SAMUEL R. MAIZEL (SBN 189301)
samuel.maizel@dentons.com
TANIA M. MOYRON (SBN 235736)
tania.moyron@dentons.com
REBECCA M. WICKS (SBN 313608)
rebecca.wicks@dentons.com
DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
Tel: 213 623 9300 / Fax: 213 623 9924

Attorneys for Chapter 11 Debtor and Debtor In Possession

Jeffrey N. Pomerantz (Bar No. 143717)
Steven W. Golden (Admitted Pro Hac Vice)
PACHULSKI STANG ZIEHL & JONES LLP
10100 Santa Monica Boulevard, 13th Floor
Los Angeles, California 90067
Tel: 310 227 6910 / Fax: 310 201 0760
Email: jpomerantz@pszjlaw.com
sgolden@pszjlaw.com

Attorneys to the Official Committee of Unsecured Creditors

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

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 **JOINT MEMORANDUM OF LAW IN SUPPORT OF CONFIRMATION OF THE FIRST AMENDED JOINT COMBINED DISCLOSURE STATEMENT AND PLAN OF LIQUIDATION OF BORREGO COMMUNITY HEALTH FOUNDATION AND OMNIBUS REPLY TO THE OBJECTIONS TO CONFIRMATION** Judge: Honorable Laura S. Taylor Hearing: Date: January 17, 2024 Time: 10:00 a.m. Location: Department 3

2202384240111000000000007

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

TABLE OF CONTENTS

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

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

TABLE OF AUTHORITIES

Page(s)

Cases

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Statutes

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

Other Authorities

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

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

Borrego Community Health Foundation, the debtor and debtor in possession (the "Debtor") in the above-captioned chapter 11 bankruptcy case (the "Case"), and the Official Committee of Unsecured Creditors (the "Committee," and collectively with the Debtor, the "Plan Proponents") hereby file this brief in support of confirmation of the *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1168] (as may be subsequently supplemented and amended, the "Plan")[1] and in reply to the objections filed by various parties [Docket No. 1219, 1232] (the "Confirmation Brief"), and, in support of the Confirmation Brief, the Plan Proponents submit the *Declaration of Isaac Lee* (the "Lee Decl."), and respectfully state as follows:

I. INTRODUCTION

Due to the threatened suspension of Medi-Cal payments from the California Department of Health Care Services (**"**DHCS**"**), at the beginning of this Case, it was unclear if the Debtor would be able to preserve the high-quality patient care for underserved communities it provided and what, if any, value the Debtor**'**s estate (the **"**Estate**"**) could provide to its creditors. Remarkably, through the tireless efforts of the Debtor and its management, advisors, stakeholders, the Committee, community members, and employees, among others, the Debtor has achieved its goal of assuring continuation of its charitable mission, maintaining the Debtor**'**s operations to ensure continuing high-quality, culturally competent care to the Debtor**'**s patients, preserving jobs, and maximizing the value of the Estate for all stakeholders through the sale of substantially all of its assets.

The Plan provides a 100% recovery to the Holders of Allowed General Unsecured Claims and implements the settlement with DHCS. As set forth in the *Certification of Sydney Reitzel Regarding the Solicitation and Tabulation of Votes on the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of*

[1] Unless otherwise provided herein, all capitalized terms have the definitions set forth in the Plan.

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

Liquidation of Borrego Community Health Foundation (the "Voting Declaration"), the Plan has been overwhelmingly accepted by all Classes eligible to vote on the Plan (the "Voting Classes").

Further reflecting the consensual nature of the Plan, the Plan Proponents received only two objections to confirmation by the objection deadline—one from the United States Trustee (the "UST"), the *Acting United States Trustee's Objection to Confirmation of the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation* [Docket No. 1219] (the "UST Objection"), and the second from Oracle America, Inc. ("Oracle"), *Oracle America, Inc.'s Cure Objection and Reservation of Rights Regarding Debtor's Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1232] (the "Oracle Objection"). The Oracle Objection is limited and is not related to confirmation issues. Only the UST raises objections to confirmation, which the Debtor and the Committee have addressed below, as appropriate. To the extent the UST Objection is not resolved by the proposed changes set forth below that will be in the Confirmation Order, it should be overruled because the Plan meets all requirements necessary for confirmation under the Bankruptcy Code.[2]

The Plan Proponents will file a proposed Confirmation Order the day prior to the Confirmation Hearing, to address the objections, to incorporate language consensually agreed to by the *Stipulation By and Among the Debtor, the Official Committee of Unsecured Creditors and Creditors DRP Holdings, LLC, Inland Valley Investments, LLC, Premier Healthcare Management, Inc., and Promenade Square, LLC* [Docket No. 1238] (the "Premier Stipulation"),[3] and provide the following non-material modifications and clarifications to the Plan and the Confirmation Order:

[2] All references to "§" or "section" herein are to sections of the United States Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*, unless otherwise noted.

[3] The Premier Stipulation resolves certain issues among the Debtor, the Committee, DRP Holdings, LLC ("DRP"), Inland Valley Investments, LLC ("IVI"), Premier Healthcare Management, Inc.

(i) the Plan will reserve for the full amount of the Premier Creditor's claims and such amounts shall be deposited in interest bearing accounts, which maximize value and maintain safety. The interest bearing accounts shall be invested in US 1 Month Treasury Bills or other US backed instruments;
(ii) to the extent a Disputed Claim becomes an Allowed Claim, Holders of such Claims shall be entitled to the interest that accrues on the *pro rata* amount of their Claim;
(iii) the clarification of language that Creditors who do not vote on the Plan are not considered Releasing Parties for purposes of the Third-Party Release;
(iv) language providing that the injunction pursuant to Section 17.3(a) of the Plan is effective so long as the Plan is Effective; and
(v) clarifying language in Section 17.5 that such section provides that any obligations under the Plan of the Debtor's Estate are contractual only.

As set forth more fully below, these non-material modifications will not require resolicitation of the Plan and do not alter the substantive rights of Holders of Claims treated under the Plan. In addition, prior to the Confirmation Hearing, the Plan Proponents will file an updated Schedule of Disputed Claims, removing certain formerly Disputed Claims that, as of the Effective Date, will be Allowed Claims entitled to a expedient distribution.

Based on the foregoing, and as set forth below, the Plan Proponents respectfully request that the Court confirm the Plan and enter the Confirmation Order.

II. FACTUAL BACKGROUND

A. General Background

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

2. As of the Petition Date, the Debtor was a nonprofit Federally Qualified Health Center ("FQHC") that provided health care services to low-income and rural patients in San Diego and Riverside Counties through a system of eighteen clinics, two pharmacies, and six mobile units. In 2021, the Debtor provided approximately

("Premier"), and Promenade Square, LLC ("Promenade," collectively with DRP, IVI, and Premier, the "Premier Creditors"). On January 11, 2024, the Premier Stipulation was approved by Court order. [Docket No. 1239].

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

386,000 patient care visits to over 94,000 patients. The Debtor's services included comprehensive primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women's health, prenatal care, veteran's health, chiropractic services, telehealth, and pharmacy.

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

4. On September 26, 2022, the UST appointed the Committee in this Case [Docket No. 49].

B. The DHCS Settlement and the Sale

5. On March 7, 2023, the Court entered its *Order on Debtor's Motion to Approve Compromise Among Debtor, Official Committee of Unsecured Creditors, and California Department of Health Care Services* [Docket No. 544], which approved the terms of a settlement with DHCS (the "DHCS Settlement"). Subsequently, on September 26, 2023, the Debtor filed the *Notice of Filing of Executed Settlement Agreement among the Debtor, the Official Committee of Unsecured Creditors, and the California Department of Health Care Services* [Docket No. 923]. As set forth therein, the proceeds of the sale of substantially all the Debtor's assets (the "Sale") will be distributed in accordance with the terms of the DHCS Settlement and the confirmed plan.

6. On March 13, 2023, the Court entered the *Order (A) Authorizing the Sale of Property to Desert AIDS Project d/b/a DAP Health Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease Related Thereto; and (C) Granting Related Relief* [Docket No. 559], which approved the Sale to DAP Health, Inc.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

7. On July 31, 2023, the Sale closed, and the Debtor filed the *Notice of Occurrence of Closing of Sale to DAP Health, Inc.* [Docket No. 823].

C. Plan Overview

8. On September 25, 2023, the Debtor, with the approval of the Committee, filed the *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* (the "Motion to Combine") [Docket No. 920], which sought (i) authority to file a joint disclosure statement and liquidating plan; and (ii) a schedule a hearing for final approval of the Disclosures and confirmation the of the Plan and related deadlines.

9. On October 30, 2023, the Court entered the *Order on 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* (the "Order to Combine") [Docket No. 1041].

10. On November 17, 2023, the Debtor and the Committee jointly filed the *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket Nos. 1091, 1141], which was subsequently amended by the Plan [Docket No. 1168]. The Plan provides for the liquidation of assets, a wind-down of remaining affairs, and dissolution through a liquidating trust.

11. If confirmed and consummated, the Plan will provide for the distribution of the Sale proceeds to creditors in accordance with the DHCS Settlement and the priorities of the Bankruptcy Code.

12. Claims are classified as follows:

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Class	Designation	Impairment	Entitled to Vote
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

13. As shown above, the Plan presently provides for four different classes of claims. Under the Plan, claims in Class 3 and Class 4 (collectively, the "Voting Classes") are impaired by the Plan, and such Holders are entitled to vote to reject or accept the Plan. Claims in Class 1 and Class 2 (collectively, the "Unimpaired Classes") are unimpaired by the Plan, and such Holders are deemed to have accepted the Plan pursuant to § 1126(f) and are therefore not entitled to vote.

14. In addition, pursuant to § 1123(a)(1), the Plan designates four categories of claims that are entitled to receive distributions under the Plan yet are not classified for purposes of voting. These categories are (1) Administrative Claims, (2) Professional Claims, (3) Statutory Fees, and (4) Priority Tax Claims (collectively, the "Unclassified Claimholders").

D. The Disclosure Statement and Solicitation

15. On November 17, 2023, the Debtor and the Committee filed the *Joint Motion of the Debtor and the Official Committee of Unsecured Creditors for an Entry of an Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Joint Disclosure Statement and Plan; (II) Approving Solicitation Packages and Procedures; (III) Approving the Forms of Ballots; (IV) Setting Related Deadlines and (V) Granting Related Relief* [Docket No. 1093] (the "Solicitation Motion"), which sought, among other things, (i) interim approval of the Disclosures in the Plan, and (ii) approval of the solicitation and voting procedures (the "Solicitation Procedures").

16. On December 7, 2023, the Court granted the Solicitation Motion by its *Order on Joint Motion of the Debtor and the Official Committee of Unsecured Creditors for an Entry of an Order (I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Joint Disclosure Statement and Plan; (II) Approving*

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Solicitation Packages and Procedures; (III) Approving the Forms of Ballots; (IV) Setting Related Deadlines and (V) Granting Related Relief [Docket No. 1179] (the "Solicitation Order"). The Solicitation Order granted interim approval of the Disclosures and approved the Solicitation Procedures.

17. Pursuant to the Solicitation Order, on or before December 11, 2023, the Plan Proponents, through Debtor's Court-appointed voting and claims agent, KCC, timely mailed a solicitation package to holders of claims entitled to vote on the Plan and timely mailed notices of non-voting claims to holders of claims not entitled to vote on the Plan and other interested parties.

18. On December 11, 2023, the Plan Proponents also filed certain documents constituting the plan supplement, which may be amended modified, or supplemented from time to time [Docket No. 1182] (the "Plan Supplement").

E. Vote Tabulation

19. The deadline to file objections to the Plan and the deadline for all Holders of Claims entitled to vote on the Plan to cast their ballots was January 8, 2024, at 4:00 p.m. (Pacific Time) (the "Voting Deadline"). All classes of creditors entitled to vote have voted in favor of confirmation. Concurrently herewith, the Debtor filed the Voting Declaration and reports KCC.

20. After the Voting Deadline, KCC tabulated the votes to accept or reject the Plan reflected in the Ballots received on or before the Voting Deadline. Voting Declaration at ¶¶ 8-9. As set forth in the Voting Declaration and the table below, each class eligible to vote on the Plan (the "Voting Classes") overwhelmingly voted to accept the Plan:

Class	Class Description	Members Voted	Members Accepted	Members Rejected	Members Abstained	% Members Accepted	% Members Rejected
3	General Unsecured Claims	34	31	3	1	91.18%	8.82%
4	Allowed DHCS Claim	1	1	0	0	100.00%	0.00%

Class	Class Description	Total $ Voted	$ Accepted	$ Rejected	$ Abstained	% $ Accepted	% $ Rejected
3	General Unsecured Claims	$4,825,276.94	$4,328,255.55	$497,021.39	$165,615.00	89.70%	10.27%
4	Allowed DHCS Claim	$112,000,000.00	$112,000,000.00	$0.00	$0.00	100.0%	0.00%

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

21. The hearing on Plan confirmation (the "Confirmation Hearing") is scheduled to take place on January 17, 2024, at 10:00 a.m. (Pacific Time).

