

Fill in this information to identify the case:

Debtor Borrego Community Health Foundation

United States Bankruptcy Court for the: Southern District of California
(State)

Case number 22-02384

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. **Who is the current creditor?** Barry H. Tischler, MD by and through Successor in Interest, Ellen Tischler
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor _____

2. **Has this claim been acquired from someone else?** No
 Yes. From whom? _____

3. **Where should notices and payments to the creditor be sent?**

Where should notices to the creditor be sent?	Where should payments to the creditor be sent? (if different)
See summary page	

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

Contact phone 3108021500 Contact phone _____

Contact email rachel@baattorneys.com Contact email _____

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

4. **Does this claim amend one already filed?** No
 Yes. Claim number on court claims registry (if known) _____ Filed on _____
MM / DD / YYYY

5. **Do you know if anyone else has filed a proof of claim for this claim?** No
 Yes. Who made the earlier filing? _____



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _

7. How much is the claim? \$ 35000.00. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Employment related discrimination case settled in principal

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)(____) that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 11/14/2022
MM / DD / YYYY

/s//s/ Patricio Barrera
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Patricio Barrera
First name Middle name Last name

Title Attorney

Company Barrera Associates
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0670 | International (310) 751-2670

Debtor: 22-02384 - Borrego Community Health Foundation		
District: Southern District of California, San Diego Division		
Creditor: Barry H. Tischler, MD by and through Successor in Interest, Ellen Tischler c/o Barrera Associates 2298 E. Maple Avenue El Segundo, California, 90245 United States Phone: 3108021500 Phone 2: Fax: 3108020500 Email: rachel@baattorneys.com	Has Supporting Documentation: Yes, please mail physical supporting documentation Related Document Statement:	
	Has Related Claim: No Related Claim Filed By:	
	Filing Party: Authorized agent	
Other Names Used with Debtor:	Amends Claim: No Acquired Claim: No	
Basis of Claim: Employment related discrimination case settled in principal	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 35000.00	Includes Interest or Charges: None	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No	Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured:	
Submitted By: /s/ Patricio Barrera on 14-Nov-2022 4:38:51 p.m. Eastern Time Title: Attorney Company: Barrera Associates		

**Additional Supporting
Documents Received on
12/7/2022**

RECEIVED

DEC 07 2022

KURTZMAN CARSON CONSULTANTS



220238422120700000000003

Fill in this information to identify the case:

Debtor Borrego Community Health Foundation
United States Bankruptcy Court for the: Southern District of California
(State)
Case number 22-02384

Official Form 410
Proof of Claim

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

1. Who is the current creditor?	<u>Barry H. Tischler, MD by and through Successor in Interest, Ellen Tischler</u> Name of the current creditor (the person or entity to be paid for this claim) Other names the creditor used with the debtor _____	
2. Has this claim been acquired from someone else?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____	
3. Where should notices and payments to the creditor be sent?	Where should notices to the creditor be sent? See summary page	Where should payments to the creditor be sent? (if different)
Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)	Contact phone <u>3108021500</u>	Contact phone _____
RECEIVED DEC 07 2022	Contact email <u>rachel@baattorneys.com</u>	Contact email _____
	Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____	
4. Does this claim amend one already filed?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY	
5. Do you know if anyone else has filed a proof of claim for this claim?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____	

KURTZMAN CARSON CONSULTANTS



220238422111400000000007

Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____
7. How much is the claim?	\$ <u>35000.00</u> Does this amount include interest or other charges? <input type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).
8. What is the basis of the claim?	Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Employment related discrimination case settled in principal</u>
9. Is all or part of the claim secured?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable
10. Is this claim based on a lease?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____
11. Is this claim subject to a right of setoff?	<input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____

RECEIVED

DEC 07 2022

KURTZMAN CARSON CONSULTANTS



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12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

No

Yes. Check all that apply:

Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).

Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).

Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).

Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).

Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).

Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.

