

Ethan P. Davis
Acting Assistant Attorney General
William D. Hyslop
United States Attorney
Brian M. Donovan
Assistant United States Attorney
Post Office Box 1494
Spokane, WA 99210-1494
Telephone: (509) 353-2767

Ruth A. Harvey
Marcus S. Sacks
Daniel Martin
U.S. Department of Justice, Civil Division
PO Box 875
Ben Franklin Station
Washington, District of Columbia 20044
Telephone: (202) 307-1104

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF WASHINGTON

In Re:

ASTRIA HEALTH, et al.¹

Debtors and Debtors in
Possession,

Bankruptcy Case No. 19-01189-11-
WLH

ASTRIA HEALTH, et al.,

Adv. Proc. Case No. 20-80016-WLH

¹ The Debtors, along with their case numbers, are as follows: Astria Health (19-01189-11), Glacier Canyon, LLC (19-01193-11), Kitchen and Bath Furnishings, LLC (19-01194-11), Oxbow Summit, LLC (19-01195-11), SHC Holdco, LLC (19-01196-11), SHC Medical Center - Toppenish (19-01190-11), SHC Medical Center - Yakima (19-01192-11), Sunnyside Community Hospital Association (19-01191-11), Sunnyside Community Hospital Home Medical Supply, LLC (19-01197-11), Sunnyside Home Health (19-01198-11), Sunnyside Professional Services, LLC (19-01199-11), Yakima Home Care Holdings, LLC (19-01201-11), and Yakima HMA Home Health, LLC (19-01200-11).



Plaintiffs,

v.

UNITED STATES SMALL
BUSINESS ADMINISTRATION
and JOVITA CARRANZA, in her
capacity as Administrator for the
United States Small Business
Administration,

Defendants.

UNITED STATES SMALL
BUSINESS ADMINISTRATION, et
al.,

Movants,

v.

ASTRIA HEALTH, et al.,

Respondents.

Case No.: 1:20-cv-03109-RMP

MOVANTS' NOTICE OF
SUPPLEMENTAL AUTHORITY
RELATED TO MOTION FOR
MANDATORY WITHDRAWAL
OF REFERENCE (ECF No. 1-3)

Movants, the U.S. Small Business Administration ("SBA") and Jovita Carranza, in her capacity as Administrator for the SBA, hereby notify the Court of the attached Order granting the United States' Motion for Mandatory Withdrawal of Reference in *All Sorts of Services of America, Inc. v. U.S. Small Business Administration*, No. 8:20-cv-1552-MSS, slip op. (M.D. Fla. July 17, 2020), an adversary proceeding, like the one at issue here, in which the plaintiff argued that SBA's exclusion of bankrupt debtors from the Paycheck Protection Program

1 violated the Administrative Procedure Act, 5 U.S.C. § 701 *et seq.*, and 11 U.S.C.
2 525(a).

3 The district court concluded that “withdrawal of the reference is mandatory
4 because resolution of this action requires ‘significant interpretation’ of the recently
5 enacted CARES Act, a non-bankruptcy federal statute that undoubtedly affects
6 interstate commerce.” *Id.* at 3. The district court further concluded that the case
7 “raises a complicated question of statutory interpretation that has divided federal
8 courts across the country, [leaving] no question that these claims require more than
9 the mere application of well-settled or hornbook nonbankruptcy law.” *Id.* at 4
10 (quotation omitted).
11
12
13

14 Respectfully Submitted: July 24, 2020

15 ETHAN P. DAVIS
16 Acting Assistant Attorney General

17 WILLIAM D. HYSLOP
18 United States Attorney

19 /s/ Brian M. Donovan
20 BRIAN M. DONOVAN
21 Assistant United States Attorney

22 RUTH A. HARVEY
23 MARCUS S. SACKS
24 DANIEL MARTIN
25 Commercial Litigation Branch
26 Civil Division
27 United States Department of Justice
28 P.O. Box 875
Ben Franklin Station

Washington D.C. 20044
Tel. (202) 307-1104
marcus.s.sacks@usdoj.gov
daniel.j.martin@usdoj.gov

Attorneys for the United States

CERTIFICATE OF SERVICE

I hereby certify that on July 24, 2020, I electronically filed the attached document with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Sam Alberts
sam.alberts@dentons.com

James L Day
jday@bskd.com

And via email to the following non CM/ECF participants:

Samuel R Maizel
samuel.maizel@dentons.com

Geoffrey M. Miller
geoffrey.miller@dentons.com

Sarah M. Schrag
sarah.schrag@dentons.com

s/Brian M. Donovan
Assistant United States Attorney

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

ALL SORTS OF SERVICES OF
AMERICA, INC.,

Plaintiff,

v.

Case No: 8:20-cv-1552-MSS

THE U.S. SMALL BUSINESS
ADMINISTRATION
and JOVITA CARRANZA,

Defendants.

ORDER

THIS CAUSE comes before the Court for consideration of Defendants' Motion for Mandatory Withdrawal of Reference, (Dkt. 1), and Plaintiff's response in opposition thereto. (Dkt. 4) Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court **GRANTS** the Motion for Mandatory Withdrawal of Reference.