III. THE PLAN SATISFIES EACH REQUIREMENT FOR CONFIRMATION

To confirm the Plan, the Plan Proponents must demonstrate by a preponderance of the evidence that they have satisfied the provisions of § 1129. *See In re Ambanc La Mesa Ltd. P'ship*, 115 F.3d 650, 653 (9th Cir. 1997) ("The bankruptcy court *must* confirm a Chapter 11 debtor's plan… if the debtor proves by a preponderance of the evidence" that the plan meets the requirements of § 1129); *see also Heartland Fed. Sav. & Loan Ass'n v. Briscoe Enters., Ltd. II (In re Briscoe Enters., Ltd. II)*, 994 F.2d 1160, 1165 (5th Cir. 1993) ("The combination of legislative silence, Supreme Court holdings, and the structure of the [Bankruptcy] Code leads this Court to conclude that preponderance of the evidence is the debtor's appropriate standard of proof both under § 1129(a) and in a cramdown."); *In re Bally Total Fitness of Greater N.Y., Inc.*, No. 07-12395, 2007 WL 2779438, at *3 (Bankr. S.D.N.Y. Sept. 17, 2007) ("The Debtors, as proponents of the Plan, have the burden of proving the satisfaction of the elements of Sections 1129(a) and (b) of the Bankruptcy Code by a preponderance of the evidence."). The Plan Proponents submit that the Plan complies with all relevant sections of the Bankruptcy Code, including §§ 1122, 1123, 1125, 1126, 1127, and 1129, as well as the Bankruptcy Rules and applicable non-bankruptcy law. This memorandum addresses each requirement individually.

A. The Plan Complies with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(1))

Section 1129(a)(1) requires that a chapter 11 plan "compl[y] with the applicable provisions of [the Bankruptcy Code]." 11 U.S.C. § 1129(a)(1). The legislative history of § 1129(a)(1) explains that this provision encompasses the requirements of §§ 1122 and 1123 including, principally, rules governing the classification of claims and interests and the contents of a chapter 11 plan. S. Rep. No. 95-989, at 126 (1978); H.R. Rep. No. 95-595, at 412 (1977); *see also Kane v.*

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Johns-Manville Corp. (In re Johns-Manville Corp.), 843 F.2d 636, 648-49 (2d Cir. 1988) (suggesting Congress intended the phrase "'applicable provisions' in [§ 1129(a)(1)] to mean provisions of Chapter 11… such as section 1122"); *see also In re Mirant Corp.*, No. 03-46590, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (noting that objective of § 1129(a)(1) is to assure compliance with sections of Bankruptcy Code governing classification and contents of a plan); 7 *Collier on Bankruptcy* ¶ 1129.02 (Richard Levin & Henry J. Sommer eds., 16th ed.). As explained below, the Plan complies with §§ 1122 and 1123 in all respects.

1. ***The Plan Satisfies the Classification Requirements of § 1122***

Section 1122 of the Bankruptcy Code governs the classification of claims and interests. Section 1122(a) requires that a plan "place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests in such class." The United States Court of Appeals for the Ninth Circuit (the "Ninth Circuit") has recognized that, under § 1122, plan proponents have significant flexibility to place similar claims into different classes, provided there is a rational basis for doing so. *See Barakat v. Life Ins. Co. of Va. (In re Barakat)*, 99 F.3d 1520, 1524–25 (9th Cir. 1996); *see also In re Rexford Props., LLC*, 558 B.R. 352, 361 (Bankr. C.D. Cal. 2016) ("A claim that is substantially similar to other claims may be classified separately from those claims, even though section 1122(a) does not say so expressly."). For example, courts have allowed separate classification where there are good business reasons for separate classification. *See Barakat*, 99 F.3d at 1524-25 (holding that substantially similar claims may be classified separately if there is a "legitimate business or economic justification" for doing so).

Section 9 of the Plan provides for the separate classification of Claims into four different Classes based upon differences in the legal or factual nature of those Claims or other relevant and objective criteria. Each of the Claims in a particular Class under the Plan is substantially similar to the other Claims in such Class, and the classification structure is necessary to implement certain aspects of the Plan. Valid

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

and sound factual and legal reasons exist for the separate classification of Claims, including, but not limited to the fact that each of the Claims in a particular Class is substantially similar to the other Claims in such Class and therefore the classification scheme does not discriminate unfairly between or among holders of such Claims.

Specifically, the Plan divides the classified Claims and Interests into the following Classes:

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

As set forth above, Unclassified Claims are not classified and are separately treated under Section 8 of the Plan.

Finally, the classification structure was not designed to gerrymander the Classes to create an impaired accepting Class. This is evident in part based on the fact that each class voted overwhelmingly to accept the Plan. Further, Classes 3 and 4 are impaired Classes entitled to vote on the Plan. The Holders of Class 3 Claims are participants in the formation of the Plan and the Plan Proponents knew, at the time of Plan formulation, that the Holders of such Claims would vote to accept the Plan. Similarly, the Holder of the Class 4 Claim is a participant in the DHCS Settlement, and the Plan Proponents knew that such Holder would vote to accept the Plan in accordance with the DHCS Settlement. The Plan Proponents therefore had no motivation to gerrymander the Classes to obtain an impaired accepting Class. Accordingly, the Plan Proponents submit that the Plan fully complies with the requirements of § 1122

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

2. *The Plan Satisfies the Seven Mandatory Plan Requirements of § 1123(a)(1)-(a)(7)*

Section 1123(a) requires that the contents of a chapter 11 plan: (i) designate classes of claims and interests; (ii) specify unimpaired classes of claims and interests; (iii) specify treatment of impaired classes of claims and interests; (iv) provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim agrees to a less favorable treatment of such particular claim or interest; (v) provide adequate means for the plan's implementation; (vi) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (vii) contain only provisions that are consistent with the interests of the creditors and equity security holders and with public policy with respect to the manner of selection of any officer, director, or trustee under the plan.

The Plan satisfies the mandatory plan requirements set forth in § 1123(a). Sections 8, 9, and 10 of the Plan satisfy the first three requirements of § 1123(a) by designating Classes of Claims, as required by § 1123(a)(1), specifying the Classes of Claims that are Unimpaired under the Plan, as required by § 1123(a)(2), and specifying the treatment of each Class of Claims that is impaired, as required by § 1123(a)(3). The Plan also satisfies § 1123(a)(4)—the fourth mandatory requirement—because the treatment of each Allowed Claim within a Class is the same as the treatment of each other Allowed Claim in that Class unless the holder of a Claim consents to less favorable treatment on account of its Claim.

The provisions of the Plan provide adequate means for the Plan's implementation, thus satisfying the fifth requirement of § 1123(a). *See* § 1123(a)(5). The provisions of Sections 11, 12, 13, and 15 of the Plan, along with the Plan Supplement, relate to, among other things: (i) the continued existence of the Post-Effective Date Debtor and the membership of the Post-Effective Date Board of Directors; (ii) the establishment of the Liquidating Trust; (iii) the identity of the

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Liquidating Trustee and the identity of the Co-Liquidating Trustee; (iv) funding the distribution to creditors; (v) the establishment of operating accounts for the Post-Effective Date Debtor and the transfer of certain funds into the Liquidating Trust; (vi) provisions for certain reserves in the Liquidating Trust; and (vii) the preservation and/or destruction and abandonment of books and records in accordance with applicable law.

The sixth requirement of § 1123(a)—*i.e.*, that if a debtor is a corporation, its plan must prohibit the issuance of nonvoting equity securities—is also met. *See* § 1123(a)(6). The Debtor, which is a nonprofit public benefit corporation, will not issue any stock or other securities under the Plan. Thus, the Plan comports with § 1123(a)(6). *See In re St. Mary's Hosp., Passaic, N.J.*, No. 09-15619, 2010 WL 5126151, at *4 (Bankr. D.N.J. Feb. 2, 2010) ("Sections 1123(a)(6) and (a)(7) of the Bankruptcy Code are not applicable to this case, as the Debtor is a non-stock, not-for-profit corporation.").

Finally, the Plan fulfills the seventh requirement in § 1123(a), which requires that the Plan provisions with respect to the manner of selection of any officer, director, or trustee "contain only provisions that are consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7). Section 15.5 of the Plan provides for the appointment of a three-member Post-Effective Date Board of Directors. The initial members of the Post-Effective Date Board of Directors are designated in the Plan Supplement. [Docket No. 1182].

The Plan Proponents have also disclosed the identities of the Liquidating Trustee and the Co-Liquidating Trustee in the Plan Supplement. *Id.* All of the relevant parties required to provide input and/or consent of the selections of the individuals serving in the roles described in this paragraph, as well as the manner of selection of officers and the Post-Effective Date Board of Directors, is consistent with public policy and the interests of creditors. The Plan is also in compliance with the requirement that the selection of any officer, director, or trustee be made in the

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

interests of equity security holders because the Plan does not provide for the creation of any equity security interests. *See* 11 U.S.C. § 1123(a)(7); *see also St. Mary's Hosp., Passaic, N.J.*, 2010 WL 5126151, at *4 (finding § 1123(a)(7) inapplicable to nonprofit entities).

B. The Plan Proponents Have Complied with the Applicable Provisions of the Bankruptcy Code (11 U.S.C. § 1129(a)(2))

Section 1129(a)(2) requires that the proponent of a chapter 11 plan comply with the applicable provisions of the Bankruptcy Code. The legislative history to § 1129(a)(2) reflects that this provision is intended to encompass the disclosure and solicitation requirements set forth in § 1125 and the plan acceptance requirements set forth in § 1126. *See In re Johns-Manville Corp.*, 68 B.R. 618, 630 (Bankr. S.D.N.Y. 1986), *aff'd in part, rev'd in part on other grounds*, 78 B.R. 407 (S.D.N.Y. 1987), *aff'd*, 843 F.2d 636 ("Objections to confirmation raised under § 1129(a)(2) generally involve the alleged failure of the plan proponent to comply with § 1125 and § 1126 of the [Bankruptcy] Code."); *In re Downtown Inv. Club III*, 89 B.R. 59, 65 (B.A.P. 9th Cir. 1988) ("Section 1129(a)(2) in turn requires that the proponent of the plan complies with the applicable provisions of Title 11."); *see also* H.R. Rep. No. 95-595, at 412 (1977); S. Rep. No. 95-989, at 126 (1978) ("Paragraph (2) [of section 1129(a)] requires that the proponent of the plan comply with the applicable provisions of chapter 11, such as section 1125 regarding disclosure."). The Plan Proponents have complied with these provisions, including §§ 1121, 1125, 1126, and 1127, as well as Bankruptcy Rules 3017 and 3018, by carrying out the solicitation procedures approved by the Court in its Solicitation Order.

1. *The Plan Proponents Are Authorized to File the Plan Under § 1121*

Section 1121(c) provides that "[a]ny party in interest including the debtor… a creditors' committee, [or] a creditor… may file a plan." 11 U.S.C. § 1121(c). Since the Debtor and the Committee are co-proponents of the Plan, and the Plan Proponents

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

are all clearly parties in interest as expressly contemplated by § 1121(c), the requirements of § 1121 are satisfied.

2. ***The Plan Proponents Complied with the Disclosure Statement and Solicitation Requirements of § 1125***

Section 1125(b) prohibits the solicitation of acceptances or rejections of a plan "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved, after notice and a hearing, by the court as containing adequate information." 11 U.S.C. § 1125(b). The purpose of § 1125 is to ensure that parties-in-interest are fully informed on the condition of the Debtor, the means for implementation of the Plan, and the treatment of all classes of Claims and Interests so they may make an informed decision on whether to accept or reject the Plan. *See In re Cal. Fidelity, Inc.*, 198 B.R. 567, 571 (B.A.P. 9th Cir. 1996) ("At a minimum, § 1125(b) seeks to guarantee that a creditor receives adequate information about the plan before the creditor is asked for a vote."); *In re Art & Architecture Books of the 21st Century*, No. 2:13-bk-14135-RK, 2016 WL 1118743, at *14 (Bankr. C.D. Cal. Mar. 18, 2016) ("The primary purpose of a disclosure statement is to give creditors and interest holders the information they need to decide whether to accept the plan.") (citing *Captain Blythers, Inc. v. Thompson (In re Captain Blythers, Inc.)*, 311 B.R. 530, 537 (B.A.P. 9th Cir. 2004)); *In re Arnold*, 471 B.R. 578, 584-85 (Bankr. C.D. Cal. 2012).

The Plan Proponents have satisfied § 1125. Upon the filing of the Motion to Combine [Docket No. 920] on September 25, 2024, the Plan Proponents sought relief [Docket No. 940] on shortened notice to request (i) authority to file a combined joint disclosure statement and plan of liquidation, and (ii) an expedited confirmation schedule that adjusted the notice periods for approval of the Disclosures and confirmation of the Plan to ensure expedient Distributions to holders of Allowed Claims. The Court approved this schedule on October 30, 2023 [Docket No. 1041].

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

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

Thereafter, on November 17, 2023, the Plan Proponents filed the Plan and the Solicitation Motion. [Docket Nos. 1091, 1092]. On December 4, 2023, the Plan Proponents filed the first amendment to the Plan to implement minor revisions to resolve certain objections to the Disclosures and the Solicitation Motion. [Docket No. 1168]. On December 7, 2023, the Court entered the Solicitation Order, approving the Disclosures, in the interim, as containing adequate information and approving the Solicitation Procedures. [Docket No. 1179]. The Solicitation Order approved the contents of the Solicitation Packages that the Plan Proponents provided to holders of Claims in Voting Classes and the timing and method of delivery of the Solicitation Packages. *See id.* ¶¶ 4-9. As detailed in the Voting Declaration, the Plan Proponents complied in all respects with the Solicitation Procedures as outlined in the Solicitation Order, including their compliance with service requirements, and not soliciting acceptance of the Plan from any creditor prior to sending the Solicitation Packages that contained the Court-approved Disclosures. *See* Voting Decl. at ¶¶ 4-6.

