

1 ROB BONTA
Attorney General of California
2 RICHARD T. WALDOW
Supervising Deputy Attorney General
3 DARIN L. WESSEL
Deputy Attorney General
4 State Bar No. 176220
600 West Broadway, Suite 1800
5 San Diego, CA 92101
P.O. Box 85266
6 San Diego, CA 92186-5266
Telephone: (619) 738-9125
7 Fax: (619) 645-2012
E-mail: Darin.Wessel@doj.ca.gov
8 *Attorneys for Defendant/Appellant California*
Department of Health Care Services, by and
9 *through its Director, Michelle Baass*

10 UNITED STATES DISTRICT COURT
11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re
13 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
14 public benefit foundation,
15 Debtor and Debtor in Possession.
16

Case No. 22-CV-01751-GPC-MSB
Chapter 11 Case No. 22-02384-LT11
Adv. Pro. No. 22-90056-LT

17 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
18 public benefit corporation,
19 Plaintiff and Appellee,
20 v.
21 CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
22 through its Director, Michelle Baass,
23 Defendant and Appellant.
24
25
26
27
28

**JOINT STIPULATION TO
DISMISS APPEAL**



1 TO THE COURT:

2 Pursuant to Rule 8023(a)-(b) of the Federal Rules of Bankruptcy Procedure
3 (the Bankruptcy Rules), Appellant the California Department of Health Care
4 Services, acting by and through its director Michelle Baass (collectively, DHCS)
5 and Appellee Borrego Community Health Foundation (Borrego, and collectively,
6 with DHCS, the Parties) hereby stipulate (the Stipulation) as follows:

7 **RECITALS**

8 WHEREAS, on September 12, 2022, Borrego filed a voluntary petition for
9 relief under chapter 11 of title 11 of the United States Code (the Bankruptcy Code)¹
10 commencing the case titled *In re Borrego Community Health Foundation*, Case No.
11 22-02384-LT11 (the Bankruptcy Case)² in the United States Bankruptcy Court for
12 the Southern District of California (the Bankruptcy Court);

13 WHEREAS, on September 26, 2022, Borrego filed the *Debtor's Complaint*
14 *for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in*
15 *the Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Adv.
16 Docket No. 1] (the "Complaint"), commencing the adversary proceeding titled
17 *Borrego Community Health Foundation, a California Nonprofit Public Benefit*
18 *Corporation v. California Department of Health Care Services, by and through its*
19 *Director, Michelle Baass*, Case No. 22-90056 (the Adversary Proceeding);³

20 WHEREAS, on September 27, 2022, Borrego filed its *Emergency Motion:*
21 *(I) to Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively,*
22 *(II) for Temporary Restraining Order; Memorandum of Points and Authorities in*
23 *Support Thereof; and Declarations in Support Thereof* [Adv. Docket No. 3] (the
24 Motion to Enforce);

25 _____
26 ¹ All references to section or chapter are to the Bankruptcy Code, 11 U.S.C.
§§ 101, *et seq.*, as amended, unless otherwise denoted.

27 ² All references to [Bankr. Docket No.] are to entries on the Bankruptcy Case
docket.

28 ³ All references to [Adv. Docket No.] are to entries on the Adversary
Proceeding docket.

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

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

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

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

18 WHEREAS, on November 9, 2022, DHCS commenced the above-captioned
19 appeal (the Appeal) of the Findings of Fact and Conclusions of Law and the
20 Bankruptcy Court Order;

21 WHEREAS, in November 2022, the Parties agreed, and the Bankruptcy
22 Court ordered the Parties to mediate all disputes between them before an appointed
23 mediator, the Honorable Dennis Montali, United States Bankruptcy Judge [Adv.
24 Docket Nos. 73, 74, 83];

25 WHEREAS, on February 27, 2023, the Parties executed a term sheet
26 outlining the terms of a settlement reached between the Parties (the Term Sheet)
27 and filed the *Debtor's Notice and Motion to Approve Compromise Among Debtor,*
28 *Official Committee of Unsecured Creditors and California Department of Health*

1 *Care Services Pursuant to Federal Rule of Bankruptcy Procedure 9019* [Docket
2 No. 510] (the Settlement Motion), which was heard on shortened time on March 1,
3 2023 [Bankr. Docket No. 512]. On March 1, 2023, the Bankruptcy Court granted
4 the Settlement Motion and approved the settlement between the Parties;

5 WHEREAS, on March 7, 2023, the Court entered its *Order on Debtor’s*
6 *Motion to Approve Compromise Among Debtor, Official Committee of Unsecured*
7 *Creditors, and California Department of Unsecured Creditors* [Bankr. Docket No.
8 544] (the Settlement Order), pursuant to which the Parties were “authorized to take
9 all actions and execute all documents and instruments that they deem necessary or
10 appropriate to implement and effectuate the transactions and other obligations
11 contemplated by the Term Sheet.” [Bankr. Docket No. 544 at ¶ 2];

