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9
10 IN THE UNITED STATES BANKRUPTCY COURT
11 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

12
13 **BORREGO COMMUNITY**
HEALTH
14 **FOUNDATION,**

15 Debtor.

CASE NO. 22-02384 (LT)

Chapter 11

Adversary No. 22-90056 (LT)

16 **BORREGO COMMUNITY**
HEALTH
17 **FOUNDATION,**

18 Plaintiff,

19 v.

20 **DEPARTMENT OF HEALTH CARE**
SERVICES (CA),
21 Defendant,
22

**ANSWER TO COMPLAINT FOR
DECLARATORY JUDGMENT
AND PRELIMINARY AND
PERMANENT INJUNCTIVE
RELIEF, OR IN THE
ALTERNATIVE, FOR WRIT OF
MANDATE UNDER CODE OF
CIVIL PROCEDURE 1085**

Place: 5
Judge: The Hon. Laura S. Taylor

23 Defendant California Department of Health Care Services (Department)
24 hereby responds to the Complaint for Declaratory Judgment and Preliminary and
25 Permanent Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code
26 of Civil Procedure 1085 (Complaint) filed by Borrego Community Health
27 Foundation (Plaintiff), as follows:
28



1 1. Answering paragraph one of the Complaint, the Department states this
2 paragraph contains legal conclusions or Plaintiff’s characterization of this lawsuit to
3 which no response is required. To the extent a response is required, the Department
4 admits that Plaintiff is a California nonprofit 501(c)(3) public benefit corporation
5 operating a Federally Qualified Health Center (FQHC) that operates eighteen (18)
6 clinics providing Family Practice, Pediatrics, OB/GYN, Internal Medicine,
7 Podiatry, Dermatology, Cardiology, HIV/Hepatitis C and COVID-19 related testing
8 and vaccinations. As to the remaining allegations, the Department lacks sufficient
9 information or knowledge to form a belief as to the truth of the allegations and, on
10 that basis, denies those allegations.

11 2. Answering paragraph two of the Complaint, the Department admits the
12 allegations contained therein.

13 3. Answering paragraph three of the Complaint, the Department admits the
14 allegations contained therein.

15 4. Answering paragraph four of the Complaint, the Department states that
16 this paragraph contains legal conclusions or Plaintiff’s characterization of this
17 lawsuit to which no response is required. If a response is required, the department
18 denies any allegation that differs from the plain language of the statutes cited
19 therein.

20 5. Answering paragraph five of the Complaint, the Department states that
21 this paragraph contains legal conclusions or Plaintiff’s characterization of this
22 lawsuit to which no response is required. If a response is required, the department
23 denies any allegation that differs from the plain language of the statutes cited
24 therein.

25 6. Answering paragraph six of the Complaint, the Department states this
26 paragraph contains legal conclusions or Plaintiff’s characterization of this lawsuit to
27 which no response is required. If a response is required, the department denies any
28 allegation that differs from the plain language of the statute cited therein.

1 7. Answering paragraph seven of the Complaint, the Department admits that
2 it is withholding payments for dental services, but denies that these payments are
3 “owed” to Borrego Health. The Department properly exercised its regulatory and
4 policing authority to reimpose a payment suspension against Borrego due to the
5 ongoing fraud investigation and for its ongoing failures to address numerous
6 concerns, including quality of care deficiencies, member grievances, referrals, and
7 ongoing improper billing to the Medi-Cal program. In addition, the Department has
8 identified significant overpayments to Borrego which far exceed any amounts
9 currently withheld by the Department.

10 The Department denies that it was “threatening” to suspend Borrego Health
11 “from any payment for services provided for Medi-Cal beneficiaries starting
12 September 29, 2022.” Instead, the Department notified Borrego Health on August
13 19, 2022 that, effective September 29, 2022, it was reimposing a full payment
14 suspension against Borrego Health.

15 Further, the Department denies that it threatened to compel third parties to
16 terminate their contracts with Borrego Health. In fact, the Department specifically
17 stated otherwise. The Department clearly informed the plans that, in accordance
18 with existing authority and policies, a payment suspension did not require managed
19 care plans to terminate contracts with Borrego. In addition, the requests to the
20 managed care plans for transition plans only asked, for example, for how a
21 “potential contract termination could affect members’ access to covered services.”
22 (Emphasis added.) At no point did DHCS require or threaten to require managed
23 care plans to terminate contracts with Borrego.

24 Moreover, the Department denies that it required or threatened to require
25 managed care plans to block transfer patients or refuse to assign new patients to
26 Borrego. In fact, the requests to the managed care plans for transition plans
27 specifically stated otherwise, asking managed care plans to, for example, develop a
28 “plan to monitor and oversee a potential transition of members on an ongoing

1 basis.” (Emphasis added.) At no point did DHCS require or threaten to require that
2 managed care plans transfer Borrego patients, whether through a block transfer or
3 otherwise, or that managed care plans refuse to assign new patients.

4 In addition, the Department denies that there is an “extreme risk to patient
5 well-being” that may result from the payment suspension. The Department
6 extended the effective date of the payment suspension to September 29, 2022 to
7 provide time for the potentially impacted managed care plans to finalize transition
8 plans and ensure that patients would have timely and effective access to care if
9 Borrego were to cease operations. The Department requested and obtained
10 transition plans from all potentially impacted managed care plans. These managed
11 care plans identified in-network providers with the capacity to effectively provide
12 care to patients reassigned away from Borrego, would be able to contract with out-
13 of-network providers to ensure that patients reassigned away from Borrego
14 continue to receive Medi-Cal services, and/or would be ready to provide services
15 through telehealth. The managed care plans are prepared to take steps to ensure
16 access to care if Borrego were to cease operations, including the placement of
17 mobile clinics adjacent to existing Borrego sites while looking for available space
18 to lease and the provision of transportation to patients.

