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9 *through its Director, Michelle Baass*

10 UNITED STATES DISTRICT COURT  
11 SOUTHERN DISTRICT OF CALIFORNIA

12 In re  
13 BORREGO COMMUNITY HEALTH  
FOUNDATION, a California nonprofit  
14 public benefit foundation,  
15 Debtor and Debtor in Possession.

Case No. 22-CV-01751-GPC-MSB  
Chapter 11 Case No. 22-02384-LT11  
Adv. Pro. No. 22-90056-LT

17 BORREGO COMMUNITY HEALTH  
FOUNDATION, a California nonprofit  
18 public benefit corporation,  
19 Plaintiff and Appellee,  
20 v.  
21 CALIFORNIA DEPARTMENT OF  
HEALTH CARE SERVICES, by and  
22 through its Director, Michelle Baass,  
23 Defendant and Appellant.

**JOINT MOTION AND  
STIPULATION FOR ORDER  
GRANTING LIMITED REMAND  
OF JURISDICTION AND  
CONTINUING STAY OF APPEAL  
AND BRIEFING SCHEDULE;  
EXHIBITS IN SUPPORT**

24  
25 TO THE COURT:

26 Pursuant to Rule 8008(c) of the Federal Rules of Bankruptcy Procedure (the  
27 “Bankruptcy Rules”) Borrego Community Health Foundation (“Borrego”) and the  
28 California Department of Health Care Services (“DHCS”, and collectively with



1 Borrego, the “Parties”) hereby stipulate and jointly move the Court for an order  
2 granting limited remand of jurisdiction back to the U.S. Bankruptcy Court for the  
3 Southern District of California (the “Bankruptcy Court”) for purposes of the  
4 Bankruptcy Court hearing a joint motion to vacate the orders that are the subject of  
5 the pending appeal, and for an order continuing the stay of this appeal and briefing  
6 schedule. Within 21 days of the Bankruptcy Court entering an order granting a  
7 joint motion to vacate the orders that are the subject of this appeal, the Parties will  
8 file a joint motion with this Court to dismiss this appeal. However, if the  
9 Bankruptcy Court denies a joint motion to vacate the orders that are the subject of  
10 this appeal, appellant will so notify this Court within 21 days thereafter, and request  
11 reinstatement of this Court’s appellate jurisdiction.

12 This joint motion is based on the terms of a settlement reached between the  
13 Parties and approved by the Bankruptcy Court at a hearing on March 1, 2023. The  
14 Bankruptcy Court’s approval of the settlement is an indication that the Bankruptcy  
15 Court will grant the requested relief once jurisdiction is vested back with the  
16 Bankruptcy Court.

### 17 **BACKGROUND**

18 This bankruptcy appeal arises out of an adversary proceeding (the “Adversary  
19 Proceeding”) commenced after Borrego filed for Chapter 11 bankruptcy protection.  
20 Borrego is a Federally Qualified Health Center serving patients in Southern  
21 California. In the Adversary Proceeding, Borrego alleged that a suspension of  
22 Medi-Cal payments by DHCS would violate the automatic stay imposed by section  
23 362 of the Bankruptcy Code. DHCS disputed this allegation. The Bankruptcy  
24 Court ruled that the automatic stay applied to the suspension and this appeal  
25 followed.

26 After discussions, the Bankruptcy Court ordered the parties to mediation, and  
27 in November, 2022, appointed a Bankruptcy Judge, the Honorable Dennis Montali,  
28 to serve as mediator in an effort to reach a compromise of all disputes pending

1 between Borrego, DHCS, its largest creditor, and the Official Committee of  
2 Unsecured Creditors (the “Committee”). Adv. Dkt. Nos. 74, 83. Progress in  
3 settlement negotiations led to Borrego and DHCS applying to this Court for an  
4 order staying the appeal for 60 days, which was granted by this Court. ECF Nos. 5  
5 and 6.

6 In early February, 2023, the Parties reached a recommended settlement in  
7 principle as to core terms and continued to negotiate related details of a settlement.

8 On February 15, 2023, the Bankruptcy Court held a status conference at which  
9 the Parties informed the Bankruptcy Court of settlement progress. On February 20,  
10 2023, a joint status report on settlement progress was filed with the Bankruptcy  
11 Court. Adv. Dkt. 123. The parties continued to work out the details of a term sheet  
12 outlining the terms of settlement, which included, in pertinent part, a provision that  
13 Borrego and the Committee would file a joint motion requesting the Bankruptcy  
14 Court vacate its orders that are the subject of this appeal (Adv. Dkt. Nos. 65 and 66)  
15 and that upon the Bankruptcy Court vacating its orders, this appeal would be  
16 dismissed along with the Adversary Proceeding, with all parties agreeing to bear  
17 their own fees and costs.

18 On Monday, February 28, 2023, the parties had a fully signed Term Sheet for  
19 a settlement and filed a joint motion for approval of settlement. See Exhibit A,  
20 Bankr. Dkt. No. 510. An ex parte application to have the motion heard on  
21 shortened time was filed and granted by the Bankruptcy Court, with the joint  
22 motion for approval of settlement set for hearing on March 1, 2023. At the March  
23 1, 2023 hearing, the Bankruptcy Court granted the joint motion and approved the  
24 settlement. On March 7, 2023, the Bankruptcy Court entered its order approving  
25 the settlement. See Exh. B, Bankr. Dkt. No. 544.

### 26 **AUTHORITY FOR LIMITED REMAND**

27 Bankruptcy Rule 8008(c) authorizes limited remand of appellate jurisdiction  
28 back to the Bankruptcy Court to allow the Bankruptcy Court to rule on matters that

1 it would otherwise lack jurisdiction to rule on because of the pendency of an appeal.  
2 *See also* Fed. R. Civ. P. 62.1(c) and Fed. R. App. P. 12.1(b); *Mendia v. Garcia*, 874  
3 F.3d 1118, 1121 (9th Cir. 2017). Here, the Bankruptcy Court has entered an order  
4 approving the settlement and compromise between Borrego, DHCS and the  
5 Committee. Exh. B, Bankr. Dkt. 544. Since the settlement calls for the Bankruptcy  
6 Court to vacate its orders that are the subject of the pending appeal (Adv. Dkt. Nos.  
7 65 and 66) by way of joint motion, the Bankruptcy Court's approval of the  
8 settlement is a strong indication that the Bankruptcy Court will grant the joint  
9 motion and vacate its prior orders, thereby allowing the parties to complete their  
10 settlement, which will thereafter include a joint motion to dismiss this appeal with  
11 all parties bearing their own fees and costs.

#### 12 **STIPULATION**

13 Appellant DHCS, by and through its Director, Michelle Baass, and its counsel  
14 of record, Deputy Attorney General Darin L. Wessel, and Appellee Borrego, by and  
15 through its counsel of record Samuel R. Maizel, Esq., and Tania M. Moyron, Esq.,  
16 of Dentons US LLP, hereby stipulate and request this Court enter an order granting  
17 limited remand of jurisdiction to the Bankruptcy Court so that the Bankruptcy  
18 Court will have jurisdiction to hear and rule on a joint motion to vacate its orders  
19 that are the subject of this appeal.

20 The Parties request that the stay of the present appeal and briefing schedule  
21 remain in place while jurisdiction remains remanded to the Bankruptcy Court and  
22 until such time as the Parties either file a joint motion for dismissal of this appeal or  
23 Appellant requests reinstatement of this Court's appellate jurisdiction.

24 Within 21 days of the Bankruptcy Court entering an order granting a joint  
25 motion to vacate and vacating its orders (Adv. Dkt. Nos. 65 and 66), the Parties will  
26 file a joint motion to dismiss this appeal. In the event the Bankruptcy Court denies  
27 a joint motion to vacate its orders, then within 21 days of entry of the Bankruptcy  
28

1 Court's order, Appellant will file a request with this Court to restore its appellate  
2 jurisdiction.

3 IT IS SO STIPULATED.

4 Dated: March 20, 2023

Respectfully submitted,

5 ROB BONTA  
6 Attorney General of California  
7 RICHARD T. WALDOW  
8 Supervising Deputy Attorney General

9 /s/ Darin L. Wessel  
10 DARIN L. WESSEL  
11 Deputy Attorney General  
12 *Attorneys for Defendant/Appellant*  
13 *California Department of Health Care*  
14 *Services, by and through its Director,*  
15 *Michelle Baass*

16 Dated: March 20, 2023

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

17 By: /s/ Samuel R. Maizel  
18 *Attorneys for Debtor Plaintiff and*  
19 *Appellee Borrego Community Health*  
20 *Foundation*

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EXHIBITS

**EXHIBIT A**

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7 Attorneys for the Chapter 11 Debtor and  
 Debtor In Possession

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

10 In re

11 **BORREGO COMMUNITY**  
**HEALTH FOUNDATION,**

12 Debtor and Debtor In  
 13 Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**DEBTOR'S NOTICE AND MOTION TO  
 APPROVE COMPROMISE AMONG  
 DEBTOR, OFFICIAL COMMITTEE OF  
 UNSECURED CREDITORS AND  
 CALIFORNIA DEPARTMENT OF  
 HEALTH CARE SERVICES  
 PURSUANT TO FEDERAL RULE OF  
 BANKRUPTCY PROCEDURE 9019;  
 DECLARATION OF ISAAC LEE IN  
 SUPPORT THEREOF**

Hearing:  
 Date: TBD  
 Time: TBD  
 Place: Department 3

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**TABLE OF AUTHORITIES**

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1           **PLEASE TAKE NOTICE** that, at the above referenced date, time and  
2 location, before the Honorable Laura S. Taylor, United States Bankruptcy Judge, in  
3 Department 3, Room 129, located at 325 West F Street, San Diego, California 92101-  
4 6991, or as soon thereafter as the Court may hear the matter, the Court shall hold a  
5 hearing on the motion (the “Motion”) filed by Borrego Community Health  
6 Foundation, the above-referenced debtor and debtor in possession (the “Debtor”) in  
7 the above captioned chapter 11 bankruptcy case, for the approval of a settlement (the  
8 “Settlement”) among the Debtor, the Official Committee of Unsecured Creditors (the  
9 “Committee”), and the California Department of Health Care Services (“DHCS,” and  
10 together with the Debtor and the Committee, the “Parties”) as set forth in the term  
11 sheet (the “Term Sheet”) attached to the Motion as **Exhibit “A”**.

