “The balance of equities and public
15 interest factors merge ‘[w]hen the government is a party.’” *Habibi v. Barr*, 445 F.
16 Supp. 3d at 995 (quoting *Drakes Bay Oyster Co. v. Jewell*, 747 F.3d 1073, 1092 (9th
17 Cir. 2014) and *Nken v. Holder*, 556 U.S. 418, 435 (2009)).

18 Typically, a TRO or preliminary injunction seeks to “maintain the status quo
19 pending a trial on the merits.” *Mastrovincenzo v. City of N.Y.*, 435 F.3d 78, 89 (2d
20 Cir. 2006); *see also Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571
21 F.3d 873, 878–79 (9th Cir. 2009). The “status quo” refers to “the last, uncontested
22 status which preceded the pending controversy.” *Id.*

23 The Debtor’s Complaint alleges two claims – one seeking a declaratory
24 judgment that the automatic stay applies to DHCS’ actions (described above) and
25 the other alleging a violation of due process. The Court should issue a temporary
26 restraining order substantially in the form requested with respect to each claim for
27 the following reasons.

28

1 **1. The Debtor Is Likely to Succeed on the Merits**

2 **a. The Automatic Stay Claims**

3 As set forth above, the automatic stay bars DHCS from (a) suspending Medi-
 4 Cal payments to the Debtor and (b) exercising control of property of the estate by
 5 (i) withholding payments for in-house dental services and (ii) threatening to direct the
 6 Health Plans to block transfer patients elsewhere in violation of the Health Plan's
 7 contractual obligations to the Debtor and to refuse to assign new patients to the
 8 Debtor. *In re True Health Diagnostics LLC*, 604 B.R. 154; *In re Medicar Ambulance*
 9 *Co., Inc.*, 166 B.R. 918 (fiscal intermediary ordered to discontinue its suspension of
 10 Medicare payments and to turn over to the debtor all amounts placed in a suspense
 11 account). Thus, the Debtor is likely to succeed on the merits or, at a minimum, has
 12 raised serious questions about DCHS's actions.

13 In light of this, and "because the Bankruptcy Code itself establishes the basis
 14 for enforcement of the automatic stay[,]" at least one bankruptcy court has held there
 15 is no need to consider any of the other *Winter* factors prior to issuing a temporary
 16 restraining order with respect to the automatic stay claim. Specifically, in *In re THG*
 17 *Holdings LLC*, the bankruptcy court held:

18 Specifically, by showing that the post-petition Medicare payments are
 19 property of [the debtor's] estate, and that none of the exceptions under
 20 [S]ection 362 of the Code apply, including the police powers exception,
 21 [the debtor] has shown that it is entitled to relief, thus establishing a
 22 likelihood of success. There is no need for [the debtor] to show
 23 irreparable harm because Section 362 does not require a showing of
 24 irreparable harm for the automatic stay to apply. ...Similarly, Section
 25 362 does not impose a requirement that the balance of the equities
 26 favors the debtor, nor that imposition of the automatic stay is in the
 27 public interest. Indeed, requiring such a showing would read into
 28 Section 362 requirements for application of the automatic stay that
 Congress did not provide for in the Code. Thus, the Court finds that [the
 debtor] has established the necessary requirements for application of
 the automatic stay.

26 604 B.R. at 162 (internal citations omitted). Thus, the Debtor has, at a minimum, met
 27 its burden with respect to the factor of showing a likelihood of success on the merits
 28 as to the automatic stay violation.

1 *ii The Suspension Will Not Be “Temporary”*

2 The Code of Federal Regulations, 42 C.F.R. § 455.23(c), provides that
 3 “suspension under this section *will be temporary....*” (Emphasis added.) DHCS’
 4 proposed suspension is not temporary, and the agency makes no effort to hide that
 5 reality. To the contrary, DHCS media statements make clear that the suspension is
 6 intended to cause—to use DHCS own words—the Debtor to “cease operations.”
 7 DHCS’ actions are also inconsistent with a temporary suspension. For instance,
 8 DHCS instructed the health plans to prepare to “bulk transfer” the Debtor’s patients
 9 to other providers. This action will cause the immediate and permanent closure of the
 10 Debtor.

11 *iii The Sanctions Are Unlawfully Excessive*

12 Considering the facts and circumstances of this case, DHCS’ decision to
 13 effectively force the Debtor to cease operations is so excessive as to be arbitrary.
 14 California law establishes that although DHCS has discretion with respect to the
 15 propriety of a penalty, “if the penalty imposed was under all of the facts and
 16 circumstances clearly excessive, the court is not powerless to act.” *Catricala v. State*
 17 *Personnel Bd.*, 42 Cal. App.3d 646, 646 (1974).

18 The federal government explained how states are to tailor suspensions, and that
 19 the states have flexibility to only suspend payments in part, explaining:

20 For example, as stated in the preamble to the current
 21 regulation, there may be times where an investigation is
 22 solely and definitively centered on *only a specific type of*
 23 *claim* in which case a State may determine it is appropriate
 24 to impose a payment suspension on only that type of claim.
 25 Likewise, a State might determine that an investigation of a
 26 credible allegation of fraud is limited to *a particular*
 27 *business unit or component of a provider* such that a
 28 suspension need not apply to certain business units or
 components of a provider.

Balancing these approaches, we proposed to allow States to
 implement a partial payment suspension, or, where
 appropriate, to convert a previously imposed full payment
 suspension to a partial payment suspension, if justified via
 a good cause exception. The good cause exceptions for
 partial suspension at paragraphs (f)(1) and (2) mirror those

1 at paragraphs (e)(4) and (3), respectively, and allow the
 2 State to *adopt a partial payment suspension where*
 3 *suspension in whole would so jeopardize a recipient's*
 4 *access to items or services as to endanger the recipient's*
 5 *life or health, or where the State deems it in the best*
 6 *interests of the Medicaid program.* At paragraph (f)(3), we
 7 proposed that a State may avail itself of the good cause
 8 exception to suspend payments only in part if the nature of
 9 the credible allegation is *focused solely and definitively on*
 10 *only a specific type of claim or arises from only a specific*
 11 *business unit of a provider, and the State determines and*
 12 *documents in writing that a payment suspension in part*
 13 *would effectively ensure that potentially fraudulent claims*
 14 *were not continuing to be paid.*

15 76 Fed. Reg. 5861, 5934 (emphasis added).

16 When all relevant facts are considered here, the complete suspension sought to
 17 be imposed here is “clearly excessive.” As explained above, the Debtor is an FQHC
 18 and, by definition and mission, offers an extensive range of medical, dental,
 19 behavioral health and other modes of health care services in geographical areas
 20 where there otherwise have little to no access to such services. And again, the
 21 regions where FQHCs operate (including and especially the Debtor here) have
 22 higher proportions of people who depend on Medi-Cal. This means that the
 23 Debtor’s suspension from Medi-Cal necessarily will adversely impact Medi-Cal
 24 beneficiary access to health care services. Yet, notwithstanding the pivotal role the
 25 Debtor fills as a safety net provider in multiple areas throughout Southern
 26 California, DHCS elected to preclude the entire organization from participating in
 27 Medi-Cal, despite the fact that the prior allegations of fraud were limited to certain
 28 business lines (contract dental, which ended in its entirety nearly two years ago).
 This is the very definition of an excessive sanction. Indeed, less severe sanctions
 exist and have been in place for many months. The Debtor has been operating under
 the strict supervision of DHCS, including a full-time, embedded compliance monitor,
 for the better part of two years; there is simply no reason why this lesser sanction
 would not protect DHCS’ (and the public’s) interests going forward.

