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Debtor In Possession

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re

BORREGO COMMUNITY HEALTH
FOUNDATION,

Debtor and Debtor In Possession.

Case No. 22-02384-11

Chapter 11 Case

**DEBTOR'S *EX PARTE*
APPLICATION FOR AN ORDER
APPOINTING KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS
AND NOTICING AGENT,
EFFECTIVE AS OF THE PETITION
DATE**

**DECLARATION OF EVAN
GERSHBEIN**

Judge: Honorable Laura S. Taylor

EX PARTE APPLICATION

Borrego Community Health Foundation (“BCHF” or the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the “Case”), seeks entry of an order, substantially in the form attached hereto as **Exhibit B**, pursuant to section 156(c) of title 28 of the United States Code (the “Judicial Code”), section 341 of title 11 of the United States Code (the “Bankruptcy Code”)¹

¹ All references to “§” or “section” herein are to sections of the Bankruptcy Code, 11 U.S.C. § 101 et seq., as amended.



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1 and Rule 2002 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy
2 Rules”) appointing Kurtzman Carson Consultants LLC (“KCC”) as Claims and
3 Noticing Agent for the Court and the Clerk of the Bankruptcy Court (the “Clerk’s
4 Office”), effective as of the Petition Date (defined below) (the “Application”). In
5 support of the Application, the Debtor submits the accompanying Declaration of Evan
6 Gershbein (the “KCC Declaration”) and the previously filed *Declaration of Isaac Lee,*
7 *Chief Restructuring Officer of Borrego Community Health Foundation, in Support of*
8 *Debtor’s Emergency First Day Motions* [Docket No. 7] (the “Lee Declaration”). In
9 further support of the Application the Debtor hereby states as follows:

10 I.

11 JURISDICTION

12 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
13 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of this
14 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

15 II.

16 STATEMENT OF FACTS

17 A. GENERAL BACKGROUND

18 1. On September 12, 2022 (“Petition Date”), the Debtor filed a voluntary
19 petition for relief under chapter 11 of the Bankruptcy Code.

20 2. The Debtor is a nonprofit federally qualified health center (“FQHC”) that
21 provides health care services to low income and rural patients (collectively,
22 “Patients”) in San Diego and Riverside Counties through a system of eighteen clinics,
23 two pharmacies, and six mobile units. In 2021, BCHF provided approximately
24 386,000 patient care visits to over 94,000 patients. BCHF’s services include
25 comprehensive primary care, urgent care, behavioral health, dental services, specialty
26 care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic
27 services, tele-health, and pharmacy.

1 3. FQHCs are federally designated entities that receive higher state
2 payments to provide health care services to poor and rural families and families with
3 incomes below 200% of the poverty level. As an FQHC, BCHF strives to deliver
4 high quality, comprehensive, compassionate primary health care to people in the
5 surrounding area, regardless of ability to pay.

6 4. Additional background regarding the Debtor, including an overview of
7 the Debtor's business and additional events leading up to this Case, is set forth in the
8 Lee Declaration.

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

12 6. To date, no official committee or examiner has been appointed by the
13 Office of the United States Trustee in this Case.

14 **B. RELEVANT BACKGROUND TO APPLICATION**

15 7. As is evident from the facts set forth in the Lee Declaration, the Debtor
16 operates a large nonprofit healthcare system in the State of California.

17 8. The Debtor's creditor matrix, which is attached to the Debtor's chapter
18 11 petition (the "Creditor Matrix"), reflects 5,341 total parties, 2,918 of which are
19 individuals with redacted addresses for privacy reasons. *See* Docket No. 1. The
20 number of parties on the Creditor Matrix is likely to increase in the coming weeks as
21 the Debtor's agents and professionals continue to review the Debtor's contracts and
22 financial information. The Debtor also has a patient population that will receive
23 notice through publication with the bar date.

24 9. Given the number of creditors on the Creditor Matrix and the anticipated
25 claims, plus the various notices that will be required throughout the Case on a large
26 number of parties, a Claims and Noticing Agent is required.

