

1 ROB BONTA
Attorney General of California
2 RICHARD T. WALDOW
Supervising Deputy Attorney General
3 GRANT LIEN
KENNETH K. WANG
4 Deputy Attorneys General
State Bar No. 201823
5 300 S. Spring Street, No. 1702
Los Angeles, CA 90013
6 Telephone: (213) 269-6217
Fax: (213) 731-2125
7 E-mail: Kenneth.Wang@doj.ca.gov
Attorneys for Defendant/Appellant California
8 Department of Health Care Services

9
10 UNITED STATES BANKRUPTCY 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,
16

17
18
19 BORREGO COMMUNITY HEALTH
FOUNDATION, a California nonprofit
20 public benefit corporation,

21 Plaintiff,
22

23 v.
24

25 CALIFORNIA DEPARTMENT OF
HEALTH CARE SERVICES, by and
through its Director, Michelle Baass,

26 Defendants.
27
28

Case No. 22-02384-LT11

Chapter 11 Case

Adv. Pro. No. 22-90056-LT

**APPELLANT CALIFORNIA
DEPARTMENT OF HEALTH
CARE SERVICES'S STATEMENT
OF ISSUES ON APPEAL**

[Fed. R. Bankr. P. 8009]

On November 7, 2022, Appellant California Department of Health Care
Services (Department) filed a Notice of Appeal to the "Court Modified" Order on



1 Plaintiff's Emergency Motion, and accompanying Findings of Fact and Conclusions
2 of Law, filed on October 26, 2022. The Department now hereby submits, pursuant
3 to Federal Rule of Bankruptcy Procedure 8009, this statement of issues on appeal:

4 **STATEMENT OF ISSUES ON APPEAL**

5 1. Whether the Bankruptcy Court erred in concluding that the payment
6 suspension imposed by the California Department of Health Care Services is not
7 exempt from the automatic stay pursuant to 11 U.S.C. § 362(b)(4).

8 2. Whether the Bankruptcy Court erred in concluding that the Debtor was
9 not required to exhaust administrative remedies before seeking the relief in the
10 Emergency Motion.

11 3. Whether the Bankruptcy Court erred in determining that the Patient Care
12 Ombudsperson's (PCO) declarations were admissible and credible.

13 4. Whether the Bankruptcy Court erred in determining that the payment
14 suspension would have a detrimental impact and cause irreparable harm to the
15 Debtor and its patients, employees, and creditors.

16 Dated: November 21, 2022

Respectfully submitted,

17 ROB BONTA
18 Attorney General of California
19 RICHARD T. WALDOW
20 Supervising Deputy Attorney General

21 
22 KENNETH K. WANG
23 GRANT LIEN
24 Deputy Attorneys General
25 Attorneys for Defendant/Appellant
26 California Department of Health Care
27 Services
28

LA2022602345

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:

**300 South Spring Street, Room 1700
Los Angeles, CA 90013**

A true and correct copy of the foregoing document entitled (*specify*): **APPELLANT CALIFORNIA DEPARTMENT OF HEALTH CARE SERVICES'S STATEMENT OF ISSUES ON APPEAL** will be served or was served (**a**) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (**b**) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **November 21, 2022**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Samuel R. Maizel, attorney for the Plaintiff Borrego Community Health Foundation at Samuel.maizel@dentons.com;
- Tania M. Moyron, attorney for Plaintiff Borrego Community Health Foundation at tania.moyron@dentons.com;
- David Ortiz, Esq., at the Office of the United States Trustee at david.a.ortiz@usdoj.gov;
- Regional 15 of the Office of the United States Trustee at ustp.region15@usdoj.gov;
- Steven Golden, Esq. attorney for the Unsecured Creditors Committee at sgolden@pszjlaw.com
- and INDIVIDUALS AND ENTITIES ON THE ATTACHED LIST

☒ Service information continued on attached page

2. SERVED BY UNITED STATES MAIL:

On (*date*) _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

SEE ATTACHED SERVICE MAILING LIST

☐ Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) _____, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

