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

15 In re

16 BORREGO COMMUNITY
HEALTH FOUNDATION,
17 Debtor and Debtor In Possession.

Case No. 22-02384-11

Chapter 11 Case

**JOINT OMNIBUS REPLY TO THE
OBJECTIONS TO THE JOINT MOTION
OF THE DEBTOR AND THE OFFICIAL
COMMITTEE OF UNSECURED
CREDITORS FOR 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**

Judge: Honorable Laura S. Taylor

Hearing:
Date: December 6, 2023
Time: 9:30 a.m.
Location: Department 3

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1 Borrego Community Health Foundation, the debtor and debtor in possession
2 (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Case”), and
3 the Official Committee of Unsecured Creditors (the “Committee,” and collectively
4 with the Debtor, the “Plan Proponents”) respectfully file this omnibus reply (“Reply”) to the objections of the United States Trustee (the “UST”) [Docket No. 1152] and
5
6 DRP Holdings, LLC, Inland Valley Investments, LLC, Premier Healthcare
7 Management, Inc., and Promenade Square, LLC (collectively, the “Premier
8 Creditors”) [Docket No. 1154] to the *Joint Motion of the Debtor and the Official*
9 *Committee of Unsecured Creditors for Entry of an Order (I) Granting Interim*
10 *Approval of the Adequacy of the Disclosures in the Combined Joint Disclosure*
11 *Statement and Plan; (II) Approving Solicitation Packages and Procedures;*
12 *(III) Approving the Forms of Ballots; (IV) Setting Related Deadlines; and*
13 *(V) Granting Related Relief* [Docket No. 1092] (the “Solicitation Procedures
14 Motion”).¹ In support of the Reply, the Plan Proponents submit as follows:

15 **I. INTRODUCTION**

16 The Plan Proponents received only two objections to the Solicitation
17 Procedures Motion despite the size and complexity of this Case. As set forth in the
18 Court’s tentative ruling [Docket No. 1156] (the “Tentative Ruling”), the concerns
19 raised by the UST and the Premier Creditors may be resolved by minor amendments.
20 To that end, concurrently with this Reply, the Plan Proponents have filed their *First*
21 *Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation*
22 *of Borrego Community Health Foundation* (the “Amended Plan”) to provide
23 additional information regarding (i) the identity of the Liquidating Trustee and Co-
24 Liquidating Trustee, (ii) the identity of the members of the Post-Effective Date Board
25 of Directors, and (iii) statutory fees and post-confirmation quarterly reports. The
26

27 _____
28 ¹ Capitalized terms not defined herein are ascribed the same meaning as in the Solicitation Procedures Motion.

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1 Amended Plan also amends deadlines related to the Plan Supplement and Rule 3018
2 Motions. The foregoing changes are reflected in the redline (the “Redline”) attached
3 hereto as **Exhibit “A.”** A clean version of the Amended Plan will be separately filed
4 on the docket.

5 None of the aforementioned revisions substantively alter the treatment afforded
6 to creditors under the Amended Plan, which, after substantial efforts, is proposed
7 jointly by the Debtor and the Committee to bring a consensual and expeditious
8 resolution to this Case. Accordingly, based on the foregoing, the Plan Proponents
9 respectfully request that the Court overrule the objections of the UST and the Premier
10 Creditors as resolved and grant the Solicitation Procedures Motion.

11 **II. REPLY**

12 **A. The Plan Proponents Have Addressed the UST’s Concerns**

13 The UST objects to the interim approval of the Disclosures on the basis that the
14 Disclosures do not contain adequate information as to four issues: (i) the identity of
15 certain parties, including the Liquidating Trustee, the Co-Liquidating Trustee, and the
16 members of the Post-Effective Date Board of Directors; (ii) the Liquidating Trust
17 Agreement; (iii) the payment of quarterly fees if the Case is reopened after entry of a
18 final decree; and (iv) the filing of post-confirmation quarterly reports. The Amended
19 Combined Plan expressly addresses the UST’s concerns. *See* Exhibit A, Redline at ¶
20 2.2, p. 6-7, ¶ 3.107, p. 20, ¶ 3.108, p. 20, ¶ 6.2, p. 37, ¶ 8.3, p. 59, ¶ 15.7, p. 85, ¶
21 15.8(b), p. 86, ¶ 20.9, p. 108, ¶ 20.21, p. 110-111.

22 Additionally, the Amended Plan provides that the Plan Proponents will file the
23 Plan Supplement, including the Liquidating Trust Agreement and the identities of the
24 above parties, by December 11, 2023. Accordingly, the Plan Supplement will be
25 available for review by any interested party throughout the entirety of the solicitation
26 period.

27 Further, the Amended Plan has been revised to clarify that the Liquidating
28 Trustee and the Post-Effective Date Debtor will file all required post-confirmation

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1 quarterly reports and pay any required statutory fees if the Case is reopened after the
2 entry of a final decree. The revised deadlines will be corrected in the various notices
3 and solicitation documents.

4 Accordingly, the Amended Plan resolves the UST’s concerns, which Haeji
5 Hong, Trial Attorney at the Office of the United States Trustee, confirmed by email
6 at 8:41 a.m. on December 4, 2023.

7 **B. The Plan Proponents Have Addressed the Premier Creditors’ Concerns**

8 The Premier Creditors requested that the Plan Proponents modify certain
9 deadlines, which are modified by the Amended Plan. As set forth above, the deadline
10 to file the Plan Supplement is now December 11, 2023. Additionally, the deadline for
11 creditors to file Rule 3018 Motions has been modified to December 29, 2023.
12 Similarly, the deadline for the Debtor to respond to any Rule 3018 Motions has been
13 modified to January 5, 2024. Accordingly, these revised deadlines resolve the Premier
14 Creditors’ concerns, which the Premier Creditors confirmed in the *Creditors DRP*
15 *Holdings, LLC, Inland Valley Investments, LLC, Premier Healthcare Management,*
16 *Inc., and Promenade Square, LLC’s Request for Status Conference. See [Docket No.*
17 *1164, p. 1].²*

18 **III. CONCLUSION**

19 **WHEREFORE**, for the foregoing reasons and such additional reasons as may
20 be advanced at or prior to any hearing on the Solicitation Procedures Motion, the Plan
21 Proponents respectfully request that the Court (i) overrule the objections of the UST
22 and the Premier Creditors as resolved, (ii) conditionally approve the Disclosures,
23 (iii) grant the Solicitation Procedures Motion, and (iv) grant such other and further
24 relief as the Court may deem just.

25
26
27 _____
28 ² Separately, the Plan Proponents will file an opposition to the Premier Creditors’ request for status conference.

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1 Dated: December 4, 2023

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Tania M. Moyron

2

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

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Attorneys for the Chapter 11 Debtor and
Debtor in Possession

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7 Dated: December 4, 2023

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Steven W. Golden

10

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Attorneys for the Official Committee of
Unsecured Creditors

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Exhibit A
Redline

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Unsecured Creditors

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **SOUTHERN DISTRICT OF CALIFORNIA**

13 In re:
14 BORREGO COMMUNITY
HEALTH FOUNDATION,
15
16 Debtor and Debtor In
Possession.

Case No. 22-02384
Chapter 11 Case

FIRST AMENDED JOINT COMBINED
DISCLOSURE STATEMENT AND
CHAPTER 11 PLAN OF
LIQUIDATION OF BORREGO
COMMUNITY HEALTH
FOUNDATION

Judge: Hon. Laura S. Taylor

Hearing:
Date: January 17, 2024
Time: 10:00 a.m.
Place: Department 3

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DISCLAIMERS

1
2 EACH HOLDER OF A CLAIM AGAINST THE DEBTOR ENTITLED
3 TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND
4 DISCLOSURE STATEMENT SHOULD READ THE COMBINED PLAN
5 AND DISCLOSURE STATEMENT IN ITS ENTIRETY BEFORE VOTING.
6 NO SOLICITATION OF VOTES TO ACCEPT OR REJECT THE
7 COMBINED PLAN AND DISCLOSURE STATEMENT MAY BE MADE
8 EXCEPT PURSUANT TO THE TERMS HEREOF AND SECTIONS 1121
9 AND 1125 OF THE BANKRUPTCY CODE.¹ IF YOU ARE ENTITLED TO
10 VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE
11 STATEMENT, YOU ARE RECEIVING A BALLOT WITH YOUR NOTICE
12 OF THE COMBINED PLAN AND DISCLOSURE STATEMENT. THE
13 DEBTOR URGES YOU TO VOTE TO ACCEPT THE COMBINED PLAN
14 AND DISCLOSURE STATEMENT. THIS COMBINED PLAN AND
15 DISCLOSURE STATEMENT IS JOINTLY PROPOSED WITH THE
16 OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE
17 “COMMITTEE”) WHICH SUPPORTS THE COMBINED PLAN AND
18 DISCLOSURE STATEMENT AND URGES CREDITORS IN CLASS 3 TO
19 VOTE TO ACCEPT THE COMBINED PLAN AND DISCLOSURE
20 STATEMENT.

21 THE COMBINED PLAN AND DISCLOSURE STATEMENT HAS
22 BEEN PREPARED IN ACCORDANCE WITH §§ 1121 AND 1125 AND
23 BANKRUPTCY RULES 3016 AND 3017, AND NOT IN ACCORDANCE
24 WITH FEDERAL OR STATE SECURITIES LAWS OR OTHER
25 APPLICABLE NON-BANKRUPTCY LAW. PERSONS OR ENTITIES
26 TRADING IN OR OTHERWISE PURCHASING, SELLING, OR
27 TRANSFERRING CLAIMS AGAINST THE DEBTOR SHOULD
28 EVALUATE THE COMBINED PLAN AND DISCLOSURE STATEMENT IN
LIGHT OF THE PURPOSE FOR WHICH IT WAS PREPARED. THE
COMBINED PLAN AND DISCLOSURE STATEMENT SHALL NOT BE
CONSTRUED TO BE ADVICE ON THE TAX, SECURITIES, OR OTHER
LEGAL EFFECTS OF THE COMBINED PLAN AND DISCLOSURE
STATEMENT AS TO HOLDERS OF CLAIMS AGAINST THE DEBTOR.
YOU SHOULD CONSULT YOUR PERSONAL COUNSEL OR TAX
ADVISOR ON ANY QUESTIONS OR CONCERNS RESPECTING TAX,

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

1 SECURITIES, OR OTHER LEGAL CONSEQUENCES OF THE
2 COMBINED PLAN AND DISCLOSURE STATEMENT.

3 THE COMBINED PLAN AND DISCLOSURE STATEMENT
4 CONTAINS SUMMARIES OF CERTAIN STATUTORY PROVISIONS,
5 DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE
6 STATEMENT, EVENTS IN THE CHAPTER 11 CASE, AND FINANCIAL
7 INFORMATION. ALTHOUGH THE DEBTOR AND THE COMMITTEE
8 BELIEVE THAT THE STATEMENTS AND DESCRIPTIONS CONTAINED
9 IN THE COMBINED PLAN AND DISCLOSURE STATEMENT ARE TRUE
10 AND ACCURATE, THEY ARE QUALIFIED TO THE EXTENT THAT
11 THEY DO NOT SET FORTH THE ENTIRE TEXT OF THE DOCUMENTS
12 RELATED TO THE COMBINED PLAN AND DISCLOSURE STATEMENT
13 AND APPLICABLE STATUTORY PROVISIONS. THE TERMS OF THE
14 DOCUMENTS RELATED TO THE COMBINED PLAN AND DISCLOSURE
15 STATEMENT AND APPLICABLE STATUTES GOVERN IN THE EVENT
16 OF ANY DISCREPANCY WITH THE COMBINED PLAN AND
17 DISCLOSURE STATEMENT. CREDITORS AND OTHER INTERESTED
18 PARTIES SHOULD READ THE COMBINED PLAN AND DISCLOSURE
19 STATEMENT, THE DOCUMENTS RELATED TO THE COMBINED PLAN
20 AND DISCLOSURE STATEMENT, AND THE APPLICABLE STATUTES
21 THEMSELVES FOR THE FULL AND COMPLETE STATEMENTS OF
22 SUCH TERMS AND PROVISIONS.

23 THE FACTUAL STATEMENTS AND REPRESENTATIONS
24 CONTAINED IN THE COMBINED PLAN AND DISCLOSURE
25 STATEMENT ARE MADE BY THE DEBTOR AND THE COMMITTEE AS
26 OF THE DATE HEREOF, UNLESS OTHERWISE SPECIFIED, AND THE
27 DEBTOR AND THE COMMITTEE DISCLAIM ANY OBLIGATION TO
28 UPDATE ANY SUCH STATEMENTS AFTER THE SOLICITATION OF
VOTES TO ACCEPT OR REJECT THE COMBINED PLAN AND
DISCLOSURE STATEMENT. THE DELIVERY OF THE COMBINED
PLAN AND DISCLOSURE STATEMENT SHALL NOT BE DEEMED OR
CONSTRUED TO CREATE ANY IMPLICATION THAT THE
INFORMATION CONTAINED HEREIN IS CORRECT AT ANY TIME
AFTER THE DATE HEREOF.

THE FINANCIAL INFORMATION CONTAINED HEREIN HAS NOT
BEEN AUDITED BY A CERTIFIED PUBLIC ACCOUNTANT AND HAS
NOT NECESSARILY BEEN PREPARED IN ACCORDANCE WITH
GENERALLY ACCEPTED ACCOUNTING PRINCIPLES.

1 ALL FORWARD-LOOKING STATEMENTS CONTAINED HEREIN
2 OR OTHERWISE MADE BY THE DEBTOR OR THE COMMITTEE
3 INVOLVE MATERIAL RISKS AND UNCERTAINTIES AND ARE
4 SUBJECT TO CHANGE BASED ON NUMEROUS FACTORS, INCLUDING
5 FACTORS THAT ARE BEYOND THE DEBTOR'S CONTROL.
6 ACCORDINGLY, THE DEBTOR'S FUTURE PERFORMANCE AND
7 FINANCIAL RESULTS MAY DIFFER MATERIALLY FROM THOSE
8 EXPRESSED OR IMPLIED IN ANY SUCH FORWARD-LOOKING
9 STATEMENTS. SUCH FACTORS INCLUDE, BUT ARE NOT LIMITED
10 TO, THOSE DESCRIBED IN THE COMBINED PLAN AND DISCLOSURE
11 STATEMENT. THE DEBTOR AND THE COMMITTEE DO NOT INTEND
12 TO UPDATE OR REVISE THEIR FORWARD-LOOKING STATEMENTS
13 EVEN IF EXPERIENCE OR FUTURE CHANGES MAKE IT CLEAR THAT
14 ANY PROJECTED RESULTS EXPRESSED OR IMPLIED THEREIN WILL
15 NOT BE REALIZED.

16 ANY PROJECTED RECOVERIES TO CREDITORS SET FORTH IN
17 THIS DISCLOSURE STATEMENT ARE BASED UPON THE ANALYSES
18 PERFORMED BY THE DEBTOR AND ITS ADVISORS. ALTHOUGH THE
19 DEBTOR AND ITS ADVISORS HAVE MADE EVERY EFFORT TO
20 VERIFY THE ACCURACY OF THE INFORMATION PRESENTED
21 HEREIN, THE DEBTOR AND ITS ADVISORS CANNOT MAKE ANY
22 REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY
23 OF THIS INFORMATION.