Amount entitled to priority

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

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

Executed on date 11/14/2022
MM / DD / YYYY

/s//s/ Patricio Barrera
Signature

Print the name of the person who is completing and signing this claim:

Name /s/ Patricio Barrera
First name Middle name Last name

Title Attorney

Company Barrera Associates
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone 310.802.1500 Email _____

RECEIVED

DEC 07 2022

KURTZMAN CARSON CONSULTANTS



220238422111400000000007

KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic (866) 967-0670 | International (310) 751-2670

Debtor: 22-02384 - Borrego Community Health Foundation		
District: Southern District of California, San Diego Division		
Creditor: Barry H. Tischler, MD by and through Successor in Interest, Ellen Tischler c/o Barrera Associates 2298 E. Maple Avenue El Segundo, California, 90245 United States Phone: 3108021500 Phone 2: Fax: 3108020500 Email: rachel@baattorneys.com	Has Supporting Documentation: Yes, please mail physical supporting documentation	
	Related Document Statement:	
	Has Related Claim: No	
		Related Claim Filed By:
		Filing Party: Authorized agent
Other Names Used with Debtor:		Amends Claim: No
		Acquired Claim: No
Basis of Claim: Employment related discrimination case settled in principal	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: 35000.00	Includes Interest or Charges: None	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No	Nature of Secured Amount:	
Amount of 503(b)(9): No	Value of Property:	
Based on Lease: No	Annual Interest Rate:	
Subject to Right of Setoff: No	Arrearage Amount:	
	Basis for Perfection:	
	Amount Unsecured:	
Submitted By: /s/ Patricio Barrera on 14-Nov-2022 4:38:51 p.m. Eastern Time		
Title: Attorney		
Company: Barrera Associates		

CONFIDENTIAL SETTLEMENT AGREEMENT AND RELEASE

This Confidential Settlement Agreement and Release (the "Agreement") is made by and between ELLEN TISCHLER, Special Administrator and / or Personal Representative of the Estate of Barry Tischler, M.D. ("Plaintiff"), on the one hand, and Defendant BORREGO COMMUNITY HEALTH FOUNDATION ("Defendant") on the other hand. Plaintiff and Defendant are referred to collectively herein as the "Parties" and may be individually referred to as a "Party."

I. RECITALS

A. WHEREAS, Plaintiff worked for Defendant from on or about March 15, 2021 to April 12, 2021 (the "termination date").

B. WHEREAS, Plaintiff filed a civil action against Defendant in the Superior Court of California, County of Riverside, Case No. CVPS2104216, entitled *Barry Tischler v. Borrego Community Health Foundation* (the "Action"), asserting nine causes of action for: (1) age discrimination (FEHA), (2) wrongful termination in violation of public policy, (3) failure to pay wages in violation of Labor Code section 201, (4) violation of Business and Professions Code section 17200, (5) defamation, (6) breach of contract, (7) breach of implied covenant of good faith and fair dealing, (8) conversion, and (9) common count - quantum meruit ("Tischler's Claims").

C. WHEREAS, the Court in the Action entered an order on February 18, 2022 compelling Plaintiff's causes of action for age discrimination (FEHA), wrongful termination in violation of public policy, failure to pay wages in violation of Labor Code § 201 ("Tischler's Wage Claim"), violation of Business & Professions Code § 17200, defamation, and breach of implied covenant of good faith and fair dealing (as to only Plaintiff's employment agreement) to arbitration pursuant to a motion to compel arbitration filed by Defendant.

D. WHEREAS, pursuant to the Court's ruling on Defendant's motion to compel arbitration, Plaintiff's causes of action for breach of contract, breach of implied covenant of good faith and fair dealing (only as to Plaintiff's claims pertaining to Defendant's acquisition of certain medical equipment from him), conversion, and quantum meruit (collectively, the "Medical Equipment Claims") were not compelled to arbitration and were permitted to proceed in the Action. (The remaining Tischler's Claims not included in the Medical Equipment Claims or Tischler's Wage Claim are referred to herein as "The Released Claims.")

E. WHEREAS, Defendant denies Tischler's Claims and denies any other wrongful or unlawful conduct, claim, damage, or liability of any kind with regard to Plaintiff, or in any other manner, or at all.

