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Debtor and Debtor in Possession

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

11
12 In re

13 BORREGO COMMUNITY
HEALTH FOUNDATION,

14 Debtor and Debtor in
15 Possession.

Case No. 22-02384-11

Chapter 11 Case
Honorable Laura S. Taylor

**DEBTOR’S EX PARTE MOTION FOR
ORDER SHORTENING TIME ON THE
DEBTOR’S MOTION FOR ENTRY OF
AN ORDER (I) AUTHORIZING THE
DEBTOR TO FILE THE COMBINED
DISCLOSURE STATEMENT AND
PLAN; (II) SCHEDULING A COMBINED
CONFIRMATION HEARING AND
SETTING DEADLINES RELATED
THERE TO; AND (III) GRANTING
RELATED RELIEF; MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT THEREOF; DECLARATION
OF ISAAC LEE**
[Docket No. 920]

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23 **EX PARTE MOTION**

24 Borrego Community Health Foundation, the debtor and debtor in possession
25 (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Case”), by
26 and through its undersigned counsel, seeks entry of an order, substantially in the form
27 attached hereto as **Exhibit A**, on an *ex parte* basis (the “Motion”), pursuant to
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1 § 105(a) of title 11 of the United States Code (the “Bankruptcy Code”),¹ Rule
2 9006(c)-(d), and Local Rule 9006-1(d), either (i) scheduling a hearing on 28 days’
3 notice on the *Debtor’s Notice of Motion and Motion for Entry of an Order*
4 *(I) Authorizing the Debtor to File the Combined Disclosure Statement and Plan;*
5 *(II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related*
6 *Thereto; and (III) Granting Related Relief; Memorandum of Points and Authorities*
7 *in Support Thereof; Declaration of Isaac Lee* (the “Motion to Combine”) [Docket
8 No. 920], or, in the alternative, (ii) granting the Motion to Combine without a hearing
9 if no opposition is filed within 14 days pursuant to Local Rule 9013-4(b)(2).

10 Based on the hearing date provided by the Courtroom Deputy for this Court,
11 the Debtor filed the Motion to Combine with a hearing date of November 14, 2023,
12 at 10:00 a.m. However, this hearing date is 46 days from the filing of this Motion
13 and will unnecessarily delay the plan process, particularly where the Debtor and the
14 Official Committee of Unsecured Creditors (the “Committee”) do not anticipate an
15 objection to the Motion to Combine. Given the Local Rules are silent on the matter,
16 and out of an abundance of caution, the Motion to Combine seeks authority for the
17 Debtor and the Committee to file a joint and combined disclosure statement and
18 liquidating plan (the “Combined Disclosure Statement and Plan”) and an expedited
19 confirmation schedule to ensure expeditious payment to holders of allowed claims.
20 Consequently, the Debtor respectfully requests that the Court expedite any hearing
21 on the Motion to Combine to 28 days’ notice, based on the Court’s availability, or,
22 alternatively, allow the Motion to Combine to be granted without a hearing if no
23 opposition is filed.

24 The Combined Disclosure Statement and Plan is jointly proposed with the
25 Committee, and, thus, the parties anticipate that the Committee and other major

26 _____
27 ¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*,
28 as amended. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure. All
references to “Local Rules” are to the Local Rules of the United States Bankruptcy Court for the
Southern District of California.

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1 stakeholders will support the Combined Disclosure Statement and Plan and an
2 expedited process, particularly since it proposes to pay unsecured creditors with
3 allowed claims in full. The other major stakeholder in this Case is the California
4 Department of Health Care Services (“DHCS”), which reached a Court-approved
5 settlement with the Debtor and the Committee (the “DHCS Settlement”) that
6 provides for, among other things, the payment of DHCS’s claim. Allowed claimants
7 will largely be paid through the proceeds of the sale of substantially all the Debtor’s
8 assets, which has already closed. Additionally, after discussions with the United
9 States Trustee (the “UST”) and the Debtor’s claims and noticing agent, Kurtzman
10 Carson Consultants LLC (“KCC”), the Debtor seeks to slightly modify the proposed
11 schedule sought in the Motion to Combine (the “Proposed Schedule”) as set forth
12 herein to provide a more comprehensive timeline for the Court and all parties in
13 interest.

