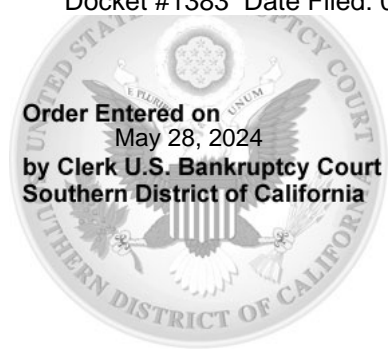


CSD 1001A [07/01/18]
Name, Address, Telephone No. & I.D. No.

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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

Debtor.

BANKRUPTCY NO. 22-02384-LT11

Date of Hearing:

Time of Hearing:

Name of Judge: Laura S. Taylor

ORDER ON

Stipulation By and Between the Post- Effective Date Debtor, The Liquidating Trustee, and Merck & Co., Inc. Regarding Administrative Claim

The court orders as set forth on the continuation pages attached and numbered 2 through 2 with exhibits, if any, for a total of 7 pages. Motion/Application Docket Entry No. 1382.

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DATED: May 28, 2024

Judge, United States Bankruptcy Court



On May 28, 2024, Borrego Community Health Foundation filed a "Stipulation By and Between the Post-Effective Date Debtor, the Liquidating Trustee, and Merck & Co. Inc. Regarding Administrative Claim" (the "Stipulation").

IT IS HEREBY ORDERED:

1. That the Stipulation, attached hereto as Exhibit A, is approved in its entirety.
2. That the terms and conditions of the Stipulation shall be binding upon the parties and are hereby full incorporated into this Order by reference.

Exhibit A

1 SAMUEL R. MAIZEL (SBN 189301)
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3 REBECCA M. WICKS (SBN 313608)
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7 Attorneys for the Chapter 11
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
15 Debtor and Debtor In
Possession.

Case No. 22-02384-LT11

Chapter 11 Case

Honorable Laura S. Taylor

16 **STIPULATION BY AND BETWEEN THE**
POST-EFFECTIVE DATE DEBTOR,
THE LIQUIDATING TRUSTEE AND
MERCK & CO. INC. REGARDING
17 **ADMINISTRATIVE CLAIM**

18 Borrego Community Health Foundation, the debtor and debtor in possession
19 (prior to the effective date of the Plan (defined below), the “Debtor,” and after the
20 effective date, the “Post-Effective Date Debtor”) in the above-captioned chapter 11
21 bankruptcy case, the Liquidating Trustee (the “Liquidating Trustee”) of the Borrego
22 Community Health Foundation Liquidating Trust (the “Liquidating Trust”)
23 established pursuant to the *First Amended Joint Combined Disclosure Statement and*
24 *Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket
25 No. 1168] (the “Plan”), confirmed by the order [Docket No. 1273] entered
26 January 25, 2024 (the “Confirmation Order”), and that certain Liquidating Trust
27 Agreement, dated as of February 14, 2024 (the “Liquidating Trust Agreement”), on
28 the one hand, and Merck & Co. Inc. (the “Claimant,” and together with the Post-

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1 Effective Date Debtor and the Liquidating Trustee, the “Parties”), on the other hand,
2 hereby stipulate as follows (the “Stipulation”):

3 **RECITALS**

4 WHEREAS, on September 12, 2022, the Debtor filed a voluntary petition for
5 relief under chapter 11 of title 11 of the United States Code commencing Case No.
6 22-02384 (the “Chapter 11 Case”) in the United States Bankruptcy Court for the
7 Southern District of California (the “Court”);

8 WHEREAS, on January 25, 2024, the Court entered the Confirmation Order,
9 which provides:

10 All requests for payment of an Administrative Claim (other than a
11 Professional Fee Claim) arising or deemed to have arisen after
12 September 12, 2022, must be filed with this Court, and served to the
Debtor, the Liquidating Trustee, and the Co-Liquidating Trustee on or
before the date that is 90 days after the Effective Date.

13 Confirmation Order at ¶ 31, [Docket No. 1273 at ¶ 31];

14 WHEREAS, the Liquidating Trust Agreement, approved pursuant to the
15 Confirmation Order, provides that the Liquidating Trustee has the power and
16 authority to settle or resolve any claims other than general unsecured claims;

17 WHEREAS, on February 27, 2024, the Claimant informed the Post-Effective
18 Date Debtor and the Liquidating Trustee that the Claimant asserts an Administrative
19 Claim¹ (as defined by the Plan and Confirmation Order) in the amount of \$56,761.26;
20 and

21 WHEREAS, after review of the Post-Effective Date Debtor’s books and
22 records, the Parties have agreed to resolve any issues regarding the Claimant’s claim
23 as set forth herein and desire the Court enter an order on the Stipulation set forth
24 below.

25
26
27
28 ¹ The term “Administrative Claim” shall have the same definition as ascribed in the Plan and Confirmation Order.

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STIPULATION

NOW, THEREFORE, the Parties hereby agree and stipulate as follows:

1. The Claimant shall have an allowed Administrative Claim in the amount of \$28,380.96.

2. This Stipulation shall serve as the filing of an Administrative Claim in accordance with the Confirmation Order.

3. In consideration of the agreements with and value provided herein and other good and valuable consideration, the Parties hereby waive, remise, release and forever discharge the other, including each of their respective former and current predecessors, successors, assigns, affiliates, subsidiaries, parent companies, shareholders, partners, members, managers, investors directors, officers, accountants, attorneys, employees, agents, representatives and servants of, from and against any and all claims, actions, causes of action, suits, proceedings, defenses, counterclaims, contracts, judgments, damages, accounts, reckonings, executions, and liabilities whatsoever of every name and nature, whether known or unknown, whether or not well-founded in fact or in law, and whether in law, at equity or otherwise, which either Party ever had or now has for or by reason of any matter, cause or anything whatsoever to this date relating to or arising out of the Parties' prior employer/employee relationship, or the Chapter 11 Case.

4. Each of the Parties to the Stipulation acknowledge that they are familiar with California Civil Code section 1542 and with respect to the matters released herein, and each Party expressly waives any and all rights under California Civil Code section 1542 and under any other federal or state statute or law of similar effect. California Civil Code section 1542 provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

5. The Claimant hereby warrants that the Claimant (a) is authorized and

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1 empowered to execute this Stipulation, (b) has read this Stipulation in its entirety and
2 fully understands and accepts the terms set forth herein, (c) has had an opportunity
3 to consult with legal counsel and any other advisors of the Claimant's choice with
4 respect to the terms of this Stipulation, and (d) is signing this Stipulation on the
5 Claimant's own free will.

6 6. The terms, covenants, conditions, and provisions of this Stipulation
7 cannot be altered, changed, modified, or added to, or deleted from, except in a writing
8 signed by all parties hereto.

9 7. This Stipulation may be executed in counterparts each of which shall be
10 deemed an original, but all of which together shall constitute one and the same.

11 8. The Court shall retain jurisdiction over all matters relating to the
12 interpretation and enforcement of this Stipulation.

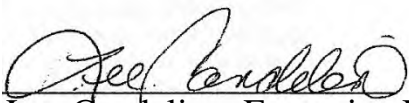
13
14 Dated: May 28, 2024

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

15
16
17 By /s/ Tania M. Moyron
Tania M. Moyron

18
19 Attorneys for the Post-Effective Date Debtor
and the Liquidating Trustee

20
21 Dated: May 28, 2024

22 By: 
Lee Candelino, Executive Director,
23 Global Security
24 Merck & Co. Inc.
25 Claimant
26
27
28

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Notice Recipients

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