F. WHEREAS, Plaintiff is represented by Barrera & Associates whose address is 2298 E. Maple Avenue, El Segundo, CA 90245 ("Plaintiff's Counsel") in the Action.

G. WHEREAS, Defendant denies any and all of the allegations in the Action and deny it committed any misconduct, statutory or regulatory violation, wrongdoing, or any other actionable conduct whatsoever.

H. WHEREAS, on or about June 27, 2022, Plaintiff BARRY TISCHLER, M.D. and Defendant BORREGO COMMUNITY HEALTH FOUNDATION entered into a settlement agreement resolving Plaintiff BARRY TISCHLER, M.D.'s Wage Claim and Medical Equipment Claims. That settlement is subject to a separate Confidential Settlement Agreement executed by the Parties and is incorporated herein by reference.

I. WHEREAS, on July 15, 2022, Plaintiff BARRY TISCHLER, M.D. passed away.

J. WHEREAS, following the death of Plaintiff BARRY TISCHLER, M.D., the Parties engaged in significant settlement negotiations and informal exchanges of documents and information in an effort to resolve The Released Claims. At the conclusion of those settlement discussions, the Parties reached an agreement to resolve said claims.

K. WHEREAS, nothing contained herein should or may be construed as an admission by Defendant of any liability of any kind or form whatsoever to Plaintiff, or any entity or person.

L. WHEREAS, the Parties now desire to fully and finally resolve, settle, compromise and discharge the differences, controversies, claims, and damages between them concerning The Released Claims.

II. TERMS

NOW THEREFORE, in consideration of the promises and mutual agreements set forth below, the adequacy of which is hereby acknowledged, the Parties agree as follows:

1. **Recitals Incorporated.** The above Recitals are incorporated herein by this reference and are hereby made part of this Agreement.

2. **Effective Date.** The Effective Date of this Agreement shall be upon full execution of this Agreement by the Parties and counsel for the Parties, and seven (7) days following Defendant's receipt of a Court Order appointing ELLEN TISCHLER as a Special Administrator to resolve the claims identified herein and / or evidence of ELLEN TISCHLER status as Personal Representative of the Estate of Barry Tischler, M.D.

3. **Consideration.** In consideration of Plaintiff's agreement to dismiss the Released Claims, *with prejudice*, Defendant agrees to pay Plaintiff and Plaintiff's Counsel the total sum of Thirty-Five Thousand Dollars and Zero Cents (\$35,000.00) (the "Settlement Funds") as full settlement and compromise of The Released Claims, which shall be payable as follows:

a. **1099 Payment.** Within fourteen (14) business days of the Effective Date, Defendant shall pay the sum of \$35,000.00, made payable to "Barrera & Associates Attorney Client Trust Account" whose address is 2298 E.

Maple Avenue, El Segundo, CA 90245, provided that the Barrera & Associates and Plaintiff first provide Defendant with a form W-9, and provided further that Defendant shall provide Barrera & Associates and Plaintiff with forms 1099-MISC. This sum covers Plaintiff's claims, attorneys' fees, damages, penalties, and interest.

c. Tax Documentation. To effectuate issuance of the Settlement Funds, Plaintiff and Plaintiff's Counsel shall each respectively provide Defendant correctly-completed and executed IRS Forms W-9 within two (2) business days of Plaintiff signing this Agreement.

4. Dismissal of Action. Within three (3) court days after receiving the Settlement Funds, Plaintiff shall prepare and file a Request for Dismissal of all of the Released Claims, to include the third, eighth, and ninth causes of action in the Action, asking the Court to dismiss these causes of action *with prejudice*.