14 The Debtor respectfully submits that no parties will be prejudiced by the
15 requested relief. If the Court sets the Motion to Combine for hearing, it will be filed
16 and served at least 28 days before any hearing date and any opposition will be due
17 within 14 days of service of any order granting this Motion, pursuant to Local Rule
18 9013-6(a)(1), (3). Alternatively, if the Court is inclined to grant the Motion to
19 Combine without a hearing, all parties in interest will have 14 days to file any
20 opposition and request for hearing, pursuant to Local Rule 9013-6(b). In support of
21 this Motion, the Debtor hereby further states as follows:

22 **I.**

23 **JURISDICTION AND VENUE**

24 The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and
25 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of this
26 Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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1 II.

2 **STATEMENT OF FACTS**

3 **A. General Background**

4 1. On September 12, 2022 (the “Petition Date”), the Debtor filed a
5 voluntary petition for relief under chapter 11. Since the commencement of its Case,
6 the Debtor has been operating its business as a debtor in possession pursuant to
7 §§ 1107 and 1108.

8 2. As of the Petition Date, the Debtor was a nonprofit Federally Qualified
9 Health Center that provided health care services to low income and rural patients in
10 San Diego and Riverside Counties through a system of eighteen clinics, two
11 pharmacies and six mobile units. In 2021, the Debtor provided approximately
12 386,000 patient care visits to over 94,000 patients. The Debtor’s services included
13 comprehensive primary care, urgent care, behavioral health, dental services, specialty
14 care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic
15 services, tele-health, and pharmacy.

16 3. Additional background regarding the Debtor, including an overview of
17 the Debtor’s business and additional events leading up to this Case, is set forth in the
18 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor’s*
19 *Emergency First Day Motions* (the “First-Day Declaration”) [Docket No. 7]. As set
20 forth in the First-Day Declaration, the Debtor appointed Isaac Lee of Ankura
21 Consulting Group, LLC, as its Chief Restructuring Officer.

22 4. On September 26, 2022, the Office of the United States Trustee
23 appointed the Committee in this Case [Docket No. 49].

24 **B. Facts Relevant to this Motion**

25 5. To expedite the confirmation process and distributions to allowed
26 claimholders, the Debtor filed the Motion to Combine [Docket No. 920] with a
27 hearing date of November 14, 2023, a 10:00 a.m., prevailing Pacific Time, based on
28 the hearing date provided by the Courtroom Deputy [Docket No. 921].

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1 6. As described more thoroughly in the Motion to Combine, if authorized
 2 by the Court, the Debtor and the Committee will file the Combined Disclosure
 3 Statement and Plan, providing for, among other things, the liquidation of assets,
 4 distributions to creditors, and the wind-down of the Debtor’s remaining affairs. The
 5 Combined Disclosure Statement and Plan contains for four different classes of
 6 claims, to be treated as follows: (i) Claims in Class 1 are unimpaired; (ii) Claims in
 7 Class 2 are unimpaired; (iii) the general unsecured creditors in Class 3 are projected
 8 to receive a 100% distribution on their allowed claims without post-petition interest;
 9 and (iv) DHCS will receive a distribution on its claim in accordance with the DHCS
 10 Settlement and the Combined Disclosure Statement and Plan. Additionally, the
 11 Combined Disclosure Statement and Plan designates four categories of claims that
 12 are entitled to receive distributions yet are not classified for purposes of voting, all
 13 of which are projected to receive a 100% distribution on their allowed claims.

14 7. The Debtor further submits that none of the creditors nor any other party
 15 in interest will be prejudiced by the relief requested in this Motion to shorten time or
 16 the Motion to Combine. The Committee supports the relief requested in this Motion
 17 and the Motion to Combine.