24 IN CONNECTION WITH THE DEBTOR'S AND THE
25 COMMITTEE'S SOLICITATION OF ACCEPTANCES OF THE
26 COMBINED PLAN AND DISCLOSURE STATEMENT PURSUANT TO §
27 1126(b), THE DEBTOR AND THE COMMITTEE ARE FURNISHING A
28 SOLICITATION PACKAGE, CONSISTING OF THE COMBINED PLAN
AND DISCLOSURE STATEMENT, THE ~~EXHIBITS~~EXHIBIT A HERETO,
CONFIRMATION NOTICE, AND A BALLOT AND/OR A RELEASE
OPT-OUT ELECTION FORM, AS APPLICABLE, TO EACH RECORD
HOLDER OF CLAIMS ELIGIBLE TO VOTE OR ITS COUNSEL. THE
COMBINED PLAN AND DISCLOSURE STATEMENT IS TO BE USED BY
EACH SUCH ELIGIBLE HOLDER SOLELY IN CONNECTION WITH ITS
EVALUATION OF THE COMBINED PLAN AND DISCLOSURE
STATEMENT; USE OF THE COMBINED PLAN AND DISCLOSURE
STATEMENT FOR ANY OTHER PURPOSE IS NOT AUTHORIZED.
NOTHING STATED IN THE COMBINED PLAN AND DISCLOSURE

1 **STATEMENT SHALL BE DEEMED OR CONSTRUED AS AN ADMISSION**
2 **OF ANY FACT OR LIABILITY BY ANY PARTY, OR BE ADMISSIBLE IN**
3 **ANY PROCEEDING INVOLVING THE DEBTOR, THE COMMITTEE OR**
4 **ANY OTHER PARTY. THE COMBINED PLAN AND DISCLOSURE**
5 **STATEMENT MAY NOT BE REPRODUCED OR PROVIDED TO ANYONE**
6 **OTHER THAN ADVISORS TO THE RECIPIENT WITHOUT THE PRIOR**
7 **WRITTEN CONSENT OF THE DEBTOR.**

8 **SECTION 1.**
9 **INTRODUCTION**

10 Borrego Community Health Foundation, (the “Debtor”), the debtor and
11 debtor-in-possession in the above-captioned chapter 11 case, and the Official
12 Committee of Unsecured Creditors (the “Committee”) hereby jointly propose the
13 following combined disclosure statement and plan pursuant to §§ 1121(a) and
14 1125(b) (the disclosure statement portion hereof, the “Disclosure Statement” and
15 the chapter 11 plan portion hereof, the “Plan,” as may be modified and/or amended
16 from time to time, and collectively, the “Combined Plan and Disclosure
17 Statement”). Capitalized terms used in the Combined Plan and Disclosure
18 Statement and not otherwise defined have the meanings ascribed to such terms in
19 Section 3.

20 The Plan proposes to pay or otherwise satisfy Allowed Administrative
21 Claims, Allowed Secured Claims, Allowed General Unsecured Claims, and a
22 portion of the Allowed DHCS Claim, in full on the Effective Date or as soon as
23 practicably thereafter. The Plan creates Class A and Class B Liquidating Trust
24 Interests and proposes to pay Allowed General Unsecured Claims and the Allowed
25 DHCS Claim in accordance with the DHCS Settlement. The Plan also proposes the
26 resolution of certain other Claims and the distribution of proceeds to Holders of
27 Allowed Claims. Claims against the Debtor—other than Unclassified Claims—are
28 classified in Section 9 and treated in accordance with Section 10 hereof. The Plan
provides that (i) the Liquidating Trustee will administer the Class B Liquidating
Trust Assets and continue the wind-down and liquidation of the Debtor after the
Effective Date, and (ii) the Co-Liquidating Trustee will administer the Class A
Liquidating Trust Assets to pay Holders of Allowed General Unsecured Claims.

The Debtor and the Committee will distribute the Combined Plan and
Disclosure Statement to all holders of Claims in accordance with § 1125(b);
Bankruptcy Rules 2002, 3016, and 3017; and the Bankruptcy Court’s order
conditionally approving the Combined Plan and Disclosure Statement [Docket No.
] (the “Conditional Approval and Procedures Order”).

1 The Combined Plan and Disclosure Statement and the ~~exhibits~~exhibit hereto
2 include a discussion of: (i) the nature and history of the Debtor’s business and
3 liabilities; (ii) events during the Chapter 11 Case; (iii) the requirements for
4 confirmation of the Plan and procedures for voting to accept or reject the Plan; (iv)
5 additional factors and disclosures to be considered, including risk factors and
6 certain U.S. federal income tax consequences of the Plan; and (v) the terms of the
7 Plan, including the treatment of holders of Claims under the Plan. The Disclosure
Statement was prepared with the intent to provide “adequate information” (as
defined in the Bankruptcy Code) to enable holders of Claims against the Debtor to
make informed judgments about the Plan.

8 Subject to the restrictions on modifications set forth in § 1127 and
9 Bankruptcy Rule 3019 and those restrictions on modifications set forth in Section
10 20.4 of the Combined Plan and Disclosure Statement, the Debtor and the
11 Committee expressly reserve the right to alter, amend, or modify the Combined
12 Plan and Disclosure Statement, including the Plan Supplement, one or more times,
before substantial consummation thereof.

13 Please read the Combined Plan and Disclosure Statement, the
~~exhibits~~exhibit, other supporting materials, and any appropriate ballot carefully and
14 follow the instructions set forth below and on the appropriate ballot to vote on the
15 Combined Plan and Disclosure Statement. The Debtor and the Committee believe
16 that the Combined Plan and Disclosure Statement provides the best method of
17 maximizing the recoveries for the holders of Claims against the Debtor. **Therefore,
the Debtor and the Committee recommend that all creditors who are entitled
to vote should vote in favor of the Combined Plan and Disclosure Statement.**

18 Unless otherwise specified, all section or exhibit references in the Combined
19 Plan and Disclosure Statement are to the respective section in, or exhibit to, the
20 Combined Plan and Disclosure Statement, as the same may be amended, waived, or
21 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,”
22 and other words of similar import refer to the Combined Plan and Disclosure
23 Statement as a whole and not to any particular section, subsection, or clause
24 contained herein. The headings in the Combined Plan and Disclosure Statement are
25 for convenience of reference only and shall not limit or otherwise affect the
26 provisions hereof. For purposes herein: (a) in the appropriate context, each term,
27 whether stated in the singular or the plural, shall include both the singular and the
28 plural, and pronouns stated in the masculine, feminine, or neuter gender shall
include the masculine, feminine, and the neuter gender; (b) any reference herein to
a contract, lease, instrument, release, or other agreement or document being in a
particular form or on particular terms and conditions means that the referenced
document shall be substantially in that form or substantially on those terms and

1 conditions; and (c) unless otherwise noted above, the rules of construction set forth
2 in § 102 shall apply.

3 **SECTION 2.**
4 **SUMMARY OF CLASSIFICATION OF CLAIMS**
5 **UNDER PLAN AND IMPORTANT SOLICITATION AND**
6 **CONFIRMATION DATES AND DEADLINES**

7 **2.1 Summary of Classification of Claims.**

8 The following table designates the Classes of Claims against the Debtor and
9 specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by
10 the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with §
11 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional
12 Claims, Statutory Fees, and Priority Tax Claims, have not been classified. All of
13 the potential Classes for the Debtor are set forth herein. If, ultimately, the Debtor
14 does not have Holders of Claims in a particular Class or Classes, such Classes shall

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

15 be treated as set forth in Section 10.

16 **2.2 Important Dates and Deadlines.**

Event	Proposed Date
Voting Record Date	November 28, 2023
Solicitation commences	December 11, 2023
Deadline to file Plan Supplement	December 11, 2023
Voting Objection Deadline	December 22, 2023
Deadline for Creditors to file Rule 3018 Motions	December 22 ²⁹ , 2023
Deadline to respond to Voting Objection	December 29, 2023
Deadline for Debtor to respond to Rule 3018 Motions	December 29 ^{January 5} ,

Event	Proposed Date
	2023 2024
Deadline to file Plan Supplement	January 5, 2024
Voting Deadline and deadline to submit the Release Opt-Out Election Form	January 8, 2024, at 4:00 p.m., Pacific Time
Combined Plan and Disclosure Statement Objection Deadline	January 8, 2024, at 4:00 p.m., Pacific Time
Deadline to file Confirmation Brief and other evidence supporting the Combined Plan and Disclosure Statement	January 11, 2024
Deadline to file Voting Tabulation Affidavit	January 11, 2024
Confirmation Hearing	January 17, 2024, at 10:00 a.m.

**SECTION 3.
DEFINITIONS AND INTERPRETATION**

A. Definitions.

As used in the Combined Plan and Disclosure Statement, capitalized terms not otherwise defined have the meanings set forth below. Any term that is not otherwise defined herein, but that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the meaning given to that term in the Bankruptcy Code or the Bankruptcy Rules, as applicable.

3.1 *Administrative Claim* means a Request for Payment of an administrative expense of a kind specified in § 503(b) and entitled to priority pursuant to § 507(a)(2) or § 507(b), including: (i) the actual, necessary costs and expenses, incurred on or after the Petition Date, of preserving the Estate and operating the business of the Debtor through the Effective Date; (ii) the value of goods received by the Debtor within 20 days before the Petition Date in which the goods have been sold to the Debtor in the ordinary course of the Debtor’s business pursuant to § 503(b)(9); (iii) Allowed Claims that are entitled to be treated as Administrative Claims pursuant to a Final Order of the Bankruptcy Court; (iv) Professional Claims; (v) and Statutory Fees.

3.2 *Administrative Claims Bar Date* means the deadline set by an order of the Bankruptcy Court by which Holders of Administrative Claims, other than Administrative Claims arising in the ordinary course of business for the Debtor or Professional Claims, must assert Administrative Claims or be forever barred, which

1 shall be (a) thirty days after the Effective Date for Administrative Claims other than
2 Professional Claims, and (b) 45 days after the Effective Date for Professional
3 Claims.

4 3.3 **Administrative Claims Objection Bar Date** means the deadline for
5 filing objections to requests for Administrative Claims required to be filed, which
6 shall be 90 days following the Effective Date, *provided, however*, that the
7 Administrative Claims Objection Bar Date may be extended by the Bankruptcy
8 Court.

9 3.4 **Administrative Claims Reserve** means Cash to be set aside by the
10 Debtor on the Effective Date in an aggregate amount estimated to fund the required
11 amounts for payment of all unpaid Allowed Administrative Claims that will be paid
12 after the Effective Date and all Administrative Claims that are not yet Allowed as
13 of the Effective Date.

14 3.5 **Adversary Proceeding** shall have the meaning provided below in
15 Section 5.5.

16 3.6 **Allowed** means for Distribution purposes, a Claim, or any portion
17 thereof, or a particular Class of Claims: (a) that is Allowed by a Final Order of the
18 Bankruptcy Court (or such other court as provided by the Plan or as the Liquidating
19 Trustee or Co-Liquidating Trustee, as applicable, and the Holder of such Claim
20 agree may adjudicate such Claim and objections thereto); (b) that is Allowed by
21 this Plan and/or Confirmation Order; (c) is scheduled as not contingent, not
22 unliquidated, and not disputed, and for which no superseding Proof of Claim has
23 been timely filed; (d) for which a Proof of Claim in a liquidated amount has been
24 timely filed with the Bankruptcy Court pursuant to the Bankruptcy Code or deemed
25 timely filed by any Final Order of the Bankruptcy Court or other applicable
26 bankruptcy law, and as to which (i) no objection to its allowance has been filed
27 prior to the date of entry of the Confirmation Order or is not listed on the Disputed
28 Claims Schedule; or (ii) any filed objection to its allowance has been settled or
29 withdrawn, or has been denied by a Final Order of the Bankruptcy Court;
30 (e) following the Effective Date, with respect to General Unsecured Claims, as
31 otherwise may be determined as Allowed by the Liquidating Trust in accordance
32 with the Plan and the Liquidating Trust Agreement; or (f) that is expressly allowed
33 in a liquidated amount pursuant to this Plan.

34 3.7 **Allowed DHCS Balance Claim** means the Allowed DHCS Claim
35 after: (i) the application of the DHCS Allowed Offset Amount, which amounts
36 have been withheld by DHCS; and (ii) the payment of the DHCS Sales Proceeds
37 Recovery. As set forth herein, the Allowed DHCS Balance Claim shall be
38 subordinated to the prior payment in full of: (a) Allowed Administrative Claims;

1 (b) Allowed Priority Claims; (c) Allowed General Unsecured Claims; and (d) the
2 Effective Date Professional Claim Reserves.

3 3.8 **Allowed DHCS Claim** means the Allowed General Unsecured Claim
4 of DHCS in the total amount of \$112,000,000, as accounted for and adjusted as set
5 forth in the DHCS Settlement Agreement.

6 3.9 **Appeal** shall have the meaning provided below in Section 5.5.

7 3.10 **Assets** means all legal or equitable interests of the Estate in any and all
8 (a) property of every kind, nature, character and description, whether real, personal,
9 or mixed, whether tangible or intangible (including contract rights), wherever
10 situated and by whomever possessed, and any goodwill related thereto, including
11 any real estate, buildings, structures, improvements, privileges, rights, easements,
12 leases, subleases, goods, materials, supplies, furniture, fixtures, equipment, work in
13 process, accounts, chattel paper, cash, deposit accounts, reserves, deposits,
14 contractual rights, intellectual property rights, claims, Causes of Action, securities,
15 investments and any other general intangibles, and (b) the proceeds, products,
16 offspring, rents or profits thereof, including all assets of the Debtor constituting
17 “property of the estate” as described in § 541.

18 3.11 **Asset Purchase Agreement** means the agreement between the Debtor
19 and DAP Health setting forth the terms of the DAP Sale, pursuant to § 363, and
20 approved by the Sale Order.

21 3.12 **Avoidance Actions** means any Causes of Action arising under any
22 section of chapter 5 of the Bankruptcy Code, including, without limitation, §§ 502,
23 510, 541, 542, 543, 544, 545, 547, 548, 549, 550, 551, and 553 or under similar or
24 related state or federal statutes and common law, including state fraudulent transfer
25 laws.

26 3.13 **Ballots** means the ballots upon which the Holders of Impaired Claims
27 shall indicate their acceptance or rejection of the Plan, in accordance with the Plan
28 and the Voting Instructions.

3.14 **Ballot Deadline** means the date by which all Ballots must be properly
executed, completed and delivered by First Class Mail, overnight courier, or hand
delivery, to Kurtzman Carson Consultants LLC, at 222 N. Pacific Coast Highway,
3rd Floor, El Segundo, CA 90245, so as to be actually received by Kurtzman
Carson Consultants LLC no later than 4:00 p.m. (Pacific Time), on the date set by
the Bankruptcy Court in the Conditional Approval and Procedures Order.

1 3.15 **Bankruptcy Code** means title 11 of the United States Code, 11 U.S.C.
2 §§ 101, *et seq.*, as amended.

3 3.16 **Bankruptcy Court** means the United States Bankruptcy Court for the
4 Southern District of California, or any other court having jurisdiction over the
5 Chapter 11 Case, including, to the extent the jurisdictional reference of the
6 Bankruptcy Court has been withdrawn to the United States District Court for the
7 Southern District of California, pursuant to section 157(d) of title 28 of the United
8 States Code.

9 3.17 **Bankruptcy Rules** means the Federal Rules of Bankruptcy Procedure
10 as promulgated by the United States Supreme Court under section 2075 of title 28
11 of the United States Code, as may be amended from time to time.

12 3.18 **Bar Date** means the applicable deadlines by which a Proof of Claim or
13 Request for Payment must be, or must have been, filed in in this Chapter 11 Case,
14 as established by either the Bar Date Order, an order of the Bankruptcy Court or
15 this Plan, including without limitation: (a) November 21, 2022 deadline to file
16 Proofs of Claim relating to prepetition Claims; (b) the March 13, 2023 deadline to
17 file Proofs of Claim for Governmental Units; (c) the Administrative Claims Bar
18 Date; (d) the Extended DHCS Bar Date; and (e) the Rejection Bar Date.

19 3.19 **Bar Date Order** means any order of the Bankruptcy Court establishing
20 Bar Dates for filing Proofs of Claim or Requests for Payment in this Chapter 11
21 Case, as the same may be amended, modified or supplemented including, but not
22 limited to, the order at Docket No. 16.

23 3.20 **Business Day** means any day other than a Saturday, a Sunday, or any
24 other day on which banking institutions in the State of California are required or
25 authorized to close by law or executive order.

26 3.21 **Cash** means the legal tender of the United States of America and its
27 equivalent.

