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7 Attorneys for the Chapter 11
Debtor and Debtor in Possession

8
9 **UNITED STATES BANKRUPTCY COURT**
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11
12 In re
13 **BORREGO COMMUNITY**
HEALTH FOUNDATION,
14
15 Debtor and Debtor in
Possession.

Case No. 22-02384-11
Chapter 11 Case
Honorable Laura S. Taylor

**DEBTOR’S NOTICE OF MOTION AND
MOTION FOR ENTRY OF AN ORDER
(I) AUTHORIZING THE DEBTOR TO
FILE THE COMBINED DISCLOSURE
STATEMENT AND PLAN;
(II) SCHEDULING A COMBINED
CONFIRMATION HEARING AND
SETTING DEADLINES RELATED
THERE TO; AND (III) GRANTING
RELATED RELIEF; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF; DECLARATION
OF ISAAC LEE**

Date: November 14, 2023
Time: 10:00 a.m. Pacific Time
Location: Department 3

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1 **PLEASE TAKE NOTICE** that at the above referenced date, time and
2 location, Borrego Community Health Foundation, the debtor and debtor in
3 possession in the above-captioned chapter 11 bankruptcy case (the “Debtor”), will
4 move (the “Motion”) the Court for entry of an order (a) authorizing the Debtor and
5 the Official Committee of Unsecured Creditors (the “Committee”) to file a joint and
6 combined disclosure statement and liquidating plan (the “Combined Disclosure
7 Statement and Plan”), (b) scheduling a combined hearing on the approval of the
8 disclosures and confirmation of the Combined Disclosure Statement and Plan and
9 related deadlines, and (c) granting related relief.

10 **PLEASE TAKE FURTHER NOTICE** that this Motion is based on this
11 Notice, the Motion, the Memorandum, the *Declaration of Isaac Lee, Chief*
12 *Restructuring Officer, in Support of Debtor’s Emergency First Day Motions* [Docket
13 No. 7], supporting statements, arguments and representations of counsel who will
14 appear at the hearing on the Motion, the record in this case, and any other evidence
15 properly brought before the Court in all other matters of which this Court may
16 properly take judicial notice.

17 **PLEASE TAKE FURTHER NOTICE** that any opposition or other response
18 to the Motion must be served upon the undersigned, and the original and one copy of
19 such papers with proof of service must be filed with the Clerk of the United States
20 Bankruptcy Court at 325 West F Street, San Diego, California 92101-6691, not later
21 than fourteen (14) days from the date of service of this Motion.

22 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy
23 Rule 9013-7(b)(2), the failure to file and serve a timely objection to the Motion may
24 be deemed by the Court to be consent to the relief requested herein.

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1 Dated: September 25, 2023

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SAMUEL R. MAIZEL
TANIA M. MOYRON

2
3 By /s/ Tania M. Moyron
Tania M. Moyron

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5 Attorneys for the Chapter 11 Debtor and
Debtor in Possession

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

1
2
3 Borrego Community Health Foundation, the debtor and debtor in possession
4 (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Case”), by
5 and through its undersigned counsel, hereby files this Memorandum of Points and
6 Authorities in support of its motion (the “Motion”) for entry of an order
7 (a) authorizing the Debtor and the Official Committee of Unsecured Creditors (the
8 “Committee”) to file a joint and combined disclosure statement and liquidating plan
9 (the “Combined Disclosure Statement and Plan”), (b) scheduling a combined hearing
10 on the approval of the disclosures and confirmation of the Combined Disclosure
11 Statement and Plan (the “Combined Hearing”) and related deadlines, and (c) granting
12 related relief.

