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20 *of Unsecured Creditors*

21 **UNITED STATES BANKRUPTCY COURT**
22 **SOUTHERN DISTRICT OF CALIFORNIA**

23
24 In re
25 BORREGO COMMUNITY HEALTH
26 FOUNDATION, a California nonprofit
public benefit corporation,
27 Debtor and Debtor in Possession.

Case No. 22-02384-11
Chapter 11 Case

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1 BORREGO COMMUNITY HEALTH
2 FOUNDATION, a California nonprofit
3 public benefit corporation,

4 Plaintiff,

5 v.

6 CALIFORNIA DEPARTMENT OF
7 HEALTH CARE SERVICES, by and
8 through its Director, Michelle Baass,

9 Defendant.

Adv. Pro. No. 22-90056

**STIPULATION AMONG THE
DEBTOR, THE CALIFORNIA
DEPARTMENT OF HEALTH CARE
SERVICES, AND THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS TO (I) VACATE THE
(A) FINDINGS OF FACTS AND
CONCLUSIONS OF LAW RE:
EMERGENCY MOTION TO
ENFORCE THE AUTOMATIC STAY
OR ALTERNATIVELY FOR
TEMPORARY RESTRAINING
ORDER [DOCKET NO. 65] AND
(B) ORDER ON EMERGENCY
MOTION TO ENFORCE THE
AUTOMATIC STAY OR
ALTERNATIVELY FOR
TEMPORARY RESTRAINING
ORDER [DOCKET NO. 66]; AND
(II) DISMISS THE ADVERSARY
PROCEEDING**

13 Borrego Community Health Foundation, the debtor and debtor in possession in
14 the above-captioned case (the “Debtor”), the California Department of Health Care
15 Services, acting by and through its director Michelle Baass (collectively, “DHCS”),
16 and the Official Committee of Unsecured Creditors (the “Committee” and with the
17 Debtor and DHCS, the “Parties”), hereby agree and stipulate as follows:

18 **RECITALS**

19 WHEREAS, on September 12, 2022, the Debtor filed a voluntary petition for
20 relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”)¹
21 commencing the above referenced bankruptcy case (the “Bankruptcy Case”) in the
22 United States Bankruptcy Court for the Southern District of California (the “Court”);

23 WHEREAS, on September 26, 2022, the Debtor filed the *Debtor’s Complaint*
24 *for Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the*
25 *Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Docket No. 1];

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28 ¹ All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*,
as amended. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure.

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1 (the “Complaint”), commencing the above referenced adversary proceeding (the
2 “Adversary Proceeding”);

3 WHEREAS, on September 26, 2022, the United States Trustee appointed the
4 Committee in the Bankruptcy Case pursuant to section 1102;

5 WHEREAS, on September 27, 2022, the Debtor filed its *Emergency Motion:*
6 *(I) to Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively,*
7 *(II) for Temporary Restraining Order; Memorandum of Points and Authorities in*
8 *Support Thereof; and Declarations in Support Thereof* [Docket No. 3] (the “Motion
9 to Enforce”) and certain other supporting declarations;

10 WHEREAS, DHCS objected to the Motion to Enforce and filed, among other
11 things, *Defendant California Department of Health Care Services’ Opposition to*
12 *Debtor’s Emergency Motion: (1) to Enforce the Automatic Stay; or (2) for Temporary*
13 *Restraining Order* [Docket No. 30];

14 WHEREAS, DHCS opposed the relief requested in the Complaint and filed its
15 *Answer to Complaint for Declaratory Judgment and Preliminary and Permanent*
16 *Injunctive Relief, or in the Alternative, for Writ of Mandate Under Code of Civil*
17 *Procedure 1085* [Docket No. 67];

18 WHEREAS, the Court issued its *Findings of Fact and Conclusions of Law re:*
19 *Emergency Motion to (I) Enforce the Automatic Stay or (II) Alternatively for*
20 *Temporary Restraining Order* [Docket No. 65] (the “Findings of Fact and
21 Conclusions of Law”);

