

CSD 1001A [07/01/18](Page 1)

Docket #1556 Date Filed: 03/12/2025

Name, Address, Telephone No. & I.D. No.

Name, Address, Telephone No. & I.D. No.

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Attorneys for the Co-Liquidating Trustee

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

**ORDER ON
STIPULATION BY AND AMONG THE POST-EFFECTIVE DATE DEBTOR,
THE LIQUIDATING TRUSTEE, THE CO-LIQUIDATING TRUSTEES AND ANNA NAVARRO
REGARDING CLAIM NO. 124**

The court orders as set forth on the continuation pages attached and numbered 2 through 2 with exhibits, if any, for a total of 22 pages. Stipulation Docket Entry No. 1553.

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DATED: March 12, 2025

Judge, United States Bankruptcy Court



ORDER ON STIPULATION BY AND AMONG THE POST-EFFECTIVE DATE DEBTOR, THE LIQUIDATING TRUSTEE, THE CO-LIQUIDATING TRUSTEES AND ANNA NAVARRO REGARDING CLAIM NO. 124

DEBTOR: BORREGO COMMUNITY HEALTH FOUNDATION

CASE NO: 22-02384-LT11

On March 11, 2025, Borrego Community Health Foundation (the Post-Effective Date Debtor), The Liquidating Trustee, the Co-Liquidating Trustees and John Davidson filed a *Stipulation By and Among the Post-Effective Date Debtor, The Liquidating Trustee, The Co-Liquidating Trustees And Anna Navarro Regarding Claim No. 124* [Docket No. 1553] (the “Stipulation”).

IT IS HEREBY ORDERED:

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

EXHIBIT 1

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(213) 623-9300

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Attorneys for the Co-Liquidating Trustee

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

In re

BORREGO COMMUNITY
HEALTH FOUNDATION,

Debtor and Debtor in
Possession.

Case No. 22-02384-11

Chapter 11 Case

Judge: Honorable Laura S. Taylor

**STIPULATION BY AND AMONG THE
POST-EFFECTIVE DATE DEBTOR,
THE LIQUIDATING TRUSTEE, THE
CO-LIQUIDATING TRUSTEES AND
ANNA NAVARRO REGARDING CLAIM
NO. 124**

DENTONS US LLP
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Borrego Community Health Foundation, the debtor and debtor in possession (prior to the effective date of the Plan (defined below), the “Debtor,” and after the effective date, the “Post-Effective Date Debtor”) in the above-captioned chapter 11 bankruptcy case, the Liquidating Trustee (the “Liquidating Trustee”) of the Borrego Community Health Foundation Liquidating Trust (the “Liquidating Trust”), the Co-Liquidating Trustees of the Liquidating Trust (the “Co-Liquidating Trustees”) and Anna Navarro (the “Claimant”, and collectively with the Post-Effective Date Debtor, the Liquidating Trustee, and the Co-Liquidating Trustees, the “Parties”) hereby enter into this *Stipulation By and Among the Post-Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating Trustees and Anna Navarro Regarding Claim No. 124*.

RECITALS

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

WHEREAS, on or about November 18, 2022, Claimant filed Proof of Claim No. 124 in the amount of \$526,368.84 (“Claim 124”), a copy of which is attached hereto as **Exhibit A**;

WHEREAS, the Liquidating Trust was established pursuant to the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1168] (the “Plan”), confirmed by the order [Docket No. 1273] entered January 25, 2024 (the “Confirmation Order”), and that certain *Liquidating Trust Agreement*, dated as of

February 14, 2024 (the “Liquidating Trust Agreement”);

WHEREAS, the Post-Effective Date Debtor has reviewed its books and records and believes that Claim 124 relates to alleged wrongful termination of the Claimant while Claimant was employed by the Debtor; and

WHEREAS, after the Post-Effective Date Debtor’s professionals reviewed Claim 124, the Parties have agreed to resolve any issues regarding Claim 124 as set forth herein.