19 The allegation is vague and ambiguous and Department lacks sufficient
20 information regarding whether Borrego Health is dependent on Medi-Cal revenue
21 to provide services to patients and denies that allegation on that basis.

22 The Department denies all other allegations in paragraph 7 of the Complaint.

23 8. Answering paragraph eight of the Complaint, the Department admits that
24 one reason for the reimposition of the payment suspension is a credible allegation
25 of fraud against Borrego Health, that the pending investigation for fraud relates, at
26 least in part, to Borrego Health’s dental services, and that Borrego Health’s dental
27 services have been under a payment suspension since November 18, 2020. The
28 Department denies all other allegations in paragraph 8 of the Complaint.

1 9. Answering paragraph nine of the Complaint, the Department denies each
2 and every allegation therein.

3 10. Answering paragraph ten of the Complaint, the Department denies each
4 and every allegation therein.

5 11. Answering paragraph eleven of the Complaint, the Department denies
6 that Borrego Health has rights that need to be vindicated. Further answering
7 paragraph eleven, this paragraph contains legal conclusions or Plaintiff's
8 characterization of this lawsuit to which no response is required. If a response is
9 required, the Department denies any allegation that differs from the plain language
10 of the statutes cited therein.

11 12. Answering paragraph twelve of the Complaint, the Department states that
12 this paragraph contains legal conclusions or Plaintiff's characterization of this
13 lawsuit to which no response is required. If a response is required, the Department
14 denies all the allegations therein.

15 13. Answering paragraph thirteen of the Complaint, the Department admits
16 that a payment suspension prohibits Borrego Health from receiving reimbursement
17 for Medi-Cal services.

18 The Department denies that Borrego Health shuttering its clinics would result
19 in a lack of access to care for thousands of Medi-Cal beneficiaries in remote and
20 underserved areas of California. The Department extended the effective date of the
21 payment suspension to September 29, 2022 to provide time for the potentially
22 impacted managed care plans to finalize transition plans and ensure that patients
23 would have timely and effective access to care if Borrego were to cease operations.
24 The managed care plans are prepared to take steps to ensure continuity of care if
25 Borrego were to cease operations, including the placement of mobile clinics
26 adjacent to existing Borrego sites while looking for available space to lease and the
27 provision of transportation to patients.
28

1 The Department lacks sufficient information or knowledge to form a belief as
2 to the truth of the other allegations in this paragraph and, on that basis, denies each
3 and every other allegation related thereto in paragraph 13.

4 14. Answering paragraph fourteen of the Complaint, the Department denies
5 each and every allegation therein.

6 15. Answering paragraph fifteen of the Complaint, the Department admits
7 the allegations contained therein.

8 16. Answering paragraph sixteen of the Complaint, the Department lacks
9 sufficient information or knowledge to form a belief as to the truth of the
10 allegations in this paragraph and, on that basis, denies each and every allegation
11 therein.

12 17. Answering paragraph seventeen of the Complaint, the Department denies
13 that it “was temporarily suspending Borrego Health’s Medi-Cal provider numbers.”
14 The Department imposed a payment suspension. The Department admits the
15 remaining allegations contained therein.

16 18. Answering paragraph eighteen of the Complaint, the Department admits
17 that Borrego Health appealed the November 18, 2020, payment suspension through
18 a meet-and-confer process. The Department denies all other allegations therein.

19 19. Answering paragraph nineteen of the Complaint, the Department admits
20 the allegations contained therein.

21 20. Answering paragraph twenty of the Complaint, the Department lacks
22 sufficient information or knowledge to form a belief as to the truth of the
23 allegations in this paragraph and, on that basis, denies each and every allegation
24 therein.

25 21. Answering paragraph twenty-one of the Complaint, the Department
26 admits that Medi-Cal payments for Borrego Health’s dental services are suspended
27 and that Borrego agreed to the modified payment suspension through the
28 Settlement Agreement. The Department denies all other allegations therein.

1 22. Answering paragraph twenty-two of the Complaint, the Department
2 admits it conditioned the payment suspension on a Term Sheet and in
3 contemplation of a settlement agreement consistent with the Term Sheet. The
4 Department denies all other allegations therein.

5 23. Answering paragraph twenty-three of the Complaint, the Department
6 denies each and every allegation therein.

7 24. Answering paragraph twenty-four of the Complaint, the Department
8 admits the allegations therein.

9 25. Answering paragraph twenty-five of the Complaint, the Department
10 admits that Borrego Health continued to provide certain dental services. The
11 Department lacks sufficient information or knowledge to form a belief as to the
12 truth of the other allegations in this paragraph and, on that basis, denies each and
13 every other allegation therein.

14 26. Answering paragraph twenty-six of the Complaint, the Department
15 admits the allegations contained therein.

16 27. Answering paragraph twenty-seven of the Complaint, the Department
17 admits the allegations contained therein.

18 28. Answering paragraph twenty-eight of the Complaint, the Department
19 denies each and every allegation therein.

20 29. Answering paragraph twenty-nine of the Complaint, the Department
21 admits the allegations contained therein.

22 30. Answering paragraph thirty of the Complaint, the Department admits that
23 Borrego Health retained Berkeley Research Group (BRG) but denies all other
24 allegations therein.

25 31. Answering paragraph thirty-one of the Complaint, the Department admits
26 that the Department worked with BRG and Borrego Health regarding a number of
27 identified deficiencies, including billing and compliance. The Department denies
28 each and every other allegation therein.

1 32. Answering paragraph thirty-two of the Complaint, the Department states
2 that this paragraph contains legal conclusions or Plaintiff's characterization of this
3 lawsuit to which no response is required. If a response is required, the Department
4 admits that it required Borrego Health to execute two Corrective Action Plans
5 (CAPs) in response to Borrego Health's dilatory performance and
6 underperformance of compliance and operational efforts and that Borrego Health's
7 refusal to do so may have resulted in the reimposition of a full payment suspension
8 but denies all other allegations therein.