22 WHEREAS the Court entered its *Order on Emergency Motion to (I) Enforce*
23 *the Automatic Stay or (II) Alternatively for Temporary Restraining Order* [Docket
24 No. 66] (the “Order”) granting, in part, the Motion to Enforce on the terms and
25 conditions set forth in the Order;

26 WHEREAS, in November 2022, the Parties agreed, and the Court ordered the
27 Parties to mediate all disputes between them before an appointed mediator, the
28 Honorable Dennis Montali, United States Bankruptcy Judge [Docket Nos. 73, 74, 83];

1 WHEREAS, on February 27, 2023, the Parties executed a term sheet outlining
2 the terms of a settlement reached between the Parties (the “Term Sheet”) and filed the
3 *Debtor’s Notice and Motion to Approve Compromise Among Debtor, Official*
4 *Committee of Unsecured Creditors and California Department of Health Care*
5 *Services Pursuant to Federal Rule of Bankruptcy Procedure 9019* [Docket No. 510]
6 (the “Settlement Motion”), which was heard on shortened time on March 1, 2023
7 [Docket No. 512]. On March 1, 2023, the Court granted the Settlement Motion and
8 approved the settlement between the Parties;

9 WHEREAS, on March 7, 2023, the Court entered its *Order on Debtor’s Motion*
10 *to Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,*
11 *and California Department of Unsecured Creditors* [Docket No. 544] (the
12 “Settlement Order”), pursuant to which the Parties were “authorized to take all actions
13 and execute all documents and instruments that they deem necessary or appropriate
14 to implement and effectuate the transactions and other obligations contemplated by
15 the Term Sheet.” [Docket No. 544 at ¶ 2];

16 WHEREAS, as contemplated by the Term Sheet, the Parties prepared and
17 executed a final settlement agreement (the “Settlement Agreement”), and the Debtor
18 filed the *Notice of Filing Executed Settlement Agreement Among the Debtor, the*
19 *Official Committee of Unsecured Creditors, and the California Department of Health*
20 *Care Services* [Docket No. 923];

21 WHEREAS, the Settlement Agreement provides, among other things, as
22 follows:

23 The Parties agree to jointly (i) seek *vacatur* of the Findings of Facts and
24 Stay Enforcement Order in the Adversary Proceeding [Adv. Dkt. Nos.
25 65 and 66] and (ii) dismiss the Adversary Proceeding. The joint motion
26 will be filed not later than 21 days after this Settlement Agreement is
27 fully executed. The Parties agree that this Settlement Agreement is
intended to and does resolve all issues between and among the Parties
related to the Adversary Proceeding. The Parties agree to file any other
joint motions and other documents as may be necessary to accomplish
the foregoing.

28 Settlement Agreement, at 11 [Docket No. 923]; and

1 WHEREAS, the Parties enter into this Stipulation to (i) vacate the Findings of
2 Fact and Conclusions of Law [Docket No. 65] and the Order [Docket No. 66], and
3 (ii) dismiss the Adversary Proceeding.

4 **STIPULATION**

5 NOW, THEREFORE, the Parties to this Stipulation hereby stipulate and agree
6 as follows:

7 1. The Findings of Fact and Conclusions of Law [Docket No. 65] and the
8 Order [Docket No. 66] shall be vacated and withdrawn.

9 2. Pursuant to Federal Rule of Civil Procedure 41(a), as made applicable to
10 adversary proceedings pursuant to Rule 7041, and the terms of the Settlement
11 Agreement, this Adversary Proceeding shall be dismissed with prejudice.

12 IT IS SO STIPULATED AND AGREED.

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15 *Signatures on the following page.*
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Dated: October 16, 2023

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

By: /s/ Tania M. Moyron

Attorneys for the Chapter 11
Debtor and Debtor In Possession

AND

Dated: October 16, 2023

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Attorneys for Defendant California
Department of Health Care Services

AND

Dated: October 16, 2023

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