STIPULATION

NOW THEREFORE, subject to the approval of the Court, the Parties hereby agree and stipulate as follows:

1. Claim 124 shall be reduced and allowed as a general unsecured claim in the amount of \$20,000.00 (the “Allowed Claim Amount”).

2. Within thirty (30) days of entry of the order approving this Stipulation, the Liquidating Trust shall pay the Allowed Claim Amount to Claimant pursuant to the Plan.

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 business relationship, or the Chapter 11 Case.

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

6
7 A general release does not extend to claims that the
8 creditor or releasing party does not know or suspect to
9 exist in his or her favor at the time of executing the
10 release and that, if known by him or her, would have
11 materially affected his or her settlement with the debtor
12 or released party.

13 5. Claimant hereby warrants that Claimant (a) is authorized and
14 empowered to execute this Stipulation on behalf of the Claimant, (b) has read this
15 Stipulation in its entirety and fully understands and accepts the terms set forth
16 herein, (c) has had an opportunity to consult with legal counsel and any other
17 advisors of Claimant's choice with respect to the terms of this Stipulation, and (d)
18 is signing this Stipulation on Claimant's own free will.
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[Remainder of Page Intentionally Left Blank]

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

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

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

Dated: March 11, 2025

DENTONS US LLP
SAMUEL R. MAIZEL
TANIA M. MOYRON

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

Attorneys for the Post-Effective Date
Debtor and the Co-Liquidating Trustee

Dated: March 11, 2025

PACHULSKI STANG ZIEHL & JONES LLP
Jeffrey N. Pomerantz
Steven W. Golden

By /s/ Steven W. Golden
Steven W. Golden

Attorneys for the Co-Liquidating Trustee

Dated: March 11, 2025

SMALL LAW PC

By 
William F. Small

Attorneys for Claimant, Anna Navarro

DENTONS US LLP
601 SOUTH FIGUEROA STREET, SUITE 2500
LOS ANGELES, CALIFORNIA 90017-5704
(213) 623-9300

EXHIBIT A

Fill in this information to identify the case:

Debtor Borrego Community Health Foundation

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

Case number 22-02384

Official Form 410
Proof of Claim

04/22

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

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

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

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

Part 1: Identify the Claim

| | | |
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| 1. Who is the current creditor? | <u>Anna Navarro</u> Name of the current creditor (the person or entity to be paid for this claim) | |
| | Other names the creditor used with the debtor _____ | |
| 2. Has this claim been acquired from someone else? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. From whom? _____ | |
| 3. Where should notices and payments to the creditor be sent? | Where should notices to the creditor be sent? <u>Anna Navarro</u> <u>c/o Small Law PC</u> <u>501 West Broadway, Suite 1360</u> <u>SAN DIEGO, CA 92101, United States</u> | Where should payments to the creditor be sent? (if different) |
| Federal Rule of Bankruptcy Procedure (FRBP) 2002(g) | Contact phone <u>6194304795</u> Contact email <u>kelly@smalllawcorp.com</u> | Contact phone _____ Contact email _____ |
| | Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____ | |
| 4. Does this claim amend one already filed? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY | |
| 5. Do you know if anyone else has filed a proof of claim for this claim? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Who made the earlier filing? _____ | |



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

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| 6. Do you have any number you use to identify the debtor? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: _____ |
| 7. How much is the claim? \$ 526,368.84 | Does this amount include interest or other charges? <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A). |
| 8. What is the basis of the claim? | Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card. Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c). Limit disclosing information that is entitled to privacy, such as health care information. <u>Services Performed, Wrongful Termination, Age Discrimination</u> |
| 9. Is all or part of the claim secured? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. The claim is secured by a lien on property. Nature or property: <input type="checkbox"/> Real estate: If the claim is secured by the debtor's principle residence, file a <i>Mortgage Proof of Claim Attachment</i> (Official Form 410-A) with this <i>Proof of Claim</i> . <input type="checkbox"/> Motor vehicle <input type="checkbox"/> Other. Describe: _____ Basis for perfection: _____ Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.) Value of property: \$ _____ Amount of the claim that is secured: \$ _____ Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.) Amount necessary to cure any default as of the date of the petition: \$ _____ Annual Interest Rate (when case was filed) _____ % <input type="checkbox"/> Fixed <input type="checkbox"/> Variable |
| 10. Is this claim based on a lease? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Amount necessary to cure any default as of the date of the petition. \$ _____ |
| 11. Is this claim subject to a right of setoff? | <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Identify the property: _____ |