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1 *i. KCC Services*

2 10. As set forth above, in accordance with that certain agreement for services
3 by and between the Debtor and KCC attached hereto as **Exhibit A** (the “**KCC**
4 **Agreement**”), the Debtor requests that KCC be permitted to provide certain
5 administrative services to the Debtor, including, but not limited to: (i) preparing and
6 serving required notices in the Case; (ii) maintaining an official copy of the Debtor’s
7 schedules of assets and liabilities and statement of financial affairs; (iii) maintaining
8 a list of potential creditors and other parties-in-interest, as well as a mailing list; (iv)
9 maintaining a post office box or address for the purpose of receiving claims and
10 returned mail; (v) processing and maintaining proofs of claim, including maintaining
11 an official claims register, and implementing security measures in relation thereto;
12 (vi) furnishing a notice to all potential creditors of the last date for the filings of proofs
13 of claim and a form for the filing of a proof of claim, after such notice and form are
14 approved by the Court; (vii) recording all transfers of claims pursuant to Bankruptcy
15 Rule 3001(e) and providing notice of such transfers as required by Bankruptcy Rule
16 3001(e); (viii) assisting in the dissemination of information to the public and
17 responding to requests for administrative information regarding this Case, as directed
18 by the Debtor or the Court, including through the use of a case website; (ix) upon
19 entry of an order closing this Case, providing to the Court the final version of the
20 official claims register; (x) complying with applicable federal, state, municipal and
21 local statutes, ordinances, rules, regulations, orders and other requirements; (xi)
22 complying with such other conditions and requirements as the Clerk’s Office or the
23 Court may at any time prescribe; and (xii) providing such other claims processing,
24 noticing, and related administrative services as may be requested from time to time
25 by the Debtor.

26 11. In addition to the foregoing, in accordance with the KCC Agreement and
27 to the extent requested by the Debtor, KCC shall assist the Debtor with, among other
28 things: (i) data collection and processing required for, among other things the

1 reconciliation and resolution of claims; (ii) schedules of assets and liabilities and
 2 statement of financial affairs; (iii) maintenance of the Debtor's master mailing matrix;
 3 and (iv) the preparation, mailing and tabulation of ballots for the purpose of voting to
 4 accept or reject a chapter 11 plan. Additionally:

- 5 • Notwithstanding the relief requested herein and the services proposed to
 6 be provided by KCC, except for the Debtor, any party submitting a
 7 particular pleading or other document with the Court shall be responsible
 8 for all noticing and service functions relevant to the particular matters as
 9 may be required under applicable rules and shall file with the Clerk's
 10 Office a declaration of service regarding such noticing and service. In
 11 addition, except for the Debtor's attorneys, the attorney submitting a
 12 proposed order or judgment shall serve copies upon all parties entitled to
 13 receive notice of entry of the order or judgment as soon as practicable
 14 and shall be responsible for photocopying the conformed copies in order
 15 to relieve the Clerk's Office of the large burden of photocopying these
 16 orders; and
- 17 • Notwithstanding the foregoing, KCC may, with the Debtor's consent,
 18 provide services to any official committee, such as mailing or web site
 19 creation/maintenance.

20 ***ii. KCC Compensation & Related Matters***

21 12. Prior to the Petition Date, the Debtor provided KCC a retainer in the
 22 amount of \$50,000. KCC seeks to first apply the retainer to all prepetition invoices,
 23 and thereafter, to have the retainer replenished to the original retainer amount, and
 24 thereafter, to hold the retainer under the KCC Agreement during the Case as security
 25 for the payment of fees and expenses incurred under the KCC Agreement.

26 13. Additionally, under the terms of the KCC Agreement, the Debtor has
 27 agreed to indemnify, defend, and hold harmless KCC and its affiliates, members,
 28 directors, officers, employees, consultants, subcontractors, and agents under certain

1 circumstances specified in the KCC Agreement, except in circumstances resulting
2 solely from KCC's gross negligence or willful misconduct or as otherwise provided
3 in the KCC Agreement or any order authorizing the employment and retention of
4 KCC. The Debtor believes that such an indemnification obligation is customary,
5 reasonable, and necessary to retain the services of a Claims and Noticing Agent in
6 this Case.

7 14. The terms of the KCC Agreement and indemnification provisions
8 included therein were negotiated at arms' length between the Debtor and KCC. The
9 Debtor respectfully submits that these terms are routinely approved and are in the best
10 interests of the Debtor, its estate, and its creditors.