9 33. Answering paragraph thirty-three of the Complaint, the Department
10 denies each and every allegation therein.

11 34. Answering paragraph thirty-four of the Complaint, the Department
12 denies each and every allegation therein.

13 35. Answering paragraph thirty-five of the Complaint, the Department
14 admits the allegations contained therein.

15 36. Answering paragraph thirty-six of the Complaint, the Department states
16 that this paragraph contains legal conclusions or Plaintiff's characterization of this
17 lawsuit to which no response is required. If a response is required, the Department
18 denies each and every allegation therein.

19 37. Answering paragraph thirty-seven of the Complaint, the Department
20 admits that BRG found that Borrego Health was not meaningfully reviewing the
21 grievances and that the process was not driving quality improvement. The
22 Department denies each and every other allegation therein.

23 38. Answering paragraph thirty-eight of the Complaint, the Department
24 denies each and every allegation therein.

25 39. Answering paragraph thirty-nine of the Complaint, the Department
26 denies each and every allegation therein.

27 40. Answering paragraph forty of the Complaint, the Department denies each
28 and every allegation therein.

1 41. Answering paragraph forty-one of the Complaint, the Department admits
2 that Borrego Health made improvements. The Department denies each and every
3 other allegation therein.

4 42. Answering paragraph forty-two of the Complaint, the Department admits
5 that Borrego Health requested that the payment suspension be modified to only
6 apply to contract dental claims. The Department denies that Borrego has the
7 authority to decide that BRG be removed as an independent monitor. In the
8 Settlement Agreement, Borrego agreed to retain an independent monitor until the
9 Department determines that a monitor is no longer necessary. The Department
10 denies each and every other allegation contained therein.

11 43. Answering paragraph forty-three of the Complaint, the Department states
12 that it lacks sufficient information or knowledge to form a belief as to the truth of
13 the allegations in this paragraph and, on that basis, denies each and every allegation
14 therein.

15 44. Answering paragraph forty-four of the Complaint, the Department admits
16 that Borrego Health requested to meet with the Department to discuss further
17 modifying the payment suspension to permit payment of in-house dental claims.
18 The Department denies all other allegations contained therein.

19 45. Answering paragraph forty-five of the Complaint, the Department admits
20 the allegations contained therein.

21 46. Answering paragraph forty-six of the Complaint, the Department denies
22 each and every allegation therein.

23 47. Answering paragraph forty-seven of the Complaint, the Department
24 admits it requested Borrego Health to submit documentation within two weeks, but
25 denies every other allegation therein.

26 48. Answering paragraph forty-eight of the Complaint, the Department
27 admits that Borrego Health submitted documentation to the Department on or about
28 July 22, 2022, but denies all other allegations contained therein.

1 49. Answering paragraph forty-nine of the Complaint, the Department admits
2 that Borrego Health followed up with the Department but denies all other
3 allegations contained therein.

4 50. Answering paragraph fifty of the Complaint, the Department admits that
5 the Settlement Agreement, in part, called for Borrego to conduct an internal audit of
6 contracted dental claims, in addition to a number of other audits, and that Borrego
7 proposed a methodology for a dental audit. The Department denies all other
8 allegations contained therein.

9 51. Answering paragraph fifty-one of the Complaint, the Department admits
10 that a purpose of the audit was to determine overpayment amounts in contract
11 dental. The Department denies each and every other allegation therein.

12 52. Answering paragraph fifty-two of the Complaint, the Department denies
13 each and every allegation therein.

14 53. Answering paragraph fifty-three of the Complaint, the Department denies
15 each and every allegation contained therein.

16 54. Answering paragraph fifty-four of the Complaint, the Department asserts
17 that the cited letter by Mr. Bruce Lim speaks for itself. The Department denies
18 each and every allegation that differs from the plain language of the letter.

19 55. Answering paragraph fifty-five of the Complaint, the Department asserts
20 that the cited letter by Mr. Bruce Lim speaks for itself. The Department denies
21 each and every allegation that differs from the plain language of the letter.

22 56. Answering paragraph fifty-six of the Complaint, the Department denies
23 each and every allegation contained therein.

24 57. Answering paragraph fifty-seven of the Complaint, the Department
25 asserts that the cited letter by Mr. Bob Sands speaks for itself. The Department
26 denies each and every allegation that differs from the plain language of the letter.

27 58. Answering paragraph fifty-eight of the Complaint, the Department states
28 this paragraph contains legal conclusions or Plaintiff's characterization of this

1 lawsuit to which no response is required. To the extent a response is required, the
2 allegation is vague and ambiguous as to the term “publicize.” The Department
3 lacks sufficient information or knowledge to form a belief as to the truth of the
4 allegations in this paragraph and, on that basis, denies each and every allegation
5 therein.

6 59. Answering paragraph fifty-nine of the Complaint, the Department admits
7 that it responded to inquiries and public records act requests by the media. The
8 Department denies all other allegations contained therein.

9 60. Answering paragraph sixty of the Complaint, the Department denies each
10 and every allegation therein.

11 61. Answering paragraph sixty-one of the Complaint, the Department states
12 that it lacks sufficient information regarding the cited reporting by the San Diego
13 Union Tribune, and on that basis, denies each and every allegation contained
14 therein.

15 62. Answering paragraph sixty-two of the Complaint, the Department asserts
16 that the cited statement and the August 19, 2022, letter by Mr. Lim speaks for
17 themselves and therefore, no response to the allegations characterizing it is
18 required. To the extent that a response is required, the Department denies each and
19 every allegation that is a summary, conclusion, interpretation, characterization, or
20 paraphrasing that differs from the plain language of the cited statement and Mr.
21 Lim’s August 19, 2022, letter.

22 63. Answering paragraph sixty-three of the Complaint, the Department
23 admits that on August 19, 2022, it notified health plans of the full payment
24 suspension to be reimposed against Borrego Health on September 29, 2022. The
25 Department denies all other allegations stated therein.