Indeed, the law specifically and explicitly anticipates this precise situation.

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1 Even if there was a credible allegation of ongoing fraud (there is not), there is a “good
2 cause” exception to suspension that DHCS could have—and should have—invoked
3 here. Code of Federal Regulations, Title 42, § 455.23(e) states that DHCS can find
4 “that good cause exists not to suspend payments...to an individual or entity against
5 which there is an investigation of a credible allegation of fraud if any of the following
6 are applicable: ...

7 (2) Other available remedies implemented by the State
8 more effectively or quickly protect Medicaid funds.

9 ...

10 (4) beneficiary access to items or services would be
11 jeopardized by a payment suspension because of either of
12 the following:

13 (i) An individual or entity is the sole community
14 physician or the sole source of essential specialized services
15 in a community.

16 (ii) The individual or entity serves a large number of
17 beneficiaries within a HRSA-designated medically
18 underserved area.

19 Both subsection (2) and (4) are applicable here. For subsection (2), DHCS has
20 other remedies available to it, and indeed is already using them. DHCS has installed
21 a full-time, embedded Monitor with the Debtor to supervise all aspects of its
22 operations, which will more than adequately protect Medi-Cal funds.

23 For subsection (4), as discussed herein, if the suspension is not enjoined, the
24 Debtor will be forced to cease operations, lay off employees, and will be unable to
25 provide services to the community it serves. The Debtor is the entity which provides
26 the sole source of community physicians and specialists in underserved areas of
27 Southern California, as the regulation sets forth. The Debtor also serves a large
28 number of beneficiaries within those underserved areas. Accordingly, DHCS could—
and should—opt not to suspend payments to the Debtor, even if there was a credible
allegations on ongoing fraud.

1 (internal citations omitted). Determining whether a particular administrative
2 procedure satisfies due process standards requires an analysis of several factors:
3 (1) the private interest involved; (2) the risk of an erroneous deprivation of that
4 interest through the procedures used and any probable value of additional or
5 substitute procedural safeguards; and (3) the government's interest, including the
6 function involved and the fiscal and administrative burdens that additional or
7 substitute procedural requirements would entail. *See id.* These factors all weigh in
8 favor of the Debtor. DHCS has known about these issues for over two years,
9 affording plenty of time for adequate process.

10
11 *vi The Debtor Has a Vital Interest in Medi-Cal
Participation*

12 The Debtor's continued right to participate in Medi-Cal is significant.
13 Indeed, multiple California courts have recognized that due process implications
14 are triggered when a provider that has been participating in the Medi-Cal program
15 is excluded. *See Leiblein*, 137 Cal. App.4th at 720; *Mednik*, 175 Cal. App.4th at
16 642. In this case, the Debtor's interest in continuing to participate in Medi-Cal is
17 heightened by the organization's status as an FQHC. The Debtor is legally and duty
18 bound to provide care to underserved areas and substantial portions of patients who
19 reside in the Debtor's service areas are Medi-Cal beneficiaries. The Debtor
20 therefore cannot fulfill its mission as an FQHC if it cannot participate in Medi-Cal.

21 In addition, while Medi-Cal exclusion alone is enough to trigger due process
22 safeguards, case law indicates that a party's interest can be magnified when the
23 denial of Medi-Cal participation is combined with harm to the party's reputation
24 due to government publication of information related to the Medi-Cal exclusion.
25 *See Lackner v. St. Joseph Convalescent Hospital, Inc.*, 106 Cal. App.3d 542, 557
26 (1980); *see also Guzman v. Shewry*, 522 F.3d 941, 955 (9th Cir. 2009). Here,
27 DHCS has caused damage to the Debtor's reputation by advising third parties,
28 such as Medi-Cal health plans and members of the media, that the Debtor would

1 be suspended from Medi-Cal based on allegations of fraud. Of course, those health
2 plans, in turn, have communicated or will communicate that information to their
3 enrollees and other providers, and the media members have communicated or will
4 communicate that information to the public.

5
6 *vii Deprivation of The Debtor’s Interest Would Be
Wrongful and Erroneous*

7 With respect to the second element of the due process analysis, based on
8 information currently available, the risk that the Debtor is being wrongly deprived
9 of its interest in participating in Medi-Cal is high. Again, the Debtor’s exclusion
10 from Medi-Cal is predicated—in whole—on an “allegation of fraud,” for conduct
11 that was indisputably ceased years ago.

12
13 *viii DHCS’ Interests Are Already Fully Protected by
Safeguards Already in Place*

14 With respect to the final factor in the due process analysis, there is no dispute
15 that DHCS has an interest in preventing fraud. However, the Debtor’s suspension
16 without due process would not impinge on those interests. First, DHCS’ interest in
17 preventing fraud is already being more than sufficient addressed. For the past months,
18 the Debtor has operated, without significant incident, under the strict supervision of
19 DHCS, including a full-time, embedded compliance Monitor overseeing all the
20 Debtor operations. Accordingly, there is no significant risk of further fraud, and
21 DHCS’ interest in that regard is already met.

22
23 *ix The Debtor Should Be Excused from Further
Pursuing Any Supposed Administrative Remedies*

24 The Debtor anticipates that DHCS will argue that this Court should not
25 intervene in this situation since the Debtor has not yet exhausted all of the
26 administrative remedies to it to challenge the Medi-Cal sanction determination,
27 including the “appeal” that is permitted. However, DHCS’ expected failure-to-
28 exhaust defense should fail because binding precedent from the Ninth Circuit holds

1 that bankruptcy courts need not defer to arguments regarding exhaustion of
2 administrative remedies. Moreover, here none of the administrative remedies are
3 “adequate” to provide relief to The Debtor.

4 First, the Ninth Circuit has recognized in similar circumstances that bankruptcy
5 jurisdiction is unique, and bankruptcy courts need not defer pending exhaustion of
6 administrative remedies. *See Do Sung Uhm v. Humana, Inc.*, 620 F.3d 1134, 1141 fn.
7 11 (9th Cir. 2010) (Noting that exhaustion of administrative remedies not required in
8 bankruptcy cases because of the “broad jurisdictional grant over all matters
9 conceivable having an effect on the bankruptcy estate.”); *Sullivan v. Town & Country*
10 *Home Nursing Servs., Inc. (In re Town & Country Home Nursing Servs., Inc.)*, 963
11 F.2d 1146, 1154 (9th Cir. 1991) (“The BAP... found ‘the better reasoned position’ to
12 be that ‘where there is an independent basis for bankruptcy court jurisdiction,
13 exhaustion of administrative remedies pursuant to other jurisdictional statutes is not
14 required.’ ... We agree.”).

15 Second, the exhaustion requirement is subject to exceptions, including (i) when
16 the administrative remedy is inadequate, and (ii) where its pursuit would be futile,
17 idle or useless. *See S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685, 688 n. 4 (9th Cir.
18 1981) (discussing a number of exceptions to the general rule requiring exhaustion,
19 including where exhaustion would be futile or the remedy would be inadequate). Both
20 of the aforementioned exceptions apply here.