11 15. As set forth in the KCC Declaration: (i) KCC shall be under the
12 supervision and control of the Clerk's Office but not be an employee of the United
13 States government, not consider itself employed by the United States government and
14 shall not seek any compensation from the United States government in its capacity as
15 the Claims and Noticing Agent in this Case; (ii) by accepting employment in this
16 Case, KCC waives any rights to receive compensation from the United States
17 government in its capacity as Agent in this Case; (iii) in its capacity as the Claims and
18 Noticing Agent in this Case, KCC will not be an agent of the United States
19 government and will not act on behalf of the United States; (iv) KCC will not employ
20 any past or present employees of the Debtor in connection with its work as the Claims
21 and Noticing Agent in this Case unless otherwise approved by the Court; and (v) KCC
22 is a "disinterested person" as the term is defined in section 101(14) of the Bankruptcy
23 Code with respect to the matters upon which it is to be engaged.

24 III.

25 DISCUSSION

26 Pursuant to section 156(c) of the Judicial Code, the Court is empowered to
27 utilize outside agents and facilities for these purposes, provided that the Debtor's
28 estate pay the cost of such services.

1 The Debtor has concluded in its business judgment that it requires a Claims and
 2 Noticing Agent to provide the services set forth above, including services related to
 3 noticing, claims management and reconciliation, plan solicitation, balloting, and
 4 disbursements. The Debtor's business judgment is entitled to substantial deference.
 5 *See NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984).

6 The Debtor and its advisors intend to work closely with the Clerk's Office to
 7 address noticing, claims, and related matters. Debtor's counsel and KCC have already
 8 had "zoom" meetings with the Clerk's Office to coordinate KCC's role as Claims and
 9 Noticing Agent.

10 KCC has the experience and expertise to render the necessary services in a
 11 professional and efficient manner. KCC has been retained as the official Claims and
 12 Noticing Agent in many large and complex cases, such as this one. *In re Verity Health*
 13 *System of California, Inc.*, Case No. 18-20151 (ER) (Docket No. 163) (Bankr. C.D.
 14 Cal. Sept. 10, 2018); *In re Tintri, Inc.*, Case No. 18-11625 (KJC) (Docket No. 43)
 15 (Bankr. D. Del. Jul. 10, 2018); *In re The Walking Company Holdings, Inc.*, Case No.
 16 18-10474 (LSS) (Docket No. 73) (Bankr. D. Del. Mar. 8, 2018); *In re Rand Logistics,*
 17 *Inc., et al.*, Case No. 18-10175 (BLS) (Docket No. 39) (Bankr. D. Del. Jan. 29, 2018);
 18 *In re ExGen Texas Power, LLC*, Case No. 17-12377 (BLS) (Docket No. 52) (Bankr.
 19 D. Del. Nov. 7, 2017); *In re TerraVia Holdings, Inc.*, Case No. 17-11655 (CSS)
 20 (Docket No. 52) (Bankr. D. Del. Aug. 2, 2017); *In re Prospector Offshore Drilling*
 21 *S.a r.l., et al.*, Case No. 17-11572 (CSS) (Docket No. 30) (Bankr. D. Del. Jul. 20,
 22 2017); *In re Keystone Tube Company, LLC (A.M. Castle & Co.)*, Case No. 17- 11330
 23 (LSS) (Docket No. 61) (Bankr. D. Del. Jun. 18, 2017).

24 The compensation to be provided by the Debtor to KCC for services rendered
 25 is set forth in the KCC Agreement. The Debtor submits that such compensation is
 26 fair and reasonable. The Debtor respectfully requests that the undisputed fees and
 27 expenses incurred by KCC in the performance of the above services be treated as
 28 administrative expenses of the Debtor's estate pursuant to 28 U.S.C. § 156(c) and §

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1 503(b)(1)(A) and be paid in the ordinary course of business without further
2 application to or order of the Court. Pursuant to the KCC Agreement, KCC will
3 maintain records of all services showing dates, categories of services, fees charged,
4 and expenses incurred. KCC will serve monthly invoices on the Debtor, the Office
5 of the United States Trustee, counsel for the Debtor, counsel for any official
6 committee appointed in this Case, and any party in interest who specifically requests
7 service of the monthly invoices. If any dispute arises relating to the KCC Agreement
8 or monthly invoices, the parties shall meet and confer in an attempt to resolve the
9 dispute. If resolution is not achieved, the parties may seek resolution of the matter
10 from the Court.