3. *The Debtor Complied with the Plan Acceptance Requirements of § 1126*

Section 1126 provides that only holders of claims and equity interests in impaired classes that will receive or retain property under a plan on account of such claims or equity interests may vote to accept or reject a plan. 11 U.S.C. § 1126. Sections 1126(c) and (d) specify the requirements for acceptance of a plan by a class of claims. Specifically, § 1126(c) provides:

> A class of claims has accepted a plan if such plan has been accepted by creditors, other than any entity designated under subsection (e) of [section 1126], that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class held by creditors, other than any entity designated under subsection (e) of [section 1126], that have accepted or rejected such plan.

Id.

Classes 1 and 2 are Unimpaired under the Plan. Pursuant to § 1126(f), holders of Claims in the Unimpaired Classes are not entitled to vote on the Plan and are conclusively deemed to have accepted the Plan.

The Plan Proponents solicited votes on the Plan from the Voting Classes—that is, the holders of all Allowed Claims in each Impaired Class entitled to receive distributions under the Plan: Classes 3 through 4. As noted above, the Voting Deadline occurred on January 8, 2024, at 4:00 p.m. (Pacific Time), and the Voting Declaration details the results of the voting process in accordance with § 1126, in which the Plan was overwhelmingly supported by the holders of Claims in each Voting Class. Based on the foregoing, the Plan Proponents' solicitation of votes on the Plan was undertaken in conformity with § 1126 and the Disclosure Statement Order.

4. ***The Non-Material Modifications to the Plan Comply with § 1127***

In the interest of clarifying and consensually resolving outstanding issues and objections to confirmation of the Plan, the Debtor has made certain non-material modifications to the Plan through language in the Confirmation Order (the "Non-Material Modifications"). Prior to the Confirmation Hearing, the Plan Proponents will file a proposed Confirmation Order to reflect certain non-material and technical changes that do not materially or adversely affect the treatment of any holder of a Claim under the Plan.

Section 1127 allows a plan proponent to modify the plan "at any time" before confirmation. Specifically, § 1127 provides:

> (a) The proponent of a plan may modify such plan at any time before confirmation, but may not modify such plan so that such plan as modified fails to meet the requirements of sections 1122 and 1123 of the title. After the proponent of a plan files a modification of such plan with the court, the plan as modified becomes the plan…
>
> (d) Any holder of a claim or interest that has accepted or rejected a plan is deemed to have accepted or rejected, as the case may be, such plan as modified, unless, within the time fixed by the court, such holder changes such holder's previous acceptance or rejection.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

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

11 U.S.C. § 1127(a), (d). Accordingly, bankruptcy courts have typically allowed a plan proponent to make non-material changes to a plan without any special procedures or vote resolicitation. *See, e.g.*, *Enron Corp. v. New Power Co. (In re New Power Co.)*, 438 F.3d 1113, 1117-18 (11th Cir. 2006) ("[T]he bankruptcy court may deem a claim or interest holder's vote for or against a plan as a corresponding vote in relation to a modified plan unless the modification materially and adversely changes the way that claim or interest holder is treated."); *In re Am. Solar King Corp.*, 90 B.R. 808, 826 (Bankr. W.D. Tex. 1988) (stating that "if a modification does not 'materially' impact a claimant's treatment, the change is not adverse and the court may deem that prior acceptances apply to the amended plan as well.") (citation omitted); *In re Mt. Vernon Plaza Cmty. Urban Redevelopment Corp. I*, 79 B.R. 305, 306 (Bankr. S.D. Ohio 1987) (all creditors were deemed to have accepted the plan as modified because "[n]one of the changes negatively affects the repayment of creditors, the length of the [p]lan, or the protected property interests of parties in interest.").

In addition, Bankruptcy Rule 3019, designed to implement § 1127(d), in turn, provides in relevant part that:

> In a… chapter 11 case, after a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code, and any other entity designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Bankruptcy Rule 3019(a).

The Plan Proponents received certain informal comments prior to the applicable objection deadline. Specifically, the Premier Creditors requested that the Plan reserve for the full amount of the Premier Creditors' claims and that such amounts be deposited in interest bearing accounts, which maximize value and maintain safety, with the interest bearing accounts to be invested in US 1 Month

Treasury Bills or other US backed instruments. Further, the Premier Creditors requested that to the extent the Premier Creditors' claims, which are currently Disputed Claims, become Allowed Claims, that the Premier Creditors be entitled to the interest that accrues on the *pro rata* amount of their claims. The Plan Proponents agreed—subject to the caveat that the treatment apply to all Holders of Disputed Claims, meaning that to the extent a Disputed Claim becomes an Allowed Claim, Holders of such Claims shall be entitled to the interest that accrues on the *pro rata* amount of their Claim.[4] Additionally, the Plan Proponents reviewed the UST Objection to certain Plan provisions. In response, the Plan Proponents addressed these issues with certain revisions to the Plan and inclusions in the Confirmation Order.

The Non-Material Modifications primarily consist of the following changes: (i) the Plan will reserve for the full amount of the Premier Creditor's claims and such amounts shall be deposited in interest bearing accounts, which maximize value and maintain safety. The interest bearing accounts shall be invested in US 1 Month Treasury Bills or other US backed instruments; (ii) to the extent a Disputed Claim becomes an Allowed Claim, Holders of such Claims shall be entitled to the interest that accrues on the *pro rata* amount of their Claim; (iii) the clarification of language that Creditors who do not vote on the Plan are not considered Releasing Parties for purposes of the Third-Party Release; (iv) language providing that the injunction pursuant to Section 17.3(a) of the Plan is limited to as long as the Plan is Effective; and (v) clarifying language in Section 17.5 that such section provides that any obligations under the Plan of the Debtor's Estate are contractual only.

The requirements of § 1127(d) have been satisfied because all creditors in this Case have notice of the Confirmation Hearing, and will have an opportunity to object to the Non-Material Modifications at that time. *See Citicorp Acceptance Co., Inc. v.*

[4] The full terms of the agreement between the Plan Proponents and the Premier Creditors is set forth in the Premier Stipulation [Docket No. 1238].

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Ruti-Sweetwater (In re Sweetwater), 57 B.R. 354, 358 (D. Utah 1985) (creditors who had knowledge of a pending confirmation hearing had sufficient opportunity to raise objections to modification of the plan). Accordingly, because the Non-Material Modifications (and those that may be made prior to or at the Confirmation Hearing), are non-material and do not materially or adversely affect the treatment of any creditor that has previously accepted the Plan, and the Plan, as modified, continues to comply with the requirements of §§ 1122 and 1123, no further solicitation is required.

C. The Plan Has Been Proposed in Good Faith and Not by Any Means Forbidden by Law (11 U.S.C. § 1129(a)(3))

Section 1129(a)(3) provides that a court may confirm a plan only if the plan is proposed "in good faith and not by any means forbidden by law." Section 1129(a)(3) does not define good faith in the context of proposing a plan of liquidation. However, the Ninth Circuit held that "a plan is proposed in good faith where it achieves a result consistent with the objectives and purposes of the Code." *In re Sylmar Plaza, L.P.*, 314 F.3d 1070, 1074 (9th Cir. 2002); *accord Ryan v. Loui (In re Corey)*, 892 F.2d 829, 835 (9th Cir. 1989); *In re Madison Hotel Assocs.*, 749 F.2d 410, 425 (7th Cir. 1984). The Ninth Circuit in *Sylmar Plaza* further held that "the requisite good faith determination is based on the totality of the circumstances." *Id.* at 1074; *accord Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988).

Bankruptcy courts in Southern California have employed the same Ninth Circuit standards for good faith in proposing a plan of reorganization. *See e.g.*, *In re Howard Marshall*, 298 B.R. 670, 675-676 (Bankr. C.D. Cal. 2003). In the *Marshall* case, the court found that "the good faith evaluation must be made on a case by case basis." *Id.* at 676; *see also Sylmar Plaza*, 314 F.3d at 1075; *Jorgensen*, 66 B.R. 104, 108-09 (B.A.P. 9th Cir. 1986). The court further held that "this court must make its own independent evaluation of the debtors' good faith for the purpose of plan confirmation" and that "[p]art of the good faith analysis is that the plan must deal with

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

the creditors in a fundamentally fair manner." *Id.* at 676; *see also Jorgensen*, 66 B.R. at 108-09. However, a plan proponent need not consider every feasible alternative form of plan, so long as the proposed plan meets the requirements of § 1129(a). *Id.* at 676; *see In re General Teamsters, Warehousemen & Helpers Union Local 890*, 225 B.R. 719, 729 (Bankr. N.D. Cal. 1998).

Good faith for purposes of § 1129(a)(3) may be found where the plan is supported by key creditor constituencies or was the result of extensive arm's-length negotiations with creditors. *See In re Chemtura Corp.*, 439 B.R. 561, 608-09 (Bankr. S.D.N.Y. 2010) (finding good faith requirement met because, among other things, the debtor negotiated and reached agreements with several parties-in-interest to put forward a chapter 11 plan which "in the aggregate demonstrate a good faith effort on the part of the debtor to consider the needs and concerns of all major constituencies in this case") (quotation marks and citation omitted); *In re Leslie Fay Cos.*, 207 B.R. 764, 781 (Bankr. S.D.N.Y. 1997) ("The fact that the plan is proposed by the committee as well as the debtors, is strong evidence that the plan is proposed in good faith."); *In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 274 (Bankr. S.D. Ohio 1996) (finding that chapter 11 plan was proposed in good faith when, among other things, it was based on extensive arm's-length negotiations among plan proponents and other parties-in-interest).

Here, the Plan is the product of months of extensive arm's-length independent and interrelated negotiations among the Debtor, the Committee, and DHCS with respect to the DHCS Settlement, which terms are incorporated into the Plan. These negotiations were difficult and addressed complex legal and factual issues. The DHCS Settlement provides for allowed administrative, priority, secured, and general unsecured creditors to receive distributions on or soon after the Effective Date. The Plan facilitates the best possible recovery for all creditors under the totality of the circumstances. As a result, the Plan has the support of each Class of Claims. The support from each of these constituencies evidences the Plan Proponents' good faith

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

and good intentions in proposing the Plan, and the totality of circumstances surrounding its formulation clearly promotes the purposes of the Bankruptcy Code.

Additionally, Bankruptcy Rule 3020(b)(2) provides that the Court may determine that a plan proponent proposed a plan in good faith and not by any means forbidden by law, without receiving evidence, if no party in interest has timely objected to the plan proponent's good faith. *See* Bankruptcy Rule 3020(b)(2) ("If no objection is timely filed, the court may determine that the plan has been proposed in good faith and not by any means forbidden by law without receiving evidence on such issue."); *see also In re Warren*, 89 B.R. 87, 91 (B.A.P. 9th Cir. 1988) ("Rule 3020(b)(2) states that without objection the court "may" find that the plan was filed in good faith without receiving evidence."). No party has objected to the good faith of the Plan Proponents in proposing the Plan. The Plan Proponents therefore submit that the requirements of § 1129(a)(3) have been satisfied.

D. The Plan Provides for Bankruptcy Court Approval of Certain Administrative Payments (11 U.S.C. § 1129(a)(4))

Section 1129(a)(4) requires that certain professional fees and expenses paid by the plan proponent, by the debtor, or by a person issuing securities or acquiring property under a plan, be subject to Court approval as reasonable. *See, e.g.*, *In re Worldcom, Inc.*, 2003 WL 23861928, at *53-54 (Bankr. S.D.N.Y. Oct. 31, 2003); *Drexel*, 138 B.R. at 760; *In re Elsinore Shore Assocs.*, 91 B.R. 238, 268 (Bankr. D.N.J. 1988) (holding that requirements of § 1129(a)(4) were satisfied where plan provided for payment of only "allowed" administrative expenses). Here, the Plan mandates that all payments (except for ordinary course payments on account of Administrative Claims) made by the Debtor for services, costs, or expenses in connection with this Case before the Effective Date, including all Professional Claims, must be approved by, or are subject to the approval of, the Bankruptcy Court as reasonable. *See* Plan § 8.2. Pursuant to the Plan, professionals asserting a Professional Claim for services rendered before the Effective Date must file a request for final allowance of such

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Professional Claim no later than 45 days after the Effective Date. In addition, Section 19 of the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of compensation or reimbursement of expenses authorized pursuant to the Bankruptcy Code or the Plan. Accordingly, the Plan complies with the requirements of § 1129(a)(4).

E. The Post-Effective Date Board, Liquidating Trustee, and Co-Liquidating Trustee Have Been Disclosed Prior to the Effective Date, and Their Appointment Is Consistent with Public Policy (11 U.S.C. § 1129(a)(5))

Section 1129(a)(5)(A)(i) provides that a court may confirm a plan only if the plan proponent discloses 'the identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer of voting trustee of the debtor… or a successor to the Debtor under the plan." Section 1129(a)(5)(A)(ii) requires that the appointment to, or continuance of a director, officer or voting trustee be "consistent with the best interests of creditors and equity holders and with public policy." *In re Produce Hawaii, Inc.*, 41 B.R. 301, 304 (Bankr. D. Haw. 1984); *In re Parks Lumber Co., Inc.*, 19 B.R. 285, 291 (Bankr. W.D. La. 1982). Section 1129(a)(5)(B) provides that a Court may confirm a plan only if the plan proponent discloses "the identity of any insider that will be employed or retained by the reorganized debtor and the nature of any compensation for such insider."

