

1 BUCHALTER, A Professional Corporation  
Shawn M. Christianson (SBN 114707)  
2 425 Market Street, Suite 2900  
San Francisco, California 94105-2491  
3 Telephone: (415) 227-0900  
Email: schristianson@buchalter.com

4 Counsel to Oracle America, Inc.

5  
6 **UNITED STATES BANKRUPTCY COURT**  
7 **SOUTHERN DISTRICT OF CALIFORNIA**  
8

9 In re:

10 BORREGO COMMUNITY HEALTH  
FOUNDATION,

11 Debtor.

Case No.: 22-02384-11

Chapter 11

12 **ORACLE AMERICA, INC.’S CURE**  
13 **OBJECTION AND RESERVATION**  
14 **OF RIGHTS REGARDING**  
15 **DEBTOR’S AMENDED JOINT**  
16 **COMBINED DISCLOSURE**  
17 **STATEMENT AND CHAPTER 11**  
18 **PLAN OF LIQUIDATION OF**  
19 **BORREGO COMMUNITY HEALTH**  
20 **FOUNDATION (“RIGHTS**  
21 **RESERVATION”)**

Judge: Hon. Laura S. Taylor  
Date: January 17, 2024  
Time: 10:00 a.m.  
Place: Department 3

22  
23 Oracle America, Inc., successor in interest to NetSuite, Inc. (“Oracle”), a creditor and  
24 contract counter-party in the above-captioned Chapter 11 case, submits this Rights Reservation in  
25 response to the proposed assumption of an Oracle contract in connection with *First Amended*  
26 *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community*  
27 *Health Foundation* [Dkt. No. 1168] (“Plan”) filed by Borrego Community Health Foundation  
28 (“Debtor”). In support of the Rights Reservation, Oracle states:



**I. INTRODUCTION**

Through the Plan, the Debtor seeks Bankruptcy Court authority to, among other things, assume an executory contract between the Debtor and Oracle. As discussed herein, Oracle objects to the proposed assumption because the Debtor has neither cured all outstanding amounts owed under the contract, nor provided adequate assurance that such amounts will be paid. Accordingly, Oracle objects and reserves all of its rights regarding the Debtor's proposed assumption of Oracle's contract.

**II. FACTUAL BACKGROUND**

The above captioned case was filed on September 12, 2022 ("Petition Date"). The Debtor continues to operate as a debtor in possession.

Oracle is a licensor of computer software and provides software-related products, technical support, maintenance, educational materials, and programs, as well as cloud-based and point of sale services, which Oracle often customizes for the customer's specific needs. Prior to the Petition Date, the Debtor and Oracle were parties to several such license agreements, including a Subscription Services Agreement and related Estimates (the "Oracle Agreements").

On March 13, 2023, the Court entered an *Order (A) Authorizing the Sale of Property to Desert AIDS Project d/b/a DAP Health Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Relief* [Dkt. No. 559] ("Sale Order") approving the proposed sale [Dkt. No. 161]. Pursuant to the Sale Order, the Oracle Agreements were assumed and assigned to the Desert AIDS Project d/b/a DAP Health ("Purchaser"). In connection with the sale the Debtor and Purchaser entered into a transitional services agreement ("TSA"), whereby the parties agreed to provide certain services and support (including those services provided under the Oracle Agreements) after the closing of the sale and until the change of ownership application by the Centers for Medicare and Medicaid Services ("CMS") is approved. As of the date of filing this Rights Reservation, approval reportedly is still pending.

Shortly after entry of the Sale Order, the Debtor, Oracle and the Purchaser entered into an assignment agreement ("Assignment Agreement"). The Assignment Agreement, among other

things, identifies the contracts to be assumed and assigned and references aspects of the relationship between the Debtor and Purchaser. Pursuant to the Assignment Agreement, the assignment will become effective upon occurrence of both (i) the date of consent and execution by Oracle; and (ii) the closing of the transaction between the Debtor and the Purchaser (“Assignment Effective Date”). Since the change of ownership application is still pending, the Assignment Effective Date has not occurred.

On December 4, 2023, the Debtor filed the Plan. Pursuant to the Plan, all executory contracts will be rejected unless previously assumed or assumed and assigned. The Plan states:

On the Effective Date, all Executory Agreements to which the Debtor is a party shall be deemed rejected as of the Effective Date, except for those Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to any Sale Order), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, (c) are specifically designated as a contract or lease to be assumed pursuant to the DAP Sale and no timely objection to the proposed assumption was filed; or (d) are specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed.