11 The relief requested herein is necessary to relieve the Clerk's Office of
12 obligations which, given the facts and circumstances of this Case, would be
13 burdensome, and to establish orderly procedures for processing certain notices. The
14 Debtor believes that the retention of KCC as the Claims and Noticing Agent is in the
15 best interests of the Debtor, its estate and its creditors and appropriate pursuant to
16 section 156(c) of the Judicial Code.

IV.

CONCLUSION

WHEREFORE, for all the foregoing, the Debtor respectfully requests that this Court enter an order appointing KCC as Claims and Noticing Agent, effective as of the Petition Date.

Dated: September 22, 2022

BORREGO COMMUNITY HEALTH
FOUNDATION

By: Isaac Lee
Isaac Lee
Chief Restructuring Officer

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DECLARATION OF EVAN GERSHBEIN

I, Evan Gershbein, submit this Declaration in support of the *Debtor's Ex Parte Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent, Effective as of the Petition Date* (the "Application"),² and hereby state and declare as follows:

1. I am an Executive Vice President, Corporate Restructuring Services of Kurtzman Carson Consultants LLC ("KCC"). I submit this declaration in support of the Application of Borrego Community Health Foundation ("BCHF" or the "Debtor") for an order authorizing and approving (i) the appointment of KCC as Claims and Noticing Agent for the Court and the Clerk of the Bankruptcy Court (the "Clerk's Office").

2. KCC specializes in providing comprehensive chapter 11 administrative services, including noticing, claims processing, balloting, and other related services critical to the effective administration of this Case. Indeed, KCC has developed efficient and cost-effective methods to properly handle the voluminous mailings associated with the noticing, claims processing, and balloting portions of chapter 11 cases to ensure the orderly and fair treatment of creditors, equity security holders, and all other parties in interest. Further, KCC has experience working with, and will continue to work with, the Clerk's Office to ensure that the services provided conform with all of the Court's procedures, LBRs, and the provisions of any orders entered by the Court.

3. The Debtor's estate and its creditors will benefit from KCC's retention because KCC has developed efficient and cost-effective methods in this area of expertise. KCC is fully equipped to handle the volume of mailing involved in properly sending the required notices to and processing the claims of creditors in this

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.

1 Case. KCC is one of the country's leading chapter 11 administrators, with experience
2 in noticing, claims administration, solicitation, balloting, and facilitating other
3 administrative aspects of chapter 11 cases.

4 4. KCC has been retained as the official Claims and Noticing Agent in
5 many large and complex cases, such as this one. *In re Verity Health System of*
6 *California., Inc.*, Case No. 18-20151 (ER) (Docket No. 163) (Bankr. C.D. Cal. Sept.
7 10, 2018); *In re Tintri, Inc.*, Case No. 18-11625 (KJC) (Docket No. 43) (Bankr. D.
8 Del. Jul. 10, 2018); *In re The Walking Company Holdings, Inc.*, Case No. 18-10474
9 (LSS) (Docket No. 73) (Bankr. D. Del. Mar. 8, 2018); *In re Rand Logistics, Inc., et*
10 *al.*, Case No. 18-10175 (BLS) (Docket No. 39) (Bankr. D. Del. Jan. 29, 2018); *In re*
11 *ExGen Texas Power, LLC*, Case No. 17-12377 (BLS) (Docket No. 52) (Bankr. D.
12 Del. Nov. 7, 2017); *In re TerraVia Holdings, Inc.*, Case No. 17-11655 (CSS) (Docket
13 No. 52) (Bankr. D. Del. Aug. 2, 2017); *In re Prospector Offshore Drilling S.a r.l., et*
14 *al.*, Case No. 17-11572 (CSS) (Docket No. 30) (Bankr. D. Del. Jul. 20, 2017); *In re*
15 *Keystone Tube Company, LLC (A.M. Castle & Co.)*, Case No. 17- 11330 (LSS)
16 (Docket No. 61) (Bankr. D. Del. Jun. 18, 2017).

17 5. The Debtor proposes to employ KCC on the terms set forth in that certain
18 agreement for services by and between the Debtor and KCC, a true and correct copy
19 of which is attached to the Application as **Exhibit A** (the "KCC Agreement"). The
20 proposed terms and conditions of KCC's engagement as set forth in the KCC
21 Agreement are consistent with, and typical of, other claims and noticing engagements
22 in chapter 11 cases.