21 This written appeal process will not be available until *after* the provider is
22 suspended from the Medi-Cal program. The written administrative appeal process
23 also does not contain any of the safeguards of a trial-type hearing and is not even
24 considered by the DHCS, itself, to be an adjudicative hearing.

25 Accordingly, the administrative appeal process that applies in this situation
26 does not present an adequate remedy for the Debtor. That appeal can only resolve the
27 “credibility” of the evidence of fraud DHCS relied upon in imposing sanctions on the
28 Debtor, which—as discussed at length herein—is not the true issue. Moreover, since

1 the administrative appeal process will take months to conclude, the Debtor's very
2 existence, and the dire harm to its patients and the community that will result if the
3 Debtor is forced to close its doors, will occur long before the Debtor's appeal will be
4 acted upon. In addition, since DHCS will hear the appeal to its own decision, it is also
5 a futile proceeding.

6 **2. The Debtor Will Suffer Irreparable Harm from the Proposed**
7 **Suspension**

8 When the Court evaluates the harm in deciding whether to grant injunctive
9 relief, a court should rule "in favor of the party most likely to be injured... if denial
10 of an injunction would result in great harm to the plaintiff, and the defendant would
11 suffer little harm if it were granted, then it is in abuse of discretion to fail to grant a
12 preliminary injunction." *Robbins v. Superior Court*, 38 Cal.3d 199, 205 (1985).
13 DHCS can present no argument that there "exists some critical public interest that
14 would be injured by the grant of preliminary relief." *Indep. Living Ctr. Of S. Cal., Inc.*
15 *v. Maxwell-Jolly*, 572 F.3d 644, 659 (9th Cir. 2009) (quoting *Hybritech Inc. v. Abbott*
16 *Labs.*, 849 F.2d 1446, 1458 (Fed.Cir.1988)). Here, there is no discernible public
17 interest that would be injured by the grant of a TRO. On the contrary, the requested
18 relief promotes the public interest by preserving the status quo and access to critical
19 medical and pharmacy services.

20 Here, the Debtor and the patients and communities it serves will suffer
21 irreparable harm in the form of reduced (or eliminated) access to healthcare services,
22 and the disruption of relationships with current healthcare providers, which are likely
23 to lead to adverse health outcomes, including the possibility of death. DHCS and the
24 public, on the other hand, will not suffer any harm whatsoever. Although not
25 applicable under these specific circumstances, the only harm that DHCS would even
26 argue is a financial loss. However, "in balancing the hardships, [this is] a choice
27 between potential financial loss on the part of the [DHCS] versus potential loss of life
28 on the part of the public." *Barenfeld v. City of Los Angeles*, 162 Cal.App.3d 1035,

1 1042 (1984). In such a question, the balance clearly tips in favor of the Debtor. *Id.*

2 There can be no dispute over the fact that the Debtor would suffer irreparable
3 harm if DHCS' total suspension is allowed to go into effect, because the undisputed
4 facts are that the Debtor will be forced out of business if the total suspension is
5 imposed. This is irreparable harm.

6 [T]he threat of being driven out of business is sufficient to establish
7 irreparable harm. [T]he loss of... an ongoing business representing
8 many years of effort and the livelihood of its... owners, constitutes
9 irreparable harm. What plaintiff stands to lose cannot be fully
10 compensated by subsequent monetary damages. Thus, showing a threat
of "extinction" is enough to establish irreparable harm, even when
damages may be available and the amount of direct financial harm is
ascertainable.

11 *hiQ Labs, Inc. v. LinkedIn Corp.*, 31 F.4th 1180, 1188 (9th Cir. 2022) (internal
12 citations omitted). Similarly, "harm to goodwill, like harm to reputation, is the type
13 of harm not readily measurable of fully compensable in damages—and for that reason,
14 more likely to be found 'irreparable'." *K-Mart Corp. v. Oriental Plaza, Inc.*, 875 F.2d
15 907, 915 (1st Cir.1989).

16 If not enjoined, DHCS' suspension from participation in the Medi-Program
17 will, in short order, force the Debtor to cease operations and go out of business.
18 Specifically, if the suspension goes into effect, the Debtor would have to immediately:

- 19 • Shut down all eighteen (18) clinics and two (2) pharmacies, close six (6)
20 administrative office locations;
- 21 • Cease operating and park six (6) mobile units, which deliver care to
22 children in schools, migrant workers where they work, and to other hard-to-reach
23 populations;;
- 24 • Cease all services, including pediatric care, urgent care, behavioral
25 health, dental services, specialty care, transgender health, women's health, prenatal
26 care, veteran's health and telehealth for approximately 77,000 patients;
- 27 • Cancel all patient appointments;
- 28 • Terminate approximately 700 employees; and

- 1 • Begin liquidation proceedings

2 *See* MacIsaac Declaration, ¶ 41. This is tantamount to the death penalty for the Debtor.

3 In turn, if the Debtor can no longer provide services to the patients and
 4 communities it serves, then there will be no other safety net providers in the area to
 5 serve the patients left behind. Those patients' access to healthcare will be severely
 6 limited, if not completely cut off. Courts have recognized that limiting or denying
 7 access to medical care can constitute irreparable harm. For example, *Harris v. Board*
 8 *of Supervisors*, 366 F.3d 754, 766 (9th Cir. 2004) the Ninth Circuit affirmed a
 9 preliminary injunction barring Los Angeles County from closing a hospital that
 10 served indigent patients, because reducing available public health care facilities
 11 would likely cause the patients irreparable harm. *Id.* at 766; *see also* *Hunt v. Superior*
 12 *Court*, 21 Cal.4th 984, 999-1000 (1999) (no error to grant interim relief where “absent
 13 a preliminary injunction, plaintiffs would be without medical services essential to the
 14 control and treatment of life-threatening conditions”); *Alford v. Cnty. of San Diego*,
 15 151 Cal.App.4th 16, 22 (2007) (injunction where patient was “not receiving all the
 16 medical care he needs”); *Crespin v. Kizer* (1990) 226 Cal.App.3d 498, 507 (1990)
 17 (injunction to prevent disruption of Medi-Cal benefits for long-term care and renal
 18 dialysis.) Multiple courts in cases involving requests for injunctive relief by health
 19 care providers threatened with exclusion from particular government health care
 20 programs have recognized that is appropriate to consider the potential harm to the
 21 provider's patients created by the government conduct sought to be enjoined. *See, e.g.*
 22 *Bracco v. Lackner*, 462 F. Supp. 436, 452-453 (N.D. Cal. 1978); *Vencor Nursing Or.,*
 23 *L.P. v. Shalala*, 63 F. Supp.2d 1, 12 (D.D.C. 1999); *John Andrus Mem'l Inc.*, 600 F.
 24 Supp.2d 563, 572-573 (S.D.N.Y. 2009).

25 Federal and state law recognizes the grave risks patient face when they are
 26 transferred from their health care providers by the government. “The damage to
 27 individuals in terms of physical and emotional deterioration, and increased mortality
 28 incidence as a result of ‘transfer trauma’ has been recognized by the federal courts.”