The Plan Supplement provides the identity of (i) the initial members of the Post-Effective Date Board of Directors, (ii) the Liquidating Trustee, and (iii) the Co-Liquidating Trustee. The Plan further provides that the Liquidating Trustee shall serve as the President of the Post-Effective Date Debtor. *See* Plan § 15.5(b)(i). The Plan Proponents submit that the selection of the Liquidating Trustee, the Co-Liquidating Trustee, and the members of the Post-Effective Date Board of Directors is consistent with the best interests of creditors and public policy.

Further, the process set forth in the Plan for selecting the Liquidating Trustee and the Co-Liquidating Trustee, with the Post-Effective Date Board of Directors having certain oversight roles, complies with § 1129(a)(5)(A)(ii), which essentially

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

asks the Bankruptcy Court to ensure that the post-confirmation governance of a debtor is in "good hands." The Plan also establishes procedures for the resignation, termination, and replacement of directors to ensure continuity of governance. Accordingly, the Plan Proponents have satisfied the requirements of § 1129(a)(5).

F. The Plan Does Not Require Governmental Regulatory Approval of Rate Changes (11 U.S.C. § 1129(a)(6))

Section 1129(a)(6) permits confirmation of a chapter 11 plan only if any regulatory commission that will have jurisdiction over the debtor after confirmation has approved any rate change provided for in the plan. See 11 U.S.C. § 1129(a)(6). Section 1129(a)(6) is inapplicable here because the Plan does not provide for any rate changes.

G. The Plan Is in the Best Interests of Creditors and Interest Holders (11 U.S.C. § 1129(a)(7))

The "Best Interest Test" requires a liquidation analysis that demonstrates that, if a claimant or interest holder is in an impaired class and that claimant or interest holder does not vote to accept the Plan, then that claimant or interest holder must receive or retain under the plan property of a value not less than the amount that such holder would receive or retain if the Debtor were forced to liquidate under chapter 7 of the Bankruptcy Code. It is not at all clear that this test applies to the bankruptcy of a nonprofit company. Unlike in the bankruptcy of a for-profit entity, the Bankruptcy Code and state law may preclude or restrict the forced sale of a nonprofit's assets. 11 U.S.C. §§ 1112(c), 303. By way of example, under § 1112(c), a nonprofit's creditors cannot force a nonprofit to convert its chapter 11 case to a chapter 7, nor under § 303 can they file an involuntary petition against a nonprofit. Similarly, state statutes impose stringent requirements on the transfer or sale of a nonprofit debtor's assets, *see, e.g.*, Cal. Corp. Code §§ 5913, 7913, 9633.5, and the involuntary dissolution of a nonprofit, *see, e.g.*, Cal. Corp. Code §§ 6510-6519, 8510-8519, 9680.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Assuming, *arguendo*, that the Best Interest Test applies to nonprofits, the Plan Proponents have satisfied the Best Interest Test with respect to Classes 3 and 4 because such Classes have unanimously voted to accept the Plan. *See* Voting Declaration at Ex. A (setting forth the vote tabulation); *see* 11 U.S.C. § 1129(a)(7)(i) (providing that the Best Interest Test is satisfied when, "[w]ith respect to each impaired class of claims or interests[,] each holder of a claim or interest of such class has accepted the plan.").

Further, all creditors will receive more under the Plan than if the case were converted to chapter 7, particularly considering that the Debtor must remain extant, with operating management and a board of directors until DAP Health obtains its own Medicare and Medi-Cal provider agreements, among other things. In a chapter 7 scenario, a chapter 7 trustee would be appointed with the statutory duty to administer the Debtor's assets as quickly as possible. *See* 11 U.S.C. § 704(a)(1). A chapter 7 trustee would be completely unfamiliar with the complexities of this Case. Following the appointment of a chapter 7 trustee, the chapter 7 trustee would presumably hire new professionals who are equally unfamiliar with the complexities of this Case. For example, there is significant litigation pending where the Debtor is a plaintiff, and those cases could eventually represent a meaningful source of recoveries for the Debtor's Estate. The Debtor's professionals are intimately familiar with that litigation. The result of a chapter 7 trustee's employment of a substantial number of professionals unfamiliar with this complex Chapter 11 Case would be the incurrence of an extraordinary amount of additional professional fees. By contrast, the Debtor's and the Committee's professionals are skilled and already intimately familiar with the Case.

Further, the chapter 7 trustee would be required to seek authority to continue operating the Debtor after obtaining approval from the UST to operate the Debtor's businesses following conversion. *See, e.g.*, 11 U.S.C. § 721 ("The court may authorize the trustee to operate the business of the debtor for a limited period if such operation

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

is in the best interest of the estate and consistent with the orderly liquidation of the estate."); Executive Office for the United States Trustee, *U.S. Dept. of Justice Handbook for Chapter 7 Trustees* (Oct. 1, 2012), at 4-31 ("The trustee must consult with the United States Trustee prior to seeking authority to operate the business[.]"). Thus, this presents significant potential risks to creditor recoveries in a chapter 7. The Debtor must be able to monitor DAP Health's operations for as long as DAP Health does not have its own provider agreements, and failure to do so would imperil the continued viability of the Debtor's former clinics and breach the agreement between the Debtor and DAP Health. Additionally, the chapter 7 trustee and/or their professionals would have to have specific FQHC and healthcare industry operational and collections experience to provide the necessary oversight and ensure sufficient liquidation of Estate assets, further increasing costs to the estate.

The advantages of finishing a liquidation in chapter 11 are not just "common knowledge" among professionals. Experts have also concluded that conversion to chapter 7 offers few advantages over liquidation in chapter 11: cases converted from chapter 11 to chapter 7 take significantly longer to resolve than a "pure" chapter 11 liquidation, and such cases require similar, if not greater, fees, and in the end provide creditors with statistically lower recovery rates—often zero—than a comparable Chapter 11 procedure. *See* Arturo Bris, Ivo Welch, and Ning Zhu, *The Costs of Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, J. OF FINANCE, vol. 61(3), June 2006, at 1253. As discussed in more detail in the Liquidation Analysis attached as Exhibit A to the Plan, the Debtor has satisfied the "Best Interest Test." Accordingly, § 1129(a)(7) is satisfied because the Plan provides fair and equitable treatment of all classes of creditors and the greatest feasible recovery to all creditors.

H. Acceptance by Impaired Classes (11 U.S.C. § 1129(a)(8))

Section 1129(a)(8) requires that each class of claims or interests must either accept the plan or be unimpaired. *See* 11 U.S.C. § 1129(a)(8). Pursuant to § 1126(c), a class of *claims* accepts a plan if holders of at least two-thirds in amount and more

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

than one-half in number of the allowed claims in that class vote to accept the plan. *See* 11 U.S.C. § 1126(c). A class that is not impaired under a plan is conclusively presumed to have accepted the plan. *See* 11 U.S.C. § 1126(f). On the other hand, a class is deemed to reject a plan if the plan provides that the claims of that class do not receive or retain any property under the plan on account of such claims or interests. *See* 11 U.S.C. § 1126(g).

The Voting Declaration reflects that the Plan has been accepted by all Classes. First, Classes 1 and 2 are unimpaired by the Plan and, thus, are deemed to accept the Plan. Second, all Voting Classes voted to accept the Plan as follows:

Class	Class Description	Members Voted	Members Accepted	Members Rejected	Members Abstained	% Members Accepted	% Members Rejected
3	General Unsecured Claims	34	31	3	1	91.18%	8.82%
4	Allowed DHCS Claim	1	1	0	0	100.00%	0.00%

Class	Class Description	Total $ Voted	$ Accepted	$ Rejected	$ Abstained	% $ Accepted	% $ Rejected
3	General Unsecured Claims	$4,825,276.94	$4,328,255.55	$497,021.39	$165,615.00	89.70%	10.30%
4	Allowed DHCS Claim	$112,000,000.00	$112,000,000.00	$0.00	$0.00	100.00%	0.00%

Accordingly, because all Classes of Claims either accept the Plan or are unimpaired, the Plan complies with the requirements of § 1129(a)(8).

I. The Plan Complies with the Statutorily Mandated Payment of Priority Claims (11 U.S.C. § 1129(a)(9))

Section 1129(a)(9) requires that persons holding allowed claims entitled to priority under § 507(a) receive specified cash payments under the Plan. Unless the holder of a particular claim agrees to a different treatment with respect to such claim, § 1129(a)(9) sets forth the treatment the Plan must provide. Under Section 8.1 of the Plan, holders of Allowed Administrative Claims under § 503(b) shall receive Cash in full and final satisfaction of their Allowed Administrative Claims on the Effective Date or as soon as reasonably practicable thereafter. *See* Plan § 8.1. Consequently, the Plan Proponents submit that § 1129(a)(9) is satisfied because the Plan provides for the payment of all Allowed Administrative Claims on the Effective Date, except to the extent the Holder of such Claim has agreed to different treatment.

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

Further, the Plan contemplates the establishment of the Administrative Claims Reserve. *See id.* § 20.2. Pursuant to Section 20.2 of the Plan, the Plan Proponents request that the Court establish the Administrative Claims Reserve in the amount of approximately $2 million. *See* Lee Decl. at ¶ 27. The Debtor has proposed to reserve the full asserted amount of the majority of asserted Administrative Claims that will ***not*** be Allowed on the Effective Date, in accordance with Section 20.2 of the Plan. *See* Lee Decl. at ¶ 27. Many of these fully reserved Administrative Claims represent claims the Debtor already paid in the ordinary course of business. *See id.* To the extent that any Administrative Claims are Disputed, the Debtor shall reserve the full-face amount of such claims. Consequently, the Debtor submits that the Administrative Claim Reserve is sufficient, under the circumstances. *See* Plan § 20.2; *see also* Lee Decl. Based upon the Debtor's current projection, the amount of $2 million is an appropriate reserve, as set forth in the Lee Declaration.

Pursuant to Section 10.1 of the Plan, all Allowed Priority Non-Tax Claims under § 507(a), unless otherwise agreed, shall receive payment in Cash in an amount equal to the amount of such Allowed Claim, payable on the later of the Effective Date and the date on which such Priority Non-Tax Claim becomes an Allowed Priority Non-Tax Claim, in each case, or as soon as reasonably practicable thereafter.

The Plan also satisfies the requirements of § 1129(a)(9)(C) with respect to the treatment of Priority Tax Claims under § 507(a)(8). Pursuant to Section 8.4 of the Plan and except as otherwise may be agreed, holders of Allowed Priority Tax Claims shall receive, at the option of the Plan Proponents or Liquidating Trustee: (i) Cash in an amount equal to such Allowed Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of (a) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on the Effective Date, and (b) the first Business Day after the date that is thirty (30) calendar days after the date such Priority Tax Claim becomes an Allowed Priority Tax Claim; or (ii) equal annual Cash payments in an aggregate amount equal to the amount of such Allowed Priority Tax Claim, together

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

with interest at the applicable rate pursuant to § 511, over a period not exceeding five (5) years from and after the Petition Date.

Based upon the foregoing, the Plan satisfies the requirements of § 1129(a)(9).

J. Each Impaired Class of Claims Has Accepted the Plan, Excluding the Acceptances of Insiders (11 U.S.C. § 1129(a)(10))

Section 1129(a)(10) provides that, if a class of claims is impaired under a plan, at least one impaired class of claims must accept the plan, excluding acceptance by any insider. *See* 11 U.S.C. § 1129(a)(10); *see also In re Station Casinos, Inc.*, 2011 WL 6012089, at ¶ 118 (Bankr. D. Nev. July 28, 2011) ("The bankruptcy courts that have expressly considered the matter have uniformly held that compliance with Section 1129(a)(10) is tested on a per-plan basis, not on a per-debtor basis, and that Section 1129(a)(10) therefore does not require an accepting impaired class for each debtor under a joint plan."). As set forth above, all Voting Classes (none of which contain insiders) are impaired and have accepted the Plan. Therefore, the Voting Declaration confirms that the Plan satisfies § 1129(a)(10).

K. The Plan Is Feasible (11 U.S.C. § 1129(a)(11))

Section 1129(a)(11) requires that the Court determine that the Plan is feasible as a condition precedent to confirmation. Specifically, it requires that confirmation is not likely to be followed by liquidation or the need for further financial reorganization of the Debtor or any successor to the Debtor unless such liquidation or reorganization is proposed in the plan. As described below, the Plan is feasible within the meaning of this provision.

The feasibility test set forth in § 1129(a)(11) requires the Court to determine whether the Plan is workable and has a reasonable likelihood of success. *See Kane v. Johns-Manville Corp.*, 843 F.2d at 649. The key element of feasibility is whether there is a reasonable probability that the provisions of the plan can be performed. As noted by the United States Court of Appeals for the Ninth Circuit: "The purpose of section 1129(a)(11) is to prevent confirmation of visionary schemes which promise creditors

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

and equity security holders more under a proposed plan than the Debtors can possibly attain after confirmation." *Pizza of Haw., Inc. v. Shakey's, Inc. (In re Pizza of Haw., Inc.)*, 761 F.2d 1374, 1382 (9th Cir. 1985) (quoting 5 Collier on Bankruptcy ¶ 1129.02[11] at 1129–34 (15th ed. 1984)). However, just as speculative prospects of success cannot sustain feasibility, speculative prospects of failure cannot defeat feasibility, and the mere prospect of financial uncertainty cannot defeat confirmation on feasibility grounds. *See In re U.S. Truck Co.*, 47 B.R. 932, 944 (E.D. Mich. 1985), *aff'd*, 800 F.2d 581 (6th Cir. 1986).