12           The Settlement resolves major, overarching issues in the Case and the related  
13 Adversary Proceeding and paves the way for the sale to Desert Aids Project d/b/a  
14 DAP Health (the “Buyer”) without protracted litigation, which will ensure the  
15 Debtor’s patients continue to receive high quality, culturally competent care without  
16 disruption. As a result of DHCS’ agreement to subordinate part of its claim, the  
17 Settlement also allows for general unsecured creditors to be paid in full.

18           As set forth more fully in the accompanying Memorandum Of Points And  
19 Authorities (the “Memorandum”) and in the Term Sheet, the principal terms of the  
20 Settlement provide as follows:<sup>1</sup>

- 21           (i) DHCS will receive an allowed general unsecured claim in the total  
22 amount of approximately \$112,000,000 (the “DHCS Allowed Claim”),  
23 subject to upward and downward adjustments and the filing of  
24 supplemental proofs of claims (the “Allowed Offset Amount”), with the  
25 Debtor and Committee agreeing to apply to this Court to extend the  
26

27 <sup>1</sup> To the extent the summary conflicts with any terms of the Term Sheet, the terms of the Term  
28 Sheet shall explicitly supersede and control. Capitalized terms in Motion that are not defined in this  
Motion shall have the meaning provided in the Term Sheet.

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- 1 government claims bar date to December 29, 2023, for DHCS to submit
- 2 its further proofs of claim;
- 3 (ii) DHCS shall retain the Allowed Offset Amount, and shall receive the
- 4 Sale Proceeds Recovery, and the Litigation Recoveries, as defined in the
- 5 Term Sheet, which shall be applied by DHCS in reduction of the DHCS
- 6 Allowed Claim, and the remaining balance shall be subordinated to
- 7 other general unsecured claims;
- 8 (iii) The Debtor agrees and DHCS consents to the transfer of the Medi-
- 9 Cal provider agreements to the Buyer of the Debtor’s assets pursuant to
- 10 section 365 of the Bankruptcy Code;
- 11 (iv) An independent monitor to remain in place as provided in the Term
- 12 Sheet;
- 13 (v) DHCS agrees to resume paying for in-house dental services effective
- 14 as of the date the Buyer of Debtor’s assets assumes Financial Control;
- 15 (vi) DHCS agrees to certain releases for the Debtor and related parties;
- 16 and
- 17 (vii) the Adversary Proceeding and related appeal shall be dismissed.

18 The Debtor submits that the Settlement is in the best interest of the estate and  
19 creditors and should be approved pursuant to Federal Rule of Bankruptcy Procedure  
20 9019.

21 **PLEASE TAKE FURTHER NOTICE** that the Motion is based on this  
22 Notice of Motion, the Memorandum, the Declaration of Isaac Lee, supporting  
23 statements, arguments and representations of counsel who will appear at the hearing  
24 on the Motion, the record in this case, any other evidence properly brought before  
25 the Court and all other matters of which this Court may properly take judicial notice.

26 **PLEASE TAKE FURTHER NOTICE** that the Parties are concurrently  
27 filing the *Joint Ex Parte Motion For Order Shortening Time On Motion to Approve*  
28 *Compromise Among Debtor, The Official Committee Of Unsecured Creditors, And*

1 *California Department Of Health Care Services Pursuant To Federal Rule Of*  
2 *Bankruptcy Procedure 9019, which seeks an expedited hearing on the Motion.*

3 **PLEASE TAKE FURTHER NOTICE** that, pursuant to Local Bankruptcy  
4 Rule 9013-7(b)(2) of the United States Bankruptcy Court for the Southern District of  
5 California, the failure to file and serve a timely objection to the Motion may be  
6 deemed by the Court to be consent to the relief requested herein.

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Dated: February 27, 2023

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON  
REBECCA M. WICKS

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

Attorneys for the Chapter 11 Debtor and  
Debtor In Possession

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Borrego Community Health Foundation (the “Debtor”), the debtor and debtor in possession in the above-captioned chapter 11 bankruptcy case (the “Case”), the Official Committee of Unsecured Creditors (the “Committee”), and the California Department of Health Care Services (“DHCS,” together with the Debtor and the Committee, the “Parties”) have entered into a proposed settlement (the “Settlement”), as memorialized in the term sheet attached as **Exhibit A** hereto (the “Term Sheet”).<sup>2</sup>

The Settlement resolves major, overarching issues in the Case and the Adversary Proceeding and paves the way for the sale to Desert Aids Project d/b/a DAP Health (the “Buyer”) without protracted litigation, which ensures the Debtor’s patients will continue to receive high quality, culturally competent care without disruption. As a result of DHCS’ agreement to subordinate its claim, the Settlement also allows for general unsecured creditors to be paid in full.

The primary terms of the Settlement are as follows:

- i) DHCS will receive an allowed general unsecured claim in the total amount of approximately \$112,000,000 (the “DHCS Allowed Claim”), subject to upward and downward adjustments and the filing of supplemental proofs of claims (the “Allowed Offset Amount”), with the Debtor and Committee agreeing to apply to this Court to extend the government claims bar date to December 29, 2023, for DHCS to submit its further proofs of claim;
- (ii) DHCS shall retain the Allowed Offset Amount, and shall receive the Sale Proceeds Recovery, and the Litigation Recoveries, as defined in the Term Sheet, which shall be applied by DHCS in reduction of the DHCS

<sup>2</sup> The Parties intend to enter into a settlement agreement (the “Settlement Agreement”) that memorializes the Settlement set forth in the Term Sheet. After the Parties execute the final Settlement Agreement, the Debtor will file the Settlement Agreement with the Court.

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- 1 Allowed Claim, and the remaining balance shall be subordinated to
- 2 other general unsecured claims;
- 3 (iii) The Debtor agrees and DHCS consents to the transfer of the Medi-
- 4 Cal provider agreements to the Buyer of the Debtor’s assets pursuant to
- 5 section 365 of the Bankruptcy Code;
- 6 (iv) An independent monitor to remain in place as provided in the Term
- 7 Sheet;
- 8 (v) DHCS agrees to resume paying for in-house dental services effective
- 9 as of the date the Buyer of Debtor’s assets assumes Financial Control;
- 10 (vi) DHCS agrees to certain releases for the Debtor and related parties;
- 11 and
- 12 (vii) the Adversary Proceeding and related appeal shall be dismissed.

13 Based on the foregoing and for the reasons fully set forth below, the Debtor  
14 submits that the Settlement is in the best interest of the estate and should be approved.

15 **II. JURISDICTION AND VENUE**

16 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and  
17 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(B). Venue is proper  
18 in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicate for this  
19 Motion is Bankruptcy Rule 9019.<sup>3</sup>

20 **III. BACKGROUND**

21 **A. GENERAL BACKGROUND**

22 1. On September 12, 2022 (“Petition Date”), the Debtor filed a voluntary  
23 petition for relief under chapter 11 of the Bankruptcy Code. Since the commencement  
24 of its case, the Debtor has been operating its business as a debtor in possession  
25 pursuant to §§ 1107 and 1108.

26 \_\_\_\_\_  
27 <sup>3</sup> All references to section or chapter herein are to the United States Bankruptcy Code, 11 U.S.C.  
28 §§ 101-1532, as amended, unless otherwise noted; all references to “Bankruptcy Rules” are to the  
provisions of the Federal Rules of Bankruptcy Procedure.



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1           2.     The Debtor is a nonprofit Federally Qualified Health Center (“FQHC”)
2 that provides health care services to low income and rural patients in San Diego and
3 Riverside Counties through a system of eighteen clinics, two pharmacies, and six
4 mobile units. In 2021, the Debtor provided approximately 386,000 patient care visits
5 to over 94,000 patients. The Debtor’s services include comprehensive primary care,
6 urgent care, behavioral health, dental services, specialty care, transgender health,
7 women’s health, prenatal care, veteran’s health, chiropractic services, tele-health,
8 and pharmacy.

9           3.     FQHCs are federally designated entities that receive higher state
10 payments to provide health care services to low-income and rural families and
11 families in underserved communities with incomes below 200% of the poverty level.
12 As an FQHC, the Debtor strives to deliver high quality, comprehensive,
13 compassionate primary health care to people in the surrounding area, regardless of
14 ability to pay.

15           4.     Additional background regarding the Debtor, including an overview of
16 the Debtor’s business and additional events leading up to this case, is set forth in the
17 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor’s*
18 *Emergency First Day Motions* [Dkt. No. 7].

19           5.     On September 26, 2022, the Office of the United States Trustee
20 appointed the Committee in this chapter 11 case. [Dkt. No. 49].

21     **B.     FACTS RELEVANT TO MOTION**

22           6.     DHCS administers the California Medicaid Program, which is called
23 “Medi-Cal.” The Medi-Cal program is California’s implementation of the federal
24 Medicaid program, a joint federal and state program for rendering health care
25 services to the needy and disabled under Title XIX of the Social Security Act. 42
26 U.S.C. §§ 1396, *et seq.* Medi-Cal pays approximately 44% of the Debtor’s revenue.