1 *Bracco v. Lackner*, 462 F. Supp. 436, 453 (N.D. Cal. 1978) (citations omitted). In
2 fact, Courts in other jurisdictions have repeatedly found that, in the context of health
3 care facilities facing decertification, the potential harm to existing residents
4 constitutes irreparable harm. *See, e.g., Pathfinder Healthcare, Inc. v. Thompson*, 177
5 F. Supp. 2d 895, 897 (E.D. Ark. 2001) (finding “[p]articularly compelling” the
6 “certain irreparable harm” to the plaintiff-facility’s residents “if they are forced to
7 move unnecessarily”); *Mediplex of Mass., Inc.*, 39 F. Supp. 2d at 100 (finding that the
8 “potential for transfer trauma” could lead to “harm of substantial dimensions should
9 the preliminary injunction plaintiff seeks not be entered”); *Libbie Rehab. Ctr.*, 26 F.
10 Supp. 2d at 132 (D.D.C. 1998) (finding that the “likelihood of irreparable injury in
11 dislocating the residents of [the plaintiff-facility] is clear and strongly influences this
12 Court’s conclusion that the preliminary injunction should issue”); *Int’l Long Term*
13 *Care, Inc.*, 947 F. Supp. at 19 (D.D.C. 1996) (finding that without a preliminary
14 injunction, residents of the plaintiff-facility risked “an unnecessary and potentially
15 destructive transfer from which many of them may sustain significant physical or
16 psychological trauma”); *Oak Park Health Ctr., LLC v. Johnson*, No. 09 CV 217, 2009
17 WL 331563, at *3 (E.D. La. Feb. 10, 2009) (agreeing with decisions finding potential
18 transfer trauma constitutes irreparable harm); *Ridgeview Manor of the Midlands, L.P.*
19 *v. Leavitt*, No. 3:07-cv-861, 2007 WL 1110915, at *6 (D.S.C. Apr. 9, 2007) (finding
20 threat of irreparable harm caused by relocation of facility’s residents).

21 While the above cases involved skilled nursing facilities, the loss of trusted
22 primary care providers is no less impactful. In the Declarations, several declarants
23 have explained that the Debtor’s patients are extremely anxious about being
24 transferred to new providers, particularly members of the transgender community
25 who do not have confidence that their care providers will have the same training,
26 background, and respect they are receiving from Borrego Health. The PCO similarly
27 expressed concern to the LGBTQIA patients. *See* Rubin Declaration ¶¶ 31, 32, 36-46.
28 The PCO also highlighted the risks to non-LGBTQIA patients. Not only do they lack

1 access to care, but they also suffer the attendant stress and anxiety of trying to find
 2 other solutions and develop new care relationships. The result is the same impact as
 3 transfer trauma. *See* Rubin Declaration ¶ 32.

4 Based upon all of the foregoing, the “irreparable injury” factor is easily
 5 established here.

6 **3. Balance of Equities and Public Interest**

7 The balance of equities and public interest merge when the government is the
 8 defendant. *Habibi*, 445 F. Supp. 3d at 995. In this case, it is clear that each factor—
 9 standing alone or merged—favors issuing a TRO. First, balancing the equities
 10 requires the Court to review the relative harm that could befall the Debtor and DHCS
 11 if the TRO is or is not granted. *Sacramento Homeless Union v. Cnty. of Sacramento*,
 12 No. 222CV01095TLNKJN, 2022 WL 3019735, at *14 (E.D. Cal. July 29, 2022). The
 13 nub of the issue is whether “the balance of equities so heavily favors the moving party
 14 that justice requires the court to intervene to secure the positions until the merits of
 15 the action are ultimately determined.” *Id.* (internal quotation omitted).

16 The equities unquestionably tip in favor of the Debtor. The status quo at this
 17 juncture is that the Debtor is a functioning nonprofit business providing important
 18 health care services as an FQHC, a special governmental program enacted to protect
 19 underserved populations. Permitting DHCS’ knowing violations of the automatic stay
 20 to continue threatens the Debtor’s viability and ability to reorganize. Without Medi-
 21 Cal funds, the Debtor’s estate will not be able to, for instance, pursue an orderly going-
 22 concern sale or other traditional path to emerge from Chapter 11. *Cf. In re Gardens*
 23 *Reg’l Hosp. & Med. Ctr., Inc.*, 567 B.R. 820, 832 (Bankr. C.D. Cal. 2017)
 24 (considering factor regarding issuing stay of order and noting “[t]he injury to the
 25 Debtor resulting from issuance of a stay will be substantially greater than the injury
 26 to the Attorney General from denial of a stay. The estate is in a precarious financial
 27 position and is desperately in need of the funds from the sale.”). Especially pertinent
 28 in a young Chapter 11 case such as this one, the Ninth Circuit has stated that the

1 “threat of being driven out of business is enough to establish irreparable harm.” *Am.*
2 *Passage Media Corp. v. Cass Commc’ns, Inc.*, 750 F.2d 17 1470, 1474 (9th Cir.
3 1985); *see also Ross-Lino Beverage Distribs., Inc. v. Coca-Cola Bottling Co. of N.Y.,*
4 *Inc.*, 749 F.2d 124, 125-26 (2d Cir. 1984) (loss of “an ongoing business... constitutes
5 irreparable harm”). On the other hand, the only “harm” that DHCS will suffer if a
6 TRO is granted is that it will be “forced” to continue to pay for Medi-Cal services
7 which the Debtor actually provides and for which the Debtor is fully entitled to be
8 reimbursed under the applicable statutes and regulations for about two weeks until a
9 hearing on a preliminary injunction. The balance of the equities clearly tips in favor
10 of the Debtor.

11 Second, the public interest also clearly tips in favor of the Debtor for several
12 reasons. Courts have recognized that the “public interest” in some categories of cases
13 is actually the interests of those served by the litigating parties. *See Tri-State*
14 *Generation & Transmission Assoc., Inc. v. Shoshone River Power, Inc.*, 805 F.2d 351,
15 356 (10th Cir. 1986) (“The ‘public interest’ in a public utility case is actually the
16 interest of purchasers of electric power”). In many respects, health care is a public
17 good rather than a purely market-based activity, similar to public utilities. Thus it is
18 appropriate to consider the interests of the patients, and the health plans and payors
19 who are responsible for ensuring an adequate network of providers for their members
20 or insureds. For example, in *In re First American Health Care, Inc.*, 208 B.R. 985
21 (Bankr. S.D. Ga. 1996), the court, in the context of enjoining future Medicare
22 suspensions notwithstanding a criminal conviction of debtor’s operators, noted that
23 “the public interest provides the most compelling reason” for granting the injunctive
24 relief sought in that case. *Id.* at 991. This was because “[w]hile the public has an
25 interest in insuring that public funds are properly spent on such programs as Medicare
26 ... the real human consequences of cessation of [payments] far outweighs that
27 interest.” *Id.* Similarly, in *In re Healthmaster Home Health Care, Inc.*, Case No. 95-
28 10548, Adv. Pro. 95-1031, 1995 WL 928920 (Bankr. S.D. Ga. Apr. 13, 1995), in the

1 context of enjoining a Medicare suspension of payments, the court held that the
2 “public interest cries out here for the immediate restoration of the cash flow into the
3 [debtor’s] business operation.” 1995 WL 928920, at *3. This determination was based
4 on the “uncontradicted evidence” that no other providers were available to take over
5 patient care, much of which was of serious medical nature. *Id.*

6 Here, the Debtor is fulfilling a public, charitable purpose in accordance with
7 Congressional policy to provide health care services to underserved populations.
8 Moreover, Congress has also mandated that the automatic stay protect debtors from
9 exactly the type of conduct engaged in and threatened to be engaged in by DHCS.
10 Protecting these public purposes on a temporary basis until such time as the Court can
11 hold a hearing on the appropriateness of a preliminary injunction far outweighs any
12 interest that DHCS could plausibly assert given that there is no ongoing fraud, DHCS
13 has had the benefit of a monitor of its choosing, there is a PCO, and the Debtor is
14 subject to transparency and supervision before this Court.