I. BACKGROUND

Plaintiff All Sorts of Services of America, Inc. is a chimney repair and cleaning service that filed for Chapter 11 bankruptcy on March 5, 2020. In re All Sorts of Services of America, Inc., 8:20-bk-01953-MGW (Bankr. M.D. Fla.). Three months after seeking Chapter 11 relief, on June 1, 2020, All Sorts brought an adversary proceeding against Defendants the U.S. Small Business Administration and Jovita Carranza (collectively, "SBA"), challenging the SBA's decision to exclude bankrupt entities such as All Sorts from participation in the Paycheck Protection Program ("PPP"), a multi-billion dollar loan guarantee program created under the Coronavirus Aid, Relief, and Economic Stimulus ("CARES") Act that "allow[s] lenders to give federally guaranteed loans [to small

businesses] to cover payroll” and other expenses. All Sorts of Services of America, Inc. v. U.S. Small Business Administration et al., Adv. No. 20-ap-00333-MGW, Dkt. 1 at ¶ 9 (Bankr. M.D. Fla.). All Sorts contends that, in excluding bankrupt entities from participation in the PPP, the SBA (i) exceeded its statutory authority under the CARES Act and acted arbitrarily or capriciously in violation of the Administrative Procedure Act (“APA”), and (ii) violated Section 525(a) of the Bankruptcy Code, which forbids the government from “deny[ing] . . . a license, permit, charter, franchise, or other similar grant to . . . a person that is . . . a debtor under this title.” Id. at ¶¶ 38-90. All Sorts seeks, among other things, an injunction barring the SBA from “denying [it] a loan under the PPP based on [its] status as a chapter 11 debtor.” Id. at 13.

On June 3, All Sorts served the SBA and moved for an emergency hearing on its Complaint, explaining that “[t]he funds authorized to be distributed under the PPP may be soon exhausted.” All Sorts of Services of America, Inc. v. U.S. Small Business Administration et al., Adv. No. 20-ap-00333-MGW, Dkts. 3, 4. The same day, Judge Michael G. Williamson scheduled a preliminary hearing for June 17. Id. Dkt. 9.

One day before the scheduled hearing, the SBA moved to withdraw the reference. (Dkt. 1) The SBA contended that withdrawal was mandatory under 28 U.S.C. § 157(d) because resolution of the issues in this case “will require an interpretation—not merely an application—of the newly enacted CARES Act.” (Id. at 2) The motion was transmitted to this Court on July 8, and All Sorts filed its response on July 13. (Dkts. 1, 4)

Meanwhile, at the June 17 hearing, Judge Williamson granted the motion for an emergency hearing, ordered the Parties to file cross-motions for summary judgment by July 1, and scheduled a hearing on those motions for July 8. All Sorts of Services of

America, Inc. v. U.S. Small Business Administration et al., Adv. No. 20-ap-00333-MGW, Dkt. 9. Judge Williamson took the cross-motions for summary judgment under advisement at the July 8 hearing, and they remain pending before him. Id. Dkt. 18.

II. DISCUSSION

A “district court shall, on timely motion of a party, [] withdraw a proceeding [referred to a bankruptcy court] if the court determines that resolution of the proceeding requires consideration of both title 11 and other laws of the United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C. § 157(d). “The majority of courts interpret [this] provision restrictively, finding withdrawal mandatory only when a claim or defense entails material and substantial consideration of non-Bankruptcy Code federal law.” Maier v. TD Bank, Nat’l Ass’n, No. 3:18-CV-462-J-32, 2018 WL 3870063, at *1 (M.D. Fla. Aug. 15, 2018). Thus, “for withdrawal to be warranted, the issue must require more than the mere application of well-settled or ‘hornbook’ non-bankruptcy law; significant interpretation of the non-Code statute must be required.” In re Cynthia S. Victor Debtors, No. 2:15-MC-2198-VEH, 2016 WL 3997235, at *3 (N.D. Ala. July 26, 2016); see also In re Pearlman, No. 6:08-CV-81-ORL-22, 2008 WL 786809, at *1 (M.D. Fla. Mar. 20, 2008) (“The federal question will require withdrawal only when there are complicated interpretative issues or matters of conflict or first impression.”).