5. Mutual Releases and Covenants. In consideration for the promises set forth in this Agreement, the Parties agree to:

a. Except for such rights and claims as may be created by this Agreement, fully and finally release each other and each other's respective officers, directors, agents, representatives, affiliates, subsidiaries, heirs, assigns, and employees from any and all claims and potential claims arising out of or related to The Released Claims.

b. Not pursue any cause of action, claim, or administrative remedy alleging or arising out of The Released Claims, except for such rights and claims as may be created by this Agreement.

c. Except for such rights and claims as may be created by this Agreement, the Parties, as well as their respective heirs, agents, attorney(s), and assigns, shall and do hereby relieve, release, and discharge each other, any and all of each other's parents, affiliates and subsidiary corporations and/or entities, its predecessors, successors and assigns, and all of its present and former officers, directors, attorneys, agents, consultants, employees, representatives, divisions, affiliates, subsidiaries, administrators, insurers, members, joint venturers, partners, owners, and shareholders and each of them (the "Released Parties"), of and from any and all claims, causes of action, debts, liabilities, demands, obligations, promises, acts, agreements, costs, and expenses (including, but not limited to, attorneys' fees, damages, wages, penalties, expenses, mediation fees, expert fees, mileage claims, actions, claims and causes of action of whatsoever kind or nature), of whatsoever kind or character, whether now known or unknown, suspected or unsuspected, based on, arising out of, or in connection with the Released Claims. By its terms, this Agreement includes not only claims arising before the Effective Date of this Agreement as they may relate to the Released Claims, but also any and all claims arising after such date which arise from the then-present effect of acts or conduct occurring before the Effective Date of the Agreement related to The Released Claims.

d. Section 1542 of the Civil Code of the State of California, provides as follows: **“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.”** Plaintiff expressly and completely waives and releases any right or benefit which he has or may have under said Section 1542 of the Civil Code of the State of California pertaining to The Released Claims, except as expressly excluded. In connection with such waiver and relinquishment, Plaintiff acknowledges that he is aware that he may hereafter discover claims or information pertaining to The Released Claims that are presently unknown or unsuspected, or facts in addition to, or different from those which he now knows or believes to be true. Nevertheless, it is the intention of Plaintiff, through this Agreement, and with the advice of counsel, to fully, finally and forever settle and release the Released Claims, except as expressly excluded herein. In furtherance of such intention, the releases herein given shall be and remain in effect as full and complete releases of such matters notwithstanding the discovery or existence of any such additional or different claims or facts relative thereto.

6. Confidentiality.

a. Plaintiff agrees that the terms of this Agreement are strictly confidential, and he shall not disclose its terms to anyone, for any purpose, or introduce the same into evidence other than to enforce the terms of this Agreement. Plaintiff shall not, without the prior written permission of all other Parties to this Agreement, disclose the settlement terms or any information, documents, testimony, or other evidence reflecting or evidencing the terms of this Agreement, or the negotiations thereof, to any person, with the exception of his attorney(s), spouse, authorized legal representative(s), financial advisor(s), accountant(s), insurer(s), taxing authorities, and government agencies, as strictly necessary in the course of his business or legal relationship with them. Plaintiff agrees that, if questioned by any person other than his attorney(s), spouse, authorized legal representative(s), financial advisor(s), accountant(s), taxing authorities, and/or government agencies concerning The Released Claims and/or this Agreement, he will respond without further elaboration: “I/we was/were able to resolve any differences,” or words to similar effect.

b. Nothing in this section is intended to preclude the Plaintiff from disclosing information in response to a valid subpoena, order, or legal process duly issued by a court of law or government agency having jurisdiction or power to compel such a disclosure. If Plaintiff is so subpoenaed, ordered or served with legal process, he agrees to notify Defendant in writing, through its respective attorneys of record at the time this Agreement was signed, within four (4) days of receipt of such subpoena, so Defendant may take any necessary action to quash the subpoena, should it choose to do so. Further, this provision in no way limits Plaintiff's rights pursuant to Code of Civil Procedure sections 1001 or 1002.

c. The agreement to preserve and maintain the confidentiality of this Agreement is a material term of this Agreement, and the Parties acknowledge that Defendant would not have entered into this Agreement but for the existence of this confidentiality provision.