28 3.22 **Causes of Action** means any and all present or future claims, rights,
29 interests, legal and equitable defenses, offsets, recoupments, actions in law or
30 equity or otherwise, choses in action, obligation, guaranty, controversy, demand,
31 action suits, damages, judgments, third-party claims, counter-claims, cross-claims
32 against any Person, whether known or unknown, liquidated or unliquidated,
33 foreseen or unforeseen, existing or hereafter arising, whether based on legal or
34 equitable relief, whether arising under the Bankruptcy Code or federal, state,
35 common, or other law or equity, whether or not the subject of a pending litigation
36 or proceedings on the Effective Date or thereafter of the Estate, the Debtor, or the

1 Liquidating Trust, as applicable, including without limitation: (a) all Avoidance
2 Actions; (b) all other claims in avoidance, recovery, and/or subordination; (c) all
3 claims for the turnover of property to the Debtor or the Liquidating Trust; (d) all
4 claims for compensation for damages incurred by the Debtor; (e) all claims arising
5 in connection with *Husam E. Aldairi, et al. v. Borrego Community Health*
6 *Foundation*, Case No. 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego);
7 (f) all claims in *Borrego Community Health Foundation v. Inland Valley, LLC, et*
8 *al.*, Case No. 3:21-cv-01417-AJB-AGS (S.D. Cal.); (g) all claims in *Borrego*
9 *Community Health Foundation v. Karen Hebets, et al.*, Case No.
10 3:22-cv-01056-AJB-AGS (S.D. Cal.); (h) all claims in *Borrego Community Health*
11 *Foundation v. Travelers Casualty and Surety Company of America*, Case No.
12 3:22-CV-161-L-MDD (S.D. Cal.); and (i) all other actions described in this
13 Combined Plan and Disclosure Statement, the Confirmation Order, the Schedules,
14 or the Plan.

15
16 3.23 **Chapter 11 Case** means the voluntary chapter 11 case filed by the
17 Debtor on the Petition Date under the caption, *In re Borrego Community Health*
18 *Foundation*, Case No. 22-02384, currently pending before the Bankruptcy Court.

19 3.24 **CHOW** means the change of ownership application submitted
20 pursuant to 42 C.F.R § 489.18 by the Debtor and DAP Health for approval by CMS
21 that will result in the transfer of the Debtor's Medicare Identification Number and
22 Medicare Provider Agreement to DAP Health.

23 3.25 **CHOW Effective Date** means date of the approval of the CHOW by
24 CMS.

25 3.26 **Claim** has the meaning set forth in § 101(5).

26 3.27 **Claims and Balloting Agent** means Kurtzman Carson Consultants
27 LLC, which was appointed as the Debtor's claims, noticing, and balloting agent.

28 3.28 **Claims Objection Deadline** means the first Business Day that is the
later of (a) two hundred ten (210) days after the Effective Date, or (b) such other
later date as the Bankruptcy Court may establish upon a motion by the Liquidating
Trustee in accordance with the Plan.

3.29 **Claimant** means the Holder of a Claim.

3.30 **Class** means a class of Claims established pursuant to Section 9
herein.

3.31 **Class A Liquidating Trust Assets** means, collectively: (i) the
Remaining Cash; and (ii) (a) 67% of the first \$1 million of Net Recovery, (b) 33%

1 of the second \$1 million of Net Recovery, and (c) for any Net Recovery thereafter,
2 the Pro Rata share of such Net Recovery among the Holders of Class A Trust
Beneficial Interests and Class B Trust Beneficial Interests.

3 3.32 **Class A Trust Beneficial Interests** means the interests in the
4 Liquidating Trust of the Holders of Allowed Claims in Class 3 and their
5 concomitant entitlement to Distributions to be made by the Liquidating Trust on
6 account of Allowed General Unsecured Claims from the Class A Liquidating Trust
Assets.

7 3.33 **Class B Liquidating Trust Assets** means collectively: (i) the DHCS
8 Sales Proceeds Recovery; (ii) (a) 33% of the first \$1 million of Specified Litigation
9 Recoveries, (b) 67% of the second \$1 million of Specified Litigation Recoveries,
10 and (c) for any Specified Litigation Recoveries thereafter, the Pro Rata share of
11 such Specified Litigation Recoveries among the Holders of Class A Trust
12 Beneficial Interests and Class B Trust Beneficial Interests; and (iii) solely to the
extent any Class A Liquidating Trust Assets remain after Holders of Class A Trust
Beneficial Interests are paid in full, the Class A Liquidating Trust Assets.

13 3.34 **Class B Trust Beneficial Interests** means the interest in the
14 Liquidating Trust of the Holders of Allowed Claims in Class 4 and their
15 concomitant entitlement to Distributions to be made by the Liquidating Trust on
16 account of the Allowed DHCS Balance Claim from the Class B Liquidating Trust
Assets.

17 3.35 **Closing** means the consummation of the transactions contemplated by
18 the DAP Sale pursuant to the terms of the Asset Purchase Agreement.

19 3.36 **Closing Date** means July 31, 2023, pursuant to the Asset Purchase
20 Agreement, as set forth in the *Notice of Occurrence of Closing of Sale to DAP*
Health, Inc. [Docket No. 823].

21 3.37 **CMS** means the Centers for Medicare and Medicaid Services.

22 3.38 **Committee** means the Official Committee of Unsecured Creditors
23 appointed on September 26, 2022, by the U.S. Trustee in this Chapter 11 Case
24 pursuant to § 1102 [Docket No. 49].

25 3.39 **Conditional Approval and Procedures Order** means the order entered
26 by this Court (i) conditionally approving the disclosures set forth in the Combined
27 Plan and Disclosure Statement, and (ii) approving the solicitation procedures set
28 forth in the Combined Plan and Disclosure Statement on December [], 2023
[Docket No. _].

1 3.40 **Confirmation** means the entry of the Confirmation Order, subject to
2 all conditions specified in Section 18.1 hereof having been satisfied.

3 3.41 **Confirmation Date** means the date on which the Clerk of the
4 Bankruptcy Court enters the Confirmation Order on the docket.

5 3.42 **Confirmation Hearing** means the hearing to be held by the
6 Bankruptcy Court to consider Confirmation of the Plan, as such hearing may be
7 adjourned or continued from time to time.

8 3.43 **Confirmation Order** means the order of the Bankruptcy Court
9 confirming this Plan pursuant to § 1129.

10 3.44 **Co-Liquidating Trustee** means such person selected pursuant to
11 Section 15 of the Plan or any successor or replacement officer appointed under the
12 terms of the Plan and Liquidating Trust Agreement.

13 3.45 **DAP Health** means Desert Aids Project d/b/a DAP Health.

14 3.46 **DAP Sale** means the sale of substantially all of the Debtor's assets to
15 DAP Health pursuant to § 363.

16 3.47 **Debtor** means Borrego Community Health Foundation, in its capacity
17 as debtor and debtor in possession in this Chapter 11 Case.

18 3.48 **DHCS** means the California Department of Health Care Service.

19 3.49 **DHCS 9019 Order** means the Order granting the Debtor's Motion to
20 Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,
21 and California Department of Health Care Services [Docket No. 544] and
22 approving the DHCS Settlement Agreement.

23 3.50 **DHCS Allowed Offset Amount** means the approximately \$20,600,000
24 that DHCS is withholding from the Debtor, which amount is inclusive of
25 approximately \$6,200,000 in monies otherwise payable to the Debtor for the
26 provision of in-house dental services to Medi-Cal beneficiaries, consistent with the
27 definition in the DHCS Settlement Agreement.

28 3.51 **DHCS Findings of Fact** shall have the meaning provided below in
Section 5.5.

3.52 **DHCS Order** shall have the meaning provided below in Section 5.5.

1 3.53 **DHCS Sales Proceeds Recovery** means the 40% of the Net Cash
2 Proceeds of the DAP Sale received by DHCS on or around the Effective Date of
3 this Plan, consistent with the definition in the DHCS Settlement Agreement.

4 3.54 **DHCS Settlement Agreement** means the settlement agreement by and
5 between the Debtor, the Committee, and DHCS that resolved all disputes between
6 the Debtor, the Committee, and DHCS, approved by the DHCS 9019 Order.

7 3.55 **DHHS** means the United States Department of Health and Human
8 Services.

9 3.56 **Disbursing Agent** means the individual or individuals as may be
10 retained by the Liquidating Trustee or Co-Liquidating Trustee, as applicable, to
11 assist him or her distribute the Liquidating Trust Assets in accordance with this
12 Plan and the Liquidating Trust Agreement.

13 3.57 **Dispute Resolution** shall have the meaning set forth below in Section
14 13.4.

15 3.58 **Disputed Claim** means a Claim that is either: (i) as of the date of entry
16 of the Confirmation Order, the subject of a pending objection; or (ii) listed on a
17 schedule included with the Plan Supplement (the “Disputed Claims Schedule”).

18 3.59 **Disputed Claim Reserve** shall have the meaning set forth below in
19 Section 12.7.

20 3.60 **Distribution Date** means the Initial Distribution Date or any
21 Subsequent Distribution Date, as applicable.

22 3.61 **Distributions** means the distributions of Cash to be made in
23 accordance with the Plan and the Liquidating Trust Agreement.

24 3.62 **Distribution Record Date** means the close of business on the Business
25 Day immediately preceding the Effective Date.

26 3.63 **District Court** means the United States District Court for the Southern
27 District of California.

28 3.64 **Effective Date** means a day, as determined by the Plan Proponents,
that is a Business Day as soon as reasonably practicable after all conditions to the
Effective Date specified in Section 18.2 hereof have been satisfied or waived.

3.65 **Effective Date Professional Claim Reserves** means cash to be set
aside by the Liquidating Trustee on the Effective Date sufficient in the aggregate to

1 fund a reserve on account of accrued and unpaid Professional Claims not yet fixed
2 and allowed by the Bankruptcy Court prior to or on the Effective Date.

3 3.66 **Entity** means an entity as defined in § 101(15).

4 3.67 **Estate** means the estate created upon the Petition Date pursuant to §
5 541.

6 3.68 **Exculpated Party** means, individually and collectively: (a) the Debtor;
7 (b) the Debtor's trustees, officers, and managers serving in such capacity on and
8 after the Petition Date; (c) members of the Committee (solely in their capacities as
9 Committee members); and (d) Bankruptcy Court-approved Estate and Committee
professionals. Notwithstanding the foregoing, none of the Prepetition Fraud Parties
are an Exculpated Party.

10 3.69 **Excluded Party** means all enumerated defendants in the Causes of
11 Action and the Prepetition Fraud Parties, as set forth in the Plan Supplement.

12 3.70 **Executory Agreement** means any executory contract or unexpired
13 lease subject to § 365, excluding any executory contract or unexpired lease entered
14 into after the Petition Date and approved by an order of the Bankruptcy Court.

15 3.71 **Extended DHCS Bar Date** means December 29, 2023, which is the
16 deadline by which DHCS must file a Proof of Claim for any further General
17 Unsecured Claims against the Debtor for Medi-Cal overpayments, consistent with
18 the definition in the DHCS Settlement Agreement.

19 3.72 **Final Decree** means the decree contemplated under Bankruptcy Rule
20 3022.

21 3.73 **Final Distribution** means the last payment to Holders of Allowed
22 Claims in accordance with the provisions of the Plan.

23 3.74 **Final Order** means an order or judgment, the operation or effect of
24 which has not been reversed, stayed, modified, or amended, is in full force and
25 effect, and as to which order or judgment (or any reversal, stay, modification, or
26 amendment thereof) (a) the time to appeal, seek *certiorari*, or request reargument,
27 further review, or rehearing has expired and no appeal, petition for *certiorari*,
28 request for reargument or further review, or rehearing has been timely filed, or (b)
any appeal that has been or may be taken, or any petition for *certiorari* or request
for reargument or further review or rehearing that has been or may be filed, has
been resolved by the highest court to which the order or judgment was appealed,
from which *certiorari* was sought, or to which the request was made, and no further
appeal, petition for *certiorari*, request for reargument, or further review or

1 rehearing has been or can be taken or granted; provided, however, that the
2 possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or
3 any analogous rule under the Bankruptcy Rules, may be filed relating to such order
4 shall not prevent such order from being a Final Order; provided, further, that the
Debtor or Liquidating Trustee, as applicable, reserve the right to waive any appeal
period for an order or judgment to become a Final Order.

5 3.75 **General Unsecured Claim** means any Claim against the Debtor that is
6 not a/an: (i) Administrative Claim; (ii) Professional Claim; (iii) Secured Claim; (iv)
7 Priority Claim; (v) Allowed DHCS Claim; (vi) Allowed DHCS Balance Claim; or
(vii) Statutory Fee.

8 3.76 **Governmental Unit** has the definition set forth in § 101(27).

9 3.77 **Holder** means a holder of a Claim against the Debtor.

10 3.78 **Impaired** means, with respect to a Class of Claims, that such Class is
11 “impaired” within the meaning of § 1124.

12 3.79 **Indemnified Parties** shall have the meaning set forth below in Section
13 17.6.

14 3.80 **Initial Distribution Date** means the Effective Date, or as soon as
15 practicable thereafter when the initial Distribution of Cash shall be made to the
16 Holders of Allowed Claims, as determined by the Debtor, the Liquidating Trustee,
or the Co-Liquidating Trustee, as applicable.

17 3.81 **Insurance Policy** means any insurance policy maintained by or for the
18 benefit of the Debtor, regardless of whether such Insurance Policy is set forth in a
19 schedule to the Plan Supplement.

20 3.82 **Liquidating Trust** means the liquidating trust created pursuant to the
21 Liquidating Trust Agreement.

22 3.83 **Liquidating Trust Agreement** means the *Liquidating Trust Agreement*,
23 to be dated on or prior to the Effective Date, as may be modified from time to time,
between the Debtor and the Liquidating Trustee.

24 3.84 **Liquidating Trust Assets** means all assets of the Debtor that (i) exist
25 immediately prior to the Effective Date and are not otherwise used by the Debtor to
26 make Distributions or create Reserves on the Effective Date to or for the benefit of
27 Holders of Allowed Administrative Claims, Priority Non-Tax Claims, Professional
Claims and Secured Claims, and (ii) are not Purchased Assets. The Liquidating
28 Trust Assets also include, without limitation, to the extent not otherwise expressly

1 excluded by this definition: (i) the Remaining Cash; (ii) all Causes of Action the
2 Debtor holds or may hold against any Person or Entity as of the Effective Date
3 (except to the extent they are the subject of any of the Releases set forth in the
4 Plan); (iii) all Claims and rights of the Debtor under any Insurance Policies; (iv)
5 any and all other non-Cash assets, interests, rights, claims and defenses of the
6 Debtor or the Estate, including, without limitation, all rights under any order of the
7 Bankruptcy Court; (v) any and all tax refunds to which the Debtor may be entitled;
8 and (vi) any and all proceeds of any of the foregoing.

9 3.85 **Liquidating Trust Beneficiaries** means the Holders of Trust Beneficial
10 Interests, as of any point in time.

11 3.86 **Liquidating Trustee** means such person selected pursuant to Section
12 15 of the Plan or any successor or replacement officer appointed under the terms of
13 the Plan and Liquidating Trust Agreement.

14 3.87 **Litigation** means the interest of the Estate, the Debtor, or the
15 Liquidating Trust, as applicable, in any and all claims, rights, and Causes of Action
16 that have been or may be commenced by the Debtor or the Liquidating Trust, as
17 applicable, except to the extent concerning any Released Parties. Litigation
18 includes, without limitation not otherwise stated herein, any action: (i) to avoid and
19 recover any transfers of property determined to be preferential, fraudulent, or
20 avoidable pursuant to §§ 544, 545, 547, 548, 549(a), and 550; (ii) for the turnover
21 of property to the Debtor or Liquidating Trust, as applicable; (iii) for the recovery
22 of property or payment of money that belongs to or can be asserted by the Debtor
23 or the Liquidating Trust, as applicable; (iv) for compensation for damages incurred
24 by the Debtor; and (v) equitable subordination actions against Creditors.