27           7.     On November 18, 2020, DHCS imposed a suspension of Medi-Cal
28 program payments to the Debtor as a result of an ongoing investigation of allegations

1 of fraud in the Debtor’s external contract dental services. Shortly thereafter, DHCS  
2 limited the suspension to dental claims only.

3 8. On January 27, 2021, the Debtor and DHCS entered into a settlement  
4 agreement, wherein, among other things, DHCS required the Debtor to retain  
5 Berkeley Research Group as an independent monitor that reported to DHCS.

6 9. Prior to the Petition Date, on August 19, 2022, DHCS notified the  
7 Debtor that it intended to impose a full suspension of Medi-Cal program payments  
8 to the Debtor (the “Payment Suspension”), for both medical and dental services,  
9 effective September 29, 2022.

10 10. On or about August 19, 2022, DHCS notified the various managed care  
11 plans (“MCP”) who had contracts with the Debtor for the Debtor to provide health  
12 care services to their members of its intention to suspend all Medi-Cal program  
13 payments to the Debtor effective September 29, 2022, and directed the MCP to  
14 provide plans for potential reassignment of their members. [Adv. Pro. Dkt. 33,  
15 Exh. A]. MCPs were not required to terminate their contracts with Debtor. [Adv. Pro.  
16 Dkt. 33, Exhs. A, C]. After the suspension date, health plans were explicitly permitted  
17 to adjudicate Debtor’s claims for services provided to Medi-Cal members but were  
18 required to withhold payment.

19 11. Given the proposed Payment Suspension, the Debtor filed the Petition  
20 to obtain the protection of the automatic stay, to continue providing for its patient  
21 population, and to explore all available restructuring options.

22 12. On September 26, 2022, the Debtor filed the *Complaint for Declaratory*  
23 *Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for*  
24 *Writ of Mandate Under Code of Civil Procedure 1085* (the “Complaint”),  
25 commencing *Borrego Community Health Foundation v. California Department of*  
26 *Health Care Services*, Adv. Pro. No. 22-90065 (the “Adversary Proceeding”). On  
27 September 27, 2022, the Debtor filed its *Emergency Motion: (I) To Enforce The*  
28 *Automatic Stay Pursuant To 11 U.S.C. § 362; or, Alternatively (II) For Temporary*

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1 *Restraining Order* [Adv. Pro. Dkt. 3] (the “Motion to Enforce”), and sought (i) a  
2 ruling that the Payment Suspension violated the automatic stay imposed pursuant to  
3 § 362, or, alternatively, (ii) issuance of a temporary restraining order enjoining the  
4 Payment Suspension under Bankruptcy Rule 7065.

5 13. DHCS filed an opposition to the Motion to Enforce [Adv. Pro. Dkt. 30],  
6 and the Debtor filed its reply in support of the same [Adv. Pro. Dkt. 47].

7 14. DHCS also opposed the relief requested in the Complaint and filed its  
8 *Answer to Complaint for Declaratory Judgment and Preliminary and Permanent*  
9 *Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code of Civil*  
10 *Procedure 1085* [Adv. Pro. Dkt. 67].

11 15. On October 26, 2022, the Court issued its *Findings of Fact and*  
12 *Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II)*  
13 *Alternatively for Temporary Restraining Order* [Adv. Pro. Dkt. 65]. That same day,  
14 the Court entered its *Order on Emergency Motion to (I) Enforce the Automatic Stay*  
15 *or (II) Alternatively for Temporary Restraining Order* [Adv. Pro. Dkt. 66] (the  
16 “Order”) granting, in part, the Motion to Enforce on the terms and conditions set forth  
17 in the Order.

18 16. On November 7, 2022, DHCS filed its Notice of Appeal and Statement  
19 of Election [Adv. Pro. Dkt. 75], appealing entry of the Order to the United States  
20 District Court.

21 17. The Parties agreed to a mediation before the Court’s appointed  
22 mediator, the Honorable Dennis Montali, United States Bankruptcy Judge. [See Adv.  
23 Pro. Dkt. 73, 74, 83.] The Parties have been actively working with the Honorable  
24 Dennis Montali to arrive at a settlement, as described herein.

1 **C. SUMMARY OF SETTLEMENT<sup>4</sup>**

2 18. The primary terms of the Settlement, as set forth in the Term Sheet<sup>5</sup> and  
3 as to be further memorialized in a final Settlement Agreement are set forth below:

- 4 a. DHCS Allowed Claim. DHCS shall hold an allowed general unsecured  
5 claim in an amount of approximately \$112 million<sup>6</sup> consisting of, but  
6 not limited to Medi-Cal overpayments, and subject to a downward or  
7 upward adjustment based on DHCS PPS reconciliation for fiscal years  
8 ending (FYE) 2019, 2020, and 2021<sup>7</sup> (the “DHCS Allowed Claim”) and DHCS shall be allowed to file proofs of claim in support of the  
9 DHCS Allowed Claim by March 13, 2023. The Debtor and the  
10 Committee agree to jointly seek an extension of the governmental unit  
11 claims bar date until December 29, 2023 (the “Extended DHCS  
12 Deadline”), during which DHCS may submit any further general  
13 unsecured proofs of claim against the Debtor for Medi-Cal  
14 overpayments. With the exception of the Offset Amount, the Sale  
15 Proceeds Recovery, which amounts shall be applied by DHCS in  
16 reduction of the DHCS Allowed Claim, and the Litigation Recoveries,  
17 the balance of the DHCS Allowed Claim shall be subordinated to the  
18 prior payment in full pursuant to a plan of liquidation in the Chapter 11  
19 case of (a) allowed administrative expenses pursuant to Section 503(b),  
20 (b) allowed unsecured claims entitled to priority pursuant to Section  
21 507, (c) all other allowed general unsecured claims, and (d) a reserve for  
22 post-confirmation expenses of the Debtor and a liquidating trust. Any  
23 further proofs of claim by DHCS shall be included in the portion of the  
24 DHCS Allowed Claim subject to subordination.
- 25 b. DHCS Allowed Offset Amount. DHCS shall apply the approximately  
26 \$20.6 million it is withholding (“Allowed Offset Amount”) to reduce  
27 the DHCS Allowed Claim.
- 28 c. Third-Party Litigation Recoveries. DHCS shall receive 33% of the first  
\$1 million of net recovery, regardless of the source; 66% of net recovery  
of the second million, regardless of the source; and its pro-rata share of

20 <sup>4</sup> The summary set forth herein is only a summary. To the extent the summary conflicts with any  
21 terms of the Term Sheet, the terms of the Term Sheet shall explicitly supersede and control.

22 <sup>5</sup> Capitalized terms not otherwise defined herein have the same meaning as in the Term Sheet.

23 <sup>6</sup> DHCS offset approximately \$12 million relating to reconciliation and rate setting audits from a  
24 total amount of approximately \$124.3 million in cost report audit claims to arrive at this amount of  
\$112 million.

25 <sup>7</sup> The pending PPS Reconciliation Audits are as follows: Centro Medico Escondido (FYs 19-21),  
26 Centro Medico El Cajon (FYs 19-21), Centro Medico Oasis (FYs 19-21), Arlanza Family Health  
27 Center (FYs 19-21), Barstow Community Health Center (FYs 19-21), Centro Medico Cathedral  
28 City (FYs 19-21), Centro Medico Coachella (FYs 19-21), Desert Oasis Women’s Health Center  
(FYs 19-21), Desert Hot Springs Community Health Center (FYs 19-21), Desert Hot Springs  
Health and Wellness Center (FYs 19-21), Borrego Medical Clinic (FYs 19-21), Eastside Health  
Center (FYs 19-21), Anza Community Health Center (FYs 19-21), D Street Medical Center (FYs  
19-21), and Women’s Health and Wellness Center (FYs 19-21).

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all remaining recoveries with other remaining unsecured creditors thereafter (the "Litigation Recoveries"), to be applied to the DHCS Allowed Claim:

- *Husam E. Aldairi, et al. v. Borrego Community Health Foundation*, Case No. 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego) (the "Aldairi Litigation").
- *Borrego Community Health Foundation v. Inland Valley, LLC, et al.*, Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.) (the "Premier Lease Litigation").
- *Borrego Community Health Foundation v. Karen Hebets, et al.*, Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.) (the "Hebets Litigation").
- *Borrego Community Health Foundation v. Travelers Casualty and Surety Company of America*, Case No. 3:22-CV-161-L-MDD (S.D. Cal.) (the "Travelers Litigation").

d. Sale Proceeds Recoveries. DHCS shall receive 40% of the Net Cash Proceeds of any sale of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code (the "Sale Proceeds Recovery") prior to payments to the Debtor or other general unsecured creditors. "Net Cash Proceeds" shall mean the Cash Consideration (as defined in the Asset Purchase Agreement ("APA")) at Closing (as defined in the APA) net of \$16 million, which shall include secured, priority unsecured, and administrative expenses to be paid by the Debtor post-Closing (*i.e.* the 503(b)(9) Claims, Operating Administrative Expenses, Restructuring Administrative Expenses, and Chapter 11 Wind-Down Expenses). After administrative expenses and all other allowed general unsecured claims other than the allowed general unsecured claim held by DHCS are paid in full, and an appropriate reserve for future costs of the estate and or any Liquidating Trust is funded, DHCS will be paid 100% of any remaining sale proceeds up to the amount of DHCS Allowed Claim.