| | |
|---|---|
| <p>12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?</p> <p>A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.</p> | <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Check all that apply: </div> <div style="text-align: right; background-color: #f2f2f2; padding: 2px 5px; font-weight: bold;">Amount entitled to priority</div> </div> <div style="margin-top: 10px;"> <div style="display: flex; justify-content: space-between; align-items: flex-start;"> <div style="width: 70%;"> <input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> <div style="display: flex; justify-content: space-between; align-items: flex-start; margin-top: 5px;"> <div style="width: 70%;"> <input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies. </div> <div style="width: 25%; text-align: right;">\$ _____</div> </div> </div> <p style="font-size: small; margin-top: 10px;">* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.</p> |
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| | |
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| <p>13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?</p> | <div style="display: flex; justify-content: space-between;"> <div> <input checked="" type="checkbox"/> No <input type="checkbox"/> Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim. </div> <div style="width: 20%; text-align: right;">\$ _____</div> </div> |
|--|--|

Part 3: Sign Below

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

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

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

Check the appropriate box:

- ☐ I am the creditor.
- ☒ I am the creditor's attorney or authorized agent.
- ☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.
- ☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

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

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

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

Executed on date 11/18/2022
MM / DD / YYYY

/s/Kelly Ann Tran
Signature

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

Name Kelly Ann Tran
First name Middle name Last name

Title Attorney

Company Small Law PC
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address _____

Contact phone _____ Email _____



KCC ePOC Electronic Claim Filing Summary

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

| | | |
|--|---|----------------------------------|
| Debtor: 22-02384 - Borrego Community Health Foundation District: Southern District of California, San Diego Division | | |
| Creditor: Anna Navarro c/o Small Law PC 501 West Broadway, Suite 1360 SAN DIEGO, CA, 92101 United States Phone: 6194304795 Phone 2: Fax: Email: kelly@smalllawcorp.com | Has Supporting Documentation: Yes, supporting documentation successfully uploaded Related Document Statement: | |
| | Has Related Claim: No Related Claim Filed By: | |
| | Filing Party: Authorized agent | |
| Other Names Used with Debtor: | Amends Claim: No Acquired Claim: No | |
| Basis of Claim: Services Performed, Wrongful Termination, Age Discrimination | Last 4 Digits: No | Uniform Claim Identifier: |
| Total Amount of Claim: 526,368.84 | Includes Interest or Charges: No | |
| Has Priority Claim: No | Priority Under: | |
| Has Secured Claim: No Amount of 503(b)(9): No Based on Lease: No Subject to Right of Setoff: No | Nature of Secured Amount: Value of Property: Annual Interest Rate: Arrearage Amount: Basis for Perfection: Amount Unsecured: | |
| Submitted By: Kelly Ann Tran on 18-Nov-2022 1:28:36 p.m. Eastern Time Title: Attorney Company: Small Law PC | | |



May 24, 2022

WILLIAM F. SMALL III
DIRECT DIAL: (619) 430-4796
EMAIL: WILL@SMALLLAWCORP.COM

VIA PRIORITY MAIL

Borrego Community Health Foundation
Attn: Edgar Bulloch, MD
Interim Chief Executive Officer
587 Palm Canyon Dr., Suite 208
Borrego Springs, CA 92004

**PRIVILEGED SETTLEMENT COMMUNICATION; INADMISSIBLE FOR ANY
PURPOSE**

Re: Anna Navarro

Dear Dr. Bulloch:

Our office represents Anna Navarro in connection with legal issues arising from her employment with Borrego Community Health Foundation (“BCHF” or “the Company”).