25 3.88 **Litigation Recoveries** means any Cash or other property received by
26 the Debtor or the Liquidating Trust, as applicable, from all or any portion of the
27 Litigation of any of the Causes of Action, including, but not limited to, awards of
28 damages, attorneys' fees and expenses, interest, and punitive damages, whether
recovered by way of settlement, execution on judgment, or otherwise. If any
litigation of any of the Causes of Action is pursued on a contingent-fee basis, the
Litigation Recovery will be net of any expenses of such litigation and any
contingent fee paid to legal counsel.

 3.89 **Local Bankruptcy Rules** means the Local Rules of the United States
Bankruptcy Court of the Southern District of California, as amended from time to
time.

 3.90 **Management Services Support Agreement** means the agreement
between the Debtor and DAP Health for DAP Health to provide a broad range of

1 management support services prior to the Closing Date as set forth in the Asset
2 Purchase Agreement.

3 3.91 *Medi-Cal* means the program administered by the State of California
4 for medical assistance under title XIX of the Social Security Act.

5 3.92 *Medicare* means the federal health insurance program administered by
6 CMS under title XVIII of the Social Security Act.

7 3.93 *Net Cash Proceeds* means the aggregate cash consideration paid to or
8 retained by the Debtor at Closing of the DAP Sale net of the Sale Proceeds
9 Holdback.

10 3.94 *Net Recovery* means the aggregate amount of any cash recovery from
11 litigation of any of the Causes of Action realized by the Debtor or its
12 successor-in-interest net of the fees (including attorney's fees) and expenses of
13 such litigation.

14 3.95 *Nonprofit Laws* means any and all federal, state, local and other laws
15 and governmental regulations applicable to nonprofit corporations, including
16 without limitation, any administrative and judicial interpretations thereof (as
17 applicable).

18 3.96 *Nonprofit Status* means status as a nonprofit corporation under
19 applicable Nonprofit Laws.

20 3.97 *Ombudsman Parties* has the meaning set forth in Section 17.8 herein.

21 3.98 *Operate* (and any such variations, such as "**Operation**") means to
22 operate, oversee, manage, administer, coordinate, control, supervise and/or direct
23 the business and operations of any and/or all of the Purchased Assets, whether in
24 the ordinary course of business or in accordance with the Asset Purchase
25 Agreement, Transition Services Agreement, or otherwise, and including
26 undertaking or pursuing strategies, activities, or actions with the intent of
27 furthering the objectives of, and otherwise to effectuate the Plan as contemplated
28 by the provisions hereof, including any strategies, activities or actions aimed at
retaining, renewing, amending, extending or Transferring any of the Purchased
Assets.

3.99 *Operating Account* means one or more deposit accounts of Cash
established and/or maintained by the Liquidating Trustee as set forth in Section
15.5(c).

1 3.100 **Ordinary Course Professionals Order** means the order [Docket No.
2 400] entered by the Bankruptcy Court granting the Debtor’s motion to retain and
3 compensate professionals utilized by the Debtor in the ordinary course of business
[Docket No. 271].

4 3.101 **Ordinary Course Professionals** means the professionals retained by
5 the Debtor in the ordinary course of their business operations, pursuant to the
6 Ordinary Course Professionals Order.

7 3.102 **Patient Care Ombudsman** means Dr. Jacob Nathan Rubin, MD,
8 FACC, appointed by the U.S. Trustee to serve as the patient care ombudsman in the
9 Chapter 11 Case, pursuant to § 333(a), in accordance with the order entered by the
10 Bankruptcy Court on September 16, 2022 [Docket No. 25].

11 3.103 **Person** means an individual, partnership, corporation, limited liability
12 company, business trust, joint stock company, trust, unincorporated association,
13 joint venture, governmental authority, Governmental Unit or other entity of
14 whatever nature.

15 3.104 **Petition Date** means September 12, 2022, which is the date that the
16 Debtor filed a voluntary chapter 11 petition.

17 3.105 **Plan** means this plan of liquidation proposed by the Plan Proponents,
18 including the Plan Supplement and the ~~exhibits~~exhibit hereto and thereto, as the
19 same may be amended, modified or supplemented from time to time in accordance
20 with the provisions of the Bankruptcy Code and its terms.

21 3.106 **Plan Proponent** means each of the Debtor and the Committee.

22 3.107 **Plan Supplement** means a supplemental appendix to this Plan, as may
23 be amended from time to time on or prior to the Effective Date, which will contain
24 the following items:

- 25 a)_the Schedule of Assumed Contracts;
- 26 b)_the list of Retained Causes of Action;
- 27 c)_the list of Excluded Parties;
- 28 d)_the Disputed Claims Schedule;
- e)_the schedule of Insurance Policies;
- f)_the initial Wind-down Budget;

1 g)_ the identity of the directors serving on the Post-Effective
Date Board of Directors;

2 h)_the identity of the initial Liquidating Trustee;

3 i)_the identity of the initial Co-Liquidating Trustee;

4 j)_ the form of Liquidating Trust Agreement; and

5
6 jk)the schedule of estimated costs of administration and any
7 other funds required to be distributed upon the Effective
Date as required by Local Rule 3020-1;and.

8 k) the form of Liquidating Trust Agreement.

9 ~~provided that, the Debtor shall file items (a) through (e) at least one (1) Business~~
10 ~~Day prior to the Effective Date, and items (d) through (j) no later than ten (10) days~~
11 ~~before the Confirmation Hearing, in each case, unless otherwise extended with the~~
12 ~~consent of the Plan Proponents~~k) by December 11, 2023. The Debtor may file
separately each of the foregoing documents. The Plan Supplement shall be in
substance and form acceptable to each of the Plan Proponents.

13
14 3.108 *Post-Effective Date Board of Directors* means the three (3) member
board of directors for the Debtor that will be formed prior to or on the Effective
Date in accordance with Section 15.5(b) hereof. The initial members of the
15 Post-Effective Date Board of Directors shall be: (i) Jenna LeComte-Hinley, PhD;
16 (ii) Frank Figueroa; and (iii) Martha Deichler. All proposed members of the
17 Post-Effective Date Board of Directors are members of the Debtor's existing Board
of Directors.

18
19 3.109 *Post-Effective Date Debtor* means the Debtor, in existence as of the
Effective Date, which shall exist solely for the limited duration and purposes set
20 forth in the Plan.

21 3.110 *Prepetition Fraud* means the fraud discovered by the Debtor
22 orchestrated by certain of the Debtor's prior management, landlords and
contractors and community contract dentists that involved filing false claims for
23 dental services provided by the contract dentists.

24 3.111 *Prepetition Fraud Parties* means the parties who are alleged to have
25 participated in the Prepetition Fraud as set forth ~~on Schedule Bin~~ the Plan
26 Supplement.

1 3.112 **Priority Claim** means a Priority Non-Tax Claim or a Priority Tax
2 Claim.

3 3.113 **Priority Non-Tax Claim** means any Claim entitled to priority in
4 payment as specified in § 507(a)(4), (5), (6), (7) or (9) other than Administrative
5 Claims and Priority Tax Claims.

6 3.114 **Priority Tax Claims** means Claims of any Governmental Unit entitled
7 to priority under § 507(a)(8) and 507(c).

8 3.115 **Professional** means any Person (a) retained in the Chapter 11 Case by
9 Final Order, pursuant to §§ 327, 363, and 1103 or otherwise; or (b) awarded
10 compensation and reimbursement by the Bankruptcy Court, pursuant to §
11 503(b)(4).

12 3.116 **Professional Claim** means an Administrative Claim of a Professional
13 for compensation for services rendered or reimbursement of costs, expenses, or
14 other charges and disbursements incurred relating to services rendered or expenses
15 incurred after the Petition Date and prior to and including the Effective Date.

16 3.117 **Proof of Claim** means a proof of claim filed in this Chapter 11 Case.

17 3.118 **Provider Agreements** means (i) the Medicare Health Insurance
18 Benefits Agreements between the Debtor and DHHS, and (ii) the Medi-Cal
19 Provider Agreements between the Debtor and DHCS.

20 3.119 **Purchased Assets** means collectively all of the Assets listed in Section
21 1.7 of the Asset Purchase Agreement.

22 3.120 **Rejection Bar Date** means the last date for any Entity whose claims
23 arise out of the Bankruptcy Court approved rejection of an executory contract or
24 unexpired lease to file a Proof of Claim for damages related to such rejection. The
25 Rejection Bar Date for such Claims will be, (i) with respect to executory contracts
26 and unexpired leases rejected pursuant to a Bankruptcy Court order other than the
27 Confirmation Order, the date provided by an order approving the rejection, and, (ii)
28 with respect to executory contracts and unexpired leases rejected pursuant to the
Confirmation Order, the date that is thirty (30) days after the Effective Date.

3.121 **Related Persons** means, subject to any exclusions expressly set forth
in the Plan, with respect to a specific Person, said Person's successors and assigns,
as applicable, its current and former shareholders, affiliates, subsidiaries,
employees, agents, investment managers, subagents, officers, directors, managers,

1 trustees, partners, members, professionals, representatives, advisors, attorneys,
2 financial advisors, accountants, and consultants.

3 3.122 **Releases** shall have the meaning provided below in Section 17.2.

4 3.123 **Release Opt-Out Election Form** means a form for Holders of Claims
5 to opt out of being a Releasing Party in connection with the Third Party Release set
6 forth in Section 17 of the Plan.

7 3.124 **Released Party** means, individually and collectively: (a) the Debtor,
8 (b) the Committee, (c) the following members of the Committee: McKesson
9 Corporation; Greenway Health, LLC; We Klean Inc.; Mustafa Bilal, DDS, Inc.;
10 Vista Village Family Dentistry; Vitamin D Public Relations, LLC; and Pourshirazi
11 & Youssefi Dental Corporation; and (d) each of the Related Persons of each of the
12 Entities in the foregoing clauses (a)-(c); provided, however, that notwithstanding
13 anything to the contrary herein, including the definition of “Related Persons,” none
14 of the Prepetition Fraud Parties are a Released Party.

15 3.125 **Releasing Party** means (a) the Released Parties; and (b) all Claimants
16 that (i) vote to accept the Plan (or are deemed to accept the Plan), and (ii) do not
17 affirmatively opt out of Third Party Releases pursuant to a duly executed Release
18 Opt-Out Election Form; *provided, that*, notwithstanding anything contained herein
19 to the contrary, in no event shall an Entity be a Releasing Party that (x) does not
20 vote to accept or reject the Plan, (y) votes to reject the Plan, or (z) appropriately
21 marks the Release Opt-Out Election Form to opt out of the Third Party Releases
22 and returns such Release Opt-Out Election Form in accordance with the Plan and
23 the Voting Instructions.

24 3.126 **Remaining Cash** means the actual sum of Cash that constitutes
25 Liquidating Trust Assets after: (i) the payment of Cash necessary to satisfy all
26 Allowed Unclassified Claims that are Allowed on or prior to the Effective Date; (ii)
27 the funding of reserves for disputed Unclassified Claims to the extent required by
28 the Bankruptcy Court on or prior to the Effective Date; (iii) the payment of all
Allowed Claims payable on the Effective Date as set forth in Classes 1-2; and (iv)
the Transfer into or maintenance of funds in the Operating Accounts for the
Post-Effective Date Debtor on the Effective Date in accordance with Section
15.5(c).

3.127 **Remaining Estate Funds** means the actual sum of Cash held by the
Debtor on the Effective Date.

1 3.128 **Request for Payment** means a request for payment of an
2 Administrative Claim filed in the Chapter 11 Case.

3 3.129 **Retained Causes of Action** shall have the meaning set forth below in
4 Section 17.7(b).

5 3.130 **Sale Effective Time** means midnight (Pacific Coast Time) following
6 the Closing Date of the DAP Sale.

7 3.131 **Sale Order** means the Final Order approving the DAP Sale, pursuant
8 to § 363, titled Order (A) Authorizing the Sale of Property to Desert Aids Project
9 d/b/a DAP Health Free and Clear of Liens, Claims, Encumbrances, and Other
10 Interests; (B) Approving the Assumption and Assignment of an Unexpired Lease
11 Related Thereto; and (C) Granting Related Relief [Docket No. 559].

12 3.132 **Sale Proceeds Holdback** means \$16,000,000, which amount is the
13 Debtor's good faith estimate of the aggregate amount of Secured Claims, Priority
14 Claims, and Administrative Claims, which amount may be adjusted only in a
15 manner consistent with the DHCS Settlement Agreement.

16 3.133 **Schedule of Assumed Contracts** means the schedule listing the
17 Executory Agreements to be assumed pursuant to the Plan.

18 3.134 **Scheduled** means, with respect to any Claim, the status, priority, and
19 amount, if any, of such Claim as set forth in the Schedules.

20 3.135 **Schedules** means the schedules of assets and liabilities and the
21 statements of financial affairs filed by the Debtor in the Chapter 11 Case pursuant
22 to § 521 and Bankruptcy Rule 1007 [Docket Nos. 97, 98], which incorporate by
23 reference the global notes and statement of limitations, methodology, and
24 disclaimer regarding the Debtor's schedules and statements, as such schedules or
25 statements have been or may be further modified, amended, or supplemented from
26 time to time in accordance with Bankruptcy Rule 1009 or Final Orders of the
27 Bankruptcy Court.

28 3.136 **Secured Claim** means a Claim that is (a) secured by a lien on any of
the Assets, which lien is valid, perfected, and enforceable under applicable law or
by reason of a Final Order, to the extent of the value of the claimant's interest in
such Asset, or (b) entitled to setoff under § 553, to the extent of the amount subject
to such setoff, as determined pursuant to § 506(a) or § 1129(b).

 3.137 **Solicitation Package** shall have the meaning set forth below in Section
6.10.

1 3.138 **Specified Litigation** means the following lawsuits: (i) Husam E.
2 Aldairi, et al. v. Borrego Community Health Foundation, Case No.
3 37-2021-00046200-CU-BC-CTL (Cal. Sup. Ct. San Diego); (ii) Borrego
4 Community Health Foundation v. Inland Valley, LLC, et al., Case No.
5 3:21-cv-01417-AJB-AGS (S.D. Cal.); (iii) Borrego Community Health Foundation
6 v. Karen Hebets, et al., Case No. 3:22-cv-01056-AJB-AGS (S.D. Cal.); and (iv)
7 Borrego Community Health Foundation v. Travelers Casualty and Surety Company
8 of America, Case No. 3:22-CV-161-L-MDD (S.D. Cal.).

9 3.139 **Specified Litigation Defendant** means any counterparty to the Debtor
10 in the Specified Litigation.

11 3.140 **Specified Litigation Recoveries** means the Net Recovery, if any,
12 realized by the Debtor or the Liquidating Trust from any or all of the Specified
13 Litigation.

14 3.141 **Statutory Fees** means the fees payable pursuant to section 1930 of title
15 28 of the United States Code that were incurred in connection with the Chapter 11
16 Case.

17 3.142 **Subsequent Distribution Date** means any date after the Initial
18 Distribution Date upon which the Liquidating Trust makes a Distribution to any
19 Holders of Allowed Claims, as determined by the Liquidating Trustee or
20 Co-Liquidating Trustee, as applicable.

21 3.143 **Tax** means any tax, charge, fee, levy, impost, or other assessment by
22 any federal, state, local, or foreign taxing authority, including, without limitation,
23 income, excise, property, sales, transfer, employment, payroll, franchise, profits,
24 license, use, ad valorem, estimated, severance, stamp, occupation, and withholding
25 tax.

26 3.144 **Third Party Releases** shall have the meaning provided below in
27 Section 17.2(b).

28 3.145 **Transition Period** means the time between the Sale Effective Time
and the occurrence of both (i) the CHOW Effective Date, and (ii) the dissolution of
the Post-Effective Date Debtor.

3.146 **Transition Services Agreement** means the agreement between the
Debtor and DAP Health in which the parties (or their successors-in interest,
including the Post-Effective Date Debtor) agree to provide certain services and
support after the Closing of the Sale pending the approval of the CHOW by CMS.