e. Independent Monitor. An independent monitor is to remain in place from approval of sale by the Bankruptcy Court and until the Transfer Effective Date (to mean HRSA , and Medi-Cal and Medicare change of ownership approvals have been obtained, and all of the terms of the Buyer’s management services agreement with the Debtor have been fulfilled). DHCS and the Buyer shall either (i) maintain the existing monitor or (ii) select a mutually acceptable independent monitor, and in all instances, redefine the scope of the monitor’s duties and reporting frequency. The scope of the independent monitor’s modified duties will be described in the definitive settlement agreement and will include, but are not limited to, the following duties: (i) monitor and provide reports on the delivery of health care services to Medi-Cal beneficiaries; (ii) monitor and provide reports on compliance with minimum Medi-Cal program participation requirements; (iii) monitor and provide reports on Medi-Cal billing compliance; (iv) monitor and provide reports on metrics of concern to DHCS and managed health care plans with Medi-Cal members; and (v) submit any report provided to DHCS simultaneously to the Debtor and the Buyer. The Debtor and the Buyer shall provide independent monitor with timely access to both information and to premises sufficient to enable independent monitor to perform its duties. The Debtor and the Buyer agree to cooperate with the independent monitor and comply with the terms of the independent

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monitor. The Debtor and the Buyer also agree to maintain appropriate levels of professionalism. The Debtor and DHCS agree that the independent monitor and employees, contractors, and representatives of the Debtor and the Buyer are to exercise appropriate levels of professionalism when interacting with each other. The Debtor and the Buyer shall identify designated primary and alternate points of contact at each of its facilities for the independent monitor to interact with in relation to the independent monitor’s duties and to raise matters of concern related to patient care. Any other matters of concern to the independent monitor are to be addressed to the Debtor’s or the Buyer’s CEO, the Debtor’s or the Buyer’s Board of Directors and/or DHCS. In the event of any dispute related to interactions among the independent monitor, the Buyer, the Debtor, or their respective employees, contractors, or representatives, the parties shall first attempt to resolve the dispute informally before seeking Bankruptcy Court’s intervention.

- f. Transfer of Medi-Cal Provider Agreements. The Debtor agrees to transfer the Medi-Cal provider agreements, pursuant to section 365 of the Bankruptcy Code as executory contracts. Subject to the Buyer having first satisfied eligibility requirements and conditions applicable to prospective Medi-Cal providers generally, DHCS agrees to the transfer of such agreements to the Buyer on the date the Buyer assumes Financial Control (“Financial Control” means the earlier of (1) The effective date of a management service agreement (or similar instrument or agreement), between the Debtor and the Buyer, or (2) the day after the Closing Date as defined in the APA). DHCS agrees that the Buyer is not liable for any overpayment or other liabilities of the Debtor which arise prior to the Buyer assuming Financial Control. The Debtor agrees that any sale will provide that the Buyer is liable for overpayments or other liabilities arising out of the Medi-Cal relationship solely for claims arising on and after the Buyer assumes Financial Control. However, if the Buyer is to receive any interest at any time, including but not limited to, an underpayment or credit in Medi-Cal claims submitted by Debtor prior to the date the Buyer assumes Financial Control, DHCS shall retain all rights to audit, adjust, recoup or otherwise offset existing overpayments with said interest.
- g. No Successor Liability. Unless Buyer agrees otherwise as part of the terms of the sale, Buyer shall not be liable for any overpayments alleged to have been incurred by Debtor prior to the date Buyer assumes Financial Control.
- h. Fee-For-Service Payments Under Medi-Cal Program. DHCS agrees to resume paying for in-house dental services effective as of the date the Buyer assumes Financial Control. DHCS currently holds approximately \$6.2 million in monies based on in-house dental services. That amount is included within the estimated \$20.6 million of Allowed Offset Amount and DHCS agrees to apply it as part of application of the Allowed Offset Amount. If the Buyer is to receive or assume any interest in Medi-Cal accounts receivable for claims submitted by the Debtor prior to the date the Buyer assumes Financial Control, then further terms related to the Buyer assuming Financial Control and effective date of fee-for-service payments made under the Medi-Cal program being paid to the Buyer are to be worked out.

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- i. Pending and Post-Confirmation Litigation. The Settlement shall include a provision regarding the vacatur of the Bankruptcy Court’s orders entered on October 26, 2022 (Docket Nos. 65 and 66). The Parties agree to file a joint motion requesting dismissal of the appeal pending before the US District Court, once the orders are vacated. The Parties agree to file a joint motion requesting dismissal of the adversary proceeding and vacating the orders before the Bankruptcy Court. The Parties agree to file any other joint motions as may be necessary to accomplish the above. All parties agree to bear their own fees and costs as to both the appeal and adversary proceeding. The Parties agree that this settlement is intended to and does resolve issues related to the pending Adversary Proceeding No. 2290056, as well as the pending appeal before the US District Court for the Southern District of California, Civil Case No. 22-cv-01751, both of which will be dismissed after approval of this settlement. All post-confirmation litigation, including the Aldairi Litigation, the Premier Lease Litigation, the Hebets Litigation, and the Travelers Litigation, will be pursued by a liquidating trust (the “Liquidating Trust”), by and through a trustee (the “Liquidating Trustee”), which will report to an oversight committee (the “Oversight Committee”). DHCS may appoint one member of the Oversight Committee. The chapter 11 plan will include provisions establishing the Liquidating Trust and the Oversight Committee.
  
- j. Resolution of all Disputes. The Settlement resolves all disputes between DHCS and the Debtor arising out of the Medi-Cal provider agreements, this bankruptcy case, the adversarial action, the related appeal, and any payment suspension. The parties agree that the amounts paid under the settlement agreement and otherwise recoverable from the bankruptcy estate represent DHCS’s sole remedy for any claims it holds against Debtor and occurring prior to the date Buyer assumes Financial Control, with any unrecovered amounts subject to regular treatment of general unsecured claims pursuant to the bankruptcy plan. The parties further agree that DHCS shall have no recourse against Buyer for any claims, causes of action, or liability arising from acts or omissions occurring prior to the date the Buyer assumes Financial Control. This agreement in no way compromises civil remedies or claims DHCS may have as against any individual or provider who performed contracted services for Debtor, or any individual former officer, former agent, former director, former employee, or former provider who performed contracted services for Debtor. DHCS does not waive any rights under section 362(b)(4) of the Bankruptcy Code. This agreement in no way compromises any remedies or claims independently held by the People of the State of California.
  
- k. Settlement Release. DHCS further agrees that the payments to be made pursuant to this Term Sheet above are in full satisfaction, discharge and release of any and all claims held or assertable by DHCS against the Debtor or the Buyer for the Debtor’s Medi-Cal obligations upon the Debtor specified herein and otherwise for actions or related to periods, prior to the date of Financial Control, whether such claims are known or unknown, liquidated, or contingent (the “Settlement Release”). This release of Debtor includes Debtor’s current officers, directors and employees.

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1. Debtor to Waive and Withdraw Audit Appeals. The Debtor will waive and withdraw any pending appeals of the findings of DHCS’s audits of all the Debtor’s cost reports, including, but not limited to, reconciliation audits, rate setting audits, or any other audit, for all fiscal years. In addition, Debtor will waive any and all of its potential or existing rights to appeal the existing or potential audit findings and resulting Medi-Cal overpayment liabilities.

**IV. ARGUMENT**

The authority granted a trustee or debtor in possession to compromise a controversy or agree to a settlement is set forth in Bankruptcy Rule 9019(a), which provides in pertinent part that “[o]n motion by the [debtor in possession] and after hearing on notice to creditors . . . , the court may approve a compromise or settlement.” Fed. R. Bankr. P. 9019(a). Section 105(a) further provides the Court with the discretion to issue any order that is necessary or appropriate to carry out the purposes of the Bankruptcy Code. 11 U.S.C. § 105(a). The law strongly encourages compromise. *Consumer Advocacy Group, Inc. v. Kintetsu Enters. of Amer.*, 141 Cal. App. 4th 46, 62 (Cal. 2006); *United States v. McInnes*, 556 F.2d 436, 440 (9th Cir. 1977) (“We are committed to the rule that the law favors and encourages compromise settlements.”). Additionally, compromises are favored in bankruptcy so as to minimize litigation and expedite a bankruptcy estate’s administration. *See Martin v. Kane (In re A & C Props.)*, 784 F.2d 1377, 1381 (9th Cir. 1986), *cert. denied sub nom, Martin v. Robinson*, 479 U.S. 854 (1986).

This Court has great latitude in approving compromise agreements as long as it finds that the compromise is fair and equitable. *In re A & C Props.*, 784 F.2d at 1382; *see also Woodson v. Fireman’s Fund Ins. Co. (In re Woodson)*, 839 F.2d 610, 620 (9th Cir. 1988); *In re Mickey Thompson Entm’t Grp., Inc.*, 292 B.R. 415 (B.A.P. 9th Cir. 2003).

“The purpose of a compromise agreement is to allow the [debtor in possession] and the creditors to avoid the expenses and burdens associated with litigating sharply contested and dubious claims.” *In re A & C Props.*, 784 F.2d at 1380-81. Accordingly, in approving a settlement agreement, the Court need not conduct an



1 exhaustive investigation of the claims sought to be compromised. *See United States*  
 2 *v. Alaska Nat'l Bank (In re Walsh Constr., Inc.)*, 669 F.2d 1325, 1328 (9th Cir. 1982).  
 3 Rather, it is sufficient that the Court find that the settlement was negotiated in good  
 4 faith and is reasonable, fair, and equitable. *See In re A & C Props.*, 784 F.2d at 1381.