☐ Service information continued on attached page

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

November 21, 2022 NORMA L. HERRERA-GILBODY
Date *Printed Name*

/s/ Norma L. Herrera-Gilbody
Signature

INDIVIDUALS AND ENTITIES

Description	CreditorName	CreditorNoticeName	Email
Counsel for Ally Bank , c/o AIS Portfolio Services, LLC	AIS Portfolio Services, LLC	Ally Bank Department	ECFNotices@aisinfo.com
Secured Creditors	Ally Auto		corporatefinance@ally.com
Secured Creditors	Ally Auto		support@invest.ally.com
Top Creditor	Arthur Santos Smile Dental	Attn Arthur Santos	yoko_miyai@yahoo.com
Counsel for AB Staffing Solutions, LLC	Bryan Cave Leighton Paisner LLP	Kyle S. Hirsch	kyle.hirsch@bclplaw.com
Counsel for AB Staffing Solutions, LLC	Bryan Cave Leighton Paisner LLP	Olivia J. Scott	olivia.scott3@bclplaw.com
Counsel for McKesson Corporation, on Behalf of itself and Certain Corporate Affiliates	Buchalter	Jeffrey K. Garfinkle	jgarfinkle@buchalter.com
Counsel for Creditor Oracle America, Inc., successor in interest to NetSuite, Inc.	Buchalter, A Professional Corporation	Shawn M. Christianson, Esq.	schristianson@buchalter.com
California Department of Public Health	CA Department of Public Health	Stephanie Spich	stephanie.spich@cdph.ca.gov
California Health & Human Services Agency	CA Health & Human Services Agency (CalHHS)	Mark Ghaly, Secretary & Jared Goldman, General Counsel	Mark.Ghaly@chhs.ca.gov; Jared.Goldman@chhs.ca.gov
Center for Medicare and Medicaid Services	Center for Medicare and Medicaid Services		OPOLE_IFM_Bankruptcy@cms.hhs.gov
Top Creditor	Ehab Samaan		ehabminerva@aol.com
Counsel for Tower Energy Group, Inc.	Elkins Kalt Weintraub Reuben Gartside LLP	Michael I. Gottfried, Esq., Royce Zur, Esq.	mgottfried@elkinskalt.com; rzur@elkinskalt.com
Secured Creditors	Enterprise Fleet Management		fleetquestions@erac.com
Secured Creditors	First American Equipment Finance		mail@faef.com
Counsel for Premier Healthcare Management, Inc	Fitch Law Firm	Stephen J. Fitch & Bernard M. Hansen	bernardmhansen@sbcglobal.net; steve@fitchlawfirm.com
Top Creditor	Gallagher Benefit Services, Inc	Attn Michelle Gonzalez	Michelle_Gonzalez@ajg.com
Top Creditor	Greenway Health, LLC	Attn Karen Mulroe	karen.mulroe@greenwayhealth.com
Committee Member	Greenway Health, LLC	Attn Stephen Janes	Stephen.janes@greenwayhealth.com
Counsel for Philip D. Szold, M.D., Inc. dba La Mesa Pediatrics	Hanson Bridgett LLP	Anthony J. Dutra	adutra@hansonbridgett.com
Top Creditor	Internal Revenue Service	Attn Gregory S Moxley	gregory.s.moxley@irs.gov
IRS	Internal Revenue Service	Attn Susanne Larson	SBSE.Insolvency.Balt@irs.gov
Claims and No icing Agent	KCC	P. Joe Morrow IV	BorregoHealthInfo@kcccllc.com
Counsel for Ramona Crossings, LLC	Kirby & McGuinn, A P.C.	Dean T. Kirby, Jr.	dkirby@kirbymac.com
Counsel for Premier Healthcare Management, Inc (Top Creditor)	Kyle Harris LLP	Laura Kimberly Gantney, Jeffrey Harris	lgantney@klhipbiz.com; jharris@KLHIPBIZ.com
Counsel for Greenway Health, LLC	Law Office Of Christine E. Baur	Christine E. Baur, Esq.	chris_ine@baurbklaw.com