26 64. Answering paragraph sixty-four of the Complaint, the Department denies
27 each and every allegation therein.

28

1 65. Answering paragraph sixty-five of the Complaint, the Department lacks
2 sufficient information or knowledge to form a belief as to the truth of the
3 allegations in this paragraph and, on that basis, denies each and every allegation
4 therein.

5 66. Answering paragraph sixty-six of the Complaint, the Department denies
6 each and every allegation therein.

7 67. Answering paragraph sixty-seven of the Complaint, the Department
8 denies each and every allegation therein.

9 68. Answering paragraph sixty-eight of the Complaint, the Department
10 admits that it knew that Borrego Health had been under investigation and that it was
11 reviewing Borrego Health’s practices in cooperation with the independent monitor.
12 The Department denies the allegation that Borrego Health is “cooperating with
13 criminal and civil investigators” on the ground that it lacks sufficient information to
14 admit or deny the allegations. The Department denies all other allegations on the
15 grounds that they are vague, ambiguous, and unintelligible as to the alleged time
16 period in which Borrego Health allegedly stopped all contract dental programs and
17 had not submitted any contractual dental claims.

18 69. Answering paragraph sixty-nine of the Complaint, the Department denies
19 each and every allegation therein.

20 70. Answering paragraph seventy of the Complaint, the Department admits
21 that Borrego Health recently filed a lawsuit against former Borrego Health staff and
22 contractors relating to Borrego’s fraudulent dental program. The Department
23 denies all other allegations stated therein.

24 71. Answering paragraph seventy-one of the Complaint, the Department
25 denies each and every allegation therein.

26 72. Answering paragraph seventy-two of the Complaint, the Department
27 denies each and every allegation therein.
28

1 73. Answering paragraph seventy-three of the Complaint, the Department
2 denies each and every allegation therein.

3 74. Answering paragraph seventy-four of the Complaint, the Department
4 denies each and every allegation therein.

5 75. Answering paragraph seventy-five of the Complaint, the Department
6 denies each and every allegation therein. The allegation is vague and ambiguous.

7 76. Answering paragraph seventy-six of the Complaint, the Department
8 admits that at least a portion of Borrego’s operations are in underserved areas. The
9 Department denies each and every other allegation stated therein.

10 77. Answering paragraph seventy-seven of the Complaint, the Department
11 denies each and every allegation therein.

12 78. Answering paragraph seventy-eight of the Complaint, the Department
13 states that it lacks sufficient information or knowledge to form a belief as to the
14 truth of the allegations in this paragraph and, on that basis, denies each and every
15 allegation therein. The Department has data demonstrating that Borrego has
16 deficiencies relating to quality of care and Borrego’s ability to provide competent
17 services to its patients, including referral backlogs and delayed appointments.

18 79. Answering paragraph seventy-nine of the Complaint, the Department
19 states that it lacks sufficient information or knowledge to form a belief as to the
20 truth of the allegations in this paragraph and, on that basis, denies each and every
21 allegation therein.

22 80. Answering paragraph eighty of the Complaint, the Department lacks
23 sufficient information or knowledge to form a belief as to the truth of the
24 allegations in this paragraph and, on that basis, denies each and every allegation
25 therein.

26 81. Answering paragraph eighty-one of the Complaint, the Department lacks
27 sufficient information or knowledge to form a belief as to the truth of the
28

1 allegations in this paragraph and, on that basis, denies each and every allegation
2 therein.

3 82. Answering paragraph eighty-two of the Complaint, the Department
4 admits the allegations contained therein.

5 83. Answering paragraph eighty-three of the Complaint, the Department
6 denies each and every allegation therein.

7 84. Answering paragraph eighty-four of the Complaint, the Department
8 denies each and every allegation therein.

9 85. Answering paragraph eighty-five of the Complaint, the Department
10 denies each and every allegation therein.

11 86. Answering paragraph eighty-six of the Complaint, the Department admits
12 that the Department concluded that Borrego Health does not have a robust
13 compliance department and that BRG reviewed Borrego Health’s compliance
14 program plan. The Department and BRG also provided extensive detail as to what
15 constituted a robust compliance department, including in the Department’s
16 corrective action plans and ongoing discussions between the independent monitor
17 and Borrego. The Department denies all other allegations contained therein.

18 87. Answering paragraph eighty-seven of the Complaint, the Department
19 denies each and every allegation therein.

20 88. Answering paragraph eighty-eight of the Complaint, the Department
21 admits Borrego Health requested the Department provide an explanation as to why
22 Borrego Health’s written submission was insufficient, but denies all other
23 allegations contained therein.

24 89. Answering paragraph eighty-nine of the Complaint, the Department
25 denies each and every allegation therein.

26 90. Answering paragraph ninety of the Complaint, the Department objects to
27 this paragraph on the grounds that it is vague, ambiguous, and unintelligible with
28 regard to the term “meet and confer request.” Aside from the objections, the

1 Department denies that the automatic stay applies to the payment suspension that
2 was to be reimposed on September 29, 2022. In addition, the Department denies all
3 other allegations contained in this paragraph.

4 91. Answering paragraph ninety-one of the Complaint, the Department
5 denies any implication or assumption that the automatic stay enjoins the payment
6 suspension that was to be reimposed on September 29, 2022. The Department
7 admits that Borrego Health commenced its Chapter 11 petition for the sole reason
8 of evading the payment suspension that was to be reimposed on September 29,
9 2022. The Department denies all other allegations contained in paragraph ninety-
10 one of the Complaint.

11 92. Answering paragraph ninety-two of the Complaint, the Department
12 admits the allegations contained therein.

13 93. Answering paragraph ninety-three of the Complaint, the Department
14 states that this paragraph contains legal conclusions or Plaintiff’s characterization
15 of this lawsuit to which no response is required. If a response is required, the
16 Department admits that the written appeal contains a 90 day timeline and does not
17 include cross-examining witnesses or reviewing the Department’s evidence but
18 denies each and every remaining allegation therein.

