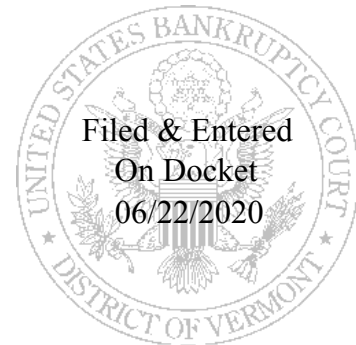


**UNITED STATES BANKRUPTCY COURT
DISTRICT OF VERMONT**



**In re:
Springfield Hospital, Inc.,
Debtor-in-Possession.**

**Chapter 11 Case
19-10283**

**In re:
Springfield Hospital, Inc.,
Plaintiff,
v.
Jovita Carranza, in her capacity as
Administrator for the U.S. Small
Business Administration,
Defendant.**

**Adversary Proceeding
20-01003**

**In re:
Springfield Medical Care Systems, Inc.,
Debtor-in-Possession.**

**Chapter 11 Case
19-10285**

**In re:
Springfield Medical Care Systems, Inc.,
Plaintiff,
v.
Jovita Carranza, in her capacity as
Administrator for the U.S. Small
Business Administration,
Defendant.**

**Adversary Proceeding
20-01004**

**ORDER
GRANTING SUMMARY JUDGMENT AND PERMANENT INJUNCTION TO PLAINTIFFS
ON THE § 525 CLAIMS**

In accordance with the findings of fact and conclusions of law articulated in the accompanying memorandum of decision of even date, the Court finds (i) there are no material facts in dispute with respect to either the Plaintiffs' § 525(a) claims or the Plaintiffs' request for a permanent injunction, (ii) the Plaintiffs are entitled to judgment as a matter of law on their § 525(a) claims, and (iii) the Plaintiffs are entitled to a permanent injunction.

Accordingly, IT IS HEREBY ORDERED that summary judgment is GRANTED in favor of the Plaintiffs on their § 525(a) claims.

their § 525(a) claims are GRANTED.

IT IS FURTHER ORDERED the terms of the Second TRO¹ issued in each of these proceedings are hereby incorporated into the permanent injunction granted in this Order, as set forth in modified format below, and apply to the Defendant Administrator and all agents, servants, employees, and any parties acting in concert with any of the foregoing parties with respect to a PPP application from either of both of the Plaintiffs (collectively, the "Enjoined Parties").

1. Mascoma, or any other lender participating in PPP to whom the Plaintiffs submit a PPP application and give notice of this Order, shall be one of the Enjoined Parties.
2. The Enjoined Parties shall not deny, or cause any commercial lender to deny, a PPP application of either Plaintiff solely on the basis that the Plaintiff is a debtor in bankruptcy, or based on the words "or presently in bankruptcy" on the Administrator's official form of PPP application.
3. The Enjoined Parties shall not refuse to guaranty a loan sought by either Plaintiff under PPP solely on the basis that the Plaintiff is a debtor in bankruptcy or because of a "yes" answer in response to question 1 on the official form of PPP application promulgated by the Administrator.
4. The Enjoined Parties shall not authorize, guaranty, or disburse funds appropriated for loans under PPP without reserving sufficient funds or guaranty authority within the scope of the second appropriation to fund PPP to provide the Plaintiffs with access to funds under the PPP if the Plaintiffs are eligible to receive funds from the PPP program, after deleting all references to their bankruptcy cases. Nothing in this paragraph is intended to limit the ability of a commercial lender that is one of the Enjoined Parties from issuing PPP loans to other eligible entities. Rather, this Order requires the Administrator to ensure she has sufficient authority within the scope of amounts appropriated for PPP as of this date to guaranty a loan to each of the Plaintiffs in an amount each of the Plaintiffs may be qualified to obtain, at this time.
5. Each of the Plaintiffs is authorized to submit a PPP application to a participating lender of its choice – and a participating lender shall consider any pending application of the Plaintiffs – with the words "or presently involved in any bankruptcy" stricken from the official form of application and, if the Plaintiff applicant satisfies all other conditions in question 1 of the official loan application form, to mark the box answering question 1 "no" or, with respect to any pending application, the participating lender shall treat question 1 as if the applicant answered it "no." The Enjoined Parties shall consider applications submitted by the Plaintiffs and shall fully implement all aspects of the PPP with respect to the Plaintiffs without consideration of the

¹ Capitalized terms not defined here shall have the meaning given to them in the memorandum of decision.

involvement of the Plaintiffs or any of its owners in any bankruptcy case. The application shall be considered an initial application if the submission of a subsequent application would adversely impact the Plaintiff's ability to qualify for a PPP loan.

6. To the extent any lender requires either of the Plaintiffs to execute other forms, applications, or other documents for a PPP loan that include language about whether the Plaintiffs or any owner of the Plaintiffs is involved in a bankruptcy case, the Plaintiffs are authorized to strike the language about involvement in a bankruptcy case and the Enjoined Parties shall process the forms, applications, or other documents without consideration of the involvement of the Plaintiffs or any owner of the Plaintiffs in a bankruptcy case.
7. The Enjoined Parties shall not condition the approval of any PPP loan guaranty related to the Plaintiffs on whether the Plaintiffs or any owner of the Plaintiffs are not "presently involved in any bankruptcy."
8. Any deadline under the PPP program requiring disbursement of PPP funds to the Plaintiffs, after approval of their PPP applications, is hereby extended until an Order is entered, either (a) authorizing the Plaintiff to enter into a transaction to obtain PPP funds or (b) directing disbursement of PPP funds, that becomes final and not subject to further appeal. Without limiting the foregoing, no PPP application of the Plaintiffs (or approval of such applications) shall be terminated or canceled because PPP funds are not disbursed prior to an order described in the prior sentence becoming final and not subject to further appeal.

