

CAUSE NO. D-1-GN-17-005824

REBECCA BIRCH, RICHARD  
FRANKLIN, III, *and* ESTHER GOVEA,

Plaintiffs

v.

TRAVIS COUNTY HEALTHCARE  
DISTRICT d/b/a CENTRAL HEALTH *and*  
DR. PATRICK LEE, *in his official capacity*  
*only,*

Defendants

§ IN THE DISTRICT COURT OF

§ TRAVIS COUNTY, TEXAS

§ 345<sup>TH</sup> JUDICIAL DISTRICT

**DEFENDANT DR. LEE’S RESPONSE TO  
PLAINTIFFS’ REQUEST FOR A PERMISSIVE INTERLOCUTORY APPEAL**

Comes now Defendant Dr. Patrick Lee<sup>1</sup> in his official capacity and files this response to Plaintiffs’ Unopposed Request for a Permissive Interlocutory Appeal Under Tex. Prac. & Rem. Code, Sec. 51.014(d), of the Denial of their Motion for Summary Judgment (“Plaintiffs’ Request for a Permissive Interlocutory Appeal” or “Plaintiffs’ Request”) and respectfully shows the Court as follows:

Per the terms of the Rule 11 agreement attached hereto as Exhibit A, “Dr. Lee and Central Health do not oppose Plaintiffs’ trial court application for permissive interlocutory appeal of the denial of summary judgment.” The parties’ Rule 11 agreement specifies the full limits of Dr. Lee’s non-opposition to Plaintiffs’ Request for a Permissive Interlocutory Appeal.

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<sup>1</sup> Because the claims against Defendant Travis County Healthcare District d/b/a Central Health (“Central Health”) were dismissed with prejudice by the Court’s June 3, 2024 Order on Defendants’ Motion to Dismiss for Lack of Subject Matter Jurisdiction and Plaintiffs’ Motion for Summary Judgment, Central Health does not join in this response although it shares Dr. Lee’s position.

Dr. Lee disputes that the discovery outlined on pages 8 and 9 of Plaintiffs' Request for a Permissive Interlocutory Appeal would be necessary if Plaintiffs' Request for a Permissive Interlocutory Appeal is not granted. As Plaintiffs state in their Request for a Permissive Interlocutory Appeal, the issue of Central Health and Dr. Lee's constitutional and statutory authority is a question of law and there are no fact issues that need to be resolved in connection with the parties' dispute. Plaintiffs' Request at 4-6. Accordingly, Dr. Lee does not believe that there are any circumstances under which further discovery in this action would be merited.

Dr. Lee also does not agree to a stay of all trial court proceedings should the Court grant Plaintiffs' Request for a Permissive Interlocutory Appeal. As stated in the parties' Rule 11 agreement, Dr. Lee agrees only to a stay of discovery. Thus, should the Court grant Plaintiffs' Request for a Permissive Interlocutory Appeal, Dr. Lee respectfully requests that the Court enter a limited stay only as to discovery.

Respectfully submitted,

REEVES & BRIGHTWELL LLP

*/s/ Sinéad O'Carroll*

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**ATTORNEYS FOR DEFENDANT  
DR. PATRICK LEE IN HIS OFFICIAL  
CAPACITY**

**CERTIFICATE OF SERVICE**

I hereby certify that on June 10, 2024 a true and correct copy of the foregoing document was served via electronic filing manager, in accordance with the Texas Rules of Civil Procedure to the following:

Manuel Quinto-Pozos  
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*/s/ Sinéad O'Carroll*  
\_\_\_\_\_  
Sinéad O'Carroll

# **EXHIBIT A**

June 7, 2024

Sinead O'Carroll  
Reeves & Brightwell LLP  
3103 Bee Caves Rd, Ste 240  
Austin TX 78746-5581

RE: *Birch et al. v. Central Health et al.*, Rule 11 agreement on Plaintiffs' motion for permissive appeal and trial court stay

Dear Sinead,

I am writing to memorialize our agreement regarding the above-captioned matter.

1. Plaintiffs may certify to the trial court that Dr. Lee and Central Health do not oppose Plaintiffs' trial court application for permissive interlocutory appeal of the denial of summary judgment.
2. By this agreement, Dr. Lee and Central Health have not agreed that the court of appeals has jurisdiction over a permissive interlocutory appeal.
3. The parties agree that discovery is stayed pending the latter of: a) the outcome of an interlocutory appeal by Dr. Lee of the denial in part of his plea to the jurisdiction; and b) Plaintiffs' permissive interlocutory appeal, if permission is granted.

If this accurately captures our agreement, please indicate by signing below. If this is inaccurate, please contact me so we can discuss.

Respectfully,



Manuel Quinto-Pozos



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Agreed on behalf of Defendants Central Health & Dr. Lee

### Automated Certificate of eService

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Susan Farris on behalf of Sinead O'Carroll

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Envelope ID: 88604214

Filing Code Description: RESPONSE

Filing Description: DEFENDANT DR. LEE'S RESPONSE TO PLAINTIFFS' REQUEST FOR A PERMISSIVE INTERLOCUTORY APPEAL

Status as of 6/10/2024 1:14 PM CST

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