Here, withdrawal of the reference is mandatory because resolution of this action requires “significant interpretation” of the recently enacted CARES Act, a non-bankruptcy federal statute that undoubtedly affects interstate commerce. In re Cynthia S. Victor Debtors, 2016 WL 3997235, at *3. All Sorts alleges that the SBA exceeded its authority under the CARES Act when it promulgated a rule disqualifying bankrupt entities from participation in the PPP. All Sorts of Services of America, Inc. v. U.S. Small Business

Administration et al., Adv. No. 20-ap-00333-MGW, Dkt. 1 at ¶¶ 38-50. This raises a complicated question of statutory interpretation that has divided federal courts across the country. Compare, e.g., Tradeways, Ltd. v. United States Dep't of the Treasury, No. CV ELH-20-1324, 2020 WL 3447767, at *15 (D. Md. June 24, 2020) (“I find that [the plaintiff] is unlikely to establish that the SBA’s [rule disqualifying bankrupt entities from the PPP] exceeds the SBA’s authority under the CARES Act.”), with In re Roman Catholic Church of Archdiocese of Santa Fe, No. 18-13027 T11, 2020 WL 2096113, at *7 (Bankr. D.N.M. May 1, 2020) (“Defendant exceeded its authority [under the CARES Act] by trying to prohibit bankruptcy debtors from getting PPP funds.”). Likewise, All Sorts contends that the decision to exclude bankrupt entities from the PPP was arbitrary or capricious under the APA—an issue that requires consideration of whether the SBA evaluated “the relevant factors [in making its decision] and whether [the] decision . . . was a clear error of judgment.” In re Gateway Radiology Consultants, P.A., No. 8:19-BK-04971-MGW, 2020 WL 3048197, at *13 (Bankr. M.D. Fla. June 8, 2020).¹ There is no question that these claims “require more than the mere application of well-settled or ‘hornbook’ non-bankruptcy law.” In re Cynthia S. Victor Debtors, 2016 WL 3997235, at *3.

All Sorts contends that “withdrawal is not mandatory” because “the instant case arises from discrimination against debtors” in violation of Section 525(a) of the Bankruptcy Code. (Dkt. 4 at ¶¶ 14-15) All Sorts asserts that the exclusion of bankrupt entities from

¹ The Eleventh Circuit has yet to weigh in on the validity of the SBA’s decision to exclude bankrupt entities from the PPP. In In re Gateway Radiology Consultants, P.A., however, Judge Williamson concluded that (i) the SBA “exceeded [its] authority” when it “promulgated a rule disqualifying debtors from participating in the [PPP],” and (ii) the SBA’s rule was “arbitrary and capricious.” 2020 WL 3048197, at *1. Judge Williamson subsequently certified his decision for direct appeal to the Eleventh Circuit, expressly finding that (i) the order involves a question of law for which there is no controlling decision of the U.S. Supreme Court or the Eleventh Circuit, (ii) the order involves a matter of public importance, and (iii) the order involves a question of law requiring resolution of conflicting decisions. Small Business Administration v. Gateway Radiology Consultants, P.A., 8:20-cv-01492-TPB, Dkt. 2 (M.D. Fla.).

the PPP violates not only the CARES Act and the APA, but also Section 525(a). It does not follow, however, that withdrawal of the reference is not mandatory. The statute mandates withdrawal where “resolution of the proceeding requires consideration of *both* title 11 [that is, the Bankruptcy Code] *and* other laws of the United States regulating organizations or activities affecting interstate commerce.” 28 U.S.C. § 157(d) (emphasis added). All Sorts’ claims require consideration of the Bankruptcy Code and “significant interpretation” of non-bankruptcy federal law. In re Cynthia S. Victor Debtors, 2016 WL 3997235, at *3. Withdrawal is therefore required.

As a fallback, All Sorts argues that if the Court withdraws the reference, it should simultaneously grant summary judgment in All Sorts’ favor. (Dkt. 4 at ¶ 17) The Court declines to do so. When a motion to withdraw the reference is granted in this district, a new case is opened and randomly assigned to a judge in accordance with Local Rule 1.03(b). See, e.g., Clear Glass Mobile Serv., Inc. v. Old Republic Surety Co., 8:18-cv-01656-SDM, Dkt. 7 (M.D. Fla. Nov. 2, 2018) (granting motion to withdraw reference and directing Clerk “(1) to collect the statutory filing fee for a new case in the district court, (2) to assign the withdrawn proceeding a case number, and (3) to randomly assign the case to a district judge and a magistrate judge in accord with Local Rules 1.03(b) and (d)”; Maxwell v. Burns et al., 8:15-cv-01957-MSS, Dkt. 6 (M.D. Fla. Oct. 21, 2015) (same). The Court sees no reason to depart from that procedure here. All Sorts is free to renew its motion for summary judgment once the case has been assigned.

III. CONCLUSION

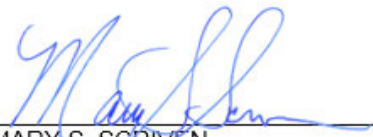
Upon consideration of the foregoing, it is hereby **ORDERED** as follows:

1. Defendants’ Motion for Mandatory Withdrawal of Reference, (Dkt. 1), is

GRANTED.

2. The **Clerk of the Bankruptcy Court** is **DIRECTED** to transfer the file to the Clerk of this Court.
3. The **Clerk of this Court** is thereafter **DIRECTED** to open a new matter as a civil case and assign it under the blind filing system established pursuant to the rules of this Court.
4. The **Clerk of this Court** is **DIRECTED** to close Case No. 8:20-cv-1552-MSS.

DONE and ORDERED at Tampa, Florida this 17th day of July, 2020.



MARY S. SCRIVEN
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of Record
Any Unrepresented Party