15 Additionally, DHCS’ suspension will cause network adequacy issues in
16 violation of Medicare statutes. States that elect to enroll individuals in managed care
17 plans (as does California) must ensure access to care. See 42 U.S.C. § 1396u–2
18 (a)(1)(A). Federal regulations require states to develop and enforce specific time and
19 distance and timely access standards. Specifically, DHCS has failed to ensure, as
20 required by 42 C.F.R. § 438.66(d)(1), that the plans being assigned enrollees in the
21 Debtor’s area of operations have the ability and capacity to adequately serve these
22 new enrollees. And, as discussed above, DHCS has failed to comply with state law
23 requirements for DHCS to conduct a plan readiness review for populations subject to
24 mandatory Medi-Cal enrollment. *See* Welf. & Inst. Code § 14184.200; DHCS APL
25 21-015, Benefit Standardization and Mandatory Managed Care Enrollment
26 Provisions of the California Advancing and Innovating Medi-Cal Initiative (Oct. 18,
27 2021), available at <https://www.dhcs.ca.gov/formsandpubs/Documents/MMCD>
28 [APLsandPolicyLetters/APL2021/APL21-015.pdf](https://www.dhcs.ca.gov/formsandpubs/Documents/MMCD). Without the Debtor, DHCS will

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1 have a number of network adequacy issues, which it appears it has not addressed,
2 including ensuring:

3 • There are enough PCPs within the network to meet a physician-to-
4 enrollee ratio of at least one PCP for every 1,200 enrollees of the MCP. *See* 28 C.C.R.,
5 § 1300.67.2(d).

6 • That PCPs must be available for a nonurgent appointment within ten
7 business days of the request for appointment. *See* Health & Saf. Code §1367.03(5)(C);
8 *See also* 28 C.C.R., § 1300.67.2(c)(5)(C).

9 • There must be at least one specialist within 75 minutes or 45 miles from
10 the beneficiary’s place of residence. *See Id.* § 14197(c)(1)(C).)

11 • Specialty care and ancillary care must be available for a nonurgent
12 appointment within fifteen business days of the request for appointment. *See* Health
13 & Saf. Code §1367.03(5)(D); *see also* Health & Saf. Code §1367.03(5)(F); 28 C.C.R.,
14 §§ 1300.67.2(c)(5)(D), (c)(5)(G).)

15 Accordingly, until and unless DHCS completes an assessment of all of the
16 above-stated network adequacy issues and determines that all network adequacy
17 standards are met, DHCS must be enjoined from the going forward with the
18 suspension of the Debtor. DHCS’ assessment must include analysis specific to the
19 geographic area covered by the Debtor and consider the impact of the suspension on
20 Medi-Cal beneficiaries in this area. Network adequacy requirements are intended to
21 ensure that Medi-Cal beneficiaries have timely access to care; the proposed
22 suspension will have the opposite effect.

23 **IV. CONCLUSION**

24 For all of the reasons set forth above, the Court should find that the
25 automatic stay applies to DHCS conduct. Alternatively, the Court should issue a TRO
26 to protect the Debtor from DHCS’ knowing violation of the automatic stay. The
27 Debtor requests that such relief be implemented immediately and for a period of at
28 least fourteen (14) calendar days or until such time as the Court schedules and holds

1 a hearing on the Debtor’s request for a preliminary injunction for the duration of this
2 proceeding.

3 Dated: September 26, 2022

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

6 /s/ Tania M. Moyron
7 Proposed Attorneys for the Chapter 11
8 Debtor and Debtor In Possession
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DECLARATION OF ROSE MACISAAC

I, Rose MacIsaac, hereby state and declare as follows:

1. I am the Chief Executive Officer (“CEO”) of Borrego Community Health Foundation (the “Debtor”). I have over 10 years of experience in healthcare leadership. Before being appointed as Interim CEO in August 2022, I served as Chief Financial Officer commencing in February 2022. Previously I served as Chief Financial Officer (“CFO”) and then CFO and Chief Operating Officer from October 2019 to February 2022, for OLE Health in Napa, California; CFO for One Community Health Sacramento in Sacramento, California from June 2018 to October 2019; controller and later CFO for Asian Health Services from November 2014 to September 2018; and Accounting Manager for ALLDATA in Elk Grove, California from October 2012 to November 2014. I have a B.S. in Accounting from the University of Phoenix and am a graduate of the University of California, San Francisco Clinic Leadership Institute in 2017. I am a Certified Healthcare Financial Professional from the Healthcare Financial Management Association in 2019.

2. I am providing this declaration in support of the *Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining Order* (the “Motion”).

3. In my role as CEO, I am appointed by and responsible to the Board and am charged with providing leadership, overall direction and administration of the Debtor’s operations. I am responsible for (i) interpreting and applying the policies of the Board; (ii) establishing and implementing basic procedures within which the various activities of the Debtor will be conducted; and (iii) assisting the Board in developing short and long-range goals for the organization and evaluating the Debtor’s activities. Additionally, my responsibilities include, but are not limited to: (a) analyzing operations to evaluate the Debtor’s performance and its staff in meeting objectives; (b) determining areas of potential cost reduction, program improvement, or policy change; (c) directing and coordinating the Debtor’s financial and budget activities in order to fund operations, maximize investments, and increase efficiency; (d) conferring with board members and staff members to discuss issues, coordinate activities, and resolve problems; (e) preparing annual budgets for approval, including those for funding and implementation programs; (f) negotiating and

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1 approving contracts and agreements with providers, suppliers, distributors, federal and state
2 agencies, and other organizational entities; (g) reviewing reports submitted by staff members in
3 order to recommend approval or suggest changes; and (h) appointing department heads or managers,
4 and assigning or delegating responsibilities to them.

5 4. I am knowledgeable and familiar with the Debtor’s day-to-day operations, business
6 and financial affairs, and the circumstances leading to the commencement of the Debtor’s
7 bankruptcy case.

8 5. The Department of Health Care Services (“DHCS”) has notified the Debtor that the
9 Debtor will have all payments by the Medi-Cal program suspended, effective September 29, 2022.
10 Medi-Cal payments represent a significant percentage of the Debtor’s revenue.

11 6. The Debtor is a Federally Qualified Health Center (“FQHC”) operating a network of
12 community clinics that provide a broad array of comprehensive primary care, urgent care,
13 behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care,
14 veteran’s health, chiropractic services, tele-health, and pharmacy throughout Southern California
15 that the federal government formally recognizes as medically underserved areas (“MUAs”). The
16 Debtor is a significant part (if not the only part) of the health care “safety net” in the communities
17 in which it operates. Since the organization’s focus is providing care in underserved areas, the
18 majority of the Debtor’s patients are Medi-Cal beneficiaries without meaningful access to other
19 health care. Despite the requirement that such a suspension be temporary, DHCS, which has
20 essentially inside knowledge of the Debtor’s operations and finances, knows full well that this
21 suspension will be the equivalent of a “death penalty” for the Debtor and has seemingly pursued
22 this process to accomplish the goal of putting the Debtor out of business.