23 6. The services to be performed by KCC as Claims and Noticing Agent are
24 described in the Application. In addition, at the Debtor's request, KCC will perform
25 such other noticing, claims, balloting, technical, and support services specified in the
26 Application.

27 7. Subject to the Court's approval, the Debtor has agreed to compensate
28 KCC for professional services rendered in connection with this Case pursuant to the

1 KCC Agreement. KCC believes that the rates for its claims and noticing processing
2 services are comparable to the rates charged by its competitors for similar services.

3 8. KCC respectfully submits that the fees and expenses incurred by KCC
4 are administrative in nature and should not be subject to the standard fee application
5 procedures for professionals. Specifically, KCC requests authorization to be
6 compensated on a monthly basis (in the ordinary course of business and in accordance
7 with the terms and conditions set forth in the KCC Agreement). KCC agrees to
8 maintain records of all services showing dates, categories of services, fees charged
9 and expenses incurred, and to serve monthly invoices on the Debtor, the U.S. Trustee,
10 counsel for the Debtor, counsel for any official committee, and any party in interest
11 who specifically requests service of the monthly invoices.

12 9. If any dispute arises relating to the KCC Agreement or KCC's monthly
13 invoices, the parties will meet in an attempt to resolve the dispute. If a resolution is
14 not achieved, the parties will seek resolution of the matter from the Court.

15 10. Before the Petition Date, KCC received a retainer from the Debtor in the
16 amount of \$50,000. KCC seeks to first apply the retainer to all pre-petition invoices,
17 and thereafter, to have the retainer replenished to the original retainer amount, and
18 thereafter, to hold the retainer under the KCC Agreement during Case as security for
19 the payment of fees and expenses incurred under the KCC Agreement.

20 11. To the best of my knowledge, neither KCC, nor any of its professional
21 personnel, has any relationship with the Debtor, or any potential party in interest, that
22 would impair KCC's ability to serve as the official Claims and Noticing Agent. The
23 Debtor has many creditors, and accordingly, KCC may have rendered and may
24 continue to render services to certain of these creditors. KCC has not and will not
25 represent the separate interests of any such creditor in this Case. Additionally, KCC
26 employees may, in the ordinary course of their personal affairs, have relationships
27 with certain creditors of the Debtor. For example, one or more of KCC's employees
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1 may have obligations outstanding with financial institutions that are creditors of the
2 Debtor or may have used the Debtor's services.

3 12. KCC may also have relationships with other professionals retained by
4 the Debtor.

5 13. KCC is an indirect subsidiary of Computershare Limited.
6 Computershare Limited is a financial services and technologies provider for the global
7 securities industry. Within the Computershare corporate structure, KCC operates as
8 a separate, segregated business unit. As such, any relationships that Computershare
9 Limited and its affiliates maintain do not create an interest of KCC that is materially
10 adverse to the Debtor's estate or any class of creditors or equity security holders.

11 14. KCC has no contract with XClaim Inc. or with any other party under
12 which KCC provides or will provide exclusive access to claims data and/or under
13 which KCC will be compensated for claims data that is made available by KCC.

14 15. To the best of my knowledge and except as disclosed herein, KCC
15 neither holds nor represents any interest materially adverse to the Debtor's estate in
16 connection with any matter on which it would be employed and is a "disinterested
17 person" within the meaning of section 101(14) of the Bankruptcy Code, as would be
18 required by section 327(a) of the Bankruptcy Code. KCC will supplement its
19 disclosure to the Court if any facts or circumstances are discovered that would require
20 disclosure.

21 16. KCC represents: (i) KCC shall be under the supervision and control of
22 the Clerk's Office but not be an employee of the United States government, not
23 consider itself employed by the United States government and shall not seek any
24 compensation from the United States government in its capacity as the Claims and
25 Noticing Agent in this Case; (ii) by accepting employment in this Case, KCC waives
26 any rights to receive compensation from the United States government in its capacity
27 as Claims and Noticing Agent in this Case; (iii) in its capacity as Claims and Noticing
28 Agent in this Case, KCC will not be an agent of the United States government and

1 will not act on behalf of the United States; and (iv) KCC will not employ any past or
2 present employees of the Debtor in connection with its work as the Claims and
3 Noticing Agent in this Case unless otherwise approved by the Court.