5 The Ninth Circuit has identified the following factors for consideration in  
 6 determining whether a proposed settlement agreement is reasonable, fair, and  
 7 equitable:

- 8 1. the probability of success in the litigation;
- 9 2. the difficulties, if any, to be encountered in the matter of collection;
- 10 3. the complexity of the litigation involved, and the expense, inconvenience,  
 11 and delay necessarily attending it; and
- 12 4. the paramount interest of the creditors and a proper deference to their  
 13 reasonable views in the premises.

14 *In re A & C Props.*, 784 F.2d at 1381 (the “A & C Factors”).

15 A court should not substitute its own judgment for the judgment of the debtor  
 16 in possession. *Matter of Carla Leather, Inc.*, 44 B.R. 457, 465 (Bankr. S.D.N.Y.  
 17 1984); *see also In re Zarate*, 2015 WL 8482887, at \*8 (B.A.P. 9th Cir. Dec. 9, 2015)  
 18 (“[T]he [debtor] must be permitted to use his business acumen and judgment in the  
 19 best interest of the estate.”). A court, in reviewing a proposed settlement, is not to  
 20 decide the numerous questions of law and fact but rather to canvass the issues to  
 21 determine whether the settlement falls below the lowest point in the range of  
 22 reasonableness. *In re W.T. Grant & Co.*, 699 F.2d 599, 608 (2nd Cir. 1983); *accord*  
 23 *Newman v. Stein*, 464 F.2d 689, 693 (2d Cir. 1972). The court should not conduct a  
 24 “mini-trial” on the merits of the underlying cause of action. *In re Walsh Const.*, 669  
 25 F.2d at 1328; *In re Blair*, 538 F.2d 849 (9th Cir. 1976).

26 The Settlement meets each of the relevant A & C Factors, is reasonable, fair  
 27 and equitable and is overwhelmingly in the best interests of the estates.  
 28

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1 **A. PROBABILITY OF SUCCESS IN THE LITIGATION**

2 The Debtor has been successful in the Adversary Proceeding to date and is  
3 confident it would prevail in the pending appeal and any future proceedings.  
4 Nonetheless, DHCS has appealed the Order to the District Court. There is no  
5 guarantee that the Debtor will ultimately be successful the pending Adversary  
6 Proceeding or the appeal, and any loss will mean the Debtor faces suspension of its  
7 Medi-Cal program payments. The Settlement avoids the uncertainty with litigating  
8 issues related to the automatic stay and resolves all disputes between the Parties  
9 arising out of the Medi-Cal relationship, this bankruptcy case, the Adversary  
10 Proceeding, and the related appeal.

11 **B. DIFFICULTIES, IF ANY, TO BE ENCOUNTERED IN THE MATTER**  
12 **OF COLLECTION**

13 The Debtor notes that the A & C Factor concerning difficulties in collection is  
14 not applicable in this case as the Debtor does not seek to collect any claim from  
15 DHCS.

16 **C. COMPLEXITY OF THE LITIGATION INVOLVED, AND THE**  
17 **EXPENSE, INCONVENIENCE, AND DELAY NECESSARILY**  
18 **ATTENDING IT**

19 The Settlement resolves disputes with DHCS that could otherwise create  
20 significant risk, expense, and delay. As explained, disputes regarding complex legal  
21 issues remain between the Parties concerning the Adversary Proceeding, related  
22 appeal, and proposed Payment Suspension. By entering into the Settlement, the  
23 Parties avoid costly and lengthy litigation concerning these issues.

24 Further, pursuant to the Settlement, the Parties agree on (i) the amount of the  
25 Allowed DHCS Claim, (ii) the cure amount with respect to the Medi-Cal Provider  
26 Agreements, and (iii) the assignment of the Medi-Cal Provider Agreements to the  
27 Buyer. Additionally, the terms of the Settlement Agreement provide for a fair  
28 division of the Sale Proceeds between DHCS and the other general unsecured  
creditors. The foregoing aspects of the Settlement resolve the litigation in the

1 Adversary Proceeding and provide certainty that the Debtor will be able to proceed  
2 with its sale of assets without costly litigation with DHCS, including the ability to  
3 assume and assign the Medi-Cal Provider Agreements to the Buyer without successor  
4 liability.

5 **D. PARAMOUNT INTEREST OF THE CREDITORS**

6 Approval of the Settlement is in the best interests of the Debtor’s creditors and  
7 estate. As discussed, approximately 44% of the Debtor’s revenue is derived from  
8 Medi-Cal program payments, and thus, the Payment Suspension by DHCS would  
9 impact patient care and business operations. The Settlement resolves this issue and  
10 avoids any further suspension of Medi-Cal program payments without incurring the  
11 expense and delay in litigating the issue, plus it ensures that the Debtor’s patients will  
12 have an uninterrupted relationship with the doctors, nurses and staff at the Debtor’s  
13 clinics, and continue to receive the high quality, culturally competent care they have  
14 been receiving to date.

15 As importantly, the Settlement allows general unsecured creditors to be paid  
16 from the proceeds of a sale of the Debtor’s assets and provides certainty that the  
17 Debtor’s assets can be sold without protracted litigation. Specifically, as set forth  
18 above, the Settlement provides that DHCS will receive 40% of the Net Cash Proceeds  
19 of any sale pursuant to § 363 of the Debtor’s assets prior to payments to the Debtor  
20 or other general unsecured creditors. The Term Sheet defines “Net Cash Proceeds”  
21 as the cash consideration paid by the Buyer net of \$16 million, which is comprised  
22 of secured claims, priority unsecured claims, and administrative and operating  
23 expenses to be paid by the Debtor post-Closing of the Sale. The Debtor believes that  
24 the \$16 million is sufficient to cover these claims and expenses. The Debtor estimates  
25 that the remaining 60% of the Net Cash Proceeds from a sale will allow general  
26 unsecured claims to receive a substantial recovery, which would remain uncertain  
27 without resolution of the claims in the Adversary Proceeding.

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1 Further, the majority of the DHCS Allowed Claim is subordinated under the  
 2 Settlement to payment in full of (a) allowed secured claims, (b) allowed  
 3 administrative expenses, (c) allowed priority claims, (d) all other allowed general  
 4 unsecured claims, and (e) a reserve for post-confirmation expenses of the debtor and  
 5 a liquidating trust. The DHCS Allowed Claim is also reduced by the Allowed Offset  
 6 Amount. The remainder of the DHCS Allowed Claim is paid from the  
 7 aforementioned Sale Proceeds Recovery and a portion of Litigation Recoveries.  
 8 Accordingly, payment of the DHCS Allowed Claim will minimally impact the  
 9 Debtor’s ability to pay other claims.

10 **V. CONCLUSION**

11 **WHEREFORE**, the Debtor respectfully requests that the Court enter an order:  
 12 (i) granting the Motion; and (ii) granting such other and further relief as the Court  
 13 may deem proper.

14 Dated: February 27, 2023

15 DENTONS US LLP  
 16 SAMUEL R. MAIZEL  
 17 TANIA M. MOYRON  
 18 REBECCA M. WICKS

19 By /s/ Tania M. Moyron  
 20 Tania M. Moyron

21 Attorneys for the Chapter 11 Debtor  
 22 and Debtor In Possession

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**DECLARATION OF ISAAC LEE**

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I, Isaac Lee, submit this Declaration in support of the *Debtors’ Motion To Approve Compromise Among Debtor, Official Committee of Unsecured Creditors, And California Department Of Health Care Services Pursuant To Federal Rule Of Bankruptcy Procedure 9019* (the “9019 Motion”)<sup>8</sup> filed by Borrego Community Health Foundation, the debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Case”), and hereby state as follows:

1. I am the Chief Restructuring Officer of the Debtor. I received my MBA from the Tuck School at Dartmouth College and my BS in Business Administration from the University of Southern California. I am a Managing Director at Ankura Consulting Group with more than 20 years of operational and financial restructuring experience. I have advised numerous companies on turnaround plan development and evaluation, liquidity improvement initiatives, asset dispositions, liability management and bankruptcy filing preparation. I have also assisted in managing and administering companies during chapter 11 cases. Additionally, I have prior experience with health care providers, including a nine surgical center system and had senior level responsibilities on two prior engagements where Ankura has been involved as Chief Restructuring Officer. I am over the age of 18 and competent to testify as to the facts set forth herein and will do so if called upon.

2. I have personal knowledge of the facts stated in this declaration, except as to those stated on information and belief, and, as to those, I am informed and believe them to be true. If called as a witness, I could and would competently testify to the matters stated herein.

3. On November 18, 2020, DHCS imposed a suspension of Medi-Cal program payments to the Debtor as a result of an ongoing investigation of allegations

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<sup>8</sup> Unless otherwise defined herein, all capitalized terms have the definitions set forth in the 9019 Motion.

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1 of fraud in the Debtor’s external contract dental services. Shortly thereafter, DHCS  
2 limited the suspension to dental claims only.

3 4. On January 27, 2021, the Debtor and DHCS entered into a settlement  
4 agreement, wherein, among other things, DHCS required the Debtor to retain  
5 Berkeley Research Group as an independent monitor that reported to DHCS.

6 5. Prior to the Petition Date, on August 19, 2022, DHCS notified the  
7 Debtor that it intended to impose a full suspension of Medi-Cal program payments  
8 to the Debtor (the “Payment Suspension”), for both medical and dental services,  
9 effective September 29, 2022.

10 6. Given the proposed Payment Suspension, the Debtor filed the Petition  
11 to obtain the protection of the automatic stay, to continue providing for its patient  
12 population, and to explore all available restructuring options.

