

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.

**JOINT STATUS REPORT TO
COURT**

24
25 TO THE COURT:

26 Pursuant to the Court’s Order for Status Report (Docket No. 10), Appellee
27 Borrego Community Health Foundation (“Borrego”), and the Appellant California
28 Department of Health Care Services (“Department” and collectively with Borrego,

1 the “Parties”) respectfully submit the following joint status report to the Court
2 regarding the progress of settlement and related proceedings before the Bankruptcy
3 Court:

4 **BACKGROUND**

5 1. This appeal arises out of an adversary proceeding in the underlying
6 Chapter 11 bankruptcy filed by Borrego, a federally qualified health care facility
7 providing care to predominantly Medi-Cal patients in San Diego and Riverside
8 Counties. The Department oversees the Medi-Cal program and Borrego’s
9 participation in the Medi-Cal program, and is Borrego’s largest creditor.

10 2. On September 12, 2022, Borrego filed a voluntary petition for relief
11 under chapter 11 of the Bankruptcy Code.

12 3. On September 26, 2022, Borrego commenced an adversary proceeding
13 entitled *Borrego Community Health Foundation v. California Department of Health*
14 *Care Services*, Adv. Pro. No. 22-90056 (the “Adversary Proceeding”). On the same
15 day, the Debtor filed *its Emergency Motion: (I) To Enforce The Automatic Stay*
16 *Pursuant To 11 U.S.C. § 362; Or, Alternatively (II) For Temporary Restraining*
17 *Order* [Adv. Docket No. 3] (the “Motion to Enforce”).

18 4. On October 26, 2022, the Court issued its *Findings Of Fact And*
19 *Conclusions Of Law re: Emergency Motion To (I) Enforce The Automatic Stay Or*
20 *(II) Alternatively For Temporary Restraining Order* [Adv. Docket No. 65]. That
21 same day, the Court entered its *Order On Emergency Motion To (I) Enforce The*
22 *Automatic Stay Or (II) Alternatively For Temporary Restraining Order* [Adv.
23 Docket No. 66] (the “Order”) granting, in part and over the opposition of the
24 Department, the Motion to Enforce.

25 5. On November 7, 2022, the Department commenced this Appeal [Adv.
26 Docket No. 75].

27 6. The Parties agreed to a mediation before the Honorable Dennis Montali,
28 United States Bankruptcy Judge [Adv. Docket Nos. 73, 74, 83].

1 Court, and (b) they will be in a position to submit the contemplated dismissal of this
2 appeal within the next 90 days.

3 The settlement between the parties was interrelated with the Sale. The terms
4 of settlement included provisions for ongoing monitoring of patient care operations
5 by an independent monitor during the transition period through close of the Sale.
6 However, as the terms of the Sale became clear, it delayed the progress of finalizing
7 the formal settlement agreement while the Department assessed potential proposed
8 changes to the material terms with respect to the independent monitor.

9 The Sale closed at 12:00 a.m. on August 1, 2023.

10 The Parties anticipate that the formal settlement agreement will be fully
11 approved by the Department and all signatures gathered by next week.

12 The Parties are now in a position to prepare and submit their joint motion to
13 the Bankruptcy Court requesting that it vacate its orders that form the basis of the
14 present appeal. The Parties anticipate that they will obtain a ruling from the
15 Bankruptcy Court within the next 30-45 days. The Parties anticipate that they will
16 be in a position to submit their joint motion for dismissal of the present appeal
17 within the time set forth in this Court's prior order and that this appeal will be in a
18 position for this Court to enter a dismissal within the next 90 days.

19 Dated: September 8, 2023

Respectfully submitted,

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

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

1 Dated: September 8, 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 Foundation Suspension (DHCS)**
USDC Case No. **22-CV-01751-GPC-MSB**

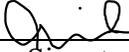
I hereby certify that on **September 8, 2023**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

JOINT STATUS REPORT TO COURT

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 **September 8, 2023**, at San Diego, California.

A. Dotson
Declarant


Signature