This correspondence seeks to open a dialogue with BCHF to attempt to resolve legal claims arising from Ms. Navarro’s employment and termination therefrom. Please forward this letter to BCHF’s legal counsel as well as to any applicable insurers that might provide coverage for the claims outlined herein.

I. SUMMARY

Ms. Navarro was the Chief Human Resources Officer (“CHRO”) at BCHF. She was wrongfully terminated on June 13, 2021. Our investigation has determined that the termination was because of Ms. Navarro’s age and in retaliation for her participation in a government investigation of BCHF regarding improper billing practices by the facility. By this action, BCHF discharged Ms. Navarro in violation of California law and caused her significant damages.

II. BACKGROUND

BCHF is a “non-profit 501(c)(3) Federally Qualified Health Center (FQHC) and a Federal Tort Claims Act Deemed (FTCA) facility” that provides primary health care to Riverside, San Diego, and San Bernardino counties. (<https://www.borregohealth.org/why-borrego-health>)

RE: Anna Navarro
May 24, 2022
Page 2

Ms. Navarro began working for BCHF in October 2006 as its Director of Human Resources. Prior to working as BCHF's CHRO, Ms. Navarro was a member of the BCHF Board of Directors from 2001 to 2006. Ms. Navarro had been a Human Resources Director at her prior employer, where she was employed for over 17 years before she left to join BCHF. Thus, Ms. Navarro was an experienced, well-qualified and successful human resources professional.

In January 2016, Ms. Navarro became BCHF's CHRO. Prior to the events that give rise to the claims discussed in this letter, Ms. Navarro successfully worked alongside two Chief Executive Officers at BCHF without any issues. The former CEOs were respectful of her decisions and her role. Ms. Navarro was never the subject of any performance issue or discipline.

A. BCHF is Investigated by the FBI

In or around October 2020, BCHF was subject to a raid by the Federal Bureau of Investigation ("FBI"), which was investigating potential Medi-Cal fraud at BCHF. Ms. Navarro was the only BCHF officer present during the FBI raid at the BCHF administration office in Borrego. When Ms. Navarro arrived at the office the morning of the raid, the FBI was already at the Borrego location. Ms. Navarro cooperated with the FBI, answering questions asked of her and allowing them to access the documents they sought pursuant to their search warrant, which they showed her.

Following the raid, Sandra Hanzberger criticized Ms. Navarro for interacting with the FBI, answering their questions and providing access to records. Moreover, the BCHF Board of Directors began to treat her negatively immediately after she complied with the FBI's investigation.

B. Ms. Navarro Was an Exemplary Employee Who Enforced Company HR Policies

In 2019, BCHF sent a memo to its employees stating it was going to freeze all merit-based raises, largely due to the COVID-19 pandemic.

In or around October 2020, Edgar Bulloch, MD, was appointed as BCHF's Interim CEO. Despite the freeze on raises, Dr. Bulloch asked Ms. Navarro to increase the salaries of certain employees. Ms. Navarro declined these requests. She reiterated that BCHF published a memo stating it was freezing all merit-based raises, and that providing merit-based raises to a select few employees of Dr. Bulloch's choosing would breach company policy as it could potentially open the company up to discrimination claims under State and Federal law. Ms. Navarro told Dr. Bulloch to speak with the company's legal counsel if he had questions as to why he could not unilaterally change certain employees' compensation.

Dr. Bulloch further refused to follow company human resource policies when hiring employees, further putting BCHF at risk. For example, Dr. Bulloch would require Ms. Navarro to on-board employees that he hired "through the back door." In other words, Dr. Bulloch filled open job positions before Ms. Navarro or the BCHF Human Resources Department had the opportunity to post the positions on the company website. Some of Dr. Bulloch's hires began working at BCHF before completing pre-requisite requirements, such as background checks and qualification vetting.