13 7. On September 26, 2022, the Debtor filed the *Complaint for Declaratory*  
14 *Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative, for*  
15 *Writ of Mandate Under Code of Civil Procedure 1085* (the “Complaint”),  
16 commencing *Borrego Community Health Foundation v. California Department of*  
17 *Health Care Services*, Adv. Pro. No. 22-90065 (the “Adversary Proceeding”). On  
18 September 27, 2022, the Debtor filed its *Emergency Motion: (I) To Enforce The*  
19 *Automatic Stay Pursuant To 11 U.S.C. § 362; or, Alternatively (II) For Temporary*  
20 *Restraining Order* [Adv. Pro. Dkt. 3] (the “Motion to Enforce”), and sought (i) a  
21 ruling that the Payment Suspension violated the automatic stay imposed pursuant to  
22 § 362, or, alternatively, (ii) issuance of a temporary restraining order enjoining the  
23 Payment Suspension under Bankruptcy Rule 7065.

24 8. DHCS filed an opposition to the Motion to Enforce [Adv. Pro. Dkt. 30],  
25 and the Debtor filed its reply in support of the same [Adv. Pro. Dkt. 47].

26 9. DHCS also opposed the relief requested in the Complaint and filed its  
27 Answer to Complaint for Declaratory Judgment and Preliminary and Permanent  
28

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1 Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code of Civil  
2 Procedure 1085 [Adv. Pro. Dkt. 67].

3 10. On October 26, 2022, the Court issued its Findings of Fact and  
4 Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II)  
5 Alternatively for Temporary Restraining Order [Adv. Pro. Dkt. 65]. That same day,  
6 the Court entered its Order on Emergency Motion to (I) Enforce the Automatic Stay  
7 or (II) Alternatively for Temporary Restraining Order [Adv. Pro. Dkt. 66] (the  
8 “Order”) granting, in part, the Motion to Enforce on the terms and conditions set forth  
9 in the Order.

10 11. On November 7, 2022, DHCS filed its Notice of Appeal and Statement  
11 of Election [Adv. Pro. Dkt. 75], appealing entry of the Order to the United States  
12 District Court.

13 12. The Debtor, the California Department of Health Care Services  
14 (“DHCS”), and the Official Committee of Unsecured Creditors (the “Committee,”  
15 collectively with the Debtor and DHCS, the “Parties”) agreed to a mediation before  
16 the Court’s appointed mediator, the Honorable Dennis Montali, United States  
17 Bankruptcy Judge (the “Mediator”). [See Adv. Pro. Dkt. 73, 74, 83.]

18 13. After negotiations among the Parties, with the continued support of the  
19 Mediator, the Parties have entered into a proposed settlement (the “Settlement”), as  
20 memorialized in the term sheet attached as Exhibit A to the 9019 Motion (the “Term  
21 Sheet”).

22 14. The primary terms of the Settlement are as follows:

23 i) DHCS will receive an allowed general unsecured claim in the total  
24 amount of approximately \$112,000,000 (the “DHCS Allowed Claim”),  
25 subject to upward and downward adjustments and the filing of  
26 supplemental proofs of claims (the “Allowed Offset Amount”), with the  
27 Debtor and Committee agreeing to apply to this Court to extend the  
28

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1 government claims bar date to December 29, 2023, for DHCS to submit  
2 its further proofs of claim;

3 (ii) DHCS shall retain the Allowed Offset Amount, and shall receive the  
4 Sale Proceeds Recovery, and the Litigation Recoveries, as defined in the  
5 Term Sheet, which shall be applied by DHCS in reduction of the DHCS  
6 Allowed Claim, and the remaining balance shall be subordinated to  
7 other general unsecured claims;

8 (iii) The Debtor agrees and DHCS consents to the transfer of the Medi-  
9 Cal provider agreements to the Buyer of the Debtor’s assets pursuant to  
10 section 365 of the Bankruptcy Code;

11 (iv) An independent monitor to remain in place as provided in the Term  
12 Sheet;

13 (v) DHCS agrees to resume paying for in-house dental services effective  
14 as of the date the Buyer of Debtor’s assets assumes Financial Control;

15 (vi) DHCS agrees to certain releases for the Debtor and related parties;  
16 and

17 (vii) the Adversary Proceeding and related appeal shall be dismissed.

18 15. The Settlement resolves major, overarching issues in the Case and the  
19 Adversary Proceeding and paves the way for the sale to Desert Aids Project d/b/a  
20 DAP Health (the “Buyer”) without protracted litigation, which ensures the Debtor’s  
21 patients will continue to receive high quality, culturally competent care without  
22 disruption. As a result of DHCS’ agreement to subordinate its claim, the Settlement  
23 also allows for general unsecured creditors to be paid in full.

24 16. Consequently, the Debtor submits that the approval of the Settlement is  
25 in the best interests of the Debtor’s estate and its creditors.

26 17. The Settlement avoids protracted litigation and resolves disputes with  
27 DHCS that could otherwise create significant risk, expense, and delay.  
28



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1 18. With respect to the benefit to the estate and creditors, DHCS shall  
2 receive 40% of the “Net Cash Proceeds” of the sale of the Debtor’s assets prior to  
3 payments to the Debtor or other general unsecured creditors and the remainder of the  
4 DHCS Allowed Claim shall be subordinated, which the Debtor anticipates will allow  
5 unsecured creditors to be paid in full from the remaining sale proceeds.

6 19. The Term Sheet defines “Net Cash Proceeds” as the cash consideration  
7 paid by the Buyer net of \$16 million, which is comprised of secured claims, priority  
8 unsecured claims, and administrative and operating expenses to be paid by the Debtor  
9 post-Closing of the Sale. I believe that the \$16 million is sufficient to cover these  
10 claims and expenses.

11 20. The Debtor estimates that the remaining 60% of the Net Cash Proceeds  
12 from a sale will allow general unsecured claims to receive a substantial recovery,  
13 which would remain uncertain without resolution of the claims in the Adversary  
14 Proceeding.

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

17 Executed this 27th day of February, 2023.

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19 \_\_\_\_\_  
20 Isaac Lee

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**EXHIBIT A**

(Term Sheet)

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LOS ANGELES, CALIFORNIA 90017-5704  
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**TERM SHEET FOR PROPOSED SETTLEMENT  
WITH CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES**

**I. PARTIES**

<b>DEBTOR</b>	Borrego Community Health Foundation (“ <u>Debtor</u> ”).
<b>COMMITTEE</b>	Official Committee of Unsecured Creditors of the Debtor (the “ <u>Committee</u> ”)
<b>DHCS</b>	California Department of Health Care Services (“ <u>DHCS</u> ”)
<b>PARTIES</b>	The Debtor, the Committee, and DHCS are collectively referred to herein as the “ <u>Parties</u> .”

**II. PREAMBLE AND REPRESENTATIONS**

<b>PREAMBLE</b>	The Parties agreed to a mediation before the Honorable Dennis Montali, United States Bankruptcy Judge. Judge Montali requested a settlement proposal from the Debtor prior to holding the mediation. This Term Sheet serves as the outline for the settlement proposal for all disputes between the Parties that the Debtor will propose during the mediation, which is subject to further documentation and releases. Until signed by a representative of DHCS, this Term Sheet remains conditioned upon DHCS securing required approvals. DHCS reserves the right to review and approve any exculpations and/or releases to be granted by DHCS in any final settlement agreement and plan of liquidation.
<b>FRAUD CLAIMS</b>	The Parties acknowledge that DHCS does not have the authority to initiate fraud-based actions held by the People of the State of California against the Debtor and/or its current or former officers, directors, employees, agents, or contractors under the facts and circumstances of this case and nothing in this agreement should be construed to be a waiver or release of the right of the People of the State of California to initiate such actions.

**III. DHCS ALLOWED CLAIM AND RECOVERIES**

<p><b>DHCS ALLOWED CLAIM</b></p>	<p>DHCS shall hold an allowed general unsecured claim in an amount of approximately \$112 million<sup>1</sup> consisting of, but not limited to Medi-Cal overpayments, and subject to a downward or upward adjustment based on DHCS PPS reconciliation for fiscal years ending (FYE) 2019, 2020, and 2021<sup>2</sup> (the “<u>DHCS Allowed Claim</u>”) and DHCS shall be allowed to file proofs of claim in support of the DHCS Allowed Claim by March 13, 2023. The Debtor and the Committee agree to jointly seek an extension of the governmental unit claims bar date until December 29, 2023 (the “<u>Extended DHCS Deadline</u>”), during which DHCS may submit any further general unsecured proofs of claim against the Debtor for Medi-Cal overpayments. With the exception of the Offset Amount, the Sale Proceeds Recovery, which amounts shall be applied by DHCS in reduction of the DHCS Allowed Claim, and the Litigation Recoveries, the balance of the DHCS Allowed Claim shall be subordinated to the prior payment in full pursuant to a plan of liquidation in the Chapter 11 case of (a) allowed administrative expenses pursuant to Section 503(b), (b) allowed unsecured claims entitled to priority pursuant to Section 507, (c) all other allowed general unsecured claims, and (d) a reserve for post-confirmation expenses of the Debtor and a liquidating trust. Any further proofs of claim by DHCS shall be included in the portion of the DHCS Allowed Claim subject to subordination.</p>
<p><b>DHCS ALLOWED OFFSET AMOUNT</b></p>	<p>DHCS shall apply the approximately \$20.6 million it is withholding (“<u>Allowed Offset Amount</u>”) to reduce the DHCS Allowed Claim.</p>
<p><b>THIRD-PARTY LITIGATION RECOVERIES</b></p>	<p>DHCS shall receive 33% of the first \$1 million of net recovery, regardless of the source; 66% of net recovery of the second million, regardless of the source; and its pro-rata share of all remaining recoveries with other remaining unsecured creditors thereafter (the “<u>Litigation Recoveries</u>”), to be applied to the DHCS Allowed Claim:</p>

<sup>1</sup> DHCS offset approximately \$12 million relating to reconciliation and rate setting audits from a total amount of approximately \$124.3 million in cost report audit claims to arrive at this amount of \$112 million.