Top Creditor	McKesson Corpora ion	Attn Lori Schechter	lori.schechter@mckesson.com
Committee Member	McKesson Corpora ion	Attn Pamela M. Craik, Regional Credit Director	Pamela.craik@McKesson.com
Top Creditor	Mehrnaz Irani	Vista Village Family Dentistry	info@vistavillagefamilydentistry.com
Top Creditor	Mohamed Dowaidari		dds1.upland@gmail.com
Top Creditor	MPower TelePacific	Attn Steve Wexler	Steve.Wexler@tpx.com
Top Creditor	Mustafa Bilal		mbdds@sbcglobal.net
Committee Member	Mustafa Bilal, DDS, Inc.	Attn Mustafa Bilala, DDS	VillageDentalGroupOnline@yahoo.com
California Attorney General	Office of the Attorney General	Consumer Protection Section, Attn Bankruptcy No ices	AGelectronicsservice@doj.ca.gov
Counsel for the California Department of Health Care Services	Office of the CA Attorney General	DOJ - Jennifer Kim	Jennifer.Kim@doj.ca.gov
Deputy General Counsel for the California Department of Health Care Services	Office of the CA Attorney General	DOJ - Kenneth K Wang	Kenne h.Wang@doj.ca.gov
Top Creditor	Oz Group Inc	Attn Chris Rosales	chris.rosales@yourccsteam.com
Proposed Counsel for the Official Committee of Unsecured Creditors	Pachulski Stang Ziehl & Jones LLP	Jeffrey N. Pomerantz, Esq., Teddy M. Kapur, Esq., Steven W. Golden, Esq.	jpomerantz@pszjlaw.com; tkapur@pszjlaw.com; sgolden@pszjlaw.com
Counsel for Creditor Pourshirazi & Youssefi Dental Corporation	Pourshirazi & Youssefi Dental	c/o Brinkman Law Group, PC	firm@brinkmanlaw.com
Committee Member	Pourshirazi & Youssefi Dental Corporation	Attn Homayoun Pourshirazi	Drhpemail@gmail.com
Top Creditor	Pourshirazi & Youssefi Dental Corporation	Attn Homayoun Pourshirazi	doctor_pourshirazi@msn.com
Top Creditor	Premier Healthcare Management	Attn Daryl R Priest	daryl@priesthomes.com
SEC Headquarters	Securities & Exchange Commission	Secretary of the Treasury	SECBankruptcy-OGC-ADO@SEC.GOV
Counsel for Creditor Anna Navarro	Small Law PC	Kelly Ann Tran	kelly@smalllawcorp.com
Counsel for California Physicians Service dba Blue Shield of California and Blue Shield of California Promise Health Plan, California Physicians Service dba Blue Shield of California and Blue Shield of California Promise Health Plan	Snell & Wilmer L.L.P.	Andrew B. Still & Michael B. Reynolds	astill@swlaw.com; mreynolds@swlaw.com
Top Creditor	Tejas Modi		drtejasmodi@yahoo.com
Counsel for Daryl R. Priest (Top Creditor)	The Maul Firm PC	Anthony F Maul	afmaul@maulfirm.com
Office of The United States Trustee	US Trustee for Southern District of CA	Tiffany Carroll & David Ortiz	tiffany.l.carroll@usdoj.gov; david.a.ortiz@usdoj.gov; ustp.region15@usdoj.gov
Office of The United States Trustee	US Trustee for Southern District of CA		Ustp.region15sop@usdoj.gov

Description	CreditorName	CreditorNoticeName	Email
Secured Creditors	VAR Technology Finance		info@vartechnologyfinance.com
Committee Member	Vista Village Family Dentistry	Attn Mehrnaz Irani, DDS	info@vistavillagefamilydentistry.com
Top Creditor, Committee Member	Vitamin D Public Relations, LLC	Attn Denise Gitsham	dgitsham@gmail.com
Top Creditor, Committee Member	We Klean Inc.	Attn Aracelis Gutierrez	agutierrez@weklean.org; nleal@weklean.org