19 94. Answering paragraph ninety-four of the Complaint, the Department
20 asserts that Title XIX of the Social Security Act speaks for itself and therefore, no
21 response to the allegations characterizing it is required. To the extent that a
22 response is required, the Department denies each and every allegation that is a
23 summary, conclusion, interpretation, characterization, or paraphrasing that differs
24 from the plain language of Title XIX of the Social Security Act.

25 95. Answering paragraph ninety-five of the Complaint, the Department
26 asserts that 42 U.S.C. § 1396(a)(30(A) and 42 C.F.R. § 447.204 speak for
27 themselves and therefore, no response to the allegations characterizing those
28 provisions is required. To the extent that a response is required, the Department

1 denies each and every allegation that is a summary, conclusion, interpretation,
2 characterization, or paraphrasing that differs from the plain language of 42 U.S.C. §
3 1396(a)(30(A) or 42 C.F.R. § 447.204.

4 96. Answering paragraph ninety-six of the Complaint, the Department asserts
5 that 42 C.F.R. § 455.23(a)(1) speaks for itself and therefore, no response to the
6 allegations characterizing it is required. To the extent that a response is required,
7 the Department denies each and every allegation that is a summary, conclusion,
8 interpretation, characterization, or paraphrasing that differs from the plain language
9 of 42 C.F.R. § 455.23(a)(1).

10 97. Answering paragraph ninety-seven of the Complaint, the Department
11 asserts that 42 C.F.R. § 455.2(3) speaks for itself and therefore, no response to the
12 allegations characterizing it is required. To the extent that a response is required,
13 the Department denies each and every allegation that is a summary, conclusion,
14 interpretation, characterization, or paraphrasing that differs from the plain language
15 of 42 C.F.R. § 455.2(3).

16 98. Answering paragraph ninety-eight of the Complaint, the Department
17 asserts that 42 C.F.R. § 455.23(a)(3) speaks for itself and therefore, no response to
18 the allegations characterizing it is required. To the extent that a response is
19 required, the Department denies each and every allegation that is a summary,
20 conclusion, interpretation, characterization, or paraphrasing that differs from the
21 plain language of 42 C.F.R. § 455.23(a)(3).

22 99. Answering paragraph ninety-nine of the Complaint, the Department
23 asserts that 42 C.F.R. § 455.23(b) speaks for itself and therefore, no response to the
24 allegations characterizing it is required. To the extent that a response is required,
25 the Department denies each and every allegation that is a summary, conclusion,
26 interpretation, characterization, or paraphrasing that differs from the plain language
27 of 42 C.F.R. § 455.23(b).

28

1 100. Answering paragraph one hundred of the Complaint, the Department
2 asserts that 42 C.F.R. § 455.23(b)(v) speaks for itself and therefore, no response to
3 the allegations characterizing it is required. To the extent that a response is
4 required, the Department denies each and every allegation that is a summary,
5 conclusion, interpretation, characterization, or paraphrasing that differs from the
6 plain language of 42 C.F.R. § 455.23(b)(v).

7 101. Answering paragraph one hundred one of the Complaint, the Department
8 asserts that 42 C.F.R. § 455.23(c) speaks for itself and therefore, no response to the
9 allegations characterizing it is required. To the extent that a response is required,
10 the Department denies each and every allegation that is a summary, conclusion,
11 interpretation, characterization, or paraphrasing that differs from the plain language
12 of 42 C.F.R. § 455.23(c).

13 102. Answering paragraph one hundred two of the Complaint, the Department
14 asserts that 42 C.F.R. § 455.23(e) speaks for itself and therefore, no response to the
15 allegations characterizing it is required. To the extent that a response is required,
16 the Department denies each and every allegation that is a summary, conclusion,
17 interpretation, characterization, or paraphrasing that differs from the plain language
18 of 42 C.F.R. § 455.23(e).

19 103. Answering paragraph one hundred three of the Complaint, the
20 Department asserts that 42 C.F.R. § 455.23(e)(4)(ii) speaks for itself and therefore,
21 no response to the allegations characterizing it is required. To the extent that a
22 response is required, the Department denies each and every allegation that is a
23 summary, conclusion, interpretation, characterization, or paraphrasing that differs
24 from the plain language of 42 C.F.R. § 455.23(e)(4)(ii).

25 104. Answering paragraph one hundred four of the Complaint, the Department
26 asserts that 76 Fed. Reg. 5861, 5934 speaks for itself and therefore, no response to
27 the allegations characterizing it is required. To the extent that a response is
28 required, the Department denies each and every allegation that is a summary,

1 conclusion, interpretation, characterization, or paraphrasing that differs from the
2 plain language of 76 Fed. Reg. 5861, 5934.

3 105. Answering paragraph one hundred five of the Complaint, the Department
4 asserts that 76 Fed. Reg. 5861, 5934 speaks for itself and therefore, no response to
5 the allegations characterizing it is required. To the extent that a response is
6 required, the Department denies each and every allegation that is a summary,
7 conclusion, interpretation, characterization, or paraphrasing that differs from the
8 plain language of 76 Fed. Reg. 5861, 5934.

9 106. Answering paragraph one hundred six of the Complaint, the Department
10 asserts that the statutes and regulations regarding the payment suspension speak for
11 themselves and therefore, no response to the allegations characterizing those
12 provisions is required. To the extent that a response is required, the Department
13 denies each and every allegation that is a summary, conclusion, interpretation,
14 characterization, or paraphrasing that differs from the plain language of the statues
15 and regulations related or regarding to payment suspension.