<sup>2</sup> The pending PPS Reconciliation Audits are as follows: Centro Medico Escondido (FYs 19-21), Centro Medico El Cajon (FYs 19-21), Centro Medico Oasis (FYs 19-21), Arlanza Family Health Center (FYs 19-21), Barstow Community Health Center (FYs 19-21), Centro Medico Cathedral City (FYs 19-21), Centro Medico Coachella (FYs 19-21), Desert Oasis Women’s Health Center (FYs 19-21), Desert Hot Springs Community Health Center (FYs 19-21), Desert Hot Springs Health and Wellness Center (FYs 19-21), Borrego Medical Clinic (FYs 19-21), Eastside Health Center (FYs 19-21), Anza Community Health Center (FYs 19-21), D Street Medical Center (FYs 19-21), and Women’s Health and Wellness Center (FYs 19-21).

	<ul style="list-style-type: none"> <li>• <i>Husam E. Aldairi, et al. v. Borrego Community Health Foundation</i>, Case No. 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego) (the “<u>Aldairi Litigation</u>”).</li> <li>• <i>Borrego Community Health Foundation v. Inland Valley, LLC, et al.</i>, Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.) (the “Premier Lease Litigation”).</li> <li>• <i>Borrego Community Health Foundation v. Karen Hebets, et al.</i>, Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.) (the “<u>Hebets Litigation</u>”).</li> <li>• <i>Borrego Community Health Foundation v. Travelers Casualty and Surety Company of America</i>, Case No. 3:22-CV-161-L-MDD (S.D. Cal.) (the “<u>Travelers Litigation</u>”).</li> </ul>
<p><b>SALE PROCEEDS RECOVERIES</b></p>	<p>DHCS shall receive 40% of the Net Cash Proceeds of any sale of the Debtor’s assets pursuant to section 363 of the Bankruptcy Code (the “<u>Sale Proceeds Recovery</u>”) prior to payments to the Debtor or other general unsecured creditors.</p> <p>“<u>Net Cash Proceeds</u>” shall mean the Cash Consideration (as defined in the Asset Purchase Agreement (APA)) at Closing (as defined in the APA) net of \$16 million, which shall include secured, priority unsecured, and administrative expenses to be paid by the Debtor post-Closing (<i>i.e.</i> the 503(b)(9) Claims, Operating Administrative Expenses, Restructuring Administrative Expenses, and Chapter 11 Wind-Down Expenses).</p> <p>After administrative expenses and all other allowed general unsecured claims other than the allowed general unsecured claim held by DHCS are paid in full, and an appropriate reserve for future costs of the estate and or any Liquidating Trust is funded, DHCS will be paid 100% of any remaining sale proceeds up to the amount of DHCS Allowed Claim.</p>
<p><b>INDEPENDENT MONITOR</b></p>	<p>An independent monitor is to remain in place from approval of sale by the Bankruptcy Court and until the Transfer Effective Date (to mean HRSA , and Medi-Cal and Medicare change of ownership approvals have been obtained, and all of the terms of the Buyer’s management services agreement with the Debtor have been fulfilled). DHCS and the Buyer shall either (i) maintain the existing monitor or (ii) select a mutually acceptable independent monitor, and in all instances, redefine the scope of the monitor’s duties and reporting frequency.</p> <p>The scope of the independent monitor’s modified duties will</p>

	<p>be described in the definitive settlement agreement and will include, but are not limited to, the following duties: (i) monitor and provide reports on the delivery of health care services to Medi-Cal beneficiaries; (ii) monitor and provide reports on compliance with minimum Medi-Cal program participation requirements; (iii) monitor and provide reports on Medi-Cal billing compliance; (iv) monitor and provide reports on metrics of concern to DHCS and managed health care plans with Medi-Cal members; and (v) submit any report provided to DHCS simultaneously to the Debtor and the Buyer.</p> <p>The Debtor and the Buyer shall provide independent monitor with timely access to both information and to premises sufficient to enable independent monitor to perform its duties. The Debtor and the Buyer agree to cooperate with the independent monitor and comply with the terms of the independent monitor. The Debtor and the Buyer also agree to maintain appropriate levels of professionalism.</p> <p>The Debtor and DHCS agree that the independent monitor and employees, contractors, and representatives of the Debtor and the Buyer are to exercise appropriate levels of professionalism when interacting with each other. The Debtor and the Buyer shall identify designated primary and alternate points of contact at each of its facilities for the independent monitor to interact with in relation to the independent monitor’s duties and to raise matters of concern related to patient care. Any other matters of concern to the independent monitor are to be addressed to the Debtor’s or the Buyer’s CEO, the Debtor’s or the Buyer’s Board of Directors and/or DHCS.</p> <p>In the event of any dispute related to interactions among the independent monitor, the Buyer, the Debtor, or their respective employees, contractors, or representatives, the parties shall first attempt to resolve the dispute informally before seeking Bankruptcy Court's intervention.</p>
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**IV. PROPOSED TREATMENT OF THE MEDI-CAL PROVIDER AGREEMENTS**

<p><b>TRANSFER OF MEDI-CAL PROVIDER AGREEMENTS</b></p>	<p>The Debtor agrees to transfer the Medi-Cal provider agreements, pursuant to section 365 of the Bankruptcy Code as executory contracts. Subject to the Buyer having first satisfied eligibility requirements and conditions applicable to prospective Medi-Cal providers generally, DHCS agrees to the transfer of such agreements to the Buyer on the date the Buyer assumes Financial Control (“<u>Financial Control</u>” means the</p>
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	<p>earlier of (1) The effective date of a management service agreement (or similar instrument or agreement), between the Debtor and the Buyer, or (2) the day after the Closing Date as defined in the APA). DHCS agrees that the Buyer is not liable for any overpayment or other liabilities of the Debtor which arise prior to the Buyer assuming Financial Control. The Debtor agrees that any sale will provide that the Buyer is liable for overpayments or other liabilities arising out of the Medi-Cal relationship solely for claims arising on and after the Buyer assumes Financial Control.</p> <p>However, if the Buyer is to receive any interest at any time, including but not limited to, an underpayment or credit in Medi-Cal claims submitted by Debtor prior to the date the Buyer assumes Financial Control, DHCS shall retain all rights to audit, adjust, recoup or otherwise offset existing overpayments with said interest.</p>
<b>CURE AMOUNT</b>	<p>For the avoidance of doubt, the Allowed Offset Amount, the Sale Proceeds Recoveries, and the Litigation Recoveries are the “cure amounts” to be paid pursuant to section 365 of the Bankruptcy Code for Medi-Cal overpayments and constitute the sole remedies available to DHCS for the recovery of Medi-Cal overpayments from Medi-Cal claims submitted by Debtor prior to the date that the Buyer assumes Financial Control, in addition to amounts otherwise recoverable from the bankruptcy estate.</p>
<b>NO SUCCESSOR LIABILITY</b>	<p>Unless Buyer agrees otherwise as part of the terms of the sale, Buyer shall not be liable for any overpayments alleged to have been incurred by Debtor prior to the date Buyer assumes Financial Control.</p>
<b>FEE-FOR-SERVICE PAYMENTS UNDER MEDI-CAL PROGRAM</b>	<p>DHCS agrees to resume paying for in-house dental services effective as of the date the Buyer assumes Financial Control.</p> <p>DHCS currently holds approximately \$6.2 million in monies based on in-house dental services. That amount is included within the estimated \$20.6 million of Allowed Offset Amount and DHCS agrees to apply it as part of application of the Allowed Offset Amount.</p> <p>If the Buyer is to receive or assume any interest in Medi-Cal accounts receivable for claims submitted by the Debtor prior to the date the Buyer assumes Financial Control, then further terms related to the Buyer assuming Financial Control and effective date of fee-for-service payments made under the Medi-Cal program being paid to the Buyer are to be worked</p>

	out.
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**V. MISCELLANEOUS PROVISIONS**

<b>SETTLEMENT SUBJECT TO COURT APPROVAL</b>	The settlement proposal contemplated by this Term Sheet (the “ <u>Settlement</u> ”) is subject to further documentation and approval by the United States Bankruptcy Court for the Southern District of California pursuant to Federal Rule of Bankruptcy Procedure 9019.
<b>PENDING AND POST-CONFIRMATION LITIGATION</b>	<p>The Settlement shall include a provision regarding the vacatur of the Bankruptcy Court’s orders entered on October 26, 2022 (Docket Nos. 65 and 66). The Parties agree to file a joint motion requesting dismissal of the appeal pending before the US District Court, once the orders are vacated. The Parties agree to file a joint motion requesting dismissal of the adversary proceeding and vacating the orders before the Bankruptcy Court. The Parties agree to file any other joint motions as may be necessary to accomplish the above. All parties agree to bear their own fees and costs as to both the appeal and adversary proceeding.</p> <p>The Parties agree that this settlement is intended to and does resolve issues related to the pending Adversary Proceeding No. 2290056, as well as the pending appeal before the US District Court for the Southern District of California, Civil Case No. 22-cv-01751, both of which will be dismissed after approval of this settlement.</p> <p>All post-confirmation litigation, including the Aldairi Litigation, the Premier Lease Litigation, the Hebets Litigation, and the Travelers Litigation, will be pursued by a liquidating trust (the “<u>Liquidating Trust</u>”), by and through a trustee (the “<u>Liquidating Trustee</u>”), which will report to an oversight committee (the “<u>Oversight Committee</u>”). DHCS may appoint one member of the Oversight Committee. The chapter 11 plan will include provisions establishing the Liquidating Trust and the Oversight Committee.</p>
<b>RESOLUTION OF ALL DISPUTES</b>	<p>The Settlement resolves all disputes between DHCS and the Debtor arising out of the Medi-Cal provider agreements, this bankruptcy case, the adversarial action, the related appeal, and any payment suspension.</p> <p>The parties agree that the amounts paid under the settlement agreement and otherwise recoverable from the bankruptcy</p>