18 **C. The Debtor Requests the Court Approve the Modified Proposed**
 19 **Schedule in Connection with the Motion to Combine Because the**
 20 **Modified Proposed Schedule Will Not Prejudice Any Party in Interest**

21 8. The Motion to Combine sought approval of the Proposed schedule
 [Docket No. 920 at 7-8] below:

Event	Date
Deadline to file (1) the Combined Disclosure Statement and Plan and (2) a motion for conditional approval of disclosures and approval of solicitation procedures (the “ <u>Conditional Approval Motion</u> ”)	November 17, 2023
Deadline to file and serve objections to the Conditional Approval Motion	November 28, 2023
Deadline to file and serve reply in support of the Conditional Approval Motion	December 4, 2023

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Hearing on Conditional Approval Motion	December 6, 2023, at 2:00 p.m.
Deadline to file and serve objections to the Combined Disclosure Statement and Plan	January 3, 2024
Deadline to file (1) confirmation brief and (2) reply to any objection	January 8, 2024
Combined hearing on the approval of the disclosures and confirmation of the Combined Disclosure Statement and Plan (the “ <u>Combined Hearing</u> ”)	January 10, 2024, at 2:00 p.m.

9. After discussions with the UST and KCC, the Debtor seeks to modify the Proposed Schedule to clarify and provide comprehensive deadlines for the solicitation and confirmation process. Such modifications ensure that (i) KCC will have sufficient time to prepare and serve the solicitation materials and tabulate votes, and (ii) all parties in interest will have 28 days to accept or reject the Combined Disclosure Statement and Plan. Accordingly, the Debtor requests the Proposed Schedule below be approved:

Event	Date
Deadline to file (1) the Combined Disclosure Statement and Plan and (2) the Conditional Approval Motion	November 17, 2023
Deadline to file and serve objections to the Conditional Approval Motion	November 28, 2023
Voting Record Date	November 28, 2023
Deadline to file and serve reply in support of the Conditional Approval Motion	December 4, 2023
Hearing on Conditional Approval Motion	December 6, 2023, at 2:00 p.m.
Deadline for Debtor to serve the Combined Disclosure Statement and Plan and all solicitation materials	December 11, 2023
Voting Deadline	January 8, 2024, at 4:00 p.m. Pacific Time

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1	Deadline to file and serve objections to the Combined Disclosure Statement and Plan	January 8, 2024
2		
3	Deadline to file (1) confirmation brief, (2) tabulation report, and (3) reply to any objection	January 11, 2024
4	Combined Hearing	January 15, 2024, at 2:00 p.m.
5		

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7 10. To accommodate the period required by Local Rule 9013-6(a)(4), the

8 Proposed Schedule seeks a deadline for any party to file an objection to the Combined

9 Disclosure Statement and Plan of January 8, 2024. Further, the Proposed Schedule

10 now requests a voting deadline of January 8, 2024, at 4:00 p.m. Pacific Time.

11 Further, as stated in the Motion to Combine, no party will waive the right to object

12 to the adequacy of disclosure or the propriety of confirmation, or any right to vote on

13 the Combined Disclosure Statement and Plan by not responding to the Conditional

14 Approval Motion. [Docket No. 920 at 10]. Accordingly, under the Proposed

15 Schedule, all parties in interest will have 28 days to file any opposition to the

16 Combined Disclosure Statement and Plan, as required by Local Rule 9013-6(a)(4).

17 11. In order to effectuate an expedited confirmation schedule and sufficient

18 notice to all parties in interest, subject to this Court’s availability, the Debtor

19 respectfully requests that the Combined Hearing be modified from January 10, 2024,

20 to January 15, 2024, at 2:00 p.m.

21 **III.**

22 **DISCUSSION**

23 **A. There is Cause to Expedite Any Hearing on the Motion to Combine**

24 Rule 9006(c)(1), & (d) authorize the Court, for cause shown, to reduce the

25 notice period otherwise required for a motion like the Motion to Combine and

26 provides:

27 [W]hen an act is required or allowed to be done at or within a specified

28 time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion

1 or notice order the period reduced... A written motion, other than one
2 which may be heard ex parte, and notice of any hearing shall be served
3 not later than seven days before the time specified for such hearing,
4 unless a different period is fixed by these rules or by order of the court.
5 Such an order may for cause shown be made on ex parte application.