16 107. Answering paragraph one hundred seven of the Complaint, the
17 Department asserts that California Welfare & Institutions Code, § 14123(c) speaks
18 for itself and therefore, no response to the allegations characterizing it is required.
19 To the extent that a response is required, the Department denies each and every
20 allegation that is a summary, conclusion, interpretation, characterization, or
21 paraphrasing that differs from the plain language of California Welfare &
22 Institutions Code, § 14123(c).

23 108. Answering paragraph one hundred eight of the Complaint, the
24 Department asserts that California Welfare & Institutions Code, § 14107.11 speaks
25 for itself and therefore, no response to the allegations characterizing it is required.
26 To the extent that a response is required, the Department denies each and every
27 allegation that is a summary, conclusion, interpretation, characterization, or
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1 paraphrasing that differs from the plain language of California Welfare &
2 Institutions Code, § 14107.11.

3 109. Answering paragraph one hundred nine of the Complaint, the Department
4 asserts that California Welfare & Institutions Code, § 14107.11 speaks for itself and
5 therefore, no response to the allegations characterizing it is required. To the extent
6 that a response is required, the Department denies each and every allegation that is
7 a summary, conclusion, interpretation, characterization, or paraphrasing that differs
8 from the plain language of California Welfare & Institutions Code, § 14107.11.

9 110. Answering paragraph one hundred ten of the Complaint, the Department
10 asserts that California Welfare & Institutions Code, § 14107.11, subdivision (b)
11 speaks for itself and therefore, no response to the allegations characterizing it is
12 required. To the extent that a response is required, the Department denies each and
13 every allegation that is a summary, conclusion, interpretation, characterization, or
14 paraphrasing that differs from the plain language of California Welfare &
15 Institutions Code, § 14107.11, subdivision (b).

16 111. Answering paragraph one hundred eleven of the Complaint, the
17 Department asserts that Borrego Health's administrative appeal right is provided
18 by California Welfare and Institutions Code section 14043.65, subdivision (a),
19 which speaks for itself, and therefore, no response to the allegations characterizing
20 it is required. To the extent that a response is required, the Department denies each
21 and every allegation that is a summary, conclusion, interpretation, characterization,
22 or paraphrasing that differs from the plain language of California Welfare &
23 Institutions Code section 14043.65, subdivision (a).

24 112. Answering paragraph one hundred twelve of the Complaint, the
25 Department asserts that California Welfare & Institutions Code, § 14043.65,
26 subdivision (a) and Code of Civil Procedure section 1085 speak for themselves and
27 therefore, no response to the allegations characterizing those provisions is required.
28 To the extent that a response is required, the Department denies each and every

1 allegation that is a summary, conclusion, interpretation, characterization, or
2 paraphrasing that differs from the plain language of California Welfare &
3 Institutions Code, § 14043.65, subdivision (a), and Code of Civil Procedure section
4 1085.

5 113. Answering paragraph one hundred thirteen of the Complaint, the
6 Department asserts that California Welfare & Institutions Code, § 14123.05 speaks
7 for itself and therefore, no response to the allegations characterizing it is required.
8 To the extent that a response is required, the Department denies each and every
9 allegation that is a summary, conclusion, interpretation, characterization, or
10 paraphrasing that differs from the plain language of California Welfare &
11 Institutions Code, § 14123.05.

12 **CLAIM I: DECLARATORY JUDGMENT**

13 114. The Department incorporates all preceding paragraphs as if fully restated
14 herein.

15 115. Answering paragraph one hundred fifteen of the Complaint, the
16 Department asserts that 28 U.S.C. § 2201(a) speaks for itself and therefore, no
17 response to the allegations characterizing it is required. To the extent that a
18 response is required, the Department denies each and every allegation that is a
19 summary, conclusion, interpretation, characterization, or paraphrasing that differs
20 from the plain language of 28 U.S.C. § 2201(a).

21 116. Answering paragraph one hundred sixteen of the Complaint, the
22 Department denies each and every allegation therein.

23 117. Answering paragraph one hundred seventeen of the Complaint, the
24 Department denies each and every allegation therein.

25 118. Answering paragraph one hundred eighteen of the Complaint, including
26 subparagraphs (a) through (e), the Department admits to the form of the declaratory
27 judgment requested by Borrego Health but denies the merits of the requested
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1 declaratory judgment, and further denies that Borrego Health is entitled to any relief
2 whatsoever.

3 **CLAIM II: ENFORCEMENT OF AUTOMATIC STAY**

4 119. The Department incorporates all preceding paragraphs as if fully restated
5 herein.

6 120. Answering paragraph one hundred twenty of the Complaint, the
7 Department asserts that 11 U.S.C. § 362(a)(1), (3), and (6) speak for themselves
8 and therefore, no response to the allegations characterizing those provisions is
9 required. To the extent that a response is required, the Department denies each and
10 every allegation that is a summary, conclusion, interpretation, characterization, or
11 paraphrasing that differs from the plain language of 11 U.S.C. § 362(a)(1), (3), and
12 (6).

13 121. Answering paragraph one hundred twenty-one of the Complaint, the
14 Department asserts that 11 U.S.C. § 362(a)(1), (3), and (6) speak for themselves
15 and therefore, no response to the allegations characterizing those provisions is
16 required. To the extent that a response is required, the Department denies each and
17 every allegation that is a summary, conclusion, interpretation, characterization, or
18 paraphrasing that differs from the plain language of 11 U.S.C. § 362(a)(1), (3), and
19 (6). The Department also denies that the reinstatement of the payment suspension
20 is a means to recover a claim against Borrego Health that arose prepetition. The
21 Department further denies the allegation that the payment suspension is an exercise
22 of “control” over Borrego Health’s property.

23 122. Answering paragraph one hundred twenty-two of the Complaint, the
24 Department denies each and every allegation therein.

25 123. Answering paragraph one hundred twenty-three of the Complaint, the
26 Department denies each and every allegation therein.

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1 **CLAIM III: PRELIMINARY AND PERMANENT INJUNCTION**

2 124. The Department incorporates all preceding paragraphs as if fully restated
3 herein.