As highlighted by the fact that no party objected to feasibility, the uncontroverted evidence demonstrates that the Plan is feasible and is not likely to be followed by liquidation. *See* Lee Decl. ¶ 29. Pursuant to the Liquidation Analysis, after payment to the estimated Allowed Unsecured Claims, approximately $27 million is available to reserve for the full amount of Disputed Claims. *Id.* at ¶ 29. Accordingly, the Liquidating Trust will be able to reserve for the full amount of all Disputed Claims. *Id.* at ¶ 29. Thus, the Plan satisfies the feasibility requirement set forth in § 1129(a)(11).

L. The Plan Provides for the Payment of All Fees Under 28 U.S.C. § 1930 (11 U.S.C. § 1129(a)(12))

Section 1129(a)(12) requires that, as a condition precedent to the confirmation of a plan, "[a]ll fees payable under section 1930 of title 28, as determined by the court at the hearing on confirmation of the plan, have been paid or the plan provides for the payment of all such fees on the effective date of the plan." 11 U.S.C. § 1129(a)(12). The Plan complies with § 1129(a)(12) by providing for the payment in full, in Cash, any Statutory Fees due and owing at the time of confirmation. *See* Plan § 8.3. The Plan further provides that any Statutory Fees accruing after the Effective Date "shall be paid by the Liquidating Trustee in the ordinary course of business until the closing, dismissal, or conversion of the Chapter 11 Case to another chapter of the Bankruptcy Code." *Id.* Accordingly, the Plan satisfies the requirements of § 1129(a)(12).

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

M. Sections 1129(a)(13)-(15) Do Not Apply to the Plan

Section 1129(a)(13) relates to the payment of retiree benefits, § 1129(a)(14) relates to the payment of domestic support obligations and § 1129(a)(15) applies only in cases in which the debtor is an "individual" as defined in the Bankruptcy Code. 11 U.S.C. §§ 1129(a)(13), a(14), (a)(15). These provisions are inapplicable to the Debtor because the Debtor will not have any ongoing retiree benefits or domestic support obligations, and the Debtor is not an "individual."

N. The Plan Provides that Any Transfer of Property Will Be in Compliance with Applicable Non-Bankruptcy Law, Subject to Bankruptcy Court Oversight (11 U.S.C. § 1129(a)(16))

Section 1129(a)(16) provides that applicable non-bankruptcy law will govern all transfers of property under a plan to be made by "a corporation or trust that is not a moneyed, business, or commercial corporation or trust." The legislative history of § 1129(a)(16) demonstrates that this section was intended to "restrict the authority of a trustee to use, sell, or lease property by a nonprofit corporation or trust." See H.R. Rep. 109-31(I), 145, 2005 WL 832198, 121, 2005 U.S.C.C.A.N. 88, 203-04 (2005). Because, according to the legislative history of § 1129(a)(16), "[n]othing in [1129(a)(16)] may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property," *id.*, and because the Plan provides for the Bankruptcy Court's approval of, or otherwise authorizes, any property transfers, the Plan satisfies the requirements of § 1129(a)(16).

O. The Principal Purpose of the Plan Is Not Avoidance of Taxes (11 U.S.C. 1129(d))

Section 1129(d) of the Bankruptcy Code states, "the court may not confirm a plan if the principal purpose of the plan is the avoidance of taxes or the avoidance of the application of section 5 of the Securities Act of 1933." The purpose of the Plan is not to avoid taxes or the application of section 5 of the Securities Act of 1933. Moreover, no holder of Priority Tax Claims raised any objection arguing that the Plan

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Proponents have proposed the Plan to either avoid taxes or the application of section 5 of the Securities Act of 1933, and the Plan Proponents do not anticipate any such objections will be filed, particularly as all Priority Tax Claims will be paid in full pursuant to the Plan. Moreover, the Plan Proponents are nonprofit, tax-exempt entities. The Debtor therefore submits that the Plan satisfies the requirements of § 1129(d).

IV. THE DISCRETIONARY CONTENTS OF THE PLAN SHOULD BE APPROVED

Section 1123(b) sets forth additional provisions that may be included in a chapter 11 plan. The Plan includes certain such additional provisions. By way of example, the Plan proposes treatment for executory contracts and unexpired leases and seeks to implement release, exculpation, and injunction provisions. *See* Plan §§ 14, 17. As discussed below, each of these provisions is in the best interests of the Debtor, the Estate, creditors, and other parties in interest in this Case.

A. The Assumption and Assignment or Rejection of the Executory Contracts and Unexpired Leases Under the Plan Should Be Approved

Section 14.1 of the Plan provides for the rejection of all executory contracts and unexpired leases ("Executory Agreements") that exist between the Debtor and any other person or entity prior to the Petition Date on the Effective Date except for Executory Agreements that (a) have been assumed or rejected pursuant to a Final Order of the Bankruptcy Court (including pursuant to the Sale Order), (b) are the subject of a separate motion to assume, assume and assign, or reject filed under § 365 on or before the Effective Date, or (c) are specifically designated as a contract or lease to be assumed on the Schedule of Assumed Contracts and no timely objection to the proposed assumption has been filed. The Schedule of Assumed Contracts, which was filed with the Plan Supplement, identifies Executory Agreements to be assumed by the Debtor pursuant to the Plan.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Section 365(a) provides that a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease." 11 U.S.C. § 365(a). Courts routinely approve motions to assume and assign or reject executory contracts or unexpired leases upon a showing that the debtor's decision to take such action will benefit the debtor's estate and is an exercise of sound business judgment. *Durkin v. Benedor Corp. (In re G.I. Indust., Inc.)*, 204 F.3d 1276, 1282 (9th Cir. 2000) ("a bankruptcy court applies the business judgment rule to evaluate a [debtor-in-possession]'s rejection decision") (citing *NLRB v. Bildisco & Bildisco*, 465 U.S. 513, 523 (1984)); *see also In re Chi-Feng Huang*, 23 B.R.798, 800 (B.A.P. 9th Cir. 1982). The debtor's exercise of its business judgment is entitled to deference. *See In re Pomona Valley Med. Grp.*, 476 F.3d 665, 670 (9th Cir. 2007) ("[I]n evaluating the rejection decision, the bankruptcy court should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.") (citing *Navellier v. Sletten*, 262 F.3d 923, 946 n. 12 (9th Cir. 2001); *FDIC v. Castetter*, 184 F.3d 1040, 1043 (9th Cir.1999); *In re Chi–Feng Huang*, 23 B.R. at 801)).

The Debtor reviewed and analyzed its Executory Agreements. In its business judgment, the Debtor concluded that certain of their Executory Agreements listed on the Plan Supplement should be assumed on the Effective Date to ensure the Post-Effective Date Debtor's seamless transition into the Post-Effective Date period and certain other Executory Agreements may be required to ensure that the value of the Liquidating Trust Assets are maximized. Likewise, the Debtor has determined that it is in their best interest to reject all other Executory Agreements under the Plan as they are no longer providing a benefit to the Estate. While Oracle objected to the assumption of its pre-petition agreements [Docket No. 1232], as discussed more thoroughly below, those agreements were already assigned as of the closing of the Sale.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Accordingly, for all of the foregoing reasons, the proposed assumption or rejection of Executory Agreements should be approved in connection with confirmation.

B. The Plan's Release, Injunction, and Exculpation Provisions Are Appropriate and Should Be Approved

The Plan provides for the release of certain causes of action of the Debtor, releases by holders of Claims, and the exculpation of certain parties for their acts during the Case. These provisions are proper because, among other things, they are the product of arm's-length negotiations and have been critical to obtaining the support of various constituencies for the Plan.

1. *The Debtor's Releases*

Pursuant to Section 17.2(a) of the Plan, the Debtor and its Estate shall release the Released Parties[5] from the following:

> any and all claims, obligations, rights, suits, damages, Causes of Action, remedies, and liabilities whatsoever, including any derivative claims, asserted or assertable on behalf of any of the Debtor or its estate, as applicable, whether known or unknown, foreseen or unforeseen, asserted or unasserted, accrued or unaccrued, matured or unmatured, determined or indeterminable, disputed or undisputed, liquidated or unliquidated, or due or to become due, existing or hereinafter arising, in law, equity, or otherwise, that the Debtor or the estate would have been legally entitled to assert in its own right, or on behalf of the Holder of any Claim or other entity, based on or relating to, or in any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation, the Chapter 11 Case, the purchase, sale, transfer of any security, asset, right, or interest of the Debtor, the DAP Sale, the subject matter of,

[5] Section 3.124 of the Plan provides as follows:

> ***Released Party*** means, individually and collectively: (a) the Debtor, (b) the Committee, (c) the following members of the Committee: McKesson Corporation; Greenway Health, LLC; We Klean Inc.; Mustafa Bilal, DDS, Inc.; Vista Village Family Dentistry; Vitamin D Public Relations, LLC; and Pourshirazi & Youssefi Dental Corporation; and (d) each of the Related Persons of each of the Entities in the foregoing clauses (a)-(c); provided, however, that notwithstanding anything to the contrary herein, including the definition of "Related Persons," none of the Prepetition Fraud Parties are a Released Party.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

> or the transactions or events giving rise to, any Claim that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the treatment of Claims prior to or in the Chapter 11 Case, the negotiation, formulation, or preparation of the Plan or related agreements, instruments, or other documents, any other act or omission, transaction, agreement, event, or other occurrence taking place on and before the Petition Date, other than claims or liabilities arising out of or relating to any act or omission of a Released Party that constitutes fraud, willful misconduct, or gross negligence; provided, that, the foregoing Debtor Release shall not operate to waive or release any obligations of any party under the Plan or any other document, instrument, or agreement executed to implement the Plan.

See Plan § 17.2(a) (the "Debtor Release").

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

It is well-established that debtors are authorized to settle or release their claims in a chapter 11 plan. *See In re Pac. Gas & Elec.*, 304 B.R. 395, 416 (Bankr. N.D. Cal. 2004) ("Given that section 1123(b)(3)(A) permits a plan of reorganization to include settlements, and given the overwhelming votes in favor of the Plan, such review [under Rule 9019] might be unnecessary. Nevertheless… [t]he court will discuss the releases as if Rule 9019 governs"); *In re Aina Le'a, Inc.*, No. BR 17-00611, 2019 WL 2274909, at *12 (Bankr. D. Haw. May 24, 2019) ("The releases of Claims and Rights of Action by the Debtor described herein and in the Plan, in accordance with section 1123(b) of the Bankruptcy Code (the 'Debtor's Release'), represent a valid exercise of the Debtor's business judgment under Bankruptcy Rule 9019."). Section 1123(b)(3)(A) specifically provides that a chapter 11 plan may provide for "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate." 11 U.S.C. § 1123(b)(3)(A). A plan that proposes to release a claim or cause of action belonging to a debtor is considered a "settlement" for purposes of satisfying § 1123(b)(3)(A). Settlements pursuant to a plan are generally subject to the same "reasonable business judgment" standard applied to settlements under Bankruptcy Rule 9019. *See WCI Cable, Inc.*, 282 B.R. at 469 (evaluating a settlement pursuant to § 1123(b) under the factors applicable to settlements under Bankruptcy Rule 9019 set forth in *In re A&C Properties*).

First, the Plan Proponents are not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. Therefore, it is not possible to place any probability of success on such litigation given that no viable litigation has even been identified.

Second, the Debtor Release has the support of every major creditor constituent in this Case. As a Plan Proponent, the Committee supports the Debtor Release. Similarly, pursuant to the DHCS Settlement, DHCS has agreed to support the Plan, including the Debtor Release. The Plan reflects the settlement and resolution of numerous complex issues, and the Debtor Release is an integral part of the consideration to be provided in exchange for the compromises and resolutions embodied in the Plan. Further, each Voting Class has overwhelmingly voted to accept the Plan, including the Debtor Release set forth therein.

Third, the Debtor Release is in the best interests of the Debtor's creditors. In the absence of any viable claims against any of the Released Parties, pursuing claims against the Released Parties would be a costly and futile exercise that would only distract the Liquidating Trustee from its primary obligation of managing the Post-Effective Date Debtor and the Liquidating Trust. The Debtor Release will eliminate the potential for post-effective date litigation against directors and officers that could, directly and indirectly, threaten the Post-Effective Date Debtor's ability to function effectively by virtue of indemnification agreements and the cost and distraction of potential third-party discovery.

Fourth, each of the Released Parties afforded significant value to the Debtor, played an integral role in the formulation of the Plan, and expended significant time and resources analyzing and negotiating the issues involved therein and leading the Debtor through a complex chapter 11 process.

Fifth, the Debtor Release is similar in scope to those that have been approved by other courts in the Ninth Circuit. *See, e.g.*, *In re FirstFed Fin. Corp.*, No. 2:10-bk-12927-ER, Docket No. 514 at 9 (Bankr. C.D. Cal. Nov. 13, 2012) (approving debtor

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

releases); *In re Verity Health System of California, Inc.*., No. 2:18-bk-20151-ER, Docket No. 5504 at 24-27 (Bankr. C.D. Cal. Nov. 13, 2012) (approving debtor releases). The Plan Proponents, therefore, submit that the Debtor Release is consistent with applicable law, represents a valid settlement of whatever Claims the Debtor may have against the Released Parties pursuant to § 1123(b)(3)(A), represents a valid exercise of the Debtor's business judgment, and should be approved.