1 3.147 *Transfer (and any variations such as “Transferring”)* means to,
2 directly or indirectly, sell, convey, assign, pledge, encumber, hypothecate, gift,
3 contribute, subject to a joint venture, partnership, or similar arrangement, abandon,
4 convey, or transfer or otherwise dispose of, either voluntarily or involuntarily, any
Asset or enter into any contract for any Asset that will effectuate the foregoing
whether or not the foregoing is subject to approvals or conditions.

5 3.148 *Trust Assets Accounts* means interest-bearing bank account(s) or
6 money-market account(s) to be established and held in trust by the Liquidating
7 Trustee or Co-Liquidating Trustee, as applicable, on or after the Effective Date, for
8 the purpose of holding the Liquidating Trust Assets to be distributed pursuant to
9 the Plan and any interest, dividends, or other income earned upon the investment of
the Liquidating Trust Assets.

10 3.149 *Trust Beneficial Interests* mean, collectively, (i) Class A Trust
11 Beneficial Interests, and (ii) the Class B Trust Beneficial Interests. The Trust
12 Beneficial Interests shall be evidenced as set forth in Section 13.3 and shall not be
13 transferable, except to the limited extent provided in the Liquidating Trust
Agreement.

14 3.150 *Unclassified Claims* means, collectively, Administrative Claims,
Professional Claims, Statutory Fees, and Priority Tax Claims.

15 3.151 *Unimpaired Claim* means a Claim that is not impaired because the
16 Plan leaves unaltered the legal, equitable, and contractual rights to which such
17 Claim entitles the Holder of such Claim, as set forth in § 1124(1).

18 3.152 *U.S. Trustee* means the Office of the United States Trustee for the
19 Southern District of California.

20 3.153 *Vacatur Stipulation* shall have the meaning provided below in Section
21 5.5.

22 3.154 *Voting Instructions* means the instructions for voting on the Plan
contained on the Ballots.

23 3.155 *Wind-down Budget* means the budget (as the same may be amended or
24 modified from time to time as provided in the Liquidating Trust Agreement) setting
25 forth the projected costs and expenses associated with winding down the Debtor
26 and the Estate and for the Liquidating Trustee and Co-Liquidating Trustee to
discharge their duties under the Plan and the Liquidating Trust Agreement.

27 **B. Interpretation and Rules of Construction.**
28

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1 Unless otherwise specified, all Section or exhibit references in the Combined
2 Plan and Disclosure Statement are to the respective Section in, or exhibit to, the
3 Combined Plan and Disclosure Statement, as the same may be amended, waived, or
4 modified from time to time. The words “herein,” “hereof,” “hereto,” “hereunder,”
5 and other words of similar import refer to the Combined Plan and Disclosure
6 Statement as a whole and not to any particular Section, subsection, or clause
7 contained therein. The headings in the Combined Plan and Disclosure Statement
8 are for convenience of reference only and shall not limit or otherwise affect the
9 provisions hereof. For purposes herein: (1) in the appropriate context, each term,
10 whether stated in the singular or the plural, shall include both the singular and the
11 plural, and pronouns stated in the masculine, feminine, or neuter gender shall
12 include the masculine, feminine, and the neuter gender; (2) any reference herein to
13 a contract, lease, instrument, release, indenture, or other agreement or document
14 being in a particular form or on particular terms and conditions means that the
15 referenced document shall be substantially in that form or substantially on those
16 terms and conditions; (3) the rules of construction set forth in § 102 shall apply;
17 and (4) any term used in capitalized form herein that is not otherwise defined, but
18 that is used in the Bankruptcy Code or the Bankruptcy Rules, shall have the
19 meaning assigned to that term in the Bankruptcy Code or the Bankruptcy Rules, as
20 the case may be.

14 C. Controlling Document.

16 The Combined Plan and Disclosure Statement (without reference to the Plan
17 Supplement) shall govern and control in the event of an inconsistency between the
18 terms and provisions in the Combined Plan and Disclosure Statement (without
19 reference to the Plan Supplement), the Plan Supplement, any other instrument or
20 document created or executed pursuant to the Combined Plan and Disclosure
21 Statement, or any order (other than the Confirmation Order) referenced in the
22 Combined Plan and Disclosure Statement (or any ~~exhibits~~[exhibit](#), schedules,
23 appendices, supplements or amendments to any of the foregoing); provided that,
24 notwithstanding anything herein to the contrary, the Confirmation Order shall
25 govern and control in all respects in the event of a conflict between the
26 Confirmation Order and any provision of the Combined Plan and Disclosure
27 Statement or the Plan Supplement.

24 SECTION 4. 25 **BACKGROUND**

26 4.1 *Overview of the Debtor.*

27 The Debtor is a non-profit public charity, tax-exempt under section 501(c)(3)
28 of the Internal Revenue Code. The Debtor strives to be the community leader in

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1 improving the health of the populations in its service area, many of whom struggle
2 with job and housing insecurity or disabilities. Its primary focus is the underserved,
3 with an empowered workforce providing measurable quality and compassionate
4 care to its patients. On the Petition Date, the Debtor had 24 brick and mortar sites
5 including administrative sites, 2 pharmacies, and 6 mobile units covering a service
6 area consisting of a 250-mile corridor on the eastern side of San Diego and
7 Riverside Counties, CA. During 2021, the Debtor provided approximately 386,000
8 patient care visits. As of 2021, of Debtor's patients: (a) 94% had incomes below
9 200% of the FPL; (b) 71% lived in poverty; (c) approximately 75% were Medi-Cal
10 (Medicaid) recipients or participate in other public health programs; (d) 36% were
11 under the age 18; and (e) 93% were under the age of 65. The Debtor's services
12 included comprehensive primary care, pediatric care, urgent care, behavioral
13 health, dental services, specialty care, transgender health, women's health, prenatal
14 care, veteran's health, chiropractic services, telehealth, and pharmacy. The Debtor
15 was also an active partner in the training of medical residents, medical students,
16 nurse practitioner students, physician assistant students, nursing students and other
17 healthcare professionals.

18 As of the Petition Date, the Debtor operated as a federally qualified health
19 center ("FQHC"). FQHCs are federally designated entities that receive federal
20 grants and enhanced state payments to provide health care services to low-income
21 and rural patients. The Debtor's health services were targeted to families with
22 incomes below 200% of the Federal Poverty Level. As an FQHC, the Debtor
23 strived to deliver high quality, comprehensive, compassionate primary health care
24 to people in the surrounding area, regardless of ability to pay.
25

26 The Debtor also operated as a Federal Tort Claims Act ("FTCA") "deemed
27 facility." Under section 224 of the Public Health Service Act, as amended by the
28 Federally Supported Health Centers Assistance Acts of 1992 and 1995, employees
of eligible health centers like the Debtor may be deemed as federal employees for
the purposes of liability protections under the FTCA for acts or omissions in the
performance of medical, surgical, dental, or related functions resulting in personal
injury, including death, and occurring within the scope of employment. Congress
extended eligibility for FTCA protections to health centers like the Debtor in order
to increase the availability of funds for health centers to provide primary health
care services by reducing or eliminating health centers' malpractice insurance
premiums.

Further information concerning the Debtor's operations is available in the
*Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor's
Emergency First Day Motions* [Docket No. 7] (the "First-Day Declaration").

1 4.2 *Events Leading to Chapter 11 Filing.*

2
3 In 2020, the Debtor’s Board of Trustees (the “Board”) became aware that
4 members of the Debtor’s leadership, certain landlords/contractors, and community
5 dentists orchestrated what appears to be significant fraud for their own personal
6 enrichment which involved filing false claims for dental services provided by
7 contract dentists (*i.e.*, the Prepetition Fraud). In November 2020, DHCS issued a
8 temporary suspension of payments for Medi-Cal services because of an ongoing
9 fraud investigation into the outside, contract dental program. There were no
10 accusations of any fraudulent acts associated with the in-house dental program or
11 medical services. During the pendency of the suspension by DHCS, the Debtor
12 provided thousands of services without compensation.

13 Following the participation in a formal administrative meet and confer
14 process, on February 26, 2021, the Debtor entered into a settlement agreement with
15 DHCS, pursuant to which DHCS agreed to lift the temporary suspension as it
16 pertained to the reimbursement of Medi-Cal medical services. The temporary
17 payment suspension remained in place through the Petition Date with respect to
18 dental services.

19 The Debtor took strong corrective actions and fully cooperated with state and
20 federal investigators. Among other steps taken by the Debtor in the fall of 2020, the
21 Debtor (a) terminated individual executives and others suspected of involvement in
22 the apparent fraud; (b) removed any tainted members from the Board; (c) hired new
23 leadership and added new board members with a high level of integrity and
24 experience; (d) agreed to the appointment of a monitor, and fully cooperated with
25 that monitor; (e) diligently completed corrective action plans; (f) initiated lawsuits
26 against the bad actors; (g) created a corporate compliance department and instituted
27 a robust compliance program; and (h) engaged reputable legal, IT, accounting, and
28 financial consultants to guide it on its path to full responsibility and integrity.

29 The Debtor initiated an internal investigation to identify wrongdoing by
30 former associates, which led to the filing of pending litigation against the former
31 trustees, officers, and contract dentists. The schemes included selling useless assets
32 to the Debtor at inflated prices, entering into one-sided agreements with the Debtor
33 to its detriment, committing and/or covering up healthcare fraud through improper
34 billing of dental services, entering into leases with the Debtor that were many times
35 fair market rates and terms, paying themselves above-market salaries and benefits,
36 and hiring friends and family members to work for the Debtor and paying them
37 above-market salaries.

1 While there were no accusations of any fraudulent acts associated with the
2 in-house dental program, as set forth above, the Medi-Cal suspension on the
3 Debtor's in-house dental payments resulted in DHCS withholding more than \$7
4 million otherwise payable to the Debtor.

5 The Debtor commenced this Chapter 11 Case as a result of the issues
6 discussed in this Section IV with the objective to maintain the Debtor's business
7 operations; to preserve value for the Debtor, its stakeholders, and parties in
8 interest; and, most importantly, to protect the health and wellbeing of the patients
9 who are being treated at the facilities operated by the Debtor and the employees of
10 the Debtor.

11 **SECTION 5.**
12 **THE CHAPTER 11 CASE**

13 The following is a brief description of certain material events that have
14 occurred during the Chapter 11 Case.

15 **5.1 *Material First-Day Motions Filed on the Petition Date.***

16 a) Emergency Motion to Pay the Debtor's Prepetition Priority
17 Wages

18 The Debtor filed an emergency motion [Docket No. 3] (the "Wage Motion")
19 for authority to pay the Debtor's prepetition priority wages and related benefits in
20 the ordinary course of business to avoid the disruption to the Debtor's business
21 from failing to do so. The Bankruptcy Court granted the Wage Motion. [See
22 Docket No. 20].

23 b) Emergency Motion to Maintain Cash Management Systems

24 The Debtor filed an emergency motion [Docket No. 4] (the "Cash
25 Management Motion") for authority to maintain their cash management systems,
26 which was imperative to avoid significant disruption to the Debtor's business
27 operations. The Bankruptcy Court granted the Cash Management Motion. [See
28 Docket. No. 28].

c) Emergency Motion to Provide Adequate Assurance of Payment
to the Debtor's Utilities

The Debtor filed an emergency motion [Docket No. 5] (the "Utilities
Motion") for an order authorizing the Debtor to provide adequate assurance of
future payment to certain utility companies pursuant to § 366(c). The Bankruptcy

1 Court granted the Utilities Motion. [*See* Docket No. 22].

2 d) Emergency Motion to Maintain Insurance Programs

3 The Debtor filed an emergency motion [Docket No. 6] (the “Insurance
4 Motion”) for authority to maintain insurance programs, pay premiums and other
5 obligations in the ordinary course, and prevent insurance companies from enforcing
6 ipso facto provisions or otherwise terminating insurance policies without first
7 seeking relief from the automatic stay. The Bankruptcy Court granted the Insurance
8 Motion. [*See* Docket No. 21].

8 e) Emergency Motion to Set Insider Compensation

9 The Debtor filed an emergency motion [Docket No. 11] (the “Motion to Set
10 Insider Compensation”) for authority to pay insiders their pre-petition salaries as
11 they come due during the Chapter 11 Case. The Bankruptcy Court granted the
12 Motion to Set Insider Compensation on an interim basis [*see* Docket No. 24] and
13 later on a final basis [*see* Docket No. 90].

13 **5.2 Motion for Entry of Order: Authorizing (I) Key Employee Retention**
14 **Program and (II) Key Employee Incentive Program.**

15 On December 7, 2022, the Debtor filed a motion [Docket No. 279] (the
16 “KERP/KEIP Motion”) seeking authorization of (a) a key employee retention plan
17 and (b) a key employee incentive plan. The United States Trustee filed an objection
18 to the KERP/KEIP Motion [Docket No. 324] and the Bankruptcy Court later
19 approved the KERP/KEIP Motion on February 9, 2023 [Docket No. 436].

19 **5.3 Estate Professionals, the Committee, and the Patient Care**
20 **Ombudsman.**

21 On September 27, 2022, the Bankruptcy Court entered an order approving
22 the employment of Kurtzman Carson Consultants LLC, as claims and noticing
23 agent to the Debtor. [Docket No. 54]. On November 16, 2022, the Bankruptcy
24 Court entered an order approving the employment of Ankura Consulting Group,
25 LLC, as financial advisor to the Debtor. [Docket No. 176]. On November 18, 2022,
26 the Bankruptcy Court entered an order [Docket No. 198] approving the
27 employment of Hooper, Lundy & Bookman P.C., as special healthcare regulatory
28 counsel. On December 13, 2022, the Bankruptcy Court entered an order [Docket
No. 292] approving the employment of Dentons US LLP, as counsel to the Debtor.

27 Additionally, on December 6, 2022, the Debtor filed a motion [Docket No.
28 271] to employ various ordinary course professionals. On January 24, 2023, the

1 Bankruptcy Court entered an order [Docket No. 400] granting the motion. Since the
2 Petition Date, the Debtor has employed, pursuant to various filings, ordinary course
3 professionals that provide an array of important services to the Debtor in the
ordinary course of business, including legal, accounting, and consulting services.

4 On September 26, 2022, the U.S. Trustee appointed [Docket No. 49] an
5 Official Committee of Unsecured Creditors (the “Committee”) to represent the
6 interests of general unsecured creditors. The Committee comprises the following
7 seven members: (i) McKesson Corporation, (ii) Greenway Health, LLC, (iii) We
8 Klean Inc., (iv) Mustafa Bilal, DDS, Inc., (v) Vista Village Family Dentistry, (vi)
9 Vitamin D Public Relations, LLC, and (vii) Pourshirazi & Youssefi Dental
10 Corporation. On December 9, 2022, the Bankruptcy Court entered an order [Docket
11 No. 287] approving the employment of Pachulski Stang Ziehl & Jones LLP, as
counsel to the Committee. On November 29, 2022, the Bankruptcy Court entered
an order [Docket No. 242] approving the employment of FTI Consulting, Inc., as
financial advisor to the Committee.

12 The U.S. Trustee appointed Dr. Jacob Nathan Rubin, MD, (the “Patient Care
13 Ombudsman”) to serve as the patient care ombudsman in this Chapter 11 Case,
14 pursuant to § 333(a). [Docket No. 25]. On October 18, 2022, the Bankruptcy Court
15 entered orders approving the employment of the following professionals to the
16 Patient Care Ombudsman: Levene, Neale, Bender, Yoo & Brill LLP, as bankruptcy
17 counsel [Docket No. 100]; and Dr. Tim Stacy DNP, ACNP-BC, as consultant
[Docket No. 101]. The Patient Care Ombudsman has filed three reports in the
Chapter 11 Case [Docket Nos. 169, 348, 560].

18 5.4 *Administrative Matters, Reporting and Disclosures.*

19 The Debtor was required to address the various administrative matters
20 attendant to the commencement of this Chapter 11 Case, which required an
21 extensive amount of work by the Debtor’s employees and its professionals. These
22 matters included the preparation of the *Schedules of Assets and Liabilities* and
23 *Statements of Financial Affairs* for the Debtor’s Chapter 11 Case [see Docket Nos.
24 97, 98], and preparation of the materials required by the U.S. Trustee, including,
without limitation, the 7-Day Package.