13 In this Case, filing the Combined Disclosure Statement and Plan and
14 proceeding on an expedited schedule is appropriate. The Combined Disclosure
15 Statement and Plan is jointly proposed with the Committee, and, thus, the parties
16 anticipate that the Committee and other major stakeholders will support the
17 Combined Disclosure Statement and Plan, particularly since the Combined
18 Disclosure Statement and Plan proposes to pay unsecured creditors with allowed
19 claims in full. The other major stakeholder in this case is the California Department
20 of Health Care Services (“DHCS”), which reached a Court-approved settlement with
21 the Debtor and the Committee (the “DHCS Settlement”) that provides for, among
22 other things, the payment of DHCS’ claim. Allowed claimants will largely be paid
23 through the proceeds of the sale of substantially all of the Debtor’s assets (the “Sale”),
24 which has closed. Accordingly, the Debtor and the Committee respectfully submit
25 that the Combined Disclosure Statement and Plan and the proposed deadlines are
26 appropriate under the circumstances and will result in expeditious payment to holders
27 of allowed claims. Thus, the Debtor respectfully requests that the Court grant this
28 Motion.

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1 **II. JURISDICTION AND VENUE**

2 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
3 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of this
4 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

5 **III. STATEMENT OF FACTS**

6 **A. General Background**

7 1. On September 12, 2022 (the “Petition Date”), the Debtor filed a
8 voluntary petition for relief under chapter 11 of title 11 of the United States Code
9 (the “Bankruptcy Code”).¹ Since the commencement of its Case, the Debtor has been
10 operating its business as a debtor in possession pursuant to §§ 1107 and 1108.

11 2. As of the Petition Date, the Debtor was a nonprofit Federally Qualified
12 Health Center that provided health care services to low income and rural patients in
13 San Diego and Riverside Counties through a system of eighteen clinics, two
14 pharmacies and six mobile units. In 2021, the Debtor provided approximately
15 386,000 patient care visits to over 94,000 patients. The Debtor’s services included
16 comprehensive primary care, urgent care, behavioral health, dental services, specialty
17 care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic
18 services, tele-health, and pharmacy.

19 3. Additional background regarding the Debtor, including an overview of
20 the Debtor’s business and additional events leading up to this Case, is set forth in the
21 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor’s*
22 *Emergency First Day Motions* [Docket No. 7]. As set forth in the First-Day
23 Declaration, the Debtor appointed Isaac Lee of Ankura Consulting Group, LLC, as
24 its Chief Restructuring Officer.

25
26 _____
27 ¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*,
28 as amended. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure. All
references to “Local Rules” are to the Local Rules of the United States Bankruptcy Court for the
Southern District of California.

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1 4. On September 26, 2022, the Office of the United States Trustee
2 appointed the Committee in this Case [Docket No. 49].

3 **B. Facts Relevant to this Motion**

4 5. On March 7, 2023, the Court entered its *Order on Debtor’s Motion to*
5 *Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,*
6 *and California Department of Health Care Services* [Docket No. 544], which
7 approved the DHCS Settlement. As set forth therein, the proceeds of the Sale will be
8 distributed in accordance with the terms of the DHCS Settlement and the confirmed
9 plan.

10 6. On March 13, 2023, the Court entered the *Order (A) Authorizing the*
11 *Sale of Property to Desert AIDS Project d/b/a DAP Health Free and Clear of Liens,*
12 *Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and*
13 *Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief*
14 [Docket No. 559], which approved the Sale to DAP Health, Inc.

15 7. On July 31, 2023, the Sale closed, and the Debtor filed the *Notice of*
16 *Occurrence of Closing of Sale to DAP Health, Inc.* [Docket No. 823].

17 **C. The Combined Disclosure Statement and Plan**

18 8. If this Motion is approved, the Debtor and the Committee will file the
19 Combined Disclosure Statement and Plan, which provides for, among other things,
20 the liquidation of assets, distributions to creditors, and the wind down of the Debtor’s
21 remaining affairs. *See Declaration of Isaac Lee* (the “Lee Decl.”) at ¶ 4.

