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7 *Debtor and Debtor In Possession*

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22 *[Proposed] Counsel to the Official Committee*
23 *of Unsecured Creditors*

24 **UNITED STATES BANKRUPTCY COURT**
25 **SOUTHERN DISTRICT OF CALIFORNIA**

26 In re

27 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
public benefit corporation,

28 Debtor and Debtor in Possession.

Case No. 22-02384-11

Chapter 11 Case



2202384221104000000000004

BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
public benefit corporation,

Plaintiff,

v.

CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
through its Director, Michelle Baass,

Defendant.

Adv. Pro. No. 22-90056

**STIPULATION AMONG THE
DEBTOR, THE CALIFORNIA
DEPARTMENT OF HEALTH CARE
SERVICES, AND THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS TO PARTICIPATE IN
MEDIATION OF ALL DISPUTES**

Borrego Community Health Foundation, the debtor and debtor in possession in the above-captioned case (the “Debtor”), the California Department of Health Care Services, acting by and through its director Michelle Baass (collectively, “DHCS”), and the Official Committee of Unsecured Creditors (the “Committee” and with the Debtor and DHCS, the “Parties”), hereby agree and stipulate as follows:

RECITALS

WHEREAS, on September 12, 2022, the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) commencing the above referenced bankruptcy case (the “Bankruptcy Case”) in the United States Bankruptcy Court for the Southern District of California (the “Court”);

WHEREAS, on September 26, 2022, the Debtor filed the *Debtor’s Complaint for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code of Civil Procedure 1085*, commencing the above referenced adversary proceeding [Docket No. 1] (the “Complaint”);

WHEREAS, on September 26, 2022, the United States Trustee appointed the Committee in the Bankruptcy Case pursuant to section 1102 of the Bankruptcy Code;

WHEREAS, on September 27, 2022, the Debtor filed its *Emergency Motion*:

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(I) to Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively, (II) for Temporary Restraining Order; Memorandum of Points and Authorities in Support Thereof; and Declarations in Support Thereof [Docket No. 3] (the “Motion to Enforce”) and certain other supporting declarations;

WHEREAS, DHCS objected to the Motion to Enforce and filed, among other things, *Defendant California Department of Health Care Services’ Opposition to Debtor’s Emergency Motion: (1) to Enforce the Automatic Stay; or (2) for Temporary Restraining Order* [Docket No. 30];

WHEREAS, DHCS opposes the relief requested in the Complaint and filed its *Answer to Complaint for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Docket No. 67];

WHEREAS, the Court issued its *Findings of Fact and Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order* [Docket No. 65] (the “Findings of Fact and Conclusions of Law”);

WHEREAS, the Court entered its *Order on Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for Temporary Restraining Order* [Docket No. 66] (the “Order”) granting, in part, the Motion to Enforce on the terms and conditions set forth in the Order; and

WHEREAS, in light of the foregoing and the existence of active disputes between the Parties, including but not limited to, concerns with quality of care, the Parties have jointly agreed to mediate all active disputes and reached the following agreements, which they jointly request that the Court enter as an Order of the Court:

STIPULATION

1. Agreement to Mediate. The Parties hereby agree to participate in a judicial settlement conference for the purpose of non-binding mediation

1 (“Mediation”) before a judicial officer (the “Judicial Officer”) in order to resolve all
 2 active disputes between and among the Parties, including but not limited to,
 3 expeditiously addressing concerns with quality of care, between the Parties.

4 2. Identity of the Judicial Officer Supervising the Mediation. The Parties
 5 shall cooperate in good faith to identify a judicial officer to serve as mediator and
 6 shall request appointment of such judicial officer to serve as mediator by the Court,
 7 no later than November 9, 2022. In the event that the Parties cannot agree on a
 8 mutually agreeable judicial officer, the Parties agree that the Bankruptcy Court may
 9 select a judicial officer.

10 3. Location of Mediation. The Mediation shall occur in Sacramento,
 11 California, or such other location as is convenient for the Judicial Officer and the
 12 Parties.

13 4. Powers of the Mediator. The Parties agree to submit to the power and
 14 jurisdiction of the Judicial Officer with respect to such further orders as are necessary
 15 or appropriate to facilitate and implement the purposes of this Stipulation and to
 16 supervise the Mediation.