25 The Debtor has made every effort to comply with its duties under §§ 521,
26 1106 and 1107 and all applicable U.S. Trustee guidelines, including the filing of
27 the Debtor’s monthly operating reports with the U.S. Trustee. [Docket Nos. 172,
28 312, 432, 517.] The Debtor also attended its initial interview with the U.S. Trustee
and the meeting of creditors required under § 341(a).

1 5.5 ***Adversary Proceeding against DHCS.***

2 On September 26, 2022, the Debtor filed the *Debtor’s Complaint for*
3 *Declaratory Judgment and Preliminary and Permanent Injunctive Relief, or in the*
4 *Alternative, for Writ of Mandate Under Code of Civil Procedure 1085* [Docket No.
5 1] (the “Complaint”), commencing an adversary proceeding (Adv. Pro. No.
6 22-90056) against DHCS (the “Adversary Proceeding”). The Complaint sought,
7 among other things, (i) an order temporarily and permanently enjoining DHCS
8 from suspending the Debtor from the Medi-Cal program until and unless DHCS
9 affords the Debtor the rights to which it is entitled under federal law and under the
10 Constitution and (ii) a Writ of Mandate under Code of Civil Procedure 1085: (1)
11 setting aside DHCS’ suspension of the Debtor’s Medi-Cal payments; (2) ordering
12 DHCS to rescind any notices issued to third-parties, including but not limited to
13 Medi-Cal health plans, directing or otherwise compelling them to (x) block transfer
14 patients already assigned to the Debtor, and (y) assign patients that would
15 otherwise be assigned to the Debtor to other providers; and (3) compel the payment
16 of approximately \$6.7 million that was being withheld related to prior provision of
17 in-house dental services to Medi-Cal beneficiaries.

18 On September 27, 2022, the Debtor filed its *Emergency Motion: (I) to*
19 *Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively, (II) for*
20 *Temporary Restraining Order; Memorandum of Points and Authorities in Support*
21 *Thereof; and Declarations in Support Thereof* [Adv. Dkt. No. 3] (the “Motion to
22 Enforce”) and certain other supporting declarations. The Motion to Enforce sought
23 (A) the entry of an order enforcing the automatic stay to prevent DHCS from
24 suspending all Medi-Cal payments and taking other related acts; or, alternatively,
25 (2) the entry of order restraining and enjoining DHCS from causing immediate and
26 irreparable harm to the Debtor, its estate, and thousands of patients by suspending
27 all Medi-Cal payments and taking other related acts which would, inevitably, have
28 caused the Debtor to close its clinics and cease providing essential medical services
to low income and rural patients in Southern California. DHCS objected to the
Motion to Enforce and filed, among other things, *Defendant California Department*
of Health Care Services’ Opposition to Debtor’s Emergency Motion: (1) to Enforce
the Automatic Stay; or (2) for Temporary Restraining Order [Adv. Dkt. No. 30].
The Committee filed a statement in support of the Motion to Enforce [Adv. Dkt.
No. 37].

 On October 26, 2022, the Bankruptcy Court issued its *Findings of Fact and*
Conclusions of Law re: Emergency Motion to (I) Enforce the Automatic Stay or (II)
Alternatively for Temporary Restraining Order [Adv. Dkt. No. 65] (the “DHCS

1 Findings of Fact”) and *Order on Emergency Motion to (I) Enforce the Automatic*
2 *Stay or (II) Alternatively for Temporary Restraining Order* [Adv. Dkt. No. 66] (the
3 “DHCS Order”) granting, in part, the Motion to Enforce on the terms and
4 conditions set forth in the DHCS Order. DHCS filed a *Notice of Appeal and*
5 *Statement of Election*. [Adv. Dkt. No. 90] with respect to the DHCS Findings of
6 Fact and DHCS Order, thereby commencing Case No. 22-CV-01751-GPC-MSB
7 (S.D. Cal.) (the “Appeal”).

8
9 On October 26, 2022, DHCS filed its *Answer to Complaint for Declaratory*
10 *Judgment and Preliminary and Permanent Injunctive Relief, or in the Alternative,*
11 *for Writ of Mandate Under Code of Civil Procedure 1085* [Adv. Dkt. No. 67].

12 On November 4, 2022, the Debtor, the Committee and DHCS entered into a
13 stipulation (the “Stipulation”) [Adv. Dkt. No. 73], to participate in a non-binding
14 mediation to resolve all active disputes between the parties. On November 7, 2022,
15 the Bankruptcy Court approved the Stipulation. [Adv. Dkt. No. 74].

16 On February 27, 2023, the Debtor filed a *Motion to Approve Compromise*
17 *Among Debtor, Official Committee of Unsecured Creditors and California*
18 *Department of Health Care Services Pursuant to Federal Rule of Bankruptcy*
19 *Procedure 9019* [Docket No. 510] (the “Settlement Motion”). The Bankruptcy
20 Court approved the Settlement Motion on March 7, 2023 [Docket No. 544] (the
21 “DHCS 9019 Order”). The DHCS 9019 Order sets forth the treatment of the DHCS
22 Claim and provides for the allocation of the DAP Sale proceeds among DHCS and
23 Holders of other Allowed Claims.

24 On September 26, 2023, the Debtor filed the *Notice of Filing of Executed*
25 *Settlement Agreement Among the Debtor, the Official Committee of Unsecured*
26 *Creditors, and the California Department of Health Care Services* [Docket Nos.
27 510, 544] [Docket No. 923]. Pursuant to the DHCS 9019 Order, the Debtor, the
28 Committee, and DHCS prepared and executed a finalized settlement agreement.

On October 17, 2023, the Debtor, DHCS, and the Committee jointly filed the
Stipulation Among the Debtor, the California Department of Health Care Services
and the Official Committee of Unsecured Creditors to (I) Vacate the (A) Findings
of Fact and Conclusions of Law re: Emergency Motion to Enforce the Automatic
Stay or Alternatively for Temporary Restraining Order [Docket No. 65] and (B)
Order on Emergency Motion to Enforce the Automatic Stay or Alternatively for
Temporary Restraining Order [Docket No. 66]; and (II) *Dismiss the Adversary*
Proceeding [Adv. Docket No. 133] (the “Vacatur Stipulation”) pursuant to the
DHCS Settlement Agreement. On October 18, 2023, the Bankruptcy Court entered

1 an order approving the Vacatur Stipulation [Adv. Docket No. 134] and (a)
2 dismissing the Adversary Proceeding with prejudice and (b) vacating the DHCS
Findings of Fact and DHCS Order.

3 On November 6, 2023, the Debtor and DHCS filed the *Joint Stipulation to*
4 *Dismiss the Appeal* [App. Docket No. 12] (the “Appeal Stipulation”) pursuant to
5 the DHCS Settlement Agreement. On November 7, 2023, the District Court
6 entered an order approving the Appeal Stipulation [App. Docket No. 13] and
dismissing the Appeal.

7 **5.6 The Sale of Substantially All Assets.**

8 On November 10, 2022, the Debtor filed a motion [Docket No. 161] (the
9 “Sale Motion”) requesting entry of an order (i) authorizing the proposed sale of
10 substantially all of the Debtor’s assets, (ii) approving the form of the Asset
11 Purchase Agreement (the “APA”), (iii) approving certain procedures governing the
12 sale process (the “Bid Procedures”), and (iv) approving certain procedures
13 governing assumption and rejection of Executory Agreements in connection with
14 the sale. On December 5, 2022, the Debtor filed a supplement to the Sale Motion
15 with revised Bid Procedures [Docket No. 276]. On December 8, 2022, the Debtor
16 filed a second supplement to the Sale Motion, which attached a form APA [Docket
17 No. 285].

18 On December 19, 2022, the Bankruptcy Court entered an order [Docket No.
19 321] approving the Bid Procedures. The order provided that all objections to the
20 proposed Bid Procedures were overruled and that remaining objections concerning
21 the proposed sale were premature.

22 On January 16, 2023, the Debtor filed a notice [Docket No. 389] to
23 counterparties of Executory Agreements that may be assumed and assigned in
24 connection with the sale. The Debtor filed a supplemental notice [Docket No. 409]
25 on January 27, 2023. Certain counterparties to executory agreements filed
26 objections (collectively, the “Cure Objections”) to the notices concerning
27 assumption and assignment. [See Docket Nos. 426, 431, 440, 441, 445, 447, 455,
28 458, 487].

On February 2, 2023, the Debtor filed a notice [Docket No. 418] that the
Debtor received Qualified Bids pursuant to the Bid Procedures and selected
designated DAP Health as the stalking horse bidder. The notice further provided
that the Debtor would conduct an auction on February 6, 2023.

1 On February 9, 2023, the Debtor filed a notice [Docket No. 438] that the
2 Debtor had adjourned the auction and requested final highest and best bids by
3 February 10, 2023. The next day, on February 10, 2023, the Bankruptcy Court
4 entered an order vacating deadlines for objections to the sale [Docket No. 443].

4 On February 15, 2023, the Debtor filed a notice [Docket No. 465] that the
5 Debtor had selected (i) DAP Health as the winning bidder, and (ii) Altamed Health
6 Services Corporation as the back-up bidder.

7 On February 16, 2023, the Bankruptcy Court entered an order approving
8 modified deadlines and scheduling a hearing to approve the sale. [Docket No. 476].

9 On February 16, 2023, the Debtor filed a notice [Docket No. 478] to
10 counterparties to Executory Agreements designated by DAP Health for assumption
11 and assignment in connection with the sale.

11 On March 1, 2023, the Bankruptcy Court held a hearing to approve the DAP
12 Sale pursuant to the Sale Motion. At the hearing, the Bankruptcy Court considered
13 the Cure Objections as well as certain objections (collectively, the “Sale
14 Objections”) to the DAP Sale as well as any withdrawals thereof. [See Docket Nos.
15 270, 356, 489, 491]. As set forth in further detail below, the Bankruptcy Court
16 overruled the Sale Objections.

16 On March 13, 2023, the Bankruptcy Court entered an order [Docket No.
17 559] granting the Sale Motion and approving the DAP Sale (the “Sale Order”). In
18 connection with the DAP Sale, the Debtor and DAP Health entered into that certain
19 Transition Services Agreement, wherein the parties agree to provide certain
20 services and support after the Closing of the Sale pending the approval of the
21 CHOW by CMS. Subsequent to approval of the CHOW, the Post-Effective Date
22 Debtor will be dissolved wherein the Debtor provides certain services to DAP
23 Health.

22 On July 31, 2023, the Debtor filed the *Notice of Occurrence of Closing of*
23 *Sale to DAP Health, Inc.* [Docket No. 823], which informed the Bankruptcy Court
24 and all parties in interest of the occurrence of the Closing Date.

25 After the Effective Date and Closing of the Sale, the Post-Effective Date
26 Debtor, as described herein, will need to continue to operate until the CHOW
27 submitted, pursuant to 42 C.F.R § 489.18, by the Debtor and DAP Health is
28 approved by CMS, which will result in the transfer of the Debtor’s Medicare
Identification Number and Medicare Provider Agreement to DAP Health. After the

1 Closing and Effective Date, DAP Health and the Post-Effective Date Debtor will
2 operate pursuant to the Transition Services Agreement.

3 **5.7 *Claims Bar Date and Reconciliation.***

4 a) General Bar Date

5 On September 13, 2022, the Bankruptcy Court set a general claims bar date
6 of November 21, 2022, and March 13, 2023, as the deadline for governmental
7 entities to file claims [Docket No. 16]. A Notice of Bar Date was published on
8 October 27, 2022, and October 28, 2022, in the Los Angeles Times, the San Diego
9 Union-Tribune, The Desert Sun, The Press-Enterprise, the El Latino, the La Prensa
10 Hispana Bilingual News Paper, the San Bernadino County Sun, and the San Diego
11 Union-Tribune Español. [Docket No. 157].

12 b) Extended DHCS Bar Date

13 Pursuant to the DHCS Settlement Agreement, the Extended DHCS Bar Date
14 is set for December 29, 2023, which is the deadline by which DHCS must file a
15 Proof of Claim for any further General Unsecured Claims against the Debtor for
16 Medi-Cal overpayments, consistent with the definition in the DHCS Settlement
17 Agreement.

18 c) Administrative Claims Bar Date

19 The Plan contemplates that a deadline will be set by the Bankruptcy Court by
20 which Holders of Administrative Claims, other than Administrative Claims arising
21 in the ordinary course of business for the Debtor or Professional Claims, must
22 assert Administrative Claims or be forever barred, which shall be (a) thirty (30)
23 days after the Effective Date for Administrative Claims other than Professional
24 Claims, and (b) sixty (60) days after the Effective Date for Professional Claims.
25 Such requests for payment may include estimates of amounts through the Effective
26 Date of the Plan.

27 **SECTION 6.**
28 **CONFIRMATION AND VOTING PROCEDURES**

6.1 ***Confirmation Hearing.***

On [___], the Bankruptcy Court entered the Conditional Approval and
Procedures Order. The Confirmation Hearing has been scheduled for January 17,
2024, at 10:00 a.m. (prevailing Pacific Time) to consider (a) final approval of the
Combined Plan and Disclosure Statement as providing adequate information

1 pursuant to § 1125 and (b) confirmation of the Combined Plan and Disclosure
2 Statement pursuant to § 1129. The Confirmation Hearing may be adjourned from
3 time to time by the Debtor without further notice, except for an announcement of
4 the adjourned date made at the Confirmation Hearing or by filing a notice with the
5 Bankruptcy Court.

6 6.2 *Procedures for Objections.*

7 Any objection to final approval of the Combined Plan and Disclosure
8 Statement as providing adequate information pursuant to § 1125 and/or
9 confirmation of the Combined Plan and Disclosure Statement must be made in
10 writing and filed with the Bankruptcy Court by no later than January 8, 2024, at
11 4:00 p.m. (prevailing Pacific Time) and be served in accordance with the Local
12 Bankruptcy Rules of the Bankruptcy Court on the following parties: (i) counsel to
13 the Debtor: Dentons US LLP, 601 South Figueroa Street, Suite 2500, Los Angeles,
14 California 90017 (Attn: Samuel R. Maizel (samuel.maizel@dentons.com) and
15 Tania M. Moyron (tania.moyron@dentons.com)); (ii) financial advisor to the
16 Debtor: Ankura, 2021 McKinney Avenue, Suite 340, Dallas, Texas 75201 (Attn:
17 Charles Pease (charles.pease@ankura.com)); (iii) the Office of the United States
18 Trustee: 880 Front Street, Room 3230, San Diego, California 92101 (Attn: ~~David~~
19 ~~Ortiz~~ (~~david.a.ortiz~~Haeji Hong (haeji.hong@usdoj.gov)); (iv) counsel to the
20 Committee: Pachulski Stang Ziehl & Jones LLP, 10100 Santa Monica Blvd., 13th
21 Floor, Los Angeles, California 90067 (Attn: Jeffrey N. Pomerantz
22 (jpomerantz@pszjlaw.com) and Steven W. Golden (sgolden@pszjlaw.com)); and
23 (v) financial advisor to the Committee: FTI, 350 South Grand Avenue, Suite 3000,
24 Los Angeles, California 90071 (Attn: Cliff Zucker
25 (cliff.zucker@fticonsulting.com) and Narendra Ganti
26 (narendra.ganti@fticonsulting.com)). Unless an objection is timely filed and
27 served, it may not be considered by the Bankruptcy Court at the Confirmation
28 Hearing.

21 6.3 *Requirements for Confirmation.*

22 The Bankruptcy Court will confirm the Combined Plan and Disclosure
23 Statement only if it meets all the applicable requirements of § 1129. Among the
24 requirements for confirmation in the Chapter 11 Case is that the Combined Plan
25 and Disclosure Statement be: (i) accepted by all Impaired Classes of Claims or, if
26 rejected by an Impaired Class, that the Combined Plan and Disclosure Statement
27 “does not discriminate unfairly” against, and is “fair and equitable” with respect to,
28 such Class; and (ii) feasible. The Bankruptcy Court must also find that:

a. the Combined Plan and Disclosure Statement has classified Claims

1 in a permissible manner;

2 b. the Combined Plan and Disclosure Statement complies with the
3 requirements of Chapter 11 of the Bankruptcy Code; and

4 c. the Combined Plan and Disclosure Statement has been proposed in
5 good faith.