See, Plan at Section 14.1.

On December 11, 2023, the Debtor filed the *Notice of Plan Supplement to the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Dkt. No. 1182] (“Plan Supplement”). Exhibit A to the Plan Supplement identifies those contracts to be assumed through the Plan. This exhibit includes both the TSA and the Oracle Agreements. There is no stated cure for the Oracle Agreements, which is inconsistent with Oracle’s records. As of the filing of this Rights Reservation, Oracle is owed not less than \$41,130.09, which is evidenced by the following open post-petition invoices:

Invoice Date	Invoice Number	Invoice Amount
5/2/23	1586433 <sup>1</sup>	\$20,565.05
8/2/23	1657670	\$20,565.04

<sup>1</sup> Oracle is aware that Invoice 1586433 is included in the Assignment Agreement and is to be paid on the Assignment Effective Date and therefore may be the responsibility of the Purchaser. However, since the Assignment Effective Date has not occurred, out of an abundance of caution, Oracle is including this invoice in Order to ensure it is paid.

1 **III. ARGUMENT**

2 **A. The Debtor May Not Assume the Oracle Agreements Absent Compliance**  
3 **With Section 365 of the Bankruptcy Code and Payment of the Required Cure.**

4 The Oracle Agreements are, or pertain to, non-exclusive licenses of copyrighted software,  
5 and as such, are executory contracts. Before assuming an unexpired executory contract, a debtor  
6 must (1) cure (or provide adequate assurance of a prompt cure of) any defaults under the subject  
7 contracts, and (2) provide adequate assurance of future performance under the contract. *See* 11  
8 U.S.C. § 365(b)(1). Absent the foregoing, a debtor may not assume unexpired executory  
9 contracts. At present, Oracle believes the cure amount is not less than \$41,130.09. In order to  
10 assume the Oracle Agreements, the Debtor must pay all sums owed in cure, including any post-  
11 petition amounts which may have come due. Absent Debtor's cure of the outstanding amounts  
12 due Oracle, the Debtor may not assume the Oracle Agreements.

13 **B. The Debtor Must Provide Adequate Assurance of Future Performance Prior**  
14 **to the Assumption of the Oracle Agreements.**

15 In addition to requiring that defaults be cured, Section 365(b)(2) of the Bankruptcy Code  
16 obligates a debtor to provide adequate assurance of future performance under the contract before  
17 the executory contract may be assumed. *See* 11 U.S.C. § 365(b)(2). In light of the Debtor's  
18 failure to provide either adequate assurance of prompt payment of the cure or of future  
19 performance under the Oracle Agreements, Oracle is unable to determine whether Debtor has  
20 complied, or will comply, with all of the requirements of section 365(b) of the Bankruptcy Code.  
21 Accordingly, Oracle reserves its right to be heard regarding all assumption and cure issues.

22 **IV. CONCLUSION**

23 For the reasons set forth above, Oracle respectfully requests that the Court deny the  
24 Debtor's request for authority to assume any Oracle contract absent confirmation of payment in  
25 cure of all outstanding amounts due and owing to Oracle.

26 Dated: January 8, 2024

BUCHALTER, a Professional Corporation

27 By:   
28

SHAWN M. CHRISTIANSON  
Attorneys for Oracle America, Inc.

CSD 3010 [07/01/18]

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

<b>UNITED STATES BANKRUPTCY COURT</b> SOUTHERN DISTRICT OF CALIFORNIA 325 West F Street, San Diego, California 92101-6991	
In Re	
Debtor.	BANKRUPTCY NO.
Plaintiff(s)	ADVERSARY NO.
v.	
Defendant(s)	

## PROOF OF SERVICE

I, \_\_\_\_\_ am a resident of the State of California, over the age of 18 years,  
and not a party to this action.