RE: Anna Navarro
May 24, 2022
Page 3

Ms. Navarro complained to Pam Sime, the Chief Human Resources Officer, about Dr. Bulloch's behavior.

C. Ms. Navarro is Wrongfully Terminated

On or about June 13, 2021, Dr. Bulloch terminated Ms. Navarro, claiming "restructuring" of the organization as the reason for termination. BCHF released a press release after Ms. Navarro's termination stating "additional changes announced today to ensure long term sustainability of our clinical services are the: elimination or realignment of other top leadership positions, and a significant number of administrative positions not directly related to patient care." (<https://www.borregohealth.org/press-release-reorganization>.)

Nonetheless, Ms. Navarro is informed and believed that she was replaced with an outside consultant who was hired before her termination and that this consultant has now been hired to be the CHRO (or is in the process of being hired to that fulltime position).

In addition, Ms. Navarro is informed and believes that she is the only officer of BCHF who was laid off during this "restructuring." Ms. Navarro is further informed and believes that the roles and responsibilities – and compensation – of the "realigned" positions are one and the same.

III. BCHF'S LIABILITY

A. Retaliation in Violation of Labor Code § 1102.5

BCHF violated California's Labor Code by retaliating against Ms. Navarro for cooperating with the FBI during its raid, including answering questions asked of her during the raid and providing access to documents.

California's Labor Code § 1102.5(b) states:

An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance, or for providing information to, or testifying before, any public body conducting an investigation, hearing, or inquiry, if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employee's job duties.

In addition, Labor Code § 1102.5(c) provides that "an employer, or any person acting on behalf of the employer, shall not retaliate against an employee **for refusing to participate in an activity that**

RE: Anna Navarro
May 24, 2022
Page 4

would result in a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation.” (Emphasis added.)

The statute reflects California’s “broad public policy interest in encouraging workplace whistleblowers to report unlawful acts without fearing retaliation.” *Green v. Ralee Eng. Co.* (1998) 19 Cal.4th 66, 77.

The statute applies regardless of whether reporting illegal activities or violations or regulations are within the normal course and scope of the employee’s duties. *McVeigh v. Recology San Francisco* (2013) 213 Cal.App.4th 443, 469 (holding an employee’s report of illegal activity can constitute protected conduct even if employee “was simply doing her job” in making the report). Moreover, if the employee has a reasonable suspicion that a violation of a statutory or regulatory provision has occurred, the employee’s motivation for reporting the conduct is irrelevant to whether the disclosure is a protected activity. *Mize-Kurzman v. Marin Comm. College Dist.* (2012) 202 Cal.App. 832, 850-852.

When making a claim for violation of California’s Labor Code § 1102.5, the employee must establish a prima facie case of retaliation by a preponderance of the evidence. To do so, the employee must show each of the following:

1. the employee engaged in a protected activity;
2. the employer subjected the employee to an adverse employment action; and
3. there is a causal link between the two.

McVeigh v. Recology San Francisco (2013) 213 Cal.App.4th 443, 468.

The causal link may be established by an inference derived from circumstantial evidence such as the employer’s knowledge that the employee engaged in protected activities and the proximity in time between the protected action and allegedly retaliatory employment decision. *Morgan v. Regents of Univ. of Calif.* (2000) 88 Cal.App.4th 52, 69-70.

Once a plaintiff establishes a prima facie case of violation of Labor Code § 1102.5 by a preponderance of the evidence, “the employer shall have the burden of proof to demonstrate **by clear and convincing evidence** that the alleged action would have occurred for legitimate, independent reasons even if the employee had not engaged in activities protected by Section 1102.5.” Labor Code § 1102.6 (emphasis added). If that is established, then the plaintiff must prove those stated reasons for the termination are pretextual. See *Bowen v. M. Caratan, Inc.* (E.D. Calif. 2015) 142 F.Supp.3d 1007, 1031.

