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12 *Proposed Counsel to Official Committee of Unsecured*
13 *Creditors*

14 **UNITED STATES BANKRUPTCY COURT**
15 **SOUTHERN DISTRICT OF CALIFORNIA**

16 In re:
17 **BORREGO COMMUNITY HEALTH**
18 **FOUNDATION, a California nonprofit public**
19 **benefit corporation,**
20
21 Debtor and Debtor in Possession.

22 **BORREGO COMMUNITY HEALTH**
23 **FOUNDATION, a California nonprofit public**
24 **benefit corporation,**

25 Plaintiff,

26 v.

27 **CALIFORNIA DEPARTMENT OF HEALTH**
28 **CARE SERVICES, by and through its Director,**
Michelle Baass,

Defendant.

Case No. 22-02384-LT11

Chapter 11 Case

Adv. Pro. No. 22-90056

STATEMENT OF THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS IN SUPPORT OF
EMERGENCY MOTION: (I) TO
ENFORCE THE AUTOMATIC STAY
PURSUANT TO 11 U.S.C. § 362; OR,
ALTERNATIVELY (II) FOR
TEMPORARY RESTRAINING ORDER

Date: October 6, 2022

Time: 2:00 p.m.

Judge: Honorable Laura S. Taylor

PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
SAN FRANCISCO, CA



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1 The Official Committee of Unsecured Creditors (the “Committee”) of Borrego Community
2 Health Foundation (the “Debtor”) hereby files this statement in support (this “Statement”) of the
3 Debtor’s *Emergency Motion: (I) To Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or,*
4 *Alternatively (II) For Temporary Restraining Order* [Adv. Docket No. 3] (the “Motion to Enforce”)¹
5 and, in support thereof, respectfully states as follows:

6 **STATEMENT**

7 The Committee, as the statutory fiduciary for unsecured creditors, is focused on two
8 interrelated goals, both of which are served by the relief requested in the Motion to Enforce:
9 (1) maintaining the Debtor’s ongoing operations in providing culturally competent and linguistically
10 appropriate care to underserved individuals in San Diego and Riverside Counties; and (2) maximizing
11 value available to compensate unsecured creditors on account of their prepetition claims. As has been
12 made clear,² actions taken by the California Department of Health Care Services (the “Department”) and
13 certain health plans (the “Health Plans”), if allowed to continue, “have the potential to endanger
14 health and life” and cause “catastrophic economic harm to the Debtor.”³

15 It is precisely these types of harms that the automatic stay is designed to prevent. “The
16 automatic stay is fundamental to bankruptcy law. It ensures that claims against the debtor will be
17 brought in one place, the bankruptcy court. The stay protects the debtor by giving it room to breathe
18 and, thereby, hopefully to reorganize. The stay also protects creditors as a group from any one creditor
19 who might otherwise seek to obtain payment on its claims to the others’ detriment.”⁴ The automatic
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23 _____
24 ¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion to Enforce.

25 ² See, e.g., *Supplemental Declaration of Samuel R. Maizel* [Adv. Dkt. No. 10]; *Supplemental Declaration of Jacob Nathan Rubin, Patient Care Ombudsman, in Support of Emergency Motion: (I) To Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively (II) For Temporary Restraining Order* [Adv. Dkt. No. 20]

26 ³ *Order re the Issuance of a Clarifying Letter by the California Department of Health Care Services to Health Plans Contracting with Debtor as of Petition Date* [Adv. Dkt. No. 25].

27 ⁴ *Boucher v. Shaw*, 572 F.3d 1087, 1092 (9th Cir. 2009).
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1 stay “effect[s] an immediate freeze of the *status quo* by precluding and nullifying post-petition actions,
2 judicial or nonjudicial, in nonbankruptcy fora against the debtor or affecting property of the estate.”⁵

3 The Committee takes the allegations of past fraud, malfeasance, and misfeasance against and
4 related to the Debtor extremely seriously and, consistent with its statutory duties, will investigate such
5 claims. But the Department does not allege that the Debtor is actively engaged in ongoing fraud.
6 Although the Committee’s investigation is nascent, it is confident that with the oversight of the Court,
7 the Patient Care Ombudsman, and the Committee, and through the integrity of the Debtor’s
8 professionals, any deficiencies in the Debtor’s operations will be addressed through the bankruptcy
9 process.

10 Any shortfalls in the Debtor’s operations do not justify violations of the automatic stay,
11 especially when lives are at risk. The Department should not be permitted to cut off the main source
12 of the Debtor’s revenue, and the Health Plans should not continue to involuntarily transfer patients to
13 other facilities, some of which are hours away from the patients’ homes. These actions violate the
14 central purpose of bankruptcy itself—allowing a debtor to reorder its affairs, make peace with its
15 creditors, and enjoy a fresh start.⁶

16 The Committee stands ready to work collaboratively with the Debtor and the Department to
17 reach a global resolution that will provide for a recovery for unsecured creditors and allow the Debtor
18 to continue providing comprehensive healthcare to medically underserved areas of Southern
19 California. But the Department and the Health Plans should not “doom [the Debtor’s] attempts to
20 reorganize”⁷ by suspending the Debtor’s Medi-Cal revenues or taking other actions that would
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25 ⁵ *Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi)*, 764 F.3d 1168, 1173 (9th Cir. 2014) (internal quotation
26 omitted).

27 ⁶ *See, e.g., Jett v. Sicroff (In re Sicroff)*, 401 F.3d 1101, 1104 (9th Cir. 2005) (*quoting Grogan v. Garner*, 498
28 U.S. 279, 286 (1991)).

⁷ *In re Sonnax Indus.*, 907 F.2d 1280, 1287 (2d Cir. 1990).

1 interfere with the Debtor's agreements with the Health Plans. Accordingly, the Committee joins in
2 the Motion to Enforce.

3 Dated: October 4, 2022

PACHULSKI STANG ZIEHL & JONES LLP

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5 By: /s/ Teddy M. Kapur

Jeffrey N. Pomerantz

Teddy M. Kapur

6 Steven W. Golden

7 *Proposed Counsel to Official Committee of*
8 *Unsecured Creditor*

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PACHULSKI STANG ZIEHL & JONES LLP
ATTORNEYS AT LAW
SAN FRANCISCO, CALIFORNIA

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: **10100 Santa Monica Boulevard, 13th Floor, Los Angeles, California 90067**

A true and correct copy of the foregoing document entitled (*specify*): **STATEMENT OF THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS IN SUPPORT OF EMERGENCY MOTION: (I) TO ENFORCE THE AUTOMATIC STAY PURSUANT TO 11 U.S.C. § 362; OR, ALTERNATIVELY (II) FOR TEMPORARY RESTRAINING ORDER** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **October 4, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- **Tania M. Moyron** *tania.moyron@dentons.com, derry.kalve@dentons.com;DOCKET.GENERAL.LIT.LOS@dentons.com*
- **Kenneth K. Wang** *kenneth.wang@doj.ca.gov*

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____ I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

October 4, 2022
Date

Nancy H. Brown
Printed Name

/s/ Nancy H. Brown
Signature