23 7. In response to this threat by DHCS, the Debtor commenced the Bankruptcy Case to,
24 among other things, obtain the protection of the automatic stay and to protect its patient population
25 and explore all available restructuring options.

26 8. DHCS is taking this extraordinary step to enforce to, among other things, suspend
27 Medi-Cal payments despite the fact that: (1) the actions that give rise to the alleged fraud ceased
28 months ago, and DHCS has knowledge of this; (2) DHCS is closely watching the Debtor and its

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1 operations, including through a full-time Monitor embedded within the Debtor; and (3) the Debtor
2 has at all times been in substantial compliance with the conditions of its continued operation, as set
3 forth in the written settlement agreement between DHCS and the Debtor, dated January 26, 2021.
4 To avoid the destruction of the Debtor’s medical treatment system, causing immediate and
5 irreparable harm to it, as well as to thousands of patients, the Debtor is compelled to seek emergency
6 relief to forestall imposition of the suspension.

7 9. I am informed and believe that (i) on October 20, 2020, the California Department
8 of Justice (“DOJ”), Division of Medi-Cal Fraud and Elder Abuse (“DMFEA”) executed search
9 warrants at two of the Debtor’s administrative offices; and (ii) the DOJ had been invited to the
10 Debtor’s offices that day for a meeting where the Debtor was going to voluntarily present its
11 concerns regarding dental providers contracted with it.

12 10. I am informed and believe that by letter dated November 18, 2020, the Debtor was
13 advised that DHCS was temporarily suspending the Debtor’s Medi-Cal provider numbers, effective
14 that same day, due to an ongoing investigation by the DMFEA.

15 11. I am informed and believe that (i) the Debtor appealed the temporary suspension
16 through the meet-and-confer process; and (ii) the Debtor and its representatives met with DHCS and
17 explained how a narrowly-tailored payment suspension would be more appropriate and how there
18 was good cause to permit the Debtor to continue to operate, for among other reasons, the fact it was
19 delivering services to underserved areas designated by HRSA.

20 12. I am informed and believe that (i) by letter dated January 29, 2021, DHCS notified
21 the Debtor that it was modifying the payment suspension to apply to in-house dental claims only;
22 and (ii) DHCS was able to narrowly draw the suspension, because the only area under investigation
23 was the Debtor’s contract dental services – services where the Debtor contracted with area dentists
24 to provide dental services on behalf of the Debtor and for its patients.

25 13. I am informed and believe that while the payment suspension was in place from
26 November 18, 2020 until January 29, 2021, DHCS retained approximately \$15,000,000 in billed
27 services that would otherwise have been payable to the Debtor. The modified payment suspension
28 for dental claims has remained in place at all times since the November 18, 2020, and it still in place

1 today. The Debtor has continued to provide dental services despite the payment suspension, because
2 patients desperately need the services.

3 14. The Debtor estimates that DHCS has withheld at least an additional \$6.7 dollars of
4 dental claims since the suspension went into effect prepetition.

5 15. I am informed and believe that (i) the Debtor executed a formal settlement agreement
6 with DHCS on January 27, 2021 (“Settlement Agreement”); (ii) the Debtor had no option other than
7 to sign the Settlement Agreement and no substantive terms were negotiable; and (iii) there was no
8 meaningful opportunity to avoid a temporary suspension without acceding to DHCS’ demands.

9 16. A requirement of the Settlement Agreement was for the Debtor to retain an
10 independent monitor. DHCS selected Berkely Research Group (“BRG”) as the compliance
11 consultant or monitor. Without any viable alternative or an option to refuse, the Debtor retained
12 BRG pursuant to the Settlement Agreement.

13 17. I am informed and believe that (i) the Debtor worked diligently with BRG and DHCS
14 to improve the Debtor’s quality and operations, including billing and compliance; (ii) despite the
15 Debtor’s best efforts, BRG’s subsequent reports resulted in DHCS demanding the Debtor execute
16 two separate Corrective Action Plans (“CAPs”) that were drafted by BRG, were not negotiable, (iii)
17 the Debtor had to accept the continuation of a partial temporary suspension; and (iv) any refusal
18 would have resulted in a full payment suspension and putting the Debtor out of business.

19 18. The Debtor diligently endeavored to comply with the Settlement Agreement and
20 CAPs. It substantially and materially complied with the terms of the agreements. DHCS’s asserted
21 ability to reimpose the full payment suspension at any time meant that the Debtor had no meaningful
22 opportunity to resist DHCS and BRG, even when their allegations were flawed or based on
23 misinterpretations. BRG and DHCS imposed a standard of performance on the Debtor that is not
24 only unattainable, but I am informed and believe, not legally required to participate in Medi-Cal.

25 19. Regardless, the Debtor made great strides and performed what was necessary to
26 comply with the Settlement Agreement and CAPs. The performance was such that in the summer
27 of 2022 the Debtor concluded that the Monitor and BRG were no longer appropriate and that DHCS
28 should further tailor the payment suspension to apply only to contract dental claims; in other words

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1 start paying for dental claims provided by the Debtor itself.

2 20. During the suspension, the Debtor has provided 30,347 dental visits that were
3 uncompensated. These services were provided through an in-house program entirely disconnected
4 from the contract dental program that was under investigation, and to date the Debtor is aware of no
5 allegation of any problems with this program.

6 21. Thus, in May 2022, the Debtor requested that DHCS meet with it to discuss further
7 modifying the payment suspension to permit payment of in-house dental claims and to consider
8 whether the Monitor and BRG, which was extremely expensive (fees for BRG to date exceed \$2.6
9 million), were still necessary.

10 22. DHCS and the Debtor met on July 7, 2022, and DHCS requested that, within two
11 weeks, the Debtor submit any documentation to support its position that the Debtor's performance
12 under the Settlement Agreement and CAPs was sufficient.

13 23. On July 22, 2022, the Debtor submitted voluminous documentation in response to
14 DHCS's areas of identified concerns under the Settlement Agreement, CAPs, and other areas that
15 DHCS and the Monitor identified at the July 7, 2022 meeting. The Debtor followed up several times
16 with the Department on the written submission, including asking for DHCS to agree to proposed
17 audit methodologies, and to address open areas under the Settlement Agreement and CAPs. For
18 example, the Settlement Agreement called for the Debtor to conduct an internal audit of contracted
19 dental claims that were billed to DHCS. The Debtor proposed a sampling and extrapolation
20 methodology that was in conformity with state auditing standards, but DHCS would not respond
21 with any feedback, much less any approval.

22 24. The purpose of the audit was to inform DHCS of any potential overpayment amount
23 impacted by contract dental. Such work calculating an overpayment amount would be useless, if
24 DHCS did not agree with the audit methodology. However, neither BRG nor DHCS approved the
25 audit plans, and the Debtor could not perform the audit. Multiple written requests for feedback have
26 been entirely ignored.

27 25. On August 19, 2022, DHCS provided two separate letters to me. The first letter was
28 from Bruce Lim, DHCS's Deputy Director. The letter from Mr. Lim explained that DHCS did not

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1 find the Debtor’s written submission persuasive, and stated, in relevant part, that DHCS was going
2 to reimpose a 100% Medi-Cal suspension on all the Debtor’s services.