On \_\_\_\_\_, I served the following documents:

1. **To Be Served by the Court via Notice of Electronic Filing ("NEF"):**

Under controlling Local Bankruptcy Rules(s) ("LBR"), the document(s) listed above will be served by the court via NEF and hyperlink to the document. On \_\_\_\_\_, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following person(s) are on the Electronic Mail Notice List to receive NEF transmission at the e-mail address(es) indicated and/or as checked below:

☐

Chapter 7 Trustee:

☐

For Chpt. 7, 11, & 12 cases:

UNITED STATES TRUSTEE  
ustp.region15@usdoj.gov

☐

For ODD numbered Chapter 13 cases:

THOMAS H. BILLINGSLEA, JR., TRUSTEE  
Billingslea@thb.coxatwork.com

☐

For EVEN numbered Chapter 13 cases:

DAVID L. SKELTON, TRUSTEE  
admin@ch13.sdcoxmail.com  
dskelton13@ecf.epiqsystems.com

CSD 3010 [07/01/18] (Page 2)

2. **Served by United States Mail:**

On \_\_\_\_\_, I served the following person(s) and/or entity(ies) at the last known address(es) in this bankruptcy case or adversary proceeding by placing accurate copies in a sealed envelope in the United States Mail via 1) first class, postage prepaid or 2) certified mail with receipt number, addressed as follows:

3. **Served by Personal Delivery, Facsimile Transmission, Overnight Delivery, or Electronic Mail:**

Under Fed.R.Civ.P.5 and controlling LBR, on \_\_\_\_\_, I served the following person(s) and/or entity(ies) by personal delivery, or (for those who consented in writing to such service method), by facsimile transmission, by overnight delivery and/or electronic mail as follows:

I declare under penalty of perjury under the laws of the United States of America that the statements made in this proof of service are true and correct.

Executed on \_\_\_\_\_

(Date)

\_\_\_\_\_  
(Typed Name and Signature)

\_\_\_\_\_  
(Address)

\_\_\_\_\_  
(City, State, ZIP Code)

BORREGO COMMUNITY HEALTH FOUNDATION  
Case No.: 3:22-02384  
PROOF OF SERVICE-ATTACHMENT 1

**Document(s) Served:**

ORACLE AMERICA, INC.'S CURE OBJECTION AND RESERVATION OF RIGHTS  
REGARDING DEBTOR'S AMENDED JOINT COMBINED DISCLOSURE STATEMENT  
AND CHAPTER 11 PLAN OF LIQUIDATION OF BORREGO COMMUNITY HEALTH  
FOUNDATION ("RIGHTS RESERVATION")

**1. Parties to be served by the Court via Notice of Electronic Filing ("NEF"):**

- Christine E. Baur christine@baurbklaw.com, admin@baurbklaw.com
- Anthony Bisconti tbisconti@bklwlaw.com,  
admin@bienertkatzman.com;4579179420@filings.docketbird.com
- Daren Brinkman firm@brinkmanlaw.com, 7764052420@filings.docketbird.com
- Van C. Durrer van.durrer@skadden.com,  
rebecca.ritchie@skadden.com;andrea.bates@skadden.com;brigitte.travaglini@skadden.c  
om;van-durrer-7974@ecf.pacerpro.com
- Anthony Dutra adutra@hansonbridgett.com, SSingh@hansonbridgett.com
- William P. Fennell william.fennell@fennelllaw.com,  
luralene.schultz@fennelllaw.com;wpf@ecf.courtdrive.com;samantha.larimer@fennellla  
w.com;naomi.cwalinski@fennelllaw.com;Hala.Hammi@fennelllaw.com
- Christine M. Fitzgerald christine@thersfirm.com,  
maria@thersfirm.com;amy@thersfirm.com
- Leslie Gardner leslie.gardner2@usdoj.gov,  
brenda.seyler@usdoj.gov;Efile.dkt.civ@usdoj.gov
- Jeffrey Garfinkle jgarfinkle@buchalter.com,  
lverstegen@buchalter.com;docket@buchalter.com
- Steven W Golden sgolden@pszjlaw.com
- David B. Golubchik dbg@lnbyg.com, dbg@ecf.inforuptcy.com
- Michael I. Gottfried mgottfried@elkinskalt.com,  
rzur@elkinskalt.com,cavila@elkinskalt.com,1648609420@filings.docketbird.com
- Bernard M. Hansen bernardmhansen@sbcglobal.net
- Haeji Hong Haeji.Hong@usdoj.gov,  
USTP.Region15@usdoj.gov,tiffany.l.carroll@usdoj.gov
- Teddy Kapur tkapur@pszjlaw.com;jpomerantz@pszjlaw.com;sgolden@pszjlaw.com
- Dean T. Kirby dkirby@fsl.law, jwilson@fsl.law
- Kirsten Martinez kirsten.martinez@bonialpc.com, Notices.Bonial@ecf.courtdrive.com
- Ali Mojdehi amojdehi@btlaw.com,  
jgertz@btlaw.com;arego@btlaw.com;melissa.turpin@btlaw.com;docketinglitin@btlaw.c  
om
- Tania M. Moyron tania.moyron@dentons.com,  
derry.kalve@dentons.com;DOCKET.GENERAL.LIT.LOS@dentons.com
- Jeffrey N. Pomerantz jpomerantz@pszjlaw.com, scho@pszjlaw.com