22 9. Claims are classified as follows:

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

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1 10. As shown above, the Combined Disclosure Statement and Plan will
2 provide for four different classes of claims. Lee Decl. at ¶ 6. Claims in Class 3 and
3 Class 4 are impaired by the Combined Disclosure Statement and Plan, and such
4 holders are entitled to vote to reject or accept the Combined Disclosure Statement
5 and Plan. *Id.* The general unsecured creditors in Class 3 are projected to receive a
6 100% distribution on their allowed claims without post-petition interest. *Id.* DHCS
7 will receive a distribution on its claim in accordance with the DHCS Settlement and
8 the Combined Disclosure Statement and Plan. *Id.*

9 11. Claims in Class 1 and Class 2 are unimpaired and such holders are
10 deemed to have accepted the Combined Disclosure Statement and Plan, pursuant to
11 § 1126(f), and are therefore not entitled to vote. *Id.*

12 12. In addition, pursuant to § 1123(a)(1), the Combined Disclosure
13 Statement and Plan designates four categories of claims that are entitled to receive
14 distributions yet are not classified for purposes of voting. *Id.* at ¶ 7. These categories
15 are (1) Administrative Claims, (2) Professional Claims, (3) Statutory Fees, and
16 (4) Priority Tax Claims (collectively, the “Unclassified Claimholders”). *Id.* Pursuant
17 to the Combined Disclosure Statement and Plan, the Unclassified Claimholders are
18 projected to receive a 100% distribution on their allowed claims. *Id.*

19 13. The Committee supports the relief requested herein and seeks authority
20 for the Debtor to file the Combined Disclosure Statement and Plan and proceed to
21 confirmation on an expedited basis. *Id.* at ¶ 8.

22 14. If the Court grants authority to file the Combined Disclosure Statement
23 and Plan, a summary of the key dates the Debtor seeks to establish, subject to the
24 Court’s availability, are as follows (collectively, the “Proposed Schedule”):

Event	Date
Deadline to file (1) the Combined Disclosure Statement and Plan and (2) a motion for conditional approval of disclosures and approval	November 17, 2023

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1	of solicitation procedures (the “ <u>Conditional Approval Motion</u> ”)	
2	Deadline to file and serve objections to the Conditional Approval Motion	November 28, 2023
3	Deadline to file and serve reply in support of the Conditional Approval Motion	December 4, 2023
4	Hearing on Conditional Approval Motion	December 6, 2023, at 2:00 p.m.
5	Deadline to file and serve objections to the Combined Disclosure Statement and Plan	January 3, 2024
6	Deadline to file (1) confirmation brief and (2) reply to any objection	January 8, 2024
7	Combined Hearing	January 10, 2024, at 2:00 p.m.

IV. ARGUMENT

A. The Combined Disclosure Statement and Plan Is Appropriate in this Case

Section 1128 provides that “[a]fter notice, the court shall hold a hearing on confirmation of a plan” and that “[a] party in interest may object to confirmation of a plan.” 11 U.S.C. § 1128. Similarly, Rule 3017(c) provides that “[o]n or before approval of the disclosure statement, the court... may fix a date for the hearing on confirmation.” Fed. R. Bankr. P. 3017(c). Additionally, this District contemplates a combined plan and disclosure statement in individual chapter 11 cases. Local Rule 3017-2.

Additionally, § 105 expressly authorizes the Court to “issue an order... that... provides that the hearing on approval of the disclosure statement be combined with the hearing on confirmation of the plan” where the Court deems a combined hearing to be “appropriate to ensure that the case is handled expeditiously and economically.” *See* § 105(d)(2)(B)(vi); *see also In re Van Tassel*, 2011 WL 10723278, at *2 (Bankr. E.D. Cal. Jun. 7, 2011) (“In the court’s view, there is enough latitude in § 105 to allow the court to approve a disclosure statement conditionally, on a case by case

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1 basis, where such approval does not prejudice the rights of any party in interest and
2 provides for an economical and expeditious administration of the case in question.”);
3 *In re Gulf Coast Oil Corp.*, 404 B.R. 407, 425 (Bankr. S.D. Tex. 2009) (“Section
4 1125(f) authorizes combined plans and disclosure statements in small business cases
5 and § 105(d) authorizes the court to combine them in other cases.”). Accordingly,
6 this Court has the discretion to authorizing the filing of a combined disclosure
7 statement and plan.