4 125. Answering paragraph one hundred twenty-five of the Complaint, the
5 Department asserts that 11 U.S.C. § 105(a) and Rules 7001(7) and 7065 of the
6 Federal Rules of Bankruptcy Procedure speak for themselves; therefore, no
7 response to the allegations characterizing these provisions is required. To the
8 extent that a response is required, the Department denies each and every allegation
9 that is a summary, conclusion, interpretation, characterization, or paraphrasing that
10 differs from the plain language of 11 U.S.C. § 105(a) and Rules 7001(7) and 7065
11 of the Federal Rules of Bankruptcy Procedure.

12 126. Answering paragraph one hundred twenty-six of the Complaint, the
13 Department denies each and every allegation therein.

14 127. Answering paragraph one hundred twenty-seven of the Complaint, the
15 Department admits to the form of injunction requested by Borrego Health but
16 denies the merits of the request and further denies that Borrego is entitled to any
17 relief whatsoever.

18 **CLAIM IV: VIOLATION OF DUE PROCESS**

19 128. The Department incorporates all preceding paragraphs as if fully restated
20 herein.

21 129. Answering paragraph one hundred twenty-nine of the Complaint, the
22 Department asserts that California Welfare & Institutions Code section 14107.11
23 and 42 Code of Federal Regulations (C.F.R.) section 455.23 (2012) speak for
24 themselves and therefore, no response to the allegations characterizing these
25 provisions is required. To the extent that a response is required, the Department
26 denies each and every allegation that is a summary, conclusion, interpretation,
27 characterization, or paraphrasing that differs from the plain language of California
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1 Welfare & Institutions Code section 14107.11 and 42 Code of Federal Regulations
2 (C.F.R.) section 455.23 (2012).

3 130. Answering paragraph one hundred thirty of the Complaint, the
4 Department admits that it has been withholding money, but denies that this money
5 is “due Plaintiff.” The Department denies each and every other allegation therein.

6 131. Answering paragraph one hundred thirty-one of the Complaint, the
7 Department denies each and every allegation therein.

8 132. Answering paragraph one hundred thirty-two of the Complaint, the
9 Department denies each and every allegation therein.

10 133. Answering paragraph one hundred thirty-three of the Complaint, the
11 Department denies each and every allegation therein.

12 134. Answering paragraph one hundred thirty-four of the Complaint, the
13 Department states that this paragraph contains legal conclusions or Plaintiff’s
14 characterization of this lawsuit to which no response is required. If a response is
15 required, the Department denies each and every allegation therein.

16 135. Answering paragraph one hundred thirty-five of the Complaint, the
17 Department denies each and every allegation therein.

18 136. Answering paragraph one hundred thirty-six of the Complaint, the
19 Department asserts that California Welfare & Institutions Code, § 14043.65,
20 subdivision (a) and Code of Civil Procedure section 1085 speaks for themselves
21 and therefore, no response to the allegations characterizing those provisions is
22 required. To the extent that a response is required, the Department denies each and
23 every allegation that is a summary, conclusion, interpretation, characterization, or
24 paraphrasing that differs from the plain language of California Welfare &
25 Institutions Code, § 14043.65, subdivision (a) and Code of Civil Procedure section
26 1085.137. The allegation is also vague and ambiguous as to the term “full hearing”
27 and the Department states that it lacks sufficient information or knowledge to form
28 a belief as to the truth of this allegation and, on that basis, denies this allegation.

1 137. Answering paragraph one hundred thirty-seven of the Complaint, the
2 Department denies each and every allegation therein.

3 138. Answering paragraph one hundred thirty-eight of the Complaint, the
4 Department denies each and every allegation therein.

5 139. Answering paragraph one hundred thirty-nine of the Complaint, the
6 Department denies each and every allegation therein.

7 140. Answering paragraph one hundred forty of the Complaint, the
8 Department states that it lacks sufficient information or knowledge to form a belief
9 as to the truth of the allegations in this paragraph and, on that basis, denies each and
10 every allegation therein.

11 141. Answering paragraph one hundred forty-one of the Complaint, the
12 Department denies each and every allegation therein.

13 142. Answering paragraph one hundred forty-two of the Complaint, the
14 Department states that it lacks sufficient information or knowledge to form a belief
15 as to the truth of the allegations in this paragraph and, on that basis, denies each and
16 every allegation therein.

17 143. Answering paragraph one hundred forty-three of the Complaint,
18 including subparagraphs (a) through (f), the Department denies each and every
19 allegation therein.

20 **CLAIM V: INJUNCTIVE AND DECLARATORY RELIEF PURSUANT TO**
21 **18 U.S.C. § 1983 AND 42 C.F.R. § 455.23**

22 144. The Department incorporates all preceding paragraphs as if fully restated
23 herein.

24 145. Answering paragraph one hundred forty-five of the Complaint, the
25 Department denies each and every allegation therein.

26 146. Answering paragraph one hundred forty-six of the Complaint, the
27 Department denies each and every allegation therein.

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1 147. Answering paragraph one hundred forty-seven of the Complaint, the
2 Department denies each and every allegation therein.

3 148. Answering paragraph one hundred forty-eight of the Complaint, the
4 Department denies each and every allegation therein.

5 149. Answering paragraph one hundred forty-nine of the Complaint the
6 Department denies each and every allegation therein.

7 150. Answering paragraph one hundred fifty of the Complaint, the Department
8 denies each and every allegation therein.

9 151. Answering paragraph one hundred fifty-one of the Complaint, the
10 Department denies each and every allegation therein.

11 152. Answering paragraph one hundred fifty-two of the Complaint, the
12 Department denies each and every allegation therein.

13 **CLAIM VI: WRIT OF MANDATE PURSUANT TO CAL. CODE OF CIV.**
14 **PROC., § 1085**

15 153. The Department incorporates all preceding paragraphs as if fully restated
16 herein.