The Parties further acknowledge and agree that, in the event of a breach of this confidentiality provision, the damages caused by such breach would be difficult to ascertain.

d. The Parties agree that, in the event of Plaintiff's proven breach of the terms of this confidentiality provision, Plaintiff shall pay Defendant the total amount of Four-Thousand dollars and Zero cents (\$4,000.00) for any such proven violation of this provision, which sum the Parties agree constitutes a reasonable estimate of those damages that would flow from said breach. In any lawsuit or action filed for an alleged violation of this Section, Defendant shall have the burden of proof to establish a breach of this confidentiality agreement. Nothing in this Section shall prevent the Parties from filing this Agreement with a court of competent jurisdiction in any lawsuit or action seeking the interpretation, enforcement, and/or construction of this Agreement, and any such filing shall not constitute a breach or violation of this Section.

e. Nothing in this Agreement prevents Plaintiff from filing a charge or complaint with, from participating in an investigation or proceeding conducted by, providing information to, or otherwise assisting the DFEH, EEOC, NLRB, SEC, or any other federal, state or local agency charged with the enforcement of any laws, or from exercising rights under Section 7 of the NLRA to engage in joint activity with other employees, although by signing this Agreement, Plaintiff is waiving rights to any and all individual relief associated with The Released Claims to the extent any such claims may be asserted in any such charge or complaint or other proceeding brought by Plaintiff or on his behalf by any third party, except for any right Plaintiff may have to receive a payment from a government agency (and not Defendant) for information provided to the government agency or otherwise prohibited.

7. **Attorneys' Fees and Costs.** Except as otherwise specified herein, the Parties shall bear their own respective attorneys' fees and costs related to the Released Claims and this Agreement, and agree they shall not pursue any claim against any other Party for any attorneys' fees or costs incurred in relation to The Released Claims and this Agreement.

IV. **MISCELLANEOUS**

8. **Subsequent Attorneys' Fees.** Should any action, arbitration, or proceeding be initiated by any Party for the purpose of enforcing, interpreting or construing this Agreement, the prevailing party (as defined by California law) in such action, arbitration or proceeding shall be entitled to recover their reasonable attorneys' fees and costs.

9. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and fully supersedes any and all prior understandings, representations, warranties and agreements between the Parties pertaining to the subject matter hereof.

10. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of California in effect at the time of execution of this Agreement by the Parties, and without regard to choice-of-law principles.

11. **Independent Advice of Counsel.** The undersigned, in executing this Agreement, represent and acknowledge that they have been represented by independent counsel in the negotiation, preparation, drafting, and execution of this Agreement, that each Party has read this Agreement and has had it fully explained to it by its independent counsel prior to execution, and fully understands the Agreement's contents and legal effect.

12. **Non-Assignment of Released Claims.** The Parties represent and warrant to one another that they have not assigned or transferred to any third party any of the rights, claims, causes of action or items to be released, which they are obligated to release as part of this Agreement.

13. **Voluntary Agreement.** The undersigned represent and acknowledge they have signed the Agreement freely and voluntarily, without duress or coercion. Each Party, by executing this Agreement, represents that they shall not deny the validity of this Agreement on the ground they executed the same under duress, fraud or without capacity.

14. **Written Modifications.** This Agreement may not be waived, altered, amended, modified, assigned or repealed, in whole or in part, without the express prior written consent of the Parties hereto. This Agreement may not be modified and/or amended except by written agreement signed by the Parties.

15. **Mutual Participation in Drafting Agreement.** Each Party represents it has fully participated in drafting the terms and provisions of this Agreement. Accordingly, should any later construction or interpretation of the Agreement find a purported ambiguity therein, the Agreement shall not be construed against any one Party on account of their having allegedly drafted this Agreement.

16. **Severability.** Should any provision of this Agreement be held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions, conditions or covenants not so declared shall be deemed severable from the remainder of this Agreement, and shall in no way affect any other provision, covenant, condition, or promise contained herein. If any provision is deemed invalid due to scope or breadth, the provision(s) shall be deemed valid to the full extent of scope and breadth permitted by law.

17. **Waiver.** No breach of any provision of this Agreement may be waived unless done in writing. Waiver of any one breach shall not be deemed to be a waiver of any other breach of the same or any other provision.

18. **Gender and Tense.** Whenever required by the context of this Agreement, the singular shall include the plural, and the plural shall include the singular, and the masculine, feminine and neutral genders shall each include the other.