The California Supreme Court recently issued an important decision that clarified “Section 1102.6 provides the governing framework” for whistleblower retaliation claims brought under Section 1102.5, and a “plaintiff need not satisfy” the *McDonnell Douglas* burden-shifting framework to establish a claim for whistleblower retaliation. *Lawson v. PPG Architectural Finishes* (2022) 12 Cal.5th 703, 718.) Under the McDonnell Douglas standard applicable to most discrimination and retaliation claims, if an employer identifies a legitimate nondiscriminatory basis for an adverse employment action, the burden falls on the employee to identify evidence of pretext to establish a claim and

RE: Anna Navarro
May 24, 2022
Page 5

avoid an employer's motion for summary judgment. However, for claims arising under Section 1102.5, the employee need only demonstrate that the whistleblowing activity was a "contributing factor" in the employer's decision to establish a basis for liability, thereby placing the burden on the employer to establish by clear and convincing evidence that it would have made the decision for legitimate, independent reasons.

In this case, Ms. Navarro will be able to establish a prima facie case for violation of California's Labor Code § 1102.5 due to the close proximity in time between the FBI raid and her termination and the fact that BCHF's management immediately expressed displeasure to Ms. Navarro after the raid. Moreover, there is a complete absence of facts to support a legitimate, independent reason for Ms. Navarro's termination. Despite the claimed "restructuring," Ms. Navarro was the only officer let go, and she was immediately replaced, belying any claim that her duties were obsolete or unnecessary.

Accordingly, BCHF violated California's Labor Code § 1102.5 and will be liable for damages that it proximately caused as a result.

B. Age Discrimination

Although there is a clear violation of California Labor Code § 1102.5, we are also extremely concerned that Ms. Navarro was terminated because of her age.

The California Fair Employment and Housing Act ("FEHA") and the federal Age Discrimination in Employment Act of 1967 ("ADEA") prohibit discrimination and retaliation by an employer based on an employee's age. Remedies in court actions include compensatory and punitive damages and attorneys' fees as well as back pay and injunctive relief.

Under FEHA, it is unlawful for employers with more than five employees to discriminate against individuals over the age of 40 on the basis of age, in disciplining or dismissing from employment.

In order to establish a prima facie case of age discrimination under the FEHA, a plaintiff must present circumstantial evidence that a reasonable inference of age discrimination arises. Such a reasonable inference arises when plaintiff can show each of the following:

- plaintiff is over the age of 40,
- plaintiff suffered an adverse employment action,
- plaintiff was performing satisfactorily at the time of the adverse action, and
- plaintiff suffered the adverse action under circumstances giving rise to an inference of unlawful discrimination.

(*Sandell v. Taylor-Listug, Inc.* (2010) 188 Cal.App.4th 297, 321 (trial court erred in granting employer's motion for summary adjudication on employee's age discrimination claim, where employee presented prima facie case through evidence he was satisfactorily performing and within short period of time he was replaced by someone considerably younger, where employee presented sufficient evidence that employer's proffered reasons for terminating his employment were untrue and pretext for discrimination, and where employee presented other evidence of discriminatory animus).)

RE: Anna Navarro
May 24, 2022
Page 6

Here, Ms. Navarro was 52 years old when she was terminated. She was an experienced HR professional who was making more than \$200,000 a year plus benefits.

Moreover, Ms. Navarro never received a negative performance review or disciplinary action. Rather, Ms. Navarro was – at a minimum – a satisfactory performer, who was essential to the functioning of the HR Department at BCHF.

But Ms. Navarro was the only officer who was let go during the “restructuring” and she was immediately replaced by a consultant. Consequently, it appears likely that Ms. Navarro’s termination was due to her age.

IV. DAMAGES

Ms. Navarro has been and will continue to be damaged as a result of experiencing age discrimination and pre-textual wrongful termination.