2. ***Third-Party Release***

Pursuant to 17.2(b) of the Plan, the Releasing Parties shall release the Released Parties:

> From any and all claims, obligations, actions, suits, rights, debts, accounts, causes of action, remedies, avoidance actions, agreements, promises, damages, judgments, demands, defenses, and liabilities throughout the world under any law or court ruling through the Effective Date (including all claims based on or arising out of factors or circumstances that existed as of or prior to the Effective Date, including claims based on negligence or strict liability, and further including any derivative claims asserted on behalf of the Debtor, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or otherwise) which the Debtor, its estate, Creditors, or other persons receiving or who are entitled to receive distributions under the Plan may have against any of them in any way related to this Chapter 11 Case, the negotiation, formulation, or preparation of the Plan or related agreements, instruments, or other documents, any other act or omission, transaction, agreement, event, or other occurrence taking place on and before the Petition Date, and related to the Debtor (or its predecessors), its business and/or its assets

Id. (the "Third-Party Releases").

As discussed, the Plan Proponents are not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. Also, the Third-Party Releases have the support of every major creditor constituent in this Case. Creditors also had the option to opt out of these Third-Party Releases such that they would not be considered Releasing Parties. Importantly, as discussed in more detail in connection with the UST Objection, one of the Non-Material Modifications

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

is to correct an internal inconsistency in the Plan and confirm that a Creditor who did not vote on the Plan will not be considered a Releasing Party.

The Third-Party Releases should be approved as they are in line with other non-debtor releases approved by Ninth Circuit precedent. The Ninth Circuit's decision in *Blixseth v. Credit Suisse*, 961 F.3d 1074 (9th Cir. 2020), clarifies its prior decision, *In re Lowenschuss*, 67 F.3d 1394 (9th Cir. 1995), and explains that the plain language of § 524(e) does not prohibit non-debtor releases of any kind.

Section 524(e) provides as follows:

> Except as provided in subsection (a)(3) of this section, discharge of a debt of the debtor does not affect the liability of any other entity on, or the property of any other entity for, such debt.

The Ninth Circuit's early interpretation of § 524(e) recognized that "[g]enerally, discharge of the principal debtor in bankruptcy will not discharge *the liabilities of codebtors or guarantors*." *Underhill v. Royal*,769 F.2d 1426, 1432 (9th Cir. 1985) (emphasis added). The Ninth Circuit and the Bankruptcy Appellate Panel for the Ninth Circuit generally conformed to this interpretation—that § 524(e) precludes a debtor's discharge from affecting the liability of a codebtor or guarantor on "such debt." *See, e.g.*, *Am. Hardwoods, Inc. v. Deutsche Credit Corp.* (*In re Am. Hardwoods, Inc.*), 885 F.2d 621, 625 (9th Cir. 1989) (affirming bankruptcy court finding that it lacked the power to permanently enjoin creditor from enforcing state court judgment against non-debtor guarantors); *Sun Valley Newspapers, Inc. v. Sun World Corp.* (*In re Sun Valley Newspapers, Inc.*), 171 B.R. 71, 77 (B.A.P. 9th Cir. 1994) (holding reorganization plans which proposed to release non-debtor guarantors violated § 524(e) and were therefore unconfirmable); *Seaport Automotive Warehouse, Inc. v. Rohnert Park Auto Parts, Inc.* (*In re Rohnert Park Auto Parts, Inc.*), 113 B.R. 610, 614-17 (B.A.P. 9th Cir. 1990) (finding that a reorganization plan provision which enjoined creditors from proceeding against co-debtors violated § 524(e)).

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

However, *Lowenschuss* indicated that the limitations previously suggested with respect to § 524(e) are not so narrow. *See* 67 F.3d at 1394. There, the Ninth Circuit denied approval of a "Global Release Provision" in a plan, which "broadly released the debtor and connected persons or entities… from all claims" rather than co-liabilities or guarantees, as inconsistent with § 524(e). *See id.* at 1401 (citing *Am. Hardwoods, Inc.*, 885 F.2d 621; *Underhill,*769 F.2d 1426).

More recently in *Blixseth,* 961 F.3d at 1082, the Ninth Circuit reevaluated the sweep of § 524(e), and in doing so, it recognized the limitation of *Lowenschuss* and the appropriate application of § 524(e). There, the Ninth Circuit considered an exculpation clause that provided an exculpation for non-debtor plan proponents. *See Blixseth*, 961 F.3d at 1082. The Ninth Circuit reviewed the plain language of § 524(e) and observed that "[b]y its terms, § 524(e) prevents a bankruptcy court from extinguishing claims of creditors against non-debtors *over the very debt discharged through the bankruptcy proceedings*." *Id.* (citing *In re PWS Holding Corp.*, 228 F.3d 224, 245-46 (3d Cir. 2000)) (emphasis added). The Ninth Circuit reasoned:

> [t]hat § 524(e) confines the debt that may be discharged to the "debt of the debtor"—and not the obligations of third parties for that debt—conforms to the basic fact that "a discharge in bankruptcy does not extinguish the debt itself but merely releases the debtor from personal liability… The debt still exists, however, and can be collected from any other entity that may be liable.

Id. (quoting *Landsing Diversified Props.-II v. First Nat'l Bank & Tr. Co. of Tulsa (In re W. Real Estate Fund),* 922 F.2d 592, 600 (10th Cir. 1990)). The Ninth Circuit further recounted its prior observation, in *Underhill,* of the legislative history that "[t]he emphasis on the liability of co-debtors and guarantors, but not creditors or other third parties, indicates the intended scope of Section 16 and, by extension, § 524(e)." *See id.* at 1083 (citing *Underhill v. Royal,*769 F.2d at 1432).

The Ninth Circuit reconciled the language in its prior holdings with the plain meaning of § 524(e) and concluded that:

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

> the breadth of the coverage—the "Global Release" in *Lowenschuss*; the permanent injunction in *American Hardwoods*; and the "all claims" exculpation in *Underhill*—would have affected the ability of creditors to make claims against third parties, including guarantors and co-debtors, ***for the debtor's discharged debt***.

Id. at 1084 (emphasis added).

The Plan does not intend to release co-liabilities precluded by § 524(e) and, thus, is not in violation of law. As explained *supra* with respect to the Debtor Release, the Plan merely seeks to provide the Released Parties — parties who have each made significant contributions to the success of this Case, with appropriate exculpations and releases. Such contributions alone justify such relief. Thus, it is evident that the Third-Party Release provides a necessary benefit to the Estate because such exculpations and releases are integral components to the Plan that maximizes creditor recoveries in this Case. The Third-Party Release will not release any guarantee or co-liability of the Released Parties on a debt otherwise treated under the Plan. Accordingly, the Third-Party Release is consistent with § 524(e).

Moreover, the Third-Party Releases are similar in scope to those approved by other courts in the Ninth Circuit. *See, e.g., In re Astria Health, et al.*, 623 B.R. 793, 802-803 (Bankr. E.D. Wash 2021) (approving third-party releases including pre-petition conduct); *In re PG & E Corp.*, 617 B.R. 671, 683 (Bankr. N.D. Cal. 2020) (approving third-party releases). Accordingly, the Plan Proponents submit that the Third-Party Release is consistent with applicable law, represents a valid settlement of whatever Claims the Debtor may have against the Released Parties pursuant to § 1123(b)(3)(A), represents a valid exercise of the Debtor's business judgment, and should be approved.

3. ***Injunctions***

Section 105(a) of the Bankruptcy Code authorizes a bankruptcy court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [title 11]." 11 U.S.C. § 105(a). The Court may issue an injunction in

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

connection with plan confirmation in furtherance of a settlement or in the interest of the Debtor's Estate. *See WCI Cable, Inc.*, 282 B.R. at 469 ("Section 105(a) can be used with respect to the injunction provisions of the WCI Plan only to the extent necessary and appropriate to carry out the terms of an approved settlement.") (citing *In re Dow Corning Corp.*, 255 B.R. 445, 478 (E.D. Mich. 2000)); *see also In re Rohnert Park Auto Parts, Inc.*,113 B.R. 610, 615 (B.A.P. 9th Cir. 1990) ("[S]ection 105 permits the court to issue both preliminary and permanent injunctions after confirmation of a plan to protect the debtor and the administration of the bankruptcy estate[.]"). The equities favor the imposition of the injunctive provisions of the Plan because, among other things, the Plan presents the best possible recovery to creditors (as evidenced by the overwhelming votes in support of the Plan).

4. ***The Exculpation***

Exculpation of estate fiduciaries and Plan Proponents is customary and permissible in chapter 11. Indeed, the Ninth Circuit has approved exculpation provisions that extend to plan proponents, including non-debtor plan proponents. *See Blixseth*, 961 F.3d at 1074 (approving exculpation of debtor's largest creditor that became a plan "proponent through its direct participation in the negotiations that preceded the adoption of the Plan"); *see also In re Yellowstone Mountain Club, LLC*, 460 B.R. 254, 277 (Bankr. D. Mont. 2011) (approving exculpation that extended to "the Debtors, Committee [of Unsecured Creditors], Credit Suisse and CrossHarbor, who all became, in essence, plan proponents"); *In re Fraser's Boiler Serv.*, 593 B.R. 636, 641-42 (Bankr. W.D. Wash. 2018) ("it appears common among bankruptcy courts within the Ninth Circuit to allow exculpation clauses that do not include exceptions for breaches of fiduciary duty, legal malpractice, or ordinary negligence.").

Plan exculpations may also extend to non-estate fiduciaries when the exculpated parties make substantial contributions to the reorganization, the exculpations are important to such parties' participation in the reorganization efforts,

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

and the exculpations are limited "in both scope and time" to actions related to the chapter 11 case. *See In re Yellowstone Mountain Club*, 460 B.R. at 272; *Meritage Homes of Nev. Inc. v. JPMorgan Chase Bank, N.A.* (*In re S. Edge LLC*), 478 B.R. 403, 415-16 (D. Nev. 2012) (approving exculpation of third-party non-debtors because exculpation "sets a standard of care to be applied in the bankruptcy proceeding" and "does not improperly release third party nondebtors"); *Lazo v. Roberts*, No. CV15-7037-CAS(PJWx), 2016 WL 738273, at *7 (C.D. Cal. Feb. 22, 2016) ("Increasingly, however, [t]he trend among bankruptcy courts [more generally] has been to confirm chapter 11 plans with express discharge or indemnification provisions for non-debtors if they meet certain tailored criteria or overall necessity. This overall trend is evident in the Ninth Circuit.") (internal quotation marks and citations omitted); *see also In re Stearns Holdings, LLC*, 607 B.R. 781, 790 (Bankr. S.D.N.Y. 2019) (holding that exculpation could extend to parties "who make a substantial contribution to a debtor's reorganization and play an integral role in building consensus in support of a debtor's restructuring"). Exculpation clauses also are essential in cases like this one that are heavily litigated. *See In re Yellowstone Mountain Club*, 460 B.R. at 274 ("An exculpation clause in this case was certainly advisable given the litigious posture of the parties.").

The exculpation provision in the Plan appropriately excludes willful misconduct or gross negligence, and there is no requirement that breaches of professional duties be excluded from a plan exculpation provision. *See In re W. Asbestos Co.*, 313 B.R. 832, 846 (Bankr. N.D. Cal. 2003) (approving provision that "neither the Plan Proponents nor any of their agents, including their attorneys, shall be liable, *other than for willful misconduct*, with respect to any action or omission prior to the effective date in connection with the Debtors' operations, the Plan, or the conduct of the bankruptcy case.") (emphasis added).

The exculpation provision the Court upheld in *Blixseth* is particularly instructive. *See* 961 F.3d 1074. There, as here, the exculpation provision was limited

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

both temporally and in scope to actions related to the reorganization; specifically, "any act or omission in connection with, relating to or arising out of the Case, the formulation, negotiation, implementation, confirmation or consummation of this Plan, the Disclosure Statement, or any contract, instrument, release or other agreement or document entered into during the Chapter 11 Cases or otherwise created in connection with this Plan." *Id*. at 1078-79. Furthermore, like here, the exculpation clause extended to major stakeholders, including the provider of the debtor in possession financing and the largest creditor in the case, who had negotiated the plan, leading the plan to be essentially a collaborative effort, of which the exculpation was a "cornerstone." *Id*.; *see also Yellowstone Mountain Club*, 460 B.R. at 277. The exculpation clause also similarly covered the various agents, professionals, and other related parties of the exculpated parties—specifically, "with respect to each of the foregoing Persons, each of their respective directors, officers, employees, agents… representatives, shareholders, partners, members, attorneys, investment bankers, restructuring consultants and financial advisors." 460 B.R. at 267. Here, the Plan exculpation extends to the major stakeholders in this case who entered settlements with the Debtor to allow the Plan to become effective and collaborated with the Debtor in the countless hours of negotiation and preparation of the Plan. Finally, as with the exculpation in *Blixseth*, the Plan exculpation excludes willful misconduct and gross negligence. *Compare* 961 F.3d at 1079 *with* Plan § 17.4.

Accordingly, the Bankruptcy Court should approve the Plan's release, injunction, and exculpation provisions.