- Jeffrey N. Pomerantz jpomerantz@pszjlaw.com;tkapur@pszjlaw.com;sgolden@pszjlaw.com, scho@pszjlaw.com
- Allison Rego arego@btlaw.com, melissa.turpin@btlaw.com,docketinglitin@btlaw.com
- Michael B. Reynolds mreynolds@swlaw.com, kcollins@swlaw.com
- Keith H. Rutman krutman@krutmanlaw.com
- Gerald N. Sims jerrys@psdslaw.com, bonniec@psdslaw.com
- Cheryl Skigin caskigin@earthlink.net, ca.ecf@aislegaltrac.com
- Randy B. Soref rsoref@polsinelli.com
- Susan C. Stevenson sstevenson@psdslaw.com, bonniec@psdslaw.com
- Andrew B. Still astill@swlaw.com, kcollins@swlaw.com
- Kelly Ann Mai Khanh Tran kelly@smalllawcorp.com, emma@smalllawcorp.com
- United States Trustee ustp.region15@usdoj.gov
- Kenneth K. Wang kenneth.wang@doj.ca.gov
- Darin L. Wessel darin.wessel@doj.ca.gov
- Helen Yang helen.yang@squirepb.com, helen-h-yang-8259@ecf.pacerpro.com;PHX\_DCKT@squirepb.com

## 2. Served by United States Mail:

Samuel R. Maizel  
Dentons US LLP  
601 South Figueroa Street, Suite 2500  
Los Angeles, California 90017  
*Counsel for Debtor*

CJ Pease  
Ankura  
2021 McKinney Avenue, Suite 340  
Dallas, Texas 75201  
*Financial Advisor to the Debtor*

Steven W. Golden  
Pachulski Stang Ziehl & Jones LLP  
10100 Santa Monica Blvd., 13th Floor  
Los Angeles, California 90067  
*Counsel to the Committee*

Cynthia Nelson  
FTI  
350 South Grand Avenue, Suite 3000  
Los Angeles, California 90071  
*Financial Advisor to the Committee*

Marc Bilbao  
FTI  
350 South Grand Avenue, Suite 3000  
Los Angeles, California 90071  
*Financial Advisor to the Committee*

H. Mark Mersel  
Bryan Cave Leighton Paisner LLP  
1920 Main Street, Suite 1000  
Irvine, CA 92614-7276 *Counsel for Creditor AB Staffing Solutions, LLC*

John Bertram  
c/o Cook Street Office LP  
41-865 Broadwalk, Suite 101  
Palm Desert, CA 92211  
*Creditor*

CRG Financial LLC  
84 Herbert Ave  
Building B - Suite 202  
Closter, NJ 07624  
*Creditor*



Alexandre Ian Cornelius  
23801 Calabasas Rd., Suite 100  
Calabasas, CA 91302  
*Counsel for Creditor DRC Citrus Office, LP*

Higgs Fletcher & Mack LLP  
401 West A Street, #2600  
San Diego, CA 92101  
*Attorney*

Angelea Nguyen  
Kcc  
222 N. Pacific Coast Highway, Suite 300  
El Segundo, CA 90245  
*Party*

David Ortiz  
DOJ-Ust  
880 Front Street, Suite 3230  
San Diego, CA 92101

Pioneer Funding Group, LLC  
232 W. 116th St.  
Box 1735  
New York, NY 10026  
*Creditor*

Sarah Rogers  
5346 Grandridge Rd  
El Cajon, CA 92004  
*Party*

Starr Indemnity & Liability Company  
c/o Christopher Celentino, Esq.  
Dinsmore & Shohl LLP  
655 W. Broadway, Suite 800  
San Diego, CA 92101  
*Creditor*