6 The Plan Proponents believe that the Combined Plan and Disclosure Statement
7 complies, or will comply, with all such requirements.

8 **6.4 Classification of Claims.**

9 Section 1123 provides that a plan must classify the claims of a debtor's
10 creditors. In accordance with § 1123, the Combined Plan and Disclosure Statement
11 divides Claims into Classes and sets forth the treatment for each Class (other than
12 those claims which pursuant to § 1123(a)(1) need not be and have not been
classified).

13 Section 1122 requires the Combined Plan and Disclosure Statement to place
14 a Claim in a particular Class only if such Claim is substantially similar to the other
15 Claims in such class. The Combined Plan and Disclosure Statement creates
16 separate Classes to deal respectively with Priority Non-Tax Claims, various
17 Secured Claims, General Unsecured Claims, and an Allowed DHCS Claim. The
18 Plan Proponents believe that the Combined Plan and Disclosure Statement's
classifications place substantially similar Claims in the same Class and, thus, meet
the requirements of § 1122.

19 The Bankruptcy Code also requires that a plan provide the same treatment
20 for each claim of a particular class unless the claim holder agrees to a less
21 favorable treatment of its claim. The Plan Proponents believe that the Combined
22 Plan and Disclosure Statement complies with such standard. If the Bankruptcy
23 Court finds otherwise, however, it could deny confirmation of the Combined Plan
and Disclosure Statement if the holders of Claims affected do not consent to the
treatment afforded them under the Combined Plan and Disclosure Statement.

24 A Claim is placed in a particular Class only to the extent that the Claim falls
25 within the description of that Class and is classified in other Classes to the extent
26 that any portion of the Claim falls within the description of such other Classes. A
27 Claim also is placed in a particular Class for the purpose of receiving distributions
pursuant to the Combined Plan and Disclosure Statement only to the extent that

1 such Claim is an Allowed Claim in that Class, and such Claim has not been paid,
2 released, or otherwise settled prior to the Effective Date.

3 The Plan Proponents believe that the Combined Plan and Disclosure
4 Statement has classified all Claims in compliance with the provisions of § 1122 and
5 applicable case law. It is possible that a holder of a Claim may challenge the Plan
6 Proponents' classification of Claims and that the Bankruptcy Court may find that a
7 different classification is required for the Combined Plan and Disclosure Statement
8 to be confirmed. If such a situation develops, the Plan Proponents intend, in
9 accordance with the terms of the Combined Plan and Disclosure Statement, to
10 make such permissible modifications to the Combined Plan and Disclosure
11 Statement as may be necessary to permit its confirmation. Any such reclassification
12 could adversely affect holders of Claims by changing the composition of one or
13 more Classes and the vote required of such Class or Classes for approval of the
14 Combined Plan and Disclosure Statement.

15 **EXCEPT AS SET FORTH IN THE COMBINED PLAN AND DISCLOSURE**
16 **STATEMENT, UNLESS SUCH MODIFICATION OF CLASSIFICATION**
17 **MATERIALLY ADVERSELY AFFECTS THE TREATMENT OF A**
18 **HOLDER OF A CLAIM AND REQUIRES RE-SOLICITATION,**
19 **ACCEPTANCE OF THE COMBINED PLAN AND DISCLOSURE**
20 **STATEMENT BY ANY HOLDER OF A CLAIM PURSUANT TO THIS**
21 **SOLICITATION WILL BE DEEMED TO BE A CONSENT TO THE**
22 **COMBINED PLAN AND DISCLOSURE STATEMENT'S TREATMENT OF**
23 **SUCH HOLDER OF A CLAIM REGARDLESS OF THE CLASS AS TO**
24 **WHICH SUCH HOLDER ULTIMATELY IS DEEMED TO BE A MEMBER.**

25 The amount of any Impaired Claim that ultimately is Allowed by the
26 Bankruptcy Court may vary from any estimated Allowed amount of such Claim
27 and, accordingly, the total Claims that are ultimately Allowed by the Bankruptcy
28 Court with respect to each Impaired Class of Claims may also vary from any
estimates contained herein with respect to the aggregate Claims in any Impaired
Class. Thus, the actual recovery ultimately received by a particular holder of an
Allowed Claim may be adversely or favorably affected by the aggregate amount of
Claims Allowed in the applicable Class. Additionally, any changes to any of the
assumptions underlying the estimated Allowed amounts could result in material
adjustments to recovery estimates provided herein or the actual Distribution
received by creditors. The projected recoveries are based on information available
to the Debtor as of the date hereof and reflect the Debtor's view as of the date
hereof only.

1 The classification of Claims and the nature of distributions to members of
2 each Class are summarized herein. The Plan Proponents believe that the
3 consideration, if any, provided under the Combined Plan and Disclosure Statement
4 to holders of Allowed Claims reflects an appropriate resolution of their Allowed
5 Claims taking into account the differing nature and priority of such Claims. The
6 Bankruptcy Court must find, however, that a number of statutory tests are met
7 before it may confirm the Combined Plan and Disclosure Statement. Many of these
8 tests are designed to protect the interests of holders of Claims who are not entitled
9 to vote on the Combined Plan and Disclosure Statement, or do not vote to accept
10 the Combined Plan and Disclosure Statement, but who will be bound by the
11 provisions of the Combined Plan and Disclosure Statement if it is confirmed by the
12 Bankruptcy Court.

9 **6.5 Impaired Claims.**

10 Pursuant to § 1126, only the Holders of Claims in Classes Impaired by the
11 Combined Plan and Disclosure Statement and receiving a payment or Distribution
12 under the Combined Plan and Disclosure Statement may vote to accept or reject the
13 Combined Plan and Disclosure Statement. Pursuant to § 1124, a Class of Claims
14 may be Impaired if the Combined Plan and Disclosure Statement alters the legal,
15 equitable, or contractual rights of the holders of such Claims treated in such Class.
16 The Holders of Claims not Impaired by the Combined Plan and Disclosure
17 Statement are deemed to accept the Combined Plan and Disclosure Statement and
18 do not have the right to vote on the Combined Plan and Disclosure Statement. The
19 Holders of Claims in any Class which will not receive any payment or Distribution
20 or retain any property pursuant to the Combined Plan and Disclosure Statement are
21 deemed to reject the Combined Plan and Disclosure Statement and do not have the
22 right to vote. Finally, the Holders of Claims whose Claims are not classified under
23 the Combined Plan and Disclosure Statement are not entitled to vote on the
24 Combined Plan and Disclosure Statement.

21 Under the Combined Plan and Disclosure Statement, Holders of Claims in
22 the Voting Classes – Class 3 (General Unsecured Claims) and Class 4 (Allowed
23 DHCS Claim) – are Impaired and are entitled to vote to accept or reject the
24 Combined Plan and Disclosure Statement. Holders of Claims in Class 1 (Priority
25 Non-Tax Claims) and Class 2 (Secured Claims) are Unimpaired and, therefore, not
26 entitled to vote on the Combined Plan and Disclosure Statement and are deemed to
27 accept the Combined Plan and Disclosure Statement.

26 **ACCORDINGLY, A BALLOT FOR ACCEPTANCE OR REJECTION**
27 **OF THE COMBINED PLAN AND DISCLOSURE STATEMENT IS BEING**

1 **PROVIDED ONLY TO HOLDERS OF CLAIMS IN THE VOTING**
2 **CLASSES.**

3 **6.6 Confirmation Without Necessary Acceptances; Cramdown.**

4 In the event that any impaired class of claims does not accept a plan, a debtor
5 nevertheless may move for confirmation of the plan. A plan may be confirmed,
6 even if it is not accepted by all impaired classes, if the plan has been accepted by at
7 least one impaired class of claims, determined without including any acceptance of
8 the plan by any insider holding a claim in that class, and the plan meets the
9 “cramdown” requirements set forth in § 1129(b). Section 1129(b) requires that a
10 court find that a plan (a) “does not discriminate unfairly” and (b) is “fair and
11 equitable,” with respect to each non-accepting impaired class of claims. Here, the
12 Plan Proponents believe that such requirements are satisfied, as no holder of a
13 Claim or Interest junior to those in the Impaired Classes is entitled to receive any
14 property under the Combined Plan and Disclosure Statement.

15 The concept of “unfair discrimination” is not defined in the Bankruptcy
16 Code, but case law suggests it exists when a difference in a plan’s treatment of two
17 classes of equal priority results in a materially lower percentage recovery for the
18 non-accepting class. The Plan Proponents do not believe that the Plan unfairly
19 discriminates against any Class of Claims.

20 The Bankruptcy Code provides a nonexclusive definition of the phrase “fair
21 and equitable.” To determine whether a plan is “fair and equitable,” the Bankruptcy
22 Code establishes “cramdown” tests for secured creditors, unsecured creditors, and
23 equity holders, as follows:

- 24 a. ***Secured Creditors.*** Either (i) each impaired secured creditor retains
25 its liens securing its secured claim and receives on account of its
26 secured claim deferred Cash payments having a present value equal
27 to the amount of its allowed secured claim, (ii) each impaired
28 secured creditor realizes the “indubitable equivalent” of its allowed
secured claim or (iii) the property securing the claim is sold free
and clear of liens with such liens to attach to the proceeds of the
sale and the treatment of such liens on proceeds to be as provided
in clause (i) or (ii) above.
- b. ***Unsecured Creditors.*** Either (i) each impaired unsecured creditor
receives or retains under the plan property of a value equal to the
amount of its allowed claim or (ii) the holders of claims that are

1 junior to the claims of the dissenting class will not receive any
2 property under the plan.

3 As discussed above, the Plan Proponents believe that the distributions
4 provided under the Combined Plan and Disclosure Statement satisfy the absolute
5 priority rule, where required.

6 **6.7 Feasibility.**

7 Section 1129(a)(11) requires that confirmation of a plan not be likely to be
8 followed by the liquidation, or the need for further financial reorganization, of the
9 Debtor or any successor to the Debtor (unless such liquidation or reorganization is
10 proposed in the Combined Plan and Disclosure Statement). Based on the Debtor's
11 analysis and subject to the financing contingency described below, the Liquidating
12 Trustee and Co-Liquidating Trustee will have sufficient assets to accomplish their
13 tasks under the Combined Plan and Disclosure Statement. Therefore, the Plan
14 Proponents believe that the liquidation pursuant to the Combined Plan and
15 Disclosure Statement will meet the feasibility requirements of the Bankruptcy
16 Code.

17 **6.8 Best Interests Test and Liquidation Analysis.**

18 Even if a plan is accepted by the holders of each class of claims, the
19 Bankruptcy Code requires the Bankruptcy Court to determine that such plan is in
20 the best interests of all holders of claims that are impaired by that plan and that
21 have not accepted the plan. The "best interests" test, as set forth in § 1129(a)(7),
22 requires a court to find either that all members of an impaired class of claims have
23 accepted the plan or that the plan will provide a member who has not accepted the
24 plan with a recovery of property of a value, as of the effective date of the plan, that
25 is not less than the amount that such holder would recover if the debtor were
26 liquidated under chapter 7 of the Bankruptcy Code.

27 To calculate the probable distribution to holders of each impaired class of
28 claims if the debtor was liquidated under chapter 7, a court must first determine the
aggregate dollar amount that would be generated from a debtor's assets if its
chapter 11 case was converted to a case under chapter 7 of the Bankruptcy Code.
To determine if a plan is in the best interests of each impaired class, the present
value of the distributions from the proceeds of a liquidation of the debtor's
unencumbered assets and properties, after subtracting the amounts attributable to
the costs, expenses, and administrative claims associated with a chapter 7
liquidation, must be compared with the value offered to such impaired classes
under the plan. If the hypothetical liquidation distribution to holders of claims in
any impaired class is greater than the distributions to be received by such parties

1 under the plan, then such plan is not in the best interests of the holders of claims in
2 such impaired class.

3 The Debtor, with the assistance of its advisors, has prepared a liquidation
4 analysis that summarizes the Debtor's best estimate of recoveries by holders of
5 Claims if the Chapter 11 Case was converted to a case under chapter 7 (the
6 "Liquidation Analysis"), which is attached hereto as **Exhibit A**.

7 Based upon the Debtor's current projections, Holders of Allowed
8 Administrative Claims, Allowed Secured Claims, Allowed General Unsecured
9 Claims, and a portion of the Allowed DHCS Claim, will be paid in full on the
10 Effective Date or as soon as practicably thereafter. See **Exhibit A** (Liquidation
11 Analysis Supplement) attached hereto.

12 Based upon **Exhibit A** (Liquidation Analysis Supplement) attached hereto,
13 the Plan Proponents believe that creditors will receive at least as much or more
14 under the Plan than they would receive if the Chapter 11 Case was converted to a
15 chapter 7 case.

16 6.9 *Eligibility to Vote on the Combined Plan and Disclosure Statement.*

17 Unless otherwise ordered by the Bankruptcy Court, only Holders of Allowed
18 Claims in the Voting Classes may vote on the Combined Plan and Disclosure
19 Statement. Further, subject to the tabulation procedures that were approved by the
20 Conditional Approval and Procedures Order, in order to vote on the Combined Plan
21 and Disclosure Statement, Creditors must hold an Allowed Claim in the Voting
22 Classes, or be the Holder of a Claim that has been temporarily Allowed for voting
23 purposes only pursuant to the approved tabulation procedures or under Bankruptcy
24 Rule 3018(a).

25 6.10 *Solicitation Package / Release Opt-Out Election Form.*

26 All Holders of Allowed Claims in the Voting Classes will receive a
27 solicitation package (the "Solicitation Package"). The Solicitation Packages will
28 contain: (i) the Combined Plan and Disclosure Statement; (ii) the Conditional
Approval and Procedures Order; (iii) notice of the Confirmation Hearing; (iv) a
form of Ballot, including Voting Instructions and a pre-addressed return envelope;
(v) a Release Opt-Out Election Form; and (vi) such other materials as the
Bankruptcy Court may direct or approve or that the Debtor deems appropriate.

All other Creditors and parties in interest not entitled to vote on the
Combined Plan and Disclosure Statement will receive only a copy of the notice of
Confirmation Hearing and a Release Opt-Out Election Form.

1 Copies of the Combined Plan and Disclosure Statement shall be available on
2 the Claims and Balloting Agent’s website at <https://www.kccllc.net/BorregoHealth>.
3 Any creditor or party-in-interest can request a hard copy of the Combined Plan and
4 Disclosure Statement be sent to them by regular mail by calling the Claims and
5 Balloting Agent at (866) 967-0670 (U.S. & Canada) during regular business hours.

6 **IN ADDITION TO OTHER PARTIES WHO WILL BE CONSIDERED**
7 **RELEASING PARTIES, ANY HOLDER OF A CLAIM THAT DOES NOT**
8 **AFFIRMATIVELY OPT-OUT OF THE THIRD PARTY RELEASE**
9 **CONTAINED IN SECTION 17 HEREOF BY TIMELY AND PROPERLY**
10 **COMPLETING AND RETURNING A RELEASE OPT-OUT ELECTION**
11 **FORM WILL BE CONSIDERED A RELEASING PARTY IN RELATION**
12 **TO THE THIRD PARTY RELEASE UNDER THE COMBINED PLAN AND**
13 **DISCLOSURE STATEMENT.**

14 **6.11 *Voting Procedures, Voting Deadline, and Deadline to Submit the***
15 ***Release Opt-Out Election.***

16 The Voting Record Date for determining which Holders of Claims in the
17 Voting Classes may vote on the Combined Plan and Disclosure Statement is
18 November 28, 2023.