4 17. Although the Debtor does not propose to retain KCC under section 327
5 of the Bankruptcy Code, KCC believe that it is a “disinterested person,” as that term
6 is defined in 11 U.S.C. § 101(14), in that KCC, its management and staff: (i) are not
7 creditors, equity security holders or insiders of the Debtor; (ii) are not and were not,
8 within two (2) years before the date of the filing of the Debtor’s chapter 11 petition,
9 directors, officers or employees of the Debtor; and (iii) do not hold or represent an
10 interest materially adverse to the interest of the Debtor’s estate or any class of
11 creditors or equity security holders, by reason of any direct or indirect relationship to,
12 connection with, or interest in, the Debtor.

13 18. KCC has not been retained to assist any entity or person other than the
14 Debtor on matters relating to, or in connection with, this Case. If this Court approves
15 KCC’s proposed retention, KCC will not accept any engagement or perform any
16 service for any entity or person other than the Debtor in this Case. KCC may,
17 however, provide services to entities or persons that may be creditors or parties in
18 interest in this Case, provided that such services do not relate to, or have any direct
19 connection with, this Case or the Debtor.

20 19. As part of the overall compensation payable to KCC under the terms of
21 the KCC Agreement, KCC is entitled to certain indemnification obligations, which
22 are described in detail in the KCC Agreement. Specifically, the KCC Agreement
23 provides that the Debtor will indemnify and hold harmless KCC, its subcontractors,
24 and their respective personnel under certain circumstances specified in the KCC
25 Agreement.

26 20. The terms of the KCC Agreement and indemnification provisions were
27 negotiated between KCC and the Debtor at arm’s length, and I believe that these
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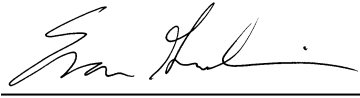
indemnification provisions, the Debtor's proposed modifications thereto, and the KCC Agreement are reasonable.

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

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4 Dated: September 22, 2022

KURTZMAN CARSON
CONSULTANTS LLC

6
7 By: 
8 Evan Gershbein
9 Executive Vice President,
10 Corporate Restructuring Services
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EXHIBIT A
(KCC Agreement)

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KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 30 day of August 2022, between Borrego Community Health Foundation (together with its affiliates and subsidiaries, the “Company”),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and



KCC AGREEMENT FOR SERVICES

orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000.00 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement.

IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

V. CONFIDENTIALITY

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency



KCC AGREEMENT FOR SERVICES

or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this contract is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.



KCC AGREEMENT FOR SERVICES

VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's gross negligence or willful misconduct. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third-parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or duplicate all programs and data submitted by the Company to KCC.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or



KCC AGREEMENT FOR SERVICES

express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kccllc.com

Borrego Community Health Foundation
P.O. Box 2369
Borrego Springs, CA 92004
Attn: Doug Habig, Chief Legal Officer
E-Mail: dhabig@borregohealth.org

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement



KCC AGREEMENT FOR SERVICES

between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]



KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

A handwritten signature in black ink, appearing to read 'Evan Gershbein', is written over a horizontal line.

BY: Evan Gershbein

DATE: August 30, 2022

TITLE: EVP, Corporate Restructuring Services

Borrego Community Health Foundation

A handwritten signature in black ink, appearing to read 'Rose MacIsaac', is written over a horizontal line.

BY: Rose MacIsaac

DATE: August 30, 2022

TITLE: Interim Chief Executive Officer

EXHIBIT B

(Proposed Order)

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

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CSD 1001A [07/01/18]

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

Samuel R. Maizel (SBN 189301)
Tania M. Moyron (SBN 235736)
DENTONS US LLP
601 S. Figueroa Street, Suite 2500
Los Angeles, CA 90017-5704
Telephone: 213 623 9300

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA
325 West F Street, San Diego, California 92101-6991

In Re
BORREGO COMMUNITY HEALTH FOUNDATION,
Debtor and Debtor In Possession.

Debtor.

BANKRUPTCY NO. 22-02384-11

Date of Hearing:
Time of Hearing:
Name of Judge: Honorable Laura S. Taylor

**ORDER ON
DEBTOR'S EX PARTE APPLICATION FOR AN ORDER APPOINTING KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT, EFFECTIVE AS OF THE PETITION DATE**

The court orders as set forth on the continuation pages attached and numbered 2 through 3 with exhibits, if any, for a total of 3 pages. Motion/Application Docket Entry No. _____.