IT IS FURTHER ORDERED, to implement the conclusions reached in the memorandum of decision of even date, and to clarify and expand the terms of the Second TROs, with the intention of providing additional safeguards that will balance the risks to, and protect the rights of, the Plaintiffs, the Defendant, and Mascoma (and any other Enjoined Parties), that:

9. The Enjoined Parties shall allow the Plaintiffs to participate fully in all aspects of the PPP, if otherwise eligible, once the Plaintiffs' bankruptcy status is disregarded, including submission of a PPP application, review of the application by a participating financial institution, participation in forgiveness and review of an application for forgiveness, and provision of a 100% SBA guaranty. This mandate includes the requirement that the Enjoined Parties shall recognize that the Plaintiffs did not lose their qualification as "eligible recipients," as defined in the CARES Act, as a result of these bankruptcy cases or by filing PPP loan applications that did not disclose their involvement in bankruptcy.

10. The Enjoined Parties, shall treat May 15, 2020,² as the date the Plaintiffs received the PPP funds and the start of the “covered period” as defined by §§ 1102 and 1106 of the CARES Act, even though the Plaintiffs will not actually receive any PPP funds until a later date. This fictional approval date is necessary to protect the rights of the Enjoined Parties and is consistent with the stay of certain crucial deadlines, including those established by 15 U.S.C. § 9005 (see ¶ 16, below).
11. The Plaintiffs shall submit their PPP forgiveness applications at the end of the “covered period.” In each of those forgiveness applications, the respective Plaintiff shall
 - (a) itemize all expenditures that are authorized under the PPP, which that Plaintiff made during the covered period, and
 - (b) account for their expenditures during the covered period, up to a sum no less than the amount of funds that Plaintiff sought – and obtained approval of – in their PPP applications.
12. The Defendant, as well as any other Enjoined Party required to participate in this analysis, shall process and review the Plaintiffs’ forgiveness applications as required by the CARES Act and the SBA’s rules and guidance, except that they shall disregard the Plaintiffs’ bankruptcy status in that analysis and determination of forgiveness.
13. The Enjoined Parties shall complete the forgiveness analysis, and advise Mascoma (or any other lender that grants either of the Plaintiffs’ PPP applications) and the Plaintiffs of their determination, within the same approximate timeframe as they are analyzing, determining, and issuing notice of their forgiveness decisions to other similarly situated non-debtor medical facility PPP recipients.
14. The Plaintiffs’ bankruptcy status shall not be a permitted basis for the Enjoined Parties to refuse to honor the forgiveness, payment, or guaranty obligations to a participating financial institution that approved the Plaintiffs’ PPP applications, including but not limited to Mascoma.
15. Any actions which Mascoma – or any other lender that grants either of the Plaintiffs’ PPP applications – takes in compliance with orders of this Court, or any appeal thereof, including but not limited to, submitting loan applications to the SBA that did not disclose the Plaintiffs’ bankruptcy status, extending or failing to meet time requirements for the disbursement of PPP loan funds, shall:
 - (a) have no adverse effect on said lender’s eligibility for the SBA guaranty, payment of lender processing fees, and remittance of amounts of loan forgiveness by said lender; and

² The Court designates May 15, 2020 as the deemed date of disbursement because that is the date Mascoma, pursuant to the Second TRO, submitted the Plaintiffs’ applications to the SBA’s E-tran system and obtained electronic approval of their participation in PPP.

- (b) not be treated as a breach or violation of said lender's obligations under section III.3.b of the First Interim Final Rule and the document collection and retention requirements described in the lender application form (SBA Form 2484).
16. Any deadlines or other requirements for disbursing the PPP funds and for granting loan forgiveness or applying for remittances under 15 U.S.C. § 9005 are stayed until entry of a final judgment not subject to further appeal is entered confirming these provisions.
17. Upon entry of a final order confirming the terms of this permanent injunction that is not subject to further appeal, or such earlier date as the parties stipulate or a Court of appropriate jurisdiction directs, the Enjoined Parties shall promptly disburse the PPP funds to the Plaintiffs. At that time, any earlier forgiveness determination, which the Enjoined Parties made pursuant to this Order, shall apply to those PPP funds and the Plaintiffs shall not be required to submit to either the lender or the SBA any additional forgiveness application in connection with the May 15, 2020 PPP approval. (However, the Plaintiffs may submit an additional forgiveness application if they wish to do so.)
18. The Plaintiffs' access to PPP funds shall be governed by this Order, or any subsequent final order adjudicating the parties' rights in these proceedings, without regard to any subsequently promulgated SBA rules or regulations that would have the effect of reducing the Plaintiffs' access to PPP funds, reducing the Plaintiffs' eligibility for loan guaranty or forgiveness, or reducing the Plaintiffs' lender's access to a full guaranty and loan forgiveness that would otherwise be available absent the Plaintiffs' bankruptcy status.

IT IS FURTHER ORDERED that, in light of the Court's determinations, the Defendant need not file an answer in either of the pending adversary proceedings.

SO ORDERED.

June 22, 2020
Burlington, Vermont



Colleen A. Brown
United States Bankruptcy Judge