V. THE OBJECTIONS SHOULD BE OVERRULED

A. The Oracle Objection Should Be Overruled

While Oracle does not object to confirmation, the Oracle Objection objects to the assumption of its pre-petition agreement with the Debtor (the "Oracle Pre-Petition

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Agreement").[6] Oracle contends that two invoices are outstanding, and, that the Oracle Pre-Petition Agreement has not been assigned to DAP Health because the CHOW has not been approved. However, with regard to one of the invoices, the Debtor has now remitted payment for the invoice dated May 2, 2023, number 1586433, which was the only outstanding liability of the Debtor on the Oracle Pre-Petition Agreement.

With regard to the other invoice, Oracle is misreading the provisions of the Sale Order. Shortly after the entry of the Sale Order, the Debtor, Oracle, and DAP Health entered into an assignment agreement (the "Assignment Agreement"), which defined the "Assignment Effective Date" as the occurrence of both (i) the date of consent and execution by Oracle, and the closing of the transaction between the Debtor and DAP Health. Despite Oracle's contentions, the Sale closed on July 31, 2023 [Docket No. 823]. Oracle executed the Assignment Agreement on August 1, 2023, making the Assignment Effective Date August 1, 2023. As such, the Oracle Pre-Petition Agreement was assigned pursuant to the Sale Order, and the August 2, 2023 Invoice is an obligation of DAP Health. Accordingly, Oracle's Objection should be overruled.

B. The USTs' Objections Have Been Addressed and Otherwise Should Be Overruled

The UST Objection objects to confirmation on four grounds. The Plan Proponents contend that the UST Objection is largely resolved by the Non-Material Modifications, and, otherwise, should be overruled.

1. ***The Initial Distribution Will Occur within Six Months of the Effective Date***

The UST's first objection is that the Plan and Liquidating Trust Agreement do not contain "an explicit default provision." However, the Plan provides a mechanism for Creditors to seek enforcement of the Plan in the unlikely event of an alleged

[6] After the Petition Date and Closing of the Sale, the Debtor and Oracle entered into a new agreement to backup certain accounting data (the "Oracle Post-Petition Agreement"). Pursuant to the Plan Supplement, the Debtor seeks to assume the Oracle Post-Petition Agreement. Oracle has not raised an objection to the assumption of the Oracle Post-Petition Agreement.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

default. Pursuant to the Plan, the Initial Distribution Date will occur on "the Effective Date, or as soon as practicable thereafter." Plan § 3.80. Thus, the Plan is designed to pay Allowed Claims quickly upon confirmation, which has been the goal of the expedited confirmation process. If concerns were to arise, the Plan also explicitly retains this Court's jurisdiction "over all matters arising, arising under, or related to the Chapter 11 Case," including jurisdiction to (i) "ensure that Distributions to Holders of Allowed Claims are accomplished in accordance with the Plan," (ii) hearing and determine disputes arising in connection with the Plan and Confirmation Order, and (iii) "take any action and issue such orders as may be necessary to construe, enforce, implement, execute, and consummate this Plan." *Id.* at § 19.1. Thus, if the Initial Distribution Date does not occur in a timely matter, or a Creditor raises another issue related to the Plan, the Creditor may bring a motion to enforce before this Court.

Notably, the UST does not provide any basis in statute or precedent that requires an "explicit default provision" for confirmation. The Plan Proponents submit that the mechanisms for a Creditor—or another party in interest—to raise enforcement issues with the Court are sufficient. Accordingly, the Plan Proponents submit that the UST Objection should be overruled on this point.

2. ***The UST's Contention that the Third-Party Releases Are Improper Is without Merit***

The UST objects to the Third-Party Release for two reasons: (i) that it violates § 524(e) by not limiting the scope or time, and (ii) that it binds creditors who do not affirmatively consent.

First, the UST misreads the evolving precedent of the Ninth Circuit concerning the scope and impact of § 524(e) on releases under a plan. The UST cites language in *Lowenschuss*, that, at first blush, suggests that § 524(e) prohibits non-debtor releases of any kind. However, the Ninth Circuit's recent decision in *Blixseth*, 961 F.3d at 1082, clarifies that the plain language of § 524(e) must be more narrowly construed.

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

("By its terms, § 524(e) prevents a bankruptcy court from extinguishing claims of creditors against non-debtors *over the very debt discharged through the bankruptcy proceedings*.) (emphasis added). As discussed thoroughly above, the Third-Party Release is appropriate because they do not contravene § 524(e), which only bars a debtor's discharge from affecting the co-liability of a non-debtor for the discharged debt.

The UST glosses over this critical distinction and never reconciles its repeated citation to cases rejecting the release of guarantors and co-liable parties with the Third-Party Release effectuated by the Plan. The Plan does not intend to release the narrow set of co-liabilities precluded by § 524(e) and Ninth Circuit authority. In fact, the UST does not claim that the Third-Party Release seeks to release co-liabilities. "As such, section 524(e) has no relevance to the court's evaluation of the plan's nondebtor releases." *Astria Health*, 623 B.R. at 803.

Rather, the UST argues that *Blixseth* turned on the fact that the exculpation provision at issue in that case was limited to actions that occurred during the bankruptcy and did not include pre-petition actions. UST Objection at 3. However, *Blixseth* involved an exculpation provision, substantially similar to Section 17.4, for actions that occurred related to the bankruptcy case. The Third-Party Release is different and does not require such temporal limitations. However, the Third-Party is narrowly tailored and is a product of extensive, arm-length negotiations. The Released Parties are a narrow subset of individuals and entities who significantly contributed to the success of this Case. The Third-Party Releases are essential to the Plan and bring finality to this Case. Courts in the Ninth Circuit have approved substantially similar nondebtor releases. *Astria Health*, 623 B.R. at 802-803 approving third-party releases including pre-petition conduct); *In re PG & E Corp.*, 617 B.R. at 683 (approving third-party releases of pre-petition conduct). Accordingly, the Third-Party Release should be approved as consistent with § 524(e), and the UST Objection should be overruled on this point.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

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

Additionally, the UST argues that the Third-Party Release is not consensual. As noted above, the Plan Proponents intend to make a Non-Material Modification to Section 17.2(b) to provide that the Third-Party Release is granted only by Creditors who (i) voted to accept the Plan (or were deemed to accept the Plan); and (ii) did not return a Release Opt-Out Election Form. This will ensure Section 17.2(b) is consistent with the Plan's definition of "Releasing Parties," which provides that "in no event shall an Entity be a Releasing Party that (x) does not vote to accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately marks the Release Opt-Out Election Form to opt out of the Third-Party Release and returns such Release Opt-Out Election Form in accordance with the Plan and the Voting Instructions." Accordingly, this Non-Material Modification should resolve the UST's concern that the Third-Party Release is not consensual.

To the extent that the UST believes the objection is not resolved, the objection should be overruled because the Third-Party Releases are consensual. The Debtor provided a clear opt-out mechanism, and clear instructions, to parties entitled to vote on the Plan. Holders of Claims who opted out of the Third-Party Release, or who did not vote on the Plan, are not bound by the Third-Party Release. *See Astria Health*, 623 B.R. at 803 (find nondebtor release to be "entirely consensual" where creditors only provided a release if they voted in favor and elected not to opt out of the releases, and that there was no arguable coercion"). While courts have approved "opt-in" procedures, opt-out procedures, such as those in the Plan, have been found to be consensual releases in the Ninth Circuit and in other jurisdictions. *Id.* at 803; *In re Abeinsa Holding, Inc.*, 56 B.R. 265, 285 (Bankr. D. Del. 2016); *In re Genco Shipping & Trading Ltd.*, 513 B.R. 233, 271 (Bankr. S.D.N.Y. 2014). Accordingly, the UST Objection should be overruled.

3. ***The Plan Does Not Provide a De Facto Discharge***

The UST incorrectly argues that the injunctive provision of the Plan affects a discharge. Plan, § 17.3(a). The Plan does not serve to discharge claims of creditors,

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

rather it converts such claims to claims against the Liquidating Trust, thereby providing a mechanism for creditors to pursue a recovery on their respective claims. Even though the Debtor is not receiving a discharge, it is entirely permissible to provide that assets transferred to the Liquidating Trust should be insulated from claims that might otherwise be asserted against the Debtor. *See In re Midway Gold US, Inc.*, 575 B.R. 475, 515 (Bankr. D. Colo. 2017) (denying debtors a discharge but approving the following plan language as permissible: "Claimants may not seek payment or recourse against or otherwise be entitled to any Distribution from the Liquidating Trust Assets except as expressly provided in this Plan and the Liquidating Trust Agreement."); *see also In re Lambertson Truex, LLC*, No. 09-10747, 2009 Bankr. LEXIS 4812, at *14 (Bankr. D. Del. July 27, 2009) (confirming plan of liquidation with the following language: "the Debtor and the Estate shall be deemed to have transferred and/or assigned any and all of their assets as of the Effective Date […] to the beneficiaries of the Liquidation Trust free and clear of all Claims, Liens and contractually imposed restrictions, except for the rights to distribution afforded to holders of Claims under the Plan; and immediately thereafter, such assets shall be deemed transferred by such beneficiaries to the Liquidation Trustee in trust.").

Specifically, the UST objects because the injunction is "not subject to any temporal limit (such as the duration of the Plan)." UST Objection at 5. Accordingly, the Plan Proponents propose to add language to the Confirmation Order providing that the injunction under section 17.3 is in place for as long as the Plan is Effective.

Based on the foregoing, the UST Objection should be resolved or otherwise overruled on this point.

4. ***The UST Misinterprets Section 17.5***

The UST objects that the Plan is "inconsistent" in providing that the Liquidating Trustee and the Co-Liquidating Trustee owe fiduciary duties under Ninth Circuit law. However, the UST misinterprets the Plan. Section 17.5 provides that "[t]he obligations under this Plan of the *Debtor's Estate* shall (i) be contractual only

and shall not create any fiduciary relationship…" (emphasis added). This provision does not apply to the Liquidating Trustee and the Co-Liquidating Trustee. Rather, section 17.5 stands for the proposition that the Debtor's Estate—a separate entity from the Liquidating Trustee and the Co-Liquidating Trustee—will not create any fiduciary relationship pursuant to its obligations under the Plan. The Plan Proponents do not dispute that the Liquidating Trustee and the Co-Liquidating Trustee are fiduciaries to the Liquidating Trust—nor does the Plan provide otherwise. However, the Plan Proponents propose to include clarifying language in Section 17.5 to confirm that, for the avoidance of doubt, the Liquidating Trustee and Co-Liquidating Trustee are fiduciaries. Accordingly, with the clarifying language, the UST Objection should be considered resolved or otherwise overruled.

VI. RESERVATION OF RIGHTS

The Plan Proponents reserve the right to further amend the Plan and to submit additional documents, declarations, exhibits, and other supporting documents and evidence in connection with confirmation of the Plan or any amended plan, or otherwise. While the objections to confirmation of the Plan are limited to those timely raised in the written objections filed by the objection deadline, to the extent any additional or modified objections are raised in connection with the confirmation hearing, the Plan Proponents reserve the right to respond to the same and/or to argue they are untimely. Nothing contained herein shall constitute a limitation or waiver of rights with respect to any objection filed after the confirmation objection deadline pursuant to a stipulation extending such deadline.

VII. CONCLUSION

WHEREFORE, the Plan Proponents respectfully request that the Bankruptcy Court enter an order (i) confirming the Plan, (ii) approving the Disclosures, (ii) overruling the Oracle Objection and the UST Objection, and (iii) granting such other and further relief as the Bankruptcy Court deems just and proper.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Dated: January 11, 2024

DENTONS US LLP
Samuel R. Maizel
Tania M. Moyron

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

Attorneys for the Chapter 11 Debtor and Debtor in Possession

Dated: January 11, 2024

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

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

Attorneys for the Official Committee of Unsecured Creditors

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

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

DECLARATION OF ISAAC LEE

I, Isaac Lee, hereby state and declare that if called as a witness, I would and could testify of my own personal knowledge as follows:

1. I am the Chief Restructuring Officer ("CRO") of Borrego Community Health Foundation (the "Debtor").

2. The statements herein are based upon my personal knowledge of the facts and information gathered by me in my capacity as CRO for the Debtor.

3. I make this declaration (the "Declaration") in support of the *Joint Memorandum of Law in Support of Confirmation of the First Amended Joint Combined Disclosure Statement and Plan of Liquidation of Borrego Community Health Foundation and Omnibus Reply to the Objections to Confirmation* (the "Confirmation Brief"). Unless otherwise defined herein, capitalized terms shall have the same meaning as in the Confirmation Brief.

4. Except as otherwise indicated, all statements in this Declaration are based upon my personal knowledge, my review of the Debtor's books and records, relevant documents, and other information prepared or collected by the Debtor's representatives and advisors, my opinion based on my experience with the Debtor's operations and financial condition, or upon my review of the *Certification of Sydney Reitzel Regarding the Solicitation and Tabulation of Votes on the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* (the "Voting Declaration"), filed contemporaneously herewith. I am authorized to submit this Declaration on behalf of the Debtor.