8 Here, no parties will be prejudiced by the filing of the Combined Disclosure
9 Statement and Plan. The Debtor and the Committee have prepared and will jointly
10 propose the Combined Disclosure Statement and Plan, which purports to pay all
11 allowed claims—other than the claim held by DHCS—in full. DHCS’ claim will be
12 paid in accordance with the terms of the DHCS Settlement. Because major
13 stakeholders are anticipated to support the Combined Disclosure Statement and Plan,
14 the Debtor and Committee seek to proceed as expeditiously as possible to pay the
15 allowed claims from the proceeds of the Sale. Thus, an expedited confirmation
16 process will allow creditors with allowed claims to be paid sooner than if the Debtor
17 was required to engage in a two-step confirmation process. The Debtor believes that
18 the proposed Combined Disclosure Statement and Plan provide the most efficient
19 means to wind down the Case and operations in an orderly manner, maximize the
20 value of the Debtor’s estate and distribute recoveries to creditors.

21 Based on the foregoing, the Debtor respectfully requests that the Court
22 authorize the Debtor to file the Combined Plan and Disclosure Statement.

23 **B. An Expedited Timeline Is Appropriate in this Case**

24 The purpose of allowing a combined disclosure statement and plan is to
25 provide “for an economical and expeditious administration of the case.” *In re Van*
26 *Tassel*, 2011 WL 10723278, at *2. Rule 9006(c)(1) authorizes the Court, for cause
27 shown, to reduce the notice period otherwise required. Fed. R. Bankr. P. 9006(c)(1);
28 *see also* Local Rule 9006-1(d). To expedite the administration of this Case, subject

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1 to this Court’s approval and availability, the Debtor requests that the Court enter an
2 order setting forth the Proposed Schedule, as set forth above.

3 Specifically, the Debtor seeks shortened time on the response deadline and
4 hearing on the Conditional Approval Motion as set forth in the Proposed Schedule.
5 The Conditional Approval Motion will be a procedural motion seeking (i) conditional
6 approval of the disclosures in the Combined Disclosure Statement and Plan, (ii)
7 approval of the proposed solicitation packages, forms of ballots, (iii) and
8 establishment of voting procedures. Cause exists to shorten time related to the
9 Conditional Approval Motion because the Proposed Schedule will streamline and
10 expedite the confirmation process, which will inure directly to the benefit of the
11 Debtor’s creditors by hastening the implementation of the Combined Disclosure
12 Statement and Plan and, thus, distribution on allowed claims. Further, the Proposed
13 Schedule will spare the Debtor the additional administrative expenses associated with
14 a two-stage process and promote judicial efficiency and economy.

15 Additionally, no parties are prejudiced under the Proposed Schedule. As set
16 forth above, the Committee, is a co-proponent of the Proposed Schedule and the
17 Combined Disclosure Statement and Plan. Failure to file an objection to the
18 Conditional Approval Motion will not waive any party’s right to object to, or vote
19 on, the Combined Disclosure Statement and Plan. Moreover, under the Proposed
20 Schedule, all parties in interest will have more than 42 days’ notice from the filing of
21 the Combined Plan and Disclosure Statement of the Combined Hearing Date and
22 related deadlines, as required by Local Rule 9013-6(a)(2), and 28 days to file any
23 opposition to the Combined Disclosure Statement and Plan, as required by Local
24 Rule 9013-6(a)(4).

25 Accordingly, based on the foregoing, the Debtor respectfully requests that the
26 Court grant the relief requested in this Motion.