17 154. Answering paragraph one hundred fifty-four of the Complaint, the
18 Department asserts that California Code of Civil Procedure, section 1085 speaks for
19 itself; therefore, no response to the allegations characterizing it is required. To the
20 extent that a response is required, the Department denies each and every allegation
21 that is a summary, conclusion, interpretation, characterization, or paraphrasing that
22 differs from the plain language of California Code of Civil Procedure, section 1085.
23 Any claim under Code of Civil Procedure section 1085 must be adjudicated by a
24 superior court of the State of California.

25 155. Answering paragraph one hundred fifty-five of the Complaint, including
26 subparagraphs (a) through (e), the Department denies each and every allegation
27 therein. Any claim under Code of Civil Procedure section 1085 must be
28 adjudicated by a superior court of the State of California.

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AFFIRMATIVE DEFENSES

The Department alleges the following affirmative defenses with respect to the purported claims for relief alleged in the Complaint.

**FIRST AFFIRMATIVE DEFENSE
(Failure to State a Cause of Action)**

As a separate affirmative defense to the Complaint and to each purported cause of action therein, the Department submits that the Complaint, and each purported cause of action thereof, fails to state a claim against the Department and fails to state facts sufficient to constitute a cause of action against the Department pursuant to Federal Rules of Civil Procedure 9 and 12(b)(6) and other applicable law. Accordingly, the Complaint and the causes of action asserted therein should be dismissed.

**SECOND AFFIRMATIVE DEFENSE
(Waiver)**

As a separate affirmative defense to the Complaint and to each purported cause of action therein, the Department submits that the Complaint, and each purported claim thereof, is barred by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE
(Estoppel)**

As a separate affirmative defense to the Complaint and to each purported claim therein, the Department submits that the Complaint, and each purported claim therein, is barred by the doctrine of estoppel.

**FOURTH AFFIRMATIVE DEFENSE
(Fraud)**

As a separate affirmative defense to the Complaint and to each purported claim therein, the Department submits that the Complaint, and each purported claim therein, is barred by the doctrine of fraud. The Department properly exercised its regulatory and policing authority to reimpose a payment suspension against

1 Borrego as a fraud enforcement mechanism due to the ongoing fraud investigation
2 into Borrego.

3 **FIFTH AFFIRMATIVE DEFENSE**
4 **(Lack of Jurisdiction)**

5 This Court lacks jurisdiction to adjudicate any claim under Code of Civil
6 Procedure section 1085. Any claim under Code of Civil Procedure section 1085
7 must be adjudicated by a superior court of the State of California.

8 **SIXTH AFFIRMATIVE DEFENSE**
9 **(Failure to Exhaust Administrative Remedies)**

10 Borrego Health failed to exhaust administrative remedies available to address
11 all or some of its claims, and all or some of its claims are not properly before this
12 Court until such administrative remedies are exhausted.

13 **SEVENTH AFFIRMATIVE DEFENSE**
14 **(Unclean Hands)**

15 Borrego Health is barred from any recovery against the Department by the
16 doctrine of unclean hands, by virtue of Borrego Health’s own wrongful and/or
17 improper conduct in connection with the subject matter of this action.

18 **EIGHTH AFFIRMATIVE DEFENSE**
19 **(Lack of Equity)**

20 Borrego Health is barred from recovery against the Department by virtue of
21 Borrego Health’s own inequitable conduct in connection with the subject matter of
22 this action.

23 **NINTH AFFIRMATIVE DEFENSE**
24 **(Exemption to the Automatic Stay)**

25 The payment suspension by the Department is exempt from the automatic stay
26 because of the Department’s regulatory and police power.

27 **PRAYER FOR RELIEF**

28 WHEREFORE, the Department prays for relief and judgment as follows:

1 1. that the Court deny Borrego Health’s prayer for relief in its entirety
2 and that the Court enter judgment in the Department’s favor;

3 2. that the Court award the Department its costs and expenses incurred in
4 this action and attorneys’ fees as permitted by law, plus interest; and

5 3. that the Court award the Department such other and further relief that
6 it deems appropriate.

7 Dated: October 26, 2022

Respectfully submitted,

8 ROB BONTA
9 Attorney General of California
10 RICHARD T. WALDOW
11 Supervising Deputy Attorney General

12 /s/ Kenneth K. Wang
13 KENNETH K. WANG
14 Deputy Attorney General
15 Attorneys for Defendant California
16 Department of Health Care Services

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DECLARATION OF SERVICE BY E-MAIL

Case Name: **Borrego Community Health Foundation v. California Department of Health Care Services**

Case No.: 22-90056

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter; my business address is: 300 South Spring Street, Suite 1702, Los Angeles, CA 90013.

On October 26, 2022, I served the attached by transmitting a true copy via electronic mail.

ANSWER TO COMPLAINT FOR DECLARATORY JUDGMENT AND PRELIMINARY AND PERMANENT INJUNCTIVE RELIEF, OR IN THE ALTERNATIVE, FOR WRIT OF MANDATE UNDER CODE OF CIVIL PROCEDURE 1085

I transmitted the above-referenced document via electronic mail to:

Samuel R. Maizel, attorney for the Plaintiff Borrego Community Health Foundation at Samuel.maizel@dentons.com;

Tania M. Moyron, attorney for Plaintiff Borrego Community Health Foundation at tania.moyron@dentons.com;

David Ortiz, Esq., at the Office of the United States Trustee at david.a.ortiz@usdoj.gov;

Regional 15 of the Office of the United States Trustee at ustp.region15@usdoj.gov;

Steven Golden, Esq. attorney for the Unsecured Creditors Committee at sgolden@pszjlaw.com; and

Bernard Hansen, Esq. at bernardmhansen@sbcglobal.net, attorney for Premier Healthcare.

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 October 26, 2022, at Los Angeles, California.

Kenneth K. Wang

Declarant

/s/ Kenneth K. Wang

Signature