A. The Plan Complies with the Requirements of Section 1122 of the Bankruptcy Code

5. Section 9 of the Plan provides for the separate classification of Claims into four distinct Classes based upon (a) their secured status, if applicable, (b) their

legal priority against the Debtor's assets, and (c) other relevant factors:[7]

Class	Designation	Impairment	Entitled to Vote
1	Priority Non-Tax Claims	Not Impaired	No (deemed to accept)
2	Secured Claims	Not Impaired	No (deemed to accept)
3	General Unsecured Claims	Impaired	Yes
4	Allowed DHCS Claim	Impaired	Yes

6. The classification scheme was not proposed principally (or otherwise) to create a consenting impaired Class and thereby manipulate voting.

7. I understand that the legal rights of each of the Holders of Claims within a particular Class are substantially similar to other Holders of Claims within the same Class. Thus, I believe the Plan satisfies the requirements of § 1122.

B. The Plan Satisfies Section 1129 of the Bankruptcy Code

8. I am informed and believe that the Plan complies with § 1129(a)(1) of the Bankruptcy Code. In that regard, I believe that the Plan satisfies each requirement set forth in section 1123(a) regarding the required contents of a chapter 11 plan. Sections 8, 9, and 10 of the Plan satisfy the first three requirements of § 1123(a) by designating Classes of Claims, as required by § 1123(a)(1), specifying the Classes of Claims that are Unimpaired under the Plan, as required by § 1123(a)(2), and specifying the treatment of each Class of Claims that is impaired, as required by § 1123(a)(3).

9. The treatment of each Allowed Claim within a Class is the same as the treatment of each other Allowed Claim in that Class unless the holder of a Claim consents to less favorable treatment on account of its Claim. Accordingly, I believe the Plan satisfies § 1123(a)(4).

[7] In accordance with § 1123(a)(1), Administrative Claims, Professional Fee Claims, Statutory Fees, and Priority Tax Claims have not been classified. *See* Plan at § 8.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

10. I am further informed and believe that the Plan satisfies the requirements of § 1123(a)(5) by setting forth the means for implementing the Plan in Sections 11, 12, 13, and 15 of the Plan, along with the Liquidating Trust Agreement and the Plan Supplement.

11. Because the Plan does not provide for the issuances of non-voting securities, I do not believe that § 1123(a)96) applies.

12. Upon the Effective Date, a Liquidating Trust will be created, and it will be operated, in accordance with the Plan and Liquidating Trust Agreement, by the Liquidating Trustee—who will serve as President of the Post-Effective Date Debtor—and a Co-Liquidating Trustee. I was selected as the Liquidating Trustee by the Debtor. The Co-Liquidating Trustee will be a representative from FTI, appointed by the Committee. Similarly, section 15.5 of the Plan provides for the appointment of a three-member Post-Effective Date Board of Directors. The identities and affiliation of the Liquidating Trustee, Co-Liquidating Trustee, and Post-Effective Date Board of Directors are described in the Plan, Liquidating Trust Agreement, and Plan Supplement. Accordingly, I believe that § 1123(a)(7) is satisfied.

13. Finally, I am informed and believe that the Plan complies with § 1123(d), which I understand provides that if a plan proposes to cure a default, the default shall be determined in accordance with the underlying agreement and applicable non-bankruptcy law. I do not believe that the Plan Provides otherwise.

14. Section 1129(a)(2). I am informed and believe that the Debtor has complied with the applicable provisions of the Bankruptcy Code, including §§ 1125 and 1126, regarding disclosure and solicitation. On December 7, 2023, the Court entered the Solicitation Order, approving the Disclosures, in the interim, as containing adequate information and approving the Solicitation Procedures. [Docket No. 1179].

15. As detailed in the Voting Declaration, the Plan Proponents complied in all respects with the Solicitation Procedures as outlined in the Solicitation Order, including their compliance with service requirements, and not soliciting acceptance

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

of the Plan from any creditor prior to sending the Solicitation Packages that contained the Court-approved Disclosures.

16. Finally, I believe that good, sufficient, and timely notice of the Confirmation Hearing has been provided to all Holders of Claims and all other parties in interest to whom notice was required to be provided.

17. I am informed and believe that the Debtor has complied with § 1126. Classes 1 and 2 are Unimpaired under the Plan. Pursuant to § 1126(f), holders of Claims in the Unimpaired Classes are not entitled to vote on the Plan and are conclusively deemed to have accepted the Plan. The Plan Proponents solicited votes on the Plan from the Voting Classes—that is, the holders of all Allowed Claims in each Impaired Class entitled to receive distributions under the Plan: Classes 3 through 4. The Voting Deadline occurred on January 8, 2024, at 4:00 p.m. (Pacific Time), and the Voting Declaration details the results of the voting process in accordance with § 1126, in which the Plan was overwhelmingly supported by the holders of Claims in each Voting Class.

18. Section 1127. The Plan Proponents intend to make the Non-Material Modifications through language in the Confirmation Order. Prior to the Confirmation Hearing, the Plan Proponents will file a proposed Confirmation Order to reflect certain non-material and technical changes that do not materially or adversely affect the treatment of any holder of a Claim under the Plan.

19. The Non-Material Modifications primarily consist of the following changes: (i) the Plan will reserve for the full amount of the Premier Creditor's claims and such amounts shall be deposited in interest bearing accounts, which maximize value and maintain safety. The interest bearing accounts shall be invested in US 1-Month Treasury Bills or other US backed instruments; (ii) to the extent a Disputed Claim becomes an Allowed Claim, Holders of such Claims shall be entitled to the interest that accrues on the *pro rata* amount of their Claim in the Disputed Claim Reserves; (iii) the clarification of language that Creditors who do not vote on the Plan

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

are not considered Releasing Parties for purposes of the Third-Party Release; (iv) language providing that the injunction pursuant to Section 17.3(a) of the Plan is limited to as long as the Plan is Effective; and (v) clarifying language in Section 17.5 that such section provides that any obligations under the Plan of the Debtor's Estate are contractual only.

20. I believe § 1127 is satisfied because all Creditors will have the opportunity to object to the Non-Material Modifications at the Confirmation Hearing.

21. Section 1129(a)(3). I believe the Plan Proponents have proposed the Plan in good faith. The Plan is the product of months of extensive arm's-length independent and interrelated negotiations among the Debtor, the Committee, and DHCS with respect to the DHCS Settlement, which terms are incorporated into the Plan. These negotiations were difficult and addressed complex legal and factual issues. The DHCS Settlement provides for allowed administrative, priority, secured, and general unsecured creditors to receive distributions on or soon after the Effective Date. The Plan facilitates the best possible recovery for all creditors under the totality of the circumstances. As a result, the Plan has the support of each Class of Claims.

22. Section 1129(a)(4). It is my understanding that all payments made or to be made by the Debtor for services or costs or expenses in connect with this Case incurred prior to the Effective Date have already been approved by or are subject to approval of the Court. More specifically, the Plan provides that professionals asserting a Professional Claim for services rendered before the Effective Date must file a request for final allowance of such Professional Claim no later than 45 days after the Effective Date.

23. Section 1129(a)(5). It is my understanding that the requirement of § 1129(a)(5) is satisfied. The Plan provides for the liquidation and distribution of the Debtor's remaining assets by a Liquidating Trust. The Plan Supplement provides the identity of (i) the initial members of the Post-Effective Date Board of Directors, (ii) the Liquidating Trustee, and (iii) the Co-Liquidating Trustee. I will serve as

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Liquidating Trustee, and I, as Liquidating Trustee, shall serve as the President of the Post-Effective Date Debtor. I am not aware of any objection to the selections and believe that these selections are not contrary to public policy.

24. Section 1129(a)(6). Because I am unaware of any government regulatory commission with jurisdiction over any rate charged by the Post-Effective Date Debtor, and because the Plan does not provide for any applicable rate change, I believe § 1129(a)(6) does not apply.

25. Section 1129(a)(7). I am informed and believe that the Plan complies with the "best interest test" set forth in § 1129(a)(7). I believe that the best interest test is satisfied with respect to Classes 3 and 4 because such Classes have unanimously voted to accept the Plan. For the reasons discussed in the Confirmation Brief, the Plan, and the Liquidation Analysis, I believe the Plan satisfies the best interest test.

26. Section 1129(a)(8). I am informed and believe that each Class of Claims either (a) accepts the Plan, or (b) is rendered unimpaired under the Plan and deemed to Accept. Accordingly, I believe the Plan satisfies the requirements of § 1129(a)(8).

27. Section 1129(a)(9). I understand that § 1129(a)(9) requires that entities holding allowed claims entitled to priority under § 507(a)(1)-(8) receive specified cash payments under a plan. I am informed and believe that the Plan complies with such requirements. Pursuant to Section 20.2 of the Plan, the Plan Proponents request that the Court establish the Administrative Claims Reserve in the amount of approximately $2 million. The Debtor has proposed to reserve the full asserted amount of the majority of asserted Administrative Claims that will not be Allowed on the Effective Date, in accordance with Section 20.2. Many of these fully reserved Administrative Claims represent claims the Debtor already paid in the ordinary course of business. To the extent that any Administrative Claims are Disputed, the Debtor shall reserve the full asserted amount of such claims. Accordingly, I submit that $2 million is an appropriate Administrative Claims reserve under the totality of circumstances.

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

28. Section 1129(a)(10). It is my understanding that the Voting Classes do not contain insiders and have accepted the Plan. Therefore, I believe the Plan satisfies § 1129(a)(10).

29. Section 1129(a)(11). I believe that the Plan is feasible and comports with § 1129(a)(11). Pursuant to the Liquidation Analysis, after payment to the estimated Allowed Unsecured Claims, approximately $27 million is available to reserve for the full amount of Disputed Claims. Accordingly, the Liquidating Trust will be able to reserve for the full amount of all Disputed Claims.

30. Section 1129(a)(12). The plan provides for payment in full of all Statutory Fees owed at the time of confirmation and provides that additional fees will be paid in the ordinary course of business until the closing, dismissal, or conversion of the Chapter 11 Case to another chapter of the Bankruptcy Code by the Liquidating Trustee. Accordingly, I believe § 1129(a)(12) is satisfied.

31. Sections 1129(a)(13)-(15). I believe that § 1129(a)(13)-(15) are inapplicable because Debtor will not have any ongoing retiree benefits or domestic support obligations, and the Debtor is not an "individual."

32. Section 1129(a)(16). I believe that § 1129(a)(16) is satisfied because the Plan provides for the Bankruptcy Court's approval of, or otherwise authorizes, any property transfers.

33. Section 1129(d). I believe that the Plan was not proposed to avoid taxes or section 5 of the Securities Act and am aware of no governmental unit that has argued otherwise.

C. The Discretionary Contents of the Plan Should Be Approved

34. Executory Agreements. The Debtor reviewed and analyzed its Executory Agreements. In its business judgment, the Debtor concluded that certain of their Executory Agreements listed on the Plan Supplement should be assumed on the Effective Date to ensure the Post-Effective Date Debtor's seamless transition into the Post-Effective Date period and certain other Executory Agreements may be required

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

to ensure that the value of the Liquidating Trust Assets is maximized. Likewise, the Debtor has determined that it is in their best interest to reject all other Executory Agreements under the Plan as they are no longer providing a benefit to the Estate.

35. Releases, Exculpations, and Injunctions. The Plan includes certain customary release, exculpation, and injunction provisions. I believe these provisions are proper because, among other things, they are the product of arm's length negotiations, have been important to obtaining the support of various constituencies and parties in interest, are supported by the Debtor and the Committee. I believe such release, exculpation, and injunction provisions are fair and equitable, given for valuable consideration, and in the best interest of the Estate.

36. I am not aware of any other colorable Estate claims or causes of action that may exist against any of the Released Parties. In the absence of any viable claims against any of the Released Parties, it is my belief that pursuing claims against the Released Parties would be a costly and futile exercise that would only distract the Liquidating Trustee from its primary obligation of managing the Post-Effective Date Debtor and the Liquidating Trust. It is also my understanding that these provisions have the support of every major creditor constituent.

37. It is my belief that each of the Released Parties afforded significant value to the Debtor, played an integral role in the formulation of the Plan, and expended significant time and resources analyzing and negotiating the issues involved therein and leading the Debtor through a complex chapter 11 process.

D. The Objections Should Be Overruled

38. The Oracle Objection. The Debtor has now remitted payment for the invoice dated May 2, 2023, number 1586433, which was the only outstanding liability of the Debtor on the Oracle Pre-Petition Agreement.

39. Shortly after the entry of the Sale Order, the Debtor, Oracle, and DAP Health entered into the Assignment Agreement, which defined the "Assignment Effective Date" as the occurrence of both (i) the date of consent and execution by

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300

Oracle, and the closing of the transaction between the Debtor and DAP Health. Oracle executed the Assignment Agreement on August 1. It is my belief that the August 2 invoice is an obligation of DAP Health.

40. After the Petition Date and Closing of the Sale, the Debtor and Oracle entered into a new agreement to backup certain accounting data (the "Oracle Post-Petition Agreement"). Pursuant to the Plan Supplement, the Debtor seeks to assume the Oracle Post-Petition Agreement.

41. Accordingly, and for the reasons set forth herein, in the Voting Declaration, and in the Plan, I believe that confirmation of the Plan is appropriate, in the best interest of all parties in interest, and should, therefore, be confirmed.

I declare under penalty of perjury, that to the best of my knowledge and after reasonable inquiry, the foregoing is true and correct.

Executed this 11th day of January 2024, at Los Angeles, California.

Isaac Lee

Isaac Lee
Chief Restructuring Officer

DENTONS US LLP
601 South Figueroa Street, Suite 2500
Los Angeles, California 90017-5704
213 623 9300