Past, present, and future wage loss: Ms. Navarro is entitled to all wages she would have earned were she not wrongfully terminated. Ms. Navarro was planning to retire from her job at BCHF. She was terminated when she was 52.

At the time of her termination, Ms. Navarro’s annual salary was \$208,494.00. She was also in line to receive a bonus of 12% of her salary (\$25,019.28) and she had benefits including medical insurance, a 401k retirement plan and six weeks vacation. Prior to the Covid-19 pandemic, Ms. Navarro’s annual salary was \$257,400 per year.

Ms. Navarro has been unable to find a new job since her termination. She has applied to at least six jobs and been interviewed twice, but she has been told she is overqualified and was not offered any position.

Emotional Distress: The extreme and outrageous actions by BCHF and Dr. Bulloch have caused Ms. Navarro severe emotional distress and anxiety for which she would be entitled to significant damages. Ms. Navarro worked extremely hard for BCHF and did a good job for her employer; to have her dedication rewarded with a discriminatory firing based on complying with a government investigation and her age has been traumatic. Ms. Navarro has been unable to sleep regularly since her termination, embarrassed by BCHF’s actions and fearful and anxious that over the possibility that she will never find a similar, full-time job with benefits due to her age.

Punitive damages & Attorneys’ fees: FEHA provides for recovery of attorneys’ fees and costs to prevailing plaintiffs. Were this matter to be filed and prosecuted, the fees and costs would eclipse the six-figure mark in short order. Moreover, we believe there is a significant potential for punitive damages given the intentional nature of the conduct discussed above.

RE: Anna Navarro
May 24, 2022
Page 7

V. DEMAND FOR EMPLOYMENT RECORDS AND PRESERVATION OF DOCUMENTS

Further, this correspondence also serves as a demand for documents. The failure to timely comply with the demands may subject BCHF to civil penalties.

California Labor Code § 226 requires that upon demand that BCHF furnish Ms. Navarro with her itemized wage statements for each pay period reflecting hours worked, rate of pay, and gross wages earned. Demand is hereby made for production of all of Ms. Navarro wage statements within twenty-one (21) days of receipt of this letter.

California Labor Code § 432 requires that upon demand BCHF furnish Ms. Navarro with all documents she executed, signed, or otherwise agreed to related to obtaining or holding her employment including application for employment, employee handbook, arbitration agreement, and company policy details and acknowledgements. Demand is hereby made for production of all of these documents within thirty (30) days of receipt of this letter.

California Labor Code § 1198.5 requires that upon demand BCHF furnish all of Ms. Navarro's personnel records "related to employee's performance or to any grievance concerning the employee," including performance reviews, disciplinary notes, and complaints about or from the employee. Demand is hereby made for production of all of Ms. Navarro's personnel records within thirty (30) days of receipt of this letter.

All the aforementioned documents should be sent to the attention of the undersigned at this office. A signed authorization form by Ms. Navarro will be provided upon request.

This correspondence also serves as notice to BCHF of its legal obligation to preserve all evidence related to our client's employment and termination. Failure to do so could result in sanctions in favor of my client.

VI. CONCLUSION

In summary, we are confident that BCHF is liable for violation of California law on several grounds, and the damages to Ms. Navarro are significant. We are reaching out to BCHF, however, to determine if the company wishes to mediate these claims in an effort to resolve them without litigation. We would ask for the company to pay for the costs of mediation, but we would be willing to consider any mediators the company proposes. Having said that, we would suggest the following mediators: Denise Asher, Jill Sperber, Kim Deck, and Gail Glick.

RE: Anna Navarro
May 24, 2022
Page 8

We look forward to your response to this letter on or before June 3, 2022.¹ If BCHF would like to discuss this matter by phone at any time, we welcome that opportunity.

Sincerely,



William F. Small III

WFS

CC: Client

¹ Although we sincerely hope to avoid any protracted dispute over these issues, this letter also serves as notice to BCHF of its legal obligation to preserve all documents and evidence related to our client's employment and her termination.

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