19. **Counterparts.** This Agreement may be executed in counterparts. Any such executed counterparts shall constitute one Agreement, which shall be binding on the Parties, even though not all Parties may have signed the original or same counterpart. Duplicates of this Agreement, or counterparts thereof, showing the execution of all Parties, shall be of the same

validity, force and effect as the original. Fax and electronically transmitted signatures shall have the same force and effect as original signatures.

20. **Taxability.** It is expressly agreed and understood that the Parties have not relied upon any advice, representations or warranties from the other Party and/or their attorney's whatsoever as to the tax consequences of this Agreement. Plaintiff is solely responsible for any and all tax consequences arising out of the payments made to Plaintiff pursuant to this Agreement. Plaintiff's Counsel are solely responsible for any and all tax consequences arising out of the payments made to Plaintiff's Counsel pursuant to this Agreement. Plaintiff agrees to indemnify and defend Defendant for his portion of any tax liability or costs incurred as a result of his failure to pay his share of the required taxes on all amounts paid by Defendant pursuant to this Agreement.

21. **Compromise Not Admission.** This Agreement is intended to, and does compromise disputed claims and shall not be construed as an admission of liability by any Party of any claim made by any other Party. Defendant denies any and all wrongdoing, liability, or obligation to Plaintiff as to the various claims and damages asserted in the Action, or which could have been asserted in the Action, and all such claims are denied and contested.

22. **Headings.** The headings used in this Agreement are for informational purposes only, and shall not be used to construe the intent of this Agreement.

23. **Admissibility.** The Parties acknowledge and hereby agree that this Agreement – redacted to cover monetary amounts – shall be admissible in any subsequent proceeding initiated to enforce its provisions notwithstanding the Confidentiality provision set forth above. Plaintiff and Defendant hereby waive any objection to the Agreement's admissibility under California Evidence Code section 1152 or Federal Rule of Evidence 408, or any other provision of law, for that limited purpose.

24. **Jurisdiction.** The Parties acknowledge and hereby agree that the Superior Court of the State of California, County of Riverside, shall have exclusive jurisdiction over any lawsuit or action seeking the interpretation, enforcement, and/or construction of the terms and conditions of this Agreement, and neither Party shall deny the same or claim a lack of such jurisdiction.

25. **No Prevailing Party.** Neither Plaintiff nor Defendant shall be considered a prevailing party with regard to The Released Claims, for any purpose.

26. **Electronic Signing.** The Parties agree where practicable to use DocuSign, an electronic signature technology, to expedite the execution of this Agreement, pursuant to California Civil Code Section 1633.7.

IN WITNESS WHEREOF, the Parties hereto have each approved and executed this Agreement on the dates set forth opposite their respective signatures.

Dated:

ELLEN TISCHLER, Special Administrator and / or
Personal Representative of the Estate of Barry Tischler,
M.D.

Dated:

Borrego Community Health Foundation

BY: Rose Maclsaac

ITS: Chief Executive Officer

APPROVED AS TO FORM:

Dated: August ___, 2022

Barrera & Associates

By: Patricio T.D. Barrera, Esq.
Attorney for Plaintiff Barry Tischler, M.D.

Dated: August ___, 2022

HIGGS FLETCHER & MACK LLP

By: Derek W. Paradis, Esq.
Kyle W. Nageotte, Esq.
Attorneys for Defendant Borrego Community
Health Foundation

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Borrego Community Health Foundation

Case Number: 22-02384

[Blank Proof Of Claim Form with Instructions](#)

For phone assistance:

(866) 967-0670 (Domestic US)

(310) 751-2670 (International)

This claim was successfully submitted for \$ 35000.00 against Borrego Community Health Foundation on 14-Nov-2022 4:38:51 p.m. Eastern Time.

You can download a copy of the Claim Filing Summary [here](#).

If you would like to make any changes to your claim, please [request a new PIN](#) from KCC and file an amended claim.

You have physical supporting documentation and should [mail them along with your claim form summary to KCC at:](#)

**Borrego Health Claims Processing Center
c/o KCC
222 N. Pacific Coast Highway, Suite 300
El Segundo, CA 90245**

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