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DATED:

Judge, United States Bankruptcy Court

The Court having considered the Debtor's Ex Parte Application for an Order Appointing Kurtzman Carson Consultants LLC as Claims and Noticing Agent, Effective as of the Petition Date ("Application") filed by Borrego Community Health Foundation ("Debtor"), the Debtor and debtor in possession herein, the files and records in this Case, and the arguments presented at the hearing before the Court (if any); the Court having found that good and sufficient cause exists for granting the Application; it appearing that the relief requested is in the best interest of the Debtor's estate, its creditors, and other parties in interest; and it appearing that notice of the Application was adequate and proper under the circumstances of the Case and that no further or other notice need be given,

IT IS HEREBY ORDERED that:

1. The Application is granted as set forth herein. Capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Application.
2. The Debtor is hereby authorized to retain KCC as the Claims and Noticing Agent in this chapter 11 case effective as of the Petition Date pursuant to section 156(c) of the Judicial Code as provided in the Application, on the terms and conditions set forth in the KCC Agreement, which terms and conditions are hereby approved.
3. KCC is authorized to take all action as necessary to comply with the duties set forth in the Application and the KCC Agreement.
4. The Debtor is authorized to compensate KCC in accordance with the terms of the Application and the KCC Agreement without the need for KCC to file fee applications or otherwise to seek Court approval for the compensation for its services and reimbursement of its expenses.
5. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, KCC's fees and expenses under this Order shall be an administrative expense of the Debtor's estate.
6. KCC may apply its retainer to all prepetition invoices, which retainer may be replenished to the original retainer amount, and thereafter, KCC may hold its retainer under the KCC Agreement during this chapter 11 case as security for payment of fees and expenses incurred under the KCC Agreement.
7. To the extent the Debtor and KCC modify the KCC Agreement, the Debtor shall file with the Court a Notice of Modification of Agreement with KCC (the "Notice") and serve such Notice upon the Office of the United States Trustee, counsel for any statutory committee appointed in this chapter 11 case, and any other party requesting notice of matters herein; and, if no objections are filed with respect to the Notice, then the modifications set forth in the Notice shall be deemed approved without the necessity of a hearing or further order of this Court.
8. The Debtor shall indemnify KCC under the terms of the KCC Agreement; provided that KCC shall not be entitled to indemnification, contribution, or reimbursement pursuant to the KCC Agreement for services other than the services provided under the KCC Agreement, unless such services and the indemnification, contribution, or reimbursement therefor are approved by this Court.
9. Notwithstanding anything to the contrary in the KCC Agreement, the Debtor shall have no obligation to indemnify KCC, or provide contribution or reimbursement to KCC, for any claim or expense that is: (a) judicially determined (the determination having become final) to have arisen from KCC's gross negligence, willful misconduct, or fraud; (b) for a contractual dispute in which the Debtor alleges the breach of KCC's contractual obligations if this Court determines that indemnification, contribution, or reimbursement would not be permissible under applicable law; or (c) settled prior to a judicial determination under (a) or (b), but determined by this Court, after notice and a hearing, to be a claim or expense for which KCC should not receive indemnity, contribution, or reimbursement under the terms of the KCC Agreement, as modified by this Order.

10. If, before the earlier of (a) the entry of an order confirming a chapter 11 plan in this chapter 11 case (that order having become a final order no longer subject to appeal), or (b) the entry of an order closing this chapter 11 case, KCC believes that it is entitled to the payment of any amounts by the Debtor on account of the Debtor's indemnification, contribution, and/or reimbursement obligations under the KCC Agreement (as modified by this Order), including without limitation the advancement of defense costs, KCC must file an application therefor in this Court, and the Debtor may not pay any such amounts to KCC before, after notice and a hearing, the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which this Court shall have jurisdiction over any request for fees and expenses by KCC for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtor's obligation to indemnify KCC. All parties in interest shall retain the right to object to any demand by KCC for indemnification, contribution, or reimbursement.

11. In the event that KCC is unable to provide the services set out in this Order, KCC will immediately notify the Clerk's Office and Debtor's counsel and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk's Office and Debtor's counsel.

12. The Debtor and KCC are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

13. Notwithstanding any term in the KCC Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

14. KCC shall not cease providing claims processing services during this chapter 11 case for any reason, including nonpayment, without an order of this Court.

15. The terms and conditions of this Order shall be immediately effective upon entry of this Order.