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15 *dba Blue Shield of California and Blue Shield of*
California Promise Health Plan

16 **UNITED STATES BANKRUPTCY COURT**
17 **SOUTHERN DISTRICT OF CALIFORNIA**

18 In re

19 BORREGO COMMUNITY
20 HEALTH FOUNDATION,

21 Debtor and Debtor in
22 Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**STIPULATION REGARDING
ASSUMPTION AND ASSIGNMENT
OF AGREEMENTS WITH
CALIFORNIA PHYSICIANS'
SERVICE DBA BLUE SHIELD OF
CALIFORNIA AND BLUE SHIELD
OF CALIFORNIA PROMISE
HEALTH PLAN**

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1 Borrego Community Health Foundation, the debtor and debtor in possession in
 2 the above-captioned case (the “Debtor”) and California Physicians Service dba Blue
 3 Shield of California (“BSC”) and Blue Shield of California Promise Health Plan f/k/a
 4 Care 1st Health Plan (“Care 1st” and together with BSC, “Blue Shield,” and
 5 collectively with the Debtor, the “Parties”), hereby enter into this *Stipulation*
 6 *Regarding the Assumption and Assignment of Agreements with California*
 7 *Physicians’ Service dba Blue Shield of California and Blue Shield of California*
 8 *Promise Health Plan* (the “Stipulation”). In support of the Stipulation, the Parties
 9 refer to the following recitals:

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 11
 12
 13 **RECITALS**

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

18
 19
 20 WHEREAS, Blue Shield and the Debtor are parties to certain provider
 21 agreements (the “Agreements”);

22
 23 WHEREAS, on November 8, 2022, Care 1st filed Proof of Claim No. 69 in the
 24 amount of \$39,179.06 for prepetition amounts owed by the Debtor to Care 1st under
 25 the Agreements;

26
 27 WHEREAS, BSC alleges that it has a claim of \$291.14 for prepetition amounts
 28 owed by the Debtor to BSC under the Agreements;

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1 WHEREAS, on January 16, 2023, the Debtor filed a *Notice to Counterparties*
2 *to Executory Contracts and Unexpired Leases of the Debtor That May Be Assumed*
3 *and Assigned* (“Supplemental Notice to Counterparties”) [Dkt. No. 389]. The Notice
4 to Counterparties lists the Agreements with Blue Shield (Internal Reference Nos. 70-
5 75, 89-93, 97) that may be assumed and assigned to the winning bidder in connection
6 with the sale of the Debtor’s assets. The Notice to Counterparties lists a \$0 cure
7 amount with respect to the Agreements;
8

9
10 WHEREAS, on February 8, 2023, Blue Shield filed an Objection to Cure
11 Amount [Dkt. No. 431], asserting that the cure amount with respect to the Agreements
12 should total \$55,171.38;
13

14 WHEREAS, on February 16, 2023, the Debtor filed a *Notice of Executory*
15 *Contracts and Unexpired Leases Designated by Desert Aids Project d/b/a DAP*
16 *Health for Assumption and Assignment Re Debtor’s Bidding Procedures and Sale*
17 *Motion* (“Notice of Designated Contracts”) [Dkt. No. 478]. The Notice of Designated
18 Contracts, Exhibit A, Schedule 1.11(a), Designated Contract List, lists the
19 Agreements with Blue Shield (Internal Reference Nos. 68-74, 87-91, 95) to be
20 assumed by the Debtor and assigned to DAP in connection with the Sale; and
21
22

23
24 WHEREAS, the Parties subsequently met and conferred, and upon further
25 review, have reached agreement that the correct and accurate amount of the cure
26 amount owed to Care 1st for prepetition overpayments made under the Agreements
27 is \$35,581(the “Care 1st Amount”) and the correct and accurate amount of the cure
28

1 amount owed to BSC for prepetition overpayments made under the Agreements is
2 \$291.14 (the “BSC Cure Amount”).

3
4 **STIPULATION**

5 **NOW THEREFORE**, subject to approval of the Court, the Parties hereby
6 agree and stipulate as follows:

7
8 1. The Care 1st Cure Amount due to Care 1st for prepetition overpayments
9 made under the Agreements is \$35,581.

10 2. The BSC Cure Amount due to BSC for prepetition overpayments made
11 under the Agreements is \$291.14.

12
13 3. In the ordinary course of the Parties’ business, Blue Shield shall be
14 entitled to payment from the Debtor for postpetition overpayments made under the
15 Agreements; *provided, however*, the Debtor reserves their right to contest or otherwise
16 dispute any such postpetition overpayments in the ordinary course of the Parties’
17 business, and the Parties each retain all rights under the Agreements to resolve
18 disputes as to postpetition overpayments in the ordinary course of the Parties’
19 business.

20
21
22 4. Blue Shield shall have the right to recoup undisputed postpetition
23 overpayments from the Debtor’s ongoing revenues in the ordinary course of business,
24 subject to any defenses or claims held by the Debtor, which shall be resolved in the
25 ordinary course of business under the Agreements; *provided, however*, Blue Shield
26 will not have the right to recoup, set off or otherwise recover any alleged
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1 overpayments made to the Debtor from any payments owed by Blue Shield to the
2 purchaser of the Debtor’s assets, DAP Health Inc., formerly known as Desert Aids
3 Project d/b/a DAP Health.
4

5 5. Once the Care 1st Cure Amount and the BSC Cure Amount are paid, Blue
6 Shield shall withdraw its Proof of Claim No. 69.
7

8 6. Blue Shield reserves all rights under 11 U.S.C. § 503(b) to file a request
9 for payment of an administrative expense on account of all postpetition overpayments,
10 including, without limitation, undisputed postpetition overpayments or disputed
11 postpetition overpayments. The Debtor reserves all rights to contest or otherwise
12 dispute any such request for payment of an administrative claim.
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14 **IT IS SO STIPULATED.**
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1 SEEN AND AGREED:

2 Dated: September 26, 2023

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

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Attorneys for the Chapter 11 Debtor and
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9

10

AND

11

Dated: September 26, 2023

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By: /s/ Andrew B. Still
Andrew B. Still

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