6 Fed. R. Bankr. P. 9006(c)(1), (d); *see also* Local Rule 9006-1(d) (“Subject to the
7 limitations of FRBP 9006, a motion for an order extending or shortening time under
8 the Bankruptcy Rules or Local Bankruptcy Rules may be submitted ex parte pursuant
9 to LBR 9013-1(e) with a proposed order.”); Local Rule 9013-3(e) (“The following
10 motions and applications may be filed without notice and must be accompanied by
11 an order submitted to the Court in accordance with the Administrative Procedures:
12 ...Motion for order extending or shortening time, as governed by LBR 9006-
13 1(d)...”). Additionally, neither the Bankruptcy Code, the Rules, nor the Local Rules
14 require a hearing on the Motion to Combine. *See* Local Rule 9013-4(a).

15 Here, there is “cause” to grant the Motion. The Motion to Combine proposes
16 an expedited confirmation process that will allow creditors with allowed claims to be
17 paid pursuant to the Combined Plan and Disclosure Statement more expediently than
18 if the Debtor was required to engage in a two-step confirmation process. The Debtor
19 believes that the proposed Combined Disclosure Statement and Plan provides the
20 most efficient means to wind down the Case and operations in an orderly manner,
21 maximize the value of the Debtor’s estate and distribute recoveries to creditors.
22 Accordingly, hearing the Motion to Combine on an expedited basis, or, in the
23 alternative, granting it without a hearing, is in the best interests of the Debtor’s estate
24 and its creditors.

25 Importantly, no creditor or any party in interest will be prejudiced by the relief
26 requested herein. If the Court sets the Motion to Combine on 28 days’ notice, all
27 creditors and parties in interest will receive the notice required pursuant to Local Rule
28 9013-6(a)(1). If, alternatively, the Court is inclined to grant the Motion to Combine

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1 without a hearing, creditors and parties in interest will have 14 days to request a
2 hearing and file and serve any opposition as set forth in Local Rule 9013-6(b).

3 **IV.**

4 **CONCLUSION**

5 **WHEREFORE**, for the foregoing reasons and such additional reasons as may
6 be advanced at or prior to the hearing on this Motion, the Debtor respectfully requests
7 that the Court enter an order (i) either (a) setting the Motion to Combine for a hearing
8 on 28 days’ notice or, alternatively, (b) granting the Motion to Combine without a
9 hearing if no objections are filed within 14 days pursuant to Local Rule 9013-6(b);
10 and (ii) granting such other and further relief as this Court deems just and proper
11 under the circumstances.

12 Dated: September 29, 2023

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SAMUEL R. MAIZEL
TANIA M. MOYRON

13 By /s/ Tania M. Moyron
14 Tania M. Moyron

15 Attorneys for the Chapter 11 Debtor
16 and Debtor in Possession

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EXHIBIT A
(Proposed Order)

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CSD 1001B [07/01/18]

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

In Re
Borrego Community Health Foundation

BANKRUPTCY NO. 22-02384-LT11

Debtor.

ORDER SHORTENING TIME FOR HEARING ON

Debtor's Notice of Motion and Motion For Entry of An Order (I) Authorizing The Debtor To File The Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; and (III) Granting Related Relief; Memorandum of Points and Authorities In Support Thereof; Declaration of Isaac Lee

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. _____ .

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DATED:

Judge, United States Bankruptcy Court

Upon review of the ex parte application for order shortening time for notice of hearing on the Debtor's Motion for Entry of an Order (I) Authorizing the Debtor to File the Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting Deadlines Related Thereto; and (III) Granting Related Relief [Docket No. 920]

and for good cause appearing therefore,

It is ordered that this Court will conduct a hearing on the Motion, and any opposition, thereto on

_____ at _____m. in Department No. 3, Room 129 of the United States Bankruptcy Court, Southern District of California, 325 West F Street, San Diego, California 92101-6991.

It is further ordered that the Notice of Motion and Motion must be filed and served no later than

_____. Service will be deemed complete when delivered

- personally, or
- by electronic method, or
- by first class or overnight mail, or
- as provided for in the application for order shortening time.

It is further ordered that all opposition, if any, to the Motion must be filed and served no later than

_____.

It is further ordered that a reply, if any, to the opposition to the Motion must be filed and served no later than

_____.