3 26. In a separate letter that was stamped “CONFIDENTIAL,” Bob Sands, Assistant
4 Deputy Director for DHCS, provided additional notice of the temporary suspension for the same
5 reasons alleged in Mr. Lim’s letter (the “Sands Letter”).

6 27. The Debtor is also informed and believes that (i) DHCS provided the Sands Letter to
7 health plans whose beneficiaries are assigned to the Debtor pursuant to contracts between the Debtor
8 and those health plans, and (ii) DHCS demanded the health plans establish a plan to move all of
9 their beneficiaries to other providers through a “bulk transfer of lives.” A bulk transfer of lives is
10 irreversible. Once the bulk transfer is implemented, the Debtor will have no patients and will cease
11 to be able to operate. This is an additional action by DHCS with a permanent impact. When the
12 Debtor’s Medi-Cal payments were suspended in 2020, it continued to provide uninterrupted care to
13 its patients without payment.

14 28. Notably, the allegations made by DHCS and reported by the Union Tribune were
15 untrue. Even more problematic, I am informed and believe that the spokesperson for DHCS cited
16 inappropriate basis for a temporary suspension because a lack of performance under the Settlement
17 Agreement was not a permissible basis for a 100% temporary suspension under the statutory
18 provisions cited by DHCS in the suspension letter.

19 31. As explained above, DHCS was already aware that the Debtor had been under
20 investigation since 2020. In response, the Debtor stopped all contract dental programs and had not
21 submitted any contract dental claims. The Debtor was also cooperating with criminal and civil
22 investigators. There is no plausible theory that the Debtor was engaging in ongoing fraud with so
23 much scrutiny – it had DHCS, BRG, and civil and criminal DOJ scrutinizing its practices. The
24 Debtor even recently brought its own lawsuit against the former staff and contractors who were
25 committing fraud for their own benefit at the expense of the Debtor for years under the contract
26 dental program, until new leadership and management took over.

27 32. I am informed and believe that there was no justification under the law to reimpose
28 a 100% payment withhold, in part because the limited payment suspension already addressed the

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1 concern DHCS had with what the government was investigating criminally – dental services. I am
2 not aware of any allegation of any other criminal investigation and no explanation why a tailored
3 suspension would not be sufficient, much less how there was no longer good cause to permit the
4 Debtor to continue to provide services to patients in underserved areas.

5 33. I am informed and believe that there is not a “credible” allegation of fraud at issue
6 for the new suspension, rather there is a disingenuous allegation of ongoing fraud to try to justify an
7 improper termination.

8 34. I believe there also is no risk to Medi-Cal’s financial security. In fact, the previous
9 partial withhold was a way for DHCS to recoup some losses that may have occurred from current
10 Medi-Cal revenue. With a 100% payment suspension reimposed, there is no more revenue to
11 recoup. The suspension is about DHCS’s frustration, not the Debtor exposing the Medi-Cal program
12 to any ongoing fraud.

13 35. I am informed and believes that there is simply no meaningful way to ensure its
14 94,000 plus patients have access to care. Without the Debtor and its clinics, patients will have to t
15 ravel hours and extreme distances to seek care, which is exacerbated by the lack of public
16 transportation options.

17 36. Even if patients were able to travel to other providers, the alternate providers likely
18 do not have capacity to handle the influx of patients. It is well-established that the areas in which
19 the Debtor operates are underserved areas. The care network, even with the Debtor, is inadequate.
20 There are simply not other providers to absorb the Debtor’s patients.

21 37. Even there were sufficient capacity (there is not), the alternate providers do not have
22 the expertise to serve the Debtor’s unique patient population. The Debtor is intimately familiar with
23 the unique needs of its patient population, and provides critically important and culturally-
24 competent care to meet those unique needs. For example, the Debtor serves many transgender
25 patients and even has transgender patient advocates on staff to assist with their unique healthcare
26 needs.

27 38. The Debtor is a trusted care provider for the migrant farmworker community thanks
28 to its efforts to meet them where they live, work, and play to provide care. During the pandemic, the

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1 Debtor ran COVID-19 testing sites that started at dawn and were located at the gas station on the
2 farmworkers' route to the fields to make it accessible to the farmworkers, even doing drive-through
3 testing for those riding on tractors and combines.

4 39. The Debtor provides this type of culturally competent care to numerous hard-to-
5 reach populations, including undocumented immigrants, people living with HIV/AIDS, and many
6 others. An attempt to transfer care to another provider will break these patient connections. These
7 patient relationships, when broken, are not easily re-established.

8 40. I believe that the Debtor, its estates, and patients will suffer irreparable harm if the
9 automatic stay is not enforced and DHCS is not enjoined from suspending Medi-Cal payment.

10 41. If not enjoined, DHCS' suspension from participation in the Medi-Program will, in
11 short order, force the Debtor to cease operations and go out of business. Specifically, if the
12 suspension goes into effect, the Debtor would have to immediately: (a) shut down all 18 clinics and
13 two pharmacies; (b) close six administrative office locations; (c) cease operating and park six mobile
14 units, which deliver care to children in schools, migrant workers where they work, and to other hard-
15 to-reach populations; (d) cease all services, including pediatric care, urgent care, behavioral health,
16 dental services, specialty care, transgender health, women's health, prenatal care, veteran's health
17 and telehealth for our patients; (e) cancel all patient appointments; (f) terminate all of our
18 approximately 700 employees; and (g) begin liquidation proceedings.

19 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
20 inquiry, the foregoing is true and correct.

21

22 ///

23

24 Executed this 26th day of September 2022, at San Diego, California _____.

25

26



Rose MacIsaac

27

28

DECLARATION OF SAMUEL R. MAIZEL

I, Samuel R. Maizel, hereby state and declare as follows:

1. I am a partner in the law firm of Dentons US LLP (“Dentons”), located at 601 S. Figueroa Street #2500, Los Angeles, CA 900017, and have been duly admitted to practice law in the Commonwealth of Pennsylvania and the State of California and the United States District Court for the Southern District of California.

2. I am one of the attorneys representing Borrego Community Health Foundation, the debtor and debtor-in-possession in the above-captioned chapter 11 case and plaintiff in this adversary proceeding (the “Debtor”). Dentons is the proposed counsel to the Debtor.

3. I am providing this declaration to apprise the Court of certain facts relevant to the pending *Emergency Motion: (I) To Enforce The Automatic Stay Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining Order* (the “Motion”).

4. On Monday, September 19, 2022, my partner Tania Moyron and I spoke by telephone with Kenneth Wang, the Deputy Attorney General from the Office of the Attorney General for the State of California who appeared on behalf of the California Department of Health Care Services (“DHCS”) at the Debtor’s “first-day” hearing on September 13, 2022. During the discussion we informed Mr. Wang that the Debtor had concluded that DHCS’s threatened suspension of payments, which was to go into effect on September 29, 2022, would be a violation of the automatic stay imposed by section 362 of the Bankruptcy Code. Mr. Wang said that DHCS intended for the suspension to go into effect as planned on September 29, 2022. We told Mr. Wang that we would send him the citations to judicial precedent upon which we relied, and we agreed to speak again after he had an opportunity to review the precedent and speak with his client.