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V. CONCLUSION

WHEREFORE, for the foregoing reasons and such additional reasons as may be advanced at or prior to the hearing on this Motion, the Debtor respectfully requests that the Court enter an order entry of an order (a) authorizing the Debtor to file the Combined Disclosure Statement and Plan; (b) scheduling the Combined Hearing and related deadlines pursuant to the Proposed Schedule; and (c) granting such other and further relief as this Court deems just and proper under the circumstances.

Dated: September 25, 2023

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By /s/ Tania M. Moyron
Tania M. Moyron

Attorneys for the Chapter 11 Debtor
and Debtor in Possession

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DECLARATION OF ISAAC LEE

I, Isaac Lee, hereby state and declare that if called as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Restructuring Officer (“CRO”) of Borrego Community Health Foundation (“Debtor”).

2. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CRO for the Debtor.

3. I make this declaration in support of the *Motion for Entry of an Order (I) Authorizing the Debtor to File the Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto* (the “Motion”) (unless otherwise defined herein, capitalized terms shall have the same meaning as in the Motion).

4. If the Motion is approved, the Debtor and the Official Committee of Unsecured Creditors (the “Committee”) will file a joint and combined disclosure statement and liquidating plan (the “Combined Disclosure Statement and Plan”). The Combined Disclosure Statement and Plan provides for, among other things, the liquidation of assets, distributions to creditors, and the wind down of the Debtor’s remaining affairs.

5. Claims are classified as follows:

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

6. As shown above, the Combined Disclosure Statement and Plan will provide for four different classes of claims. Claims in Class 1 and Class 2 are

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1 unimpaired and such holders are deemed to have accepted the Combined Disclosure
 2 Statement and Plan and are not entitled to vote Claims in Class 3 and Class 4 are
 3 impaired by the Combined Disclosure Statement and Plan, and such holders are
 4 entitled to vote to reject or accept the Combined Disclosure Statement and Plan. The
 5 general unsecured creditors in Class 3 are projected to receive a 100% distribution
 6 on their allowed claims without post-petition interest. DHCS will receive a
 7 distribution on its claim in accordance with the DHCS Settlement and the Combined
 8 Disclosure Statement and Plan.

9 7. The Combined Disclosure Statement and Plan designates four
 10 categories of claims that are entitled to receive distributions yet are not classified for
 11 purposes of voting. These categories are (1) Administrative Claims, (2) Professional
 12 Claims, (3) Statutory Fees, and (4) Priority Tax Claims (collectively, the
 13 “Unclassified Claimholders”). Pursuant to the Combined Disclosure Statement and
 14 Plan, the Unclassified Claimholders are projected to receive a 100% distribution on
 15 their allowed claims.

16 8. The Committee supports the relief requested herein and seeks authority
 17 for the Debtor to file the Combined Disclosure Statement and Plan and proceed to
 18 confirmation on an expedited basis.

19 9. If the Court grants authority to file the Combined Disclosure Statement
 20 and Plan, a summary of the key dates the Debtor seeks to establish, subject to the
 21 Court’s availability, are as follows (collectively, the “Proposed Schedule”):

Event	Date
Deadline to file (1) the Combined Disclosure Statement and Plan and (2) a motion for conditional approval of disclosures and approval of solicitation procedures (the “ <u>Conditional Approval Motion</u> ”)	November 17, 2023
Deadline to file and serve objections to the Conditional Approval Motion	November 28, 2023

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Deadline to file and serve reply in support of the Conditional Approval Motion	December 4, 2023
Hearing on Conditional Approval Motion	December 6, 2023, at 2:00 p.m.
Deadline to file and serve objections to the Combined Disclosure Statement and Plan	January 3, 2024
Deadline to file (1) confirmation brief and (2) reply to any objection	January 8, 2024
Combined Hearing	January 10, 2024, at 2:00 p.m.

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

Executed this 25th day of September 2023, at Los Angeles, California.



Isaac Lee
Chief Restructuring Officer

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