12 WHEREAS, as contemplated by the Term Sheet, the Parties prepared and
13 executed a final settlement agreement (the Settlement Agreement), and the Debtor
14 filed the *Notice of Filing Executed Settlement Agreement Among the Debtor, the*
15 *Official Committee of Unsecured Creditors, and the California Department of*
16 *Health Care Services* [Bankr. Docket No. 923];

17 WHEREAS, the Settlement Agreement provides, among other things, as
18 follows:

19 The Parties agree to, within 21 days of the entry of the Bankruptcy
20 Court’s vacatur of the Findings of Fact and Stay Enforcement Order in
21 the Adversary Proceeding [Adv. Dkt 65 and 66], jointly seek dismissal
22 of the Appeal. The Parties agree that this Settlement Agreement is
intended to and does resolve all issues between and among the Parties
related to the Appeal. The Parties agree to file any other joint motions
and other documents as may be necessary to accomplish the foregoing.

23 Settlement Agreement, at 11 [Bankr. Docket No. 923];

24 WHEREAS, the Parties entered into the *Stipulation Among the Debtor, the*
25 *California Department of Health Care Services, and the Official Committee of*
26 *Unsecured Creditors to (I) Vacate the (A) Findings of Facts and Conclusions of*
27 *Law re: Emergency Motion to Enforce the Automatic Stay or Alternatively for*
28 *Temporary Restraining Order* [Docket No. 65] and (B) *Order on Emergency*

1 *Motion to Enforce the Automatic Stay or Alternatively for Temporary Restraining*
2 *Order [Docket No. 66]; and (II) Dismiss the Adversary Proceeding [Adv. Docket*
3 *No. 133] (the “Bankruptcy Stipulation”) to (i) vacate the Findings of Fact and*
4 *Conclusions of Law [Adv. Docket No. 65] and the Bankruptcy Court Order [Adv.*
5 *Docket No. 66], and (ii) dismiss the Adversary Proceeding;*

6 WHEREAS, on October 18, 2023, the Bankruptcy Court approved the
7 Bankruptcy Stipulation and (i) vacated the Findings of Fact and Conclusions of
8 Law and the Bankruptcy Court Order, and (ii) dismissed the Adversary Proceeding
9 [Adv. Docket No. 134]; and

10 WHEREAS, pursuant to the Settlement Agreement, the Parties seek to dismiss
11 the Appeal.

12 **STIPULATION**

13 NOW, THEREFORE, the Parties to this Stipulation hereby stipulate as follows:

14 Pursuant to Bankruptcy Rule 8023(a)-(b), and the terms of the Settlement
15 Agreement, this Appeal shall be dismissed with prejudice. All parties to bear their
16 own fees and costs.

17
18 **IT IS SO STIPULATED AND AGREED.**

19 Dated: November 6, 2023

Respectfully submitted,

20 ROB BONTA
21 Attorney General of California
22 RICHARD T. WALDOW
Supervising Deputy Attorney General

23
24 By: /s/ Darin L. Wessel
25 DARIN L. WESSEL
26 Deputy Attorney General
27 *Attorneys for Defendant/Appellant*
28 *California Department of Health Care*
Services, by and through its Director,
Michelle Baass

1 Dated: November 6, 2023

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

2

3

4

By: /s/ Samuel R. Maizel
*Attorneys for Debtor Plaintiff and
Appellee Borrego Community Health
Foundation*

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

CERTIFICATE OF SERVICE

Case Name: **Borrego Community Health** No. **22-CV-01751-GPC-MSB**
Foundation Suspension (DHCS)

I hereby certify that on **November 6, 2023**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **JOINT STIPULATION TO DISMISS APPEAL**
- **[PROPOSED] ORDER ON JOINT STIPULATION TO DISMISS APPEAL**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **November 6, 2023**, at San Diego, California.

G. Lopez
Declarant

 Signature

LA2022602345
84233318.docx

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re
BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
public benefit foundation,
Debtor and Debtor in Possession.
BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
public benefit corporation,
Plaintiff and Appellee,
v.
CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
through its Director, Michelle Baass,
Defendant and Appellant.

Case No. 22-CV-01751-GPC-MSB
Chapter 11 Case No. 22-02384-LT11
Adv. Pro. No. 22-90056-LT

**[PROPOSED] ORDER ON JOINT
STIPULATION TO DISMISS
APPEAL**

BY THE COURT,

The Court having reviewed and considered the joint stipulation by Appellant,
and Defendant below, California Department of Health Care Services and Appellee,

1 and Plaintiff below, Borrego Community Health Foundation, and good cause
2 appearing, the Court hereby orders as follows:

3 1. Pursuant to Rule 8023(a)-(b) of the Federal Rules of Bankruptcy
4 Procedure, this Court hereby orders this appeal dismissed with all parties to bear
5 their own fees and costs.

6 IT IS SO ORDERED.

7 Dated: November __, 2023

The Honorable Gonzalo P. Curiel,
8 District Court Judge

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28