17 5. Applicability of the Court’s Administrative Procedures. The following
 18 provisions of section 5.4 of the Court’s Administrative Procedures shall apply to the
 19 Mediation: sections 5.4(a), (b), (c), (e), (f), (g) (with the exceptions that (i) paragraph
 20 3 of this Stipulation shall modify section 5.4(a) and (ii) no compensation shall be
 21 required for the judicial officer overseeing the settlement conference), and (h).
 22 Section 5.5 of the Court's Administrative Procedures shall apply to the Mediation,
 23 except that a lack of communication between the Judicial Officer and the Parties
 24 relating to the dispute for ten (10) calendar days shall not result in deemed termination
 25 of the Mediation.

26
 27 6. Participation by Client Representatives. Representatives of the Parties,
 28 other than and in addition to counsel, are required to be present during the Mediation,

1 unless such attendance is excused, for cause, by the Judicial Officer. Representatives
2 of the Parties with authority to bind them in settlement discussions are required to be
3 available during the Mediation.

4 7. Confidentiality. The contents of the Mediation shall be confidential and
5 statements made by the Parties or the Judicial Officer during Mediation shall be
6 confidential and shall not be admissible as evidence before any court.

7 8. Effect of Entry of this Stipulation as an Order of the Court. Upon the
8 Court's entry of an order approving this Stipulation, pursuant to the proposed order
9 attached hereto as Exhibit A, each of the agreements set forth herein shall be binding
10 orders of the Court.

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16 *Signatures on following page*
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1 SEEN AND AGREED:

2
3 Dated: November 4, 2022

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

5 By: /s/ Samuel R. Maizel

6 Proposed Attorneys for the Chapter 11
7 Debtor and Debtor In Possession

8 AND

9 Dated: November 4, 2022

10 ROB BONTA
11 ATTORNEY GENERAL OF
12 CALIFORNIA
13 RICHARD T. WALDOW
14 SUPERVISING DEPUTY
15 ATTORNEY GENERAL
16 KENNETH K. WANG
17 DEPUTY ATTORNEY GENERAL

18 By: /s/ Kenneth K. Wang

19 Attorneys for Defendant California
20 Department of Health Care Services

21 AND

22 Dated: November 4, 2022

23 PACHULSKI STANG ZIEHL &
24 JONES LLP
25 JEFFREY N. POMERANTZ
26 STEVEN W. GOLDEN

27 By: /s/ Steven W. Golden

28 Proposed Attorneys for the Official
Committee of Unsecured Creditors

29 SO ORDERED:

30 Dated: _____, 2022

Judge, United States Bankruptcy Court

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EXHIBIT “A”
(Proposed Order)

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CSD 3000A [07/01/18]

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

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UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF CALIFORNIA

325 West F Street, San Diego, California 92101-6991

In Re

Borrego Community Health Foundation

Debtor.

BANKRUPTCY NO. 22-02384

Borrego Community Health Foundation

Plaintiff(s)

ADVERSARY NO. 22-90056

v.

California Department of Health Care Services

Defendant(s)

Date of Hearing:

Time of Hearing:

Name of Judge: Honorable Laura S. Taylor

ORDER ON**STIPULATION AMONG THE DEBTOR, THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES,
AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PARTICIPATE IN MEDIATION OF
ALL DISPUTES**

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

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DATED:

Judge, United States Bankruptcy Court

ORDER ON STIPULATION AMONG THE DEBTOR, THE CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, AND THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS TO PARTICIPATE IN MEDIATION OF ALL DISPUTES

DEBTOR: Borrego Community Health Foundation

CASE NO.: 22-02384

ADV. NO.: 22-90056

The Court having considered the Stipulation Among Borrego Community Health Foundation ("Debtor"), The California Department of Health Care Services ("DHCS"), and The Official Committee of Unsecured Creditors (the "Committee") To Participate In Mediation of All Disputes (the "Stipulation") [Adv. Docket No.] filed by Debtor and records in this Case; the Court having found that good and sufficient cause exists for granting the Stipulation;

IT IS HEREBY ORDERED that:

1. The Stipulation is granted.

IT IS SO ORDERED.