5. At 7:03pm prevailing Pacific time, on September 19, 2022, I sent Mr. Wang an email, which included citations to the two cases we thought most relevant to the argument that the proposed suspension of Medi-Cal payments was subject to the automatic stay: *True Health Diagnostics LLC v. Azar (In re THG Holdings LLC)*, 604 B.R. 154 (Bankr. D. Del. 2019) and *In re Medicar Ambulance Co., Inc.*, 166 B.R. 918 (Bankr. N.D. Cal. 1994).

6. On Thursday, September 22, 2022, my partner Tania Moyron and I had a zoom

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1 conference with Mr. Wang and another individual representing DHCS. We asked him if he had
2 considered the cases we had cited to him and whether DHCS had reconsidered its intent to impose
3 the suspension on September 29, 2022, despite the effect of the automatic stay. He repeated that
4 DHCS intended for the suspension to go into effect as planned on September 29, 2022. We asked
5 him to have DHCS reconsider this decision, in that it would force the Debtor to take actions to stop
6 the suspension from going into effect to protect access to medical care for the Debtor’s patients. He
7 said that he would speak to his client, but as of the filing of this declaration we have received no
8 further information from Mr. Wang about DHCS’s position on the suspension (or anything else).

9 7. On Sunday, September 25, 2022, Joseph R. LagMagna, from Hooper, Lundy &
10 Bookman, corresponded by email with DHCS representatives as part of the “ongoing meet and
11 confer” process. In that correspondence, he requested that DHCS agree to postpone the planned
12 suspension for a “reasonable period of time” and stated that if the suspension were not postponed,
13 bankruptcy counsel would be filing a complaint and seeking a temporary restraining order in the
14 bankruptcy case. Mr. Wang was forwarded that email by me shortly after the email was sent. On
15 Monday, September 26, 2022, an attorney from the Office of Legal Services for the DHCS replied
16 by email that “DHCS denies the characterization ... of the Department’s communications.” Nothing
17 more was said.

18 I declare under penalty of perjury that, to the best of my knowledge and after reasonable
19 inquiry, the foregoing is true and correct.

20 Executed this 26th day of September 2022, at Los Angeles, California.

21
22 

23
24 _____
Samuel R. Maizel

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Exhibit "A"
(Proposed Order)

CSD 3000C [07/01/18]

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

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TANIA M. MOYRON (Bar No. 235736)

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

In Re Borrego Community Health Foundation

LODGED

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:

Time of Hearing:

Name of Judge: Honorable Laura S. Taylor

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. Notice of Lodgment Docket Entry No. _____ .

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DATED:

Judge, United States Bankruptcy Court

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 Debtor's Emergency Motion to (I) Enforce the Automatic Stay or, Alternatively, (II) for Temporary Restraining Order (the "Emergency Motion") [Adv. Docket No. ___] 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 Motion, the Complaint for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for Writ of Mandate, filed by the Debtor [Adv. Docket No. 1] (the "Complaint"), the declarations and evidence in support of the Motion, any responses or replies to the Motion, and the arguments of counsel on the record; and the Court having found that the relief requested in the 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 Motion and the opportunity for a hearing on the Motion under the circumstances,

THE COURT RULES:

The automatic stay under section 362 of the Bankruptcy Code does not permit the DHCS to take any Department Action (as defined in the Complaint), and : (i) DHCS' enforcement of its decision set forth in its prepetition letter, dated August 19, 2022, to suspend all payments under Medi-Cal to the Debtor effective September 29, 2022, is a violation of the automatic stay under §§ 362(a)(1), (3), and (6); (ii) DHCS' ongoing withholding of payments for in-house dental services is a violation of the automatic stay because it constitutes an act to take possession of property of the estate or from the estate, exercise control over property of the estate, and or to collect, assess, or recover a claim against the Debtor that arose prepetition under §§ 362(a)(3) and (6); and (iii) DHCS' efforts to compel parties that have contracts with the Debtor, including health plans such as Inland Empire Health Plan, to block transfer patients from the Debtor and refuse to assign new patients to the Debtor, are violations of the automatic stay because they constitute acts to take possession of property of the estate or from the estate, exercise control over property of the estate, and to collect, asses, or recover a claim against the Debtor that arose prepetition under §§ 362(a)(3), and (6) (with each action described in this paragraph, including the Department Actions, a DHCS Stay Violation).

The Debtor will be irreparably harmed by any DHCS Stay Violation.

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. DHCS shall comply with the automatic stay and not suspend Medi-Cal payments to the Debtor and shall take necessary corrective action to the extent required.
3. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion. DHCS shall cooperate with the Debtor to resolve any issues regarding effectuation of this Order.
4. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

**Exhibit “B”
(Proposed Order)**

CSD 3000C [07/01/18]

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

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

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

In Re Borrego Community Health Foundation

LODGED

Debtor.

BANKRUPTCY NO. 22-02384

Borrego Community Health Foundation

Plaintiff(s)

ADVERSARY NO. 22-90056

v. California Department of Health Care Services, by and through its Director, Michelle Baass

Defendant(s)

Date of Hearing:

Time of Hearing:

Name of Judge: Honorable Laura S. Taylor

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. Notice of Lodgment Docket Entry No. _____ .

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DATED:

Judge, United States Bankruptcy Court

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 Debtor's 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") [Adv. Docket No. ___] 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 Complaint for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for Writ of Mandate, filed by the Debtor [Adv. Docket No. 1] (the "Complaint"), the declarations and evidence in support of the Motion, any responses or replies to the Motion, and the arguments of counsel on the record; and the Court having found that the relief requested in the 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 Motion and the opportunity for a hearing on the Motion under the circumstances,

THE COURT RULES:

The Court rules that: (i) the California Department of Health Care Services' ("DHCS") proposed postpetition suspension of all Medi-Cal payments to the Debtor, effective September 29, 2022, is a violation of the automatic stay under §§ 362(a)(1), (3), and (6); (ii) DHCS' ongoing withholding of payments for in-house dental services is a violation of the automatic stay because it constitutes an act to take possession of property of the estate or from the estate, exercise control over property of the estate, and or to collect, assess, or recover a claim against the Debtor that arose prepetition under §§ 362(a)(3) and (6); and (iii) DHCS' efforts to compel parties that have contracts with the Debtor, including health plans such as Inland Empire Health Plan, to block transfer patients from the Debtor and refuse to assign new patients to the Debtor, are violations of the automatic stay because they constitute acts to take possession of property of the estate or from the estate, exercise control over property of the estate, and to collect, asses, or recover a claim against the Debtor that arose prepetition under §§ 362(a)(3), and (6) (with each action described in this paragraph, including the Department Actions, a DHCS Stay Violation).

The DHCS Stay Violation would cause immediate and irreparable harm to the Debtor, its estate, and thousands of patients by suspending all Medi-Cal payments and taking other related acts which would, inevitably, cause the Debtor to close its clinics and cease providing essential medical services to low income and rural patients in Southern California.

IT IS HEREBY ORDERED THAT:

1. The TRO sought in the Motion is granted.
2. DHCS is hereby enjoined from continuing with its suspension of Medi-Cal payments..
3. DHCS, and all those acting in active concert and participation with it, is enjoined from taking any DHCS Stay Violation.
4. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion. DHCS shall cooperate with the Debtor to resolve any issues regarding effectuation of this Order.
5. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.