	<p>estate represent DHCS’s sole remedy for any claims it holds against Debtor and occurring prior to the date Buyer assumes Financial Control, with any unrecovered amounts subject to regular treatment of general unsecured claims pursuant to the bankruptcy plan. The parties further agree that DHCS shall have no recourse against Buyer for any claims, causes of action, or liability arising from acts or omissions occurring prior to the date the Buyer assumes Financial Control.</p> <p>This agreement in no way compromises civil remedies or claims DHCS may have as against any individual or provider who performed contracted services for Debtor, or any individual former officer, former agent, former director, former employee, or former provider who performed contracted services for Debtor. DHCS does not waive any rights under section 362(b)(4) of the Bankruptcy Code. This agreement in no way compromises any remedies or claims independently held by the People of the State of California.</p>
<p><b>SETTLEMENT RELEASE</b></p>	<p>DHCS further agrees that the payments to be made pursuant to this Term Sheet above are in full satisfaction, discharge and release of any and all claims held or assertable by DHCS against the Debtor or the Buyer for the Debtor’s Medi-Cal obligations upon the Debtor specified herein and otherwise for actions or related to periods, prior to the date of Financial Control, whether such claims are known or unknown, liquidated, or contingent (the “<u>Settlement Release</u>”). This release of Debtor includes Debtor’s current officers, directors and employees.</p>
<p><b>AVOIDANCE ACTIONS</b></p>	<p>All avoidance actions and other causes of action arising under Chapter 5 of the Bankruptcy Code against DHCS, including, but not limited to, claims or causes of action pursuant to sections 547 and 548 of the Bankruptcy Code, that could be asserted by the Debtor are waived by the Debtor, their bankruptcy estates, any and all successors, chapter 7 trustees, and any post-confirmation creditor litigation trust.</p>
<p><b>DEBTOR TO WAIVE AND WITHDRAW AUDIT APPEALS</b></p>	<p>The Debtor will waive and withdraw any pending appeals of the findings of DHCS’s audits of all the Debtor’s cost reports, including, but not limited to, reconciliation audits, rate setting audits, or any other audit, for all fiscal years. In addition, Debtor will waive any and all of its potential or existing rights to appeal the existing or potential audit findings and resulting Medi-Cal overpayment liabilities.</p>

<b>NO PERSONAL LIABILITY</b>	The Parties accept and agree that this Term Sheet and all actions and measures contained herein do not give rise to any personal liability for any members of a Party, and to the extent any such personal liability existed or is asserted to have existed, the Parties explicitly waive any and all such potential rights and claims against one another.
<b>TERMINATION</b>	This Term Sheet shall automatically terminate and the Parties' respective interests, rights, remedies and defenses shall be restored without prejudice as if the settlement had never been agreed to if DHCS or the Debtor are unable, after good faith efforts, to obtain the authority necessary to perform its obligations hereunder or in the event a sale to a Buyer is not completed.
<b>CHOICE OF LAW/VENUE</b>	The Parties' settlement agreement shall be governed by the laws of the State of California. All disputes relating to the terms of this settlement shall be heard exclusively in the United States Bankruptcy Court for the Southern District of California.

*[Remainder of page intentionally left blank]*

If the foregoing correctly sets forth the Parties' agreement, please indicate your acceptance of the terms hereof by returning to the Debtor an executed counterpart hereof.


**AGREED AND ACCEPTED:**

**CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES**

By: 

Name: Michelle Baass  
Title: Director

**BORREGO COMMUNITY HEALTH FOUNDATION**

By:  \_\_\_\_\_

Name:   
Title:

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

By: \_\_\_\_\_

Name:  
Title:

If the foregoing correctly sets forth the Parties' agreement, please indicate your acceptance of the terms hereof by returning to the Debtor an executed counterpart hereof.

**AGREED AND ACCEPTED:**

**CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES**

By: \_\_\_\_\_

Name:

Title:


**BORREGO COMMUNITY HEALTH FOUNDATION**

By: \_\_\_\_\_

Name:

Title:

**OFFICIAL COMMITTEE OF UNSECURED CREDITORS**

By:  \_\_\_\_\_

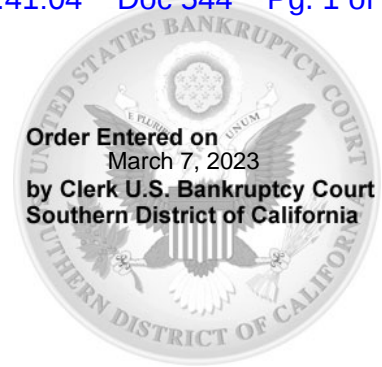
Name: Steven W. Golden

Title: Counsel to the Official Committee of Unsecured Creditors

**EXHIBIT B**

CSD 1001A [07/01/18]

Name, Address, Telephone No. & I.D. No.  
SAMUEL R. MAIZEL (Bar No. 189301)  
samuel.maizel@dentons.com  
TANIA M. MOYRON (Bar No. 235736)  
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Los Angeles, California 90017-5704  
Telephone: 213 623 9300  
Facsimile: 213 623 9924



**UNITED STATES BANKRUPTCY COURT**  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991

In Re  
BORREGO COMMUNITY HEALTH FOUNDATION  
Debtor and Debtor in Possession

Debtor.

BANKRUPTCY NO. 22-02384-11

Date of Hearing: March 1, 2023  
Time of Hearing: 10:00 a.m.  
Name of Judge: Laura S. Taylor

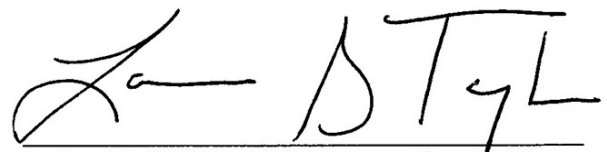
**ORDER ON**

**Debtor's Motion To Approve Compromise Among Debtor, Official Committee Of Unsecured Creditors,  
And California Department Of Health Care Services**

The court orders as set forth on the continuation pages attached and numbered   2   through   2   with exhibits, if any, for a total of   2   pages. Motion/Application Docket Entry No.   510  .

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DATED: March 7, 2023

  
\_\_\_\_\_  
Judge, United States Bankruptcy Court

CSD 1001A [07/01/18](Page 2)

ORDER ON Debtor's Motion To Approve Compromise Among Debtor, Official Committee Of Unsecured Creditors, And California Department Of Health Care Services

DEBTOR:

BORREGO COMMUNITY HEALTH FOUNDATION  
Debtor and Debtor in Possession

CASE NO: 22-02384-11

This matter came before the Court on the motion [Docket No. 510] (the "Motion") of the above-captioned debtor and debtor in possession (the "Debtor") for an order pursuant to Federal Rule of Bankruptcy Procedure 9019 approving the compromise among Debtor, Official Committee of Unsecured Creditors (the "Committee"), and the California Department of Health Care Services ("DHCS"). The Court has found that (i) the Court has jurisdiction to consider the Motion and relief requested therein pursuant to 28 U.S.C. §§ 147 and 1334, (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409, (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b), and (iv) notice of the Motion was sufficient under the circumstances and properly given, and that no other or further notice need be provided. The Court, having read and considered the Motion, the Term Sheet attached to the Motion (the "Term Sheet"), the Memorandum of Points and Authorities, the declarations in support of the Motion, no objection or other responses having been filed to the Motion, and the statements, arguments, and representations made at the hearing in support of the Motion; and after due deliberation, the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate, and its creditors; and good and sufficient cause having been shown:

IT IS HEREBY ORDERED that:

1. The Motion is GRANTED in its entirety and the Term Sheet is APPROVED in its entirety.
2. The Debtor, the Committee, and DHCS are each authorized to take all actions and execute all documents and instruments that they deem necessary or appropriate to implement and effectuate the transactions and other obligations contemplated by the Term Sheet.
3. The Term Sheet shall be binding pursuant to the terms set forth therein, upon the Debtor, the Committee, and DHCS.
4. Pursuant to the Term Sheet, the deadline by which DHCS must file a proof of claim for any further general unsecured claims against the Debtor for Medi-Cal overpayments is extended through and including December 29, 2023 (the "Extended DHCS Bar Date").
5. The Court shall retain exclusive jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

IT IS SO ORDERED.

## CERTIFICATE OF SERVICE

Case Name: **In Re Borrego Community Health Foundation Chapter 11; Borrego Community Health Foundation v. California Department of Health Care Services, et al.** No. **22-CV-01751-GPC-MSB**

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I hereby certify that on **March 20, 2023**, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

- **JOINT MOTION AND STIPULATION FOR ORDER GRANTING LIMITED REMAND OF JURISDICTION AND CONTINUING STAY OF APPEAL AND BRIEFING SCHEDULE; EXHIBITS IN SUPPOR**
- **[PROPOSED] ORDER ON JOINT MOTION AND STIPULATION FOR ORDER GRANTING LIMITED REMAND AND CONTINUING STAY OF APPEAL AND BRIEFING SCHEDULE**

I certify that **all** participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

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 **March 20, 2023**, at San Diego, California.

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G. Lopez  
Declarant

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Signature