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

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

25 In re
26 BORREGO COMMUNITY HEALTH
27 FOUNDATION, a California nonprofit
public benefit corporation,
28 Debtor and Debtor in Possession.

Case No. 22-02384-11
Chapter 11 Case



220238422110400000000004

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<p>BORREGO COMMUNITY HEALTH FOUNDATION, a California nonprofit public benefit corporation,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">v.</p> <p>CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES, by and through its Director, Michelle Baass,</p> <p style="text-align: center;">Defendant.</p>

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

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

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

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

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

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

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

25
26 **STIPULATION**

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

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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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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

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5

By: /s/ Samuel R. Maizel

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Proposed Attorneys for the Chapter 11
Debtor and Debtor In Possession

7

8

AND

9

10 Dated: November 4, 2022

ROB BONTA
ATTORNEY GENERAL OF
CALIFORNIA
RICHARD T. WALDOW
SUPERVISING DEPUTY
ATTORNEY GENERAL
KENNETH K. WANG
DEPUTY ATTORNEY GENERAL

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14

By: /s/ Kenneth K. Wang

15

Attorneys for Defendant California
Department of Health Care Services

16

17

AND

18 Dated: November 4, 2022

PACHULSKI STANG ZIEHL &
JONES LLP
JEFFREY N. POMERANTZ
STEVEN W. GOLDEN

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By: /s/ Steven W. Golden

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Proposed Attorneys for the Official
Committee of Unsecured Creditors

23 SO ORDERED:

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26 Dated: _____, 2022

Judge, United States Bankruptcy Court

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EXHIBIT “A”
(Proposed Order)

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CSD 3000A [07/01/18]

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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.