19 In order for a Creditor’s Ballot to count, the Creditor must (1) complete,
20 date, and properly execute the Ballot and (2) properly deliver the Ballot to the
21 Claims and Balloting Agent by either (a) mailing the Ballot via First Class Mail to
22 the Claims and Balloting Agent at the following address: Borrego Health Ballot
23 Processing c/o Kurtzman Carson Consultants LLC, 222 N. Pacific Coast Highway,
24 Suite 300, El Segundo, CA 90245; (b) overnight delivery; (c) hand delivery; or (d)
25 submitting the Ballot by electronically uploading the Ballot on the Claims and
26 Balloting Agent’s online balloting platform at
27 <https://www.kccllc.net/BorregoHealth>. Instructions for casting a Ballot will be
28 available on the Claims and Balloting Agent’s website.

Ballots must be submitted electronically, or the Claims and Balloting Agent
must actually receive physical, original Ballots by mail, overnight, or hand
delivery, on or before the Voting Deadline, which is **January 8, 2024, at 4:00 p.m.**
(prevailing Pacific Time). Subject to the tabulation procedures approved by the
Conditional Approval and Procedures Order, Creditors may not change their vote
once a Ballot is submitted electronically or the Claims and Balloting Agent
receives their original paper Ballot. Subject to the tabulation procedures approved
by the Conditional Approval and Procedures Order, any Ballot that is timely and
properly submitted electronically or received physically will be counted and will be

1 deemed to be cast as an acceptance, rejection, or abstention, as the case may be, of
2 the Combined Plan and Disclosure Statement.

3 In order to be effective, Release Opt-Out Election Form for Holders of
4 Claims entitled to opt out of being a Releasing Party in connection with the Third
5 Party Release contained in Section 17.2(b) must be received by the Claims and
6 Balloting Agent by the Voting Deadline, which is **January 8, 2024, at 4:00 p.m.**
7 **(prevailing Pacific Time)**. Each Release Opt-Out Election Form must be properly
8 delivered to the Claims and Balloting Agent by either (a) mailing via First Class
9 mail the Release Opt-Out Election Form to the Claims and Balloting Agent at the
10 following address: Borrego Health Ballot Processing c/o Kurtzman Carson
11 Consultants LLC, 222 N. Pacific Coast Highway, Suite 300, El Segundo, CA
12 90245; (b) overnight courier; (c) hand delivery; or (d) uploading the Release
13 Opt-Out Election Form on the Claims and Balloting Agent's online opt-out portal
14 at <https://www.kccllc.net/BorregoHealth>.

15 **IF YOU ARE ENTITLED TO VOTE ON THE COMBINED PLAN**
16 **AND DISCLOSURE STATEMENT, YOU ARE URGED TO COMPLETE,**
17 **DATE, SIGN, AND PROMPTLY MAIL OR UPLOAD THE BALLOT YOU**
18 **RECEIVE. PLEASE BE SURE TO COMPLETE ALL BALLOT ITEMS**
19 **PROPERLY AND LEGIBLY. IF YOU ARE A HOLDER OF A CLAIM**
20 **ENTITLED TO VOTE ON THE COMBINED PLAN AND DISCLOSURE**
21 **STATEMENT AND YOU DID NOT RECEIVE A BALLOT, YOU**
22 **RECEIVED A DAMAGED BALLOT, OR YOU LOST YOUR BALLOT, OR**
23 **IF YOU HAVE ANY QUESTIONS CONCERNING THE COMBINED PLAN**
24 **AND DISCLOSURE STATEMENT OR PROCEDURES FOR VOTING ON**
25 **THE COMBINED PLAN AND DISCLOSURE STATEMENT, PLEASE**
26 **CONTACT THE CLAIMS AND BALLOTING AGENT BY (I) TELEPHONE**
27 **AT (888) 647-174 (U.S./CANADA) OR (II) EMAIL AT**
28 **BorregoHealthinfo@kccllc.com. THE CLAIMS AND BALLOTING AGENT**
IS NOT AUTHORIZED TO, AND WILL NOT, PROVIDE LEGAL ADVICE.

29 *6.12 Acceptance of the Combined Plan and Disclosure Statement.*

30 If you are a Holder of a Claim in one of the Voting Classes, your acceptance
31 of the Combined Plan and Disclosure Statement is important. In order for the
32 Combined Plan and Disclosure Statement to be accepted by an Impaired Class of
33 Claims, a majority in number (*i.e.*, more than half) and two-thirds in dollar amount
34 of the Claims voting (of each Impaired Class of Claims) must vote to accept the
35 Combined Plan and Disclosure Statement. At least one Impaired Class of Creditors,
36 excluding the votes of insiders, must actually vote to accept the Combined Plan and
37

1 Disclosure Statement. The Debtor urges that you vote to accept the Combined Plan
2 and Disclosure Statement.

3 **SECTION 7.**
4 **CERTAIN RISK FACTORS, TAX CONSEQUENCES,**
5 **AND OTHER DISCLOSURES**

6 7.1 *Certain Risk Factors to be Considered.*

7 THE COMBINED PLAN AND DISCLOSURE STATEMENT AND ITS
8 IMPLEMENTATION ARE SUBJECT TO CERTAIN RISKS, INCLUDING, BUT
9 NOT LIMITED TO, THE RISK FACTORS SET FORTH BELOW. HOLDERS OF
10 CLAIMS WHO ARE ENTITLED TO VOTE ON THE COMBINED PLAN AND
11 DISCLOSURE STATEMENT SHOULD READ AND CAREFULLY CONSIDER
12 THE RISK FACTORS, AS WELL AS THE OTHER INFORMATION SET
13 FORTH IN THE COMBINED PLAN AND DISCLOSURE STATEMENT AND
14 THE DOCUMENTS DELIVERED TOGETHER HEREWITH OR REFERRED TO
15 OR INCORPORATED BY REFERENCE HEREIN, BEFORE DECIDING
16 WHETHER TO VOTE TO ACCEPT OR REJECT THE COMBINED PLAN AND
17 DISCLOSURE STATEMENT. THESE FACTORS SHOULD NOT, HOWEVER,
18 BE REGARDED AS CONSTITUTING THE ONLY RISKS INVOLVED IN
19 CONNECTION WITH THE COMBINED PLAN AND DISCLOSURE
20 STATEMENT AND ITS IMPLEMENTATION.

21 (a) *The Combined Plan and Disclosure Statement May Not Be*
22 *Accepted.*

23 The Plan Proponents can make no assurances that the requisite acceptances
24 of the Combined Plan and Disclosure Statement will be received, and the Debtor
25 may need to obtain acceptances of an alternative plan for the Debtor, or otherwise,
26 that may not have the support of the creditors and/or may be required to liquidate
27 the Estate under chapter 7. There can be no assurance that the terms of any
28 alternative arrangement or plan would be similar to or as favorable to creditors as
those proposed in the Combined Plan and Disclosure Statement.

(b) *The Combined Plan and Disclosure Statement May Not Be*
Confirmed.

Even if the Plan Proponents receive the requisite acceptances, there is no
assurance that the Bankruptcy Court, which may exercise substantial discretion as a
court of equity, will confirm the Combined Plan and Disclosure Statement. Even if
the Bankruptcy Court determined that the Combined Plan and Disclosure Statement
and the balloting procedures and results were appropriate, the Bankruptcy Court

1 could still decline to confirm the Combined Plan and Disclosure Statement if it
2 finds that any of the statutory requirements for confirmation had not been met. As
3 is described in greater detail in Section 6.3, § 1129 sets forth the requirements for
4 confirmation of a chapter 11 plan. While, as more fully set forth Section 6, the Plan
5 Proponents believe that the Combined Plan and Disclosure Statement complies
6 with or will comply with all such requirements, there can be no guarantee that the
7 Bankruptcy Court will agree.

8 Moreover, there can be no assurance that modifications to the Combined
9 Plan and Disclosure Statement will not be required for Confirmation or that such
10 modifications would not necessitate the re-solicitation of votes. If the Combined
11 Plan and Disclosure Statement is not confirmed, it is unclear what distributions
12 holders of Claims ultimately would receive with respect to their Claims in a
13 subsequent plan of liquidation. If an alternative could not be agreed to, it is
14 possible that the Debtor would have to liquidate its remaining assets in chapter 7,
15 in which case it is likely that the Holders of Allowed Claims would receive
16 substantially less favorable treatment than they would receive under the Combined
17 Plan and Disclosure Statement.

18 (c) **Distributions to Holders of Allowed Claims Under the**
19 **Combined Plan and Disclosure Statement May be Inconsistent**
20 **with Projections.**

21 Projected Distributions are based upon good faith estimates of the total
22 amount of Claims ultimately Allowed and the funds available for Distribution.
23 There can be no assurance that the estimated Claim amounts set forth in the
24 Combined Plan and Disclosure Statement are correct. These estimated amounts are
25 based on certain assumptions with respect to a variety of factors. Both the actual
26 amount of Allowed Claims in a particular Class and the funds available for
27 distribution to such Class may differ from the Debtor's estimates. If the total
28 amount of Allowed Claims in a Class is higher than the Debtor's estimates, or the
funds available for distribution to such Class are lower than the Debtor's estimates,
the percentage recovery to Holders of Allowed Claims in such Class will be less
than projected.

(d) **Objections to Classification of Claims.**

Section 1122 provides that a plan may place a claim in a particular class only
if such claim is substantially similar to the other claims in such class. As is
described in greater detail in Section 6.4, the Plan Proponents believe that the
classification of Claims under the Combined Plan and Disclosure Statement

1 complies with the requirements set forth in the Bankruptcy Code. Nevertheless,
2 there can be no assurance the Bankruptcy Court will reach the same conclusion.

3 To the extent that the Bankruptcy Court finds that a different classification is
4 required for the Combined Plan and Disclosure Statement to be confirmed, the Plan
5 Proponents would seek to (i) modify the Combined Plan and Disclosure Statement
6 to provide for whatever classification might be required for Confirmation and (ii)
7 use the acceptances received from any Holder of Claims pursuant to this
8 solicitation for the purpose of obtaining the approval of the Class or Classes of
9 which such holder ultimately is deemed to be a member. Any such reclassification
10 of Claims, although subject to the notice and hearing requirements of the
11 Bankruptcy Code, could adversely affect the Class in which such Holder was
12 initially a member, or any other Class under the Combined Plan and Disclosure
13 Statement, by changing the composition of such Class and the vote required for
14 approval of the Combined Plan and Disclosure Statement. There can be no
15 assurance that the Bankruptcy Court, after finding that a classification was
16 inappropriate and requiring a reclassification, would approve the Combined Plan
17 and Disclosure Statement based upon such reclassification. Except to the extent
18 that modification of classification in the Combined Plan and Disclosure Statement
19 requires re-solicitation, the Plan Proponents will, in accordance with the
20 Bankruptcy Code and the Bankruptcy Rules, seek a determination by the
21 Bankruptcy Court that acceptance of the Combined Plan and Disclosure Statement
22 by any Holder of Claims pursuant to this solicitation will constitute a consent to the
23 Combined Plan and Disclosure Statement's treatment of such Holder, regardless of
24 the Class as to which such holder is ultimately deemed to be a member. The Plan
25 Proponents believe that under the Bankruptcy Rules, they would be required to
26 resolicit votes for or against the Combined Plan and Disclosure Statement only
27 when a modification adversely affects the treatment of the Claim of any Holder.

28 The Bankruptcy Code also requires that the Combined Plan and Disclosure
Statement provide the same treatment for each Claim of a particular Class unless
the Holder of a particular Claim agrees to a less favorable treatment of its Claim.
The Plan Proponents believe that the Combined Plan and Disclosure Statement
complies with the requirement of equal treatment. To the extent that the
Bankruptcy Court finds that the Combined Plan and Disclosure Statement does not
satisfy such requirement, the Bankruptcy Court could deny confirmation of the
Combined Plan and Disclosure Statement. Issues or disputes relating to
classification and/or treatment could result in a delay in the confirmation and
consummation of the Combined Plan and Disclosure Statement and could increase
the risk that the Combined Plan and Disclosure Statement will not be
consummated.

1 (e) *Failure to Consummate the Combined Plan and Disclosure*
2 *Statement.*

3 Although the Plan Proponents believe that the Effective Date will occur and
4 may occur quickly after the Confirmation Date, there can be no assurance as to
5 such timing, or as to whether the Effective Date will, in fact, occur.

6 (f) *The Releases May Not Be Approved.*

7 There can be no assurance that the releases, as provided in Section 17, will
8 be granted. Failure of the Bankruptcy Court to grant such relief may result in a plan
9 that differs from the Combined Plan and Disclosure Statement or the Plan not being
10 confirmed.

11 (g) *Reductions to Estimated Creditor Recoveries.*

12 The Allowed amount of Claims in any Class could be greater than projected,
13 which, in turn, could cause the amount of Distributions to creditors in such Class to
14 be reduced substantially. The amount of cash realized from the monetization of the
15 Debtor's remaining assets could be less than anticipated, which could cause the
16 amount of Distributions to creditors to be reduced substantially.

17 7.2 *Certain U.S. Federal Income Tax Consequences.*

18 The following discussion is a summary of certain material U.S. federal
19 income tax consequences of the Combined Plan and Disclosure Statement to the
20 Debtor and to certain Holders (which solely for purposes of this discussion means
21 the beneficial owner for U.S. federal income tax purposes) of Claims. The
22 following summary does not address the U.S. federal income tax consequences to
23 holders of Claims not entitled to vote on the Combined Plan and Disclosure
24 Statement. This summary is based on the Internal Revenue Code, Treasury
25 Regulations promulgated and proposed thereunder, judicial decisions, and
26 published administrative rules and pronouncements of the IRS, all as in effect on
27 the date hereof and all of which are subject to change or differing interpretations,
28 possibly with retroactive effect. No legal opinions have been requested or obtained
29 from counsel with respect to any of the tax aspects of the Combined Plan and
30 Disclosure Statement and no rulings have been or will be requested from the IRS
31 with respect to the any of the issues discussed below. The discussion below is not
32 binding upon the IRS or the courts. No assurance can be given that the IRS would
33 not assert, or that a court would not sustain, a different position than any position
34 discussed herein.

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1 This discussion does not purport to address all aspects of U.S. federal income
2 taxation that may be relevant to the Debtor or to certain holders of Claims in light
3 of their individual circumstances, nor does the discussion deal with tax issues with
4 respect to holders of Claims subject to special treatment under the U.S. federal
5 income tax laws (including, for example, insurance companies; banks or other
6 financial institutions; brokers, dealers, or traders in securities; real estate
7 investment trusts; governmental authorities or agencies; tax-exempt organizations;
8 retirement plans; individual retirement or other tax-deferred accounts; certain
9 expatriates or former long-term residents of the United States; small business
10 investment companies; regulated investment companies; S corporations,
11 partnerships, or other pass-through entities for U.S. federal income tax purposes
12 and their owners; persons whose functional currency is not the U.S. dollar; persons
13 who use a mark-to-market method of accounting; persons required to report income
14 on an applicable financial statement; persons holding Claims as part of a straddle,
15 hedge, constructive sale, conversion transaction, or other integrated transaction;
16 and persons who are not U.S. holders (as defined below)). Furthermore, this
17 discussion assumes that a holder of a Claim holds such claim as a “capital asset”
18 within the meaning of section 1221 of the Internal Revenue Code (generally
19 property held for investment). This discussion does not address any U.S. federal
20 non-income (including estate or gift), state, local, or foreign taxation, alternative
21 minimum tax, or the Medicare tax on certain net investment income.

22 If a partnership (or other entity or arrangement classified as a partnership for
23 U.S. federal income tax purposes) is a holder of Claims, the U.S. federal income
24 tax treatment of a partner in the partnership will generally depend on the status of
25 the partner and the activities of the partnership. A holder of a Claim that is a
26 partnership and the partners in such partnership should consult their tax advisors
27 with regard to the U.S. federal income tax consequences of the Combined Plan and
28 Disclosure Statement.

THE FOLLOWING SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING AND ADVICE BASED UPON THE INDIVIDUAL CIRCUMSTANCES PERTAINING TO A HOLDER OF A CLAIM. EACH HOLDER OF A CLAIM IS URGED TO CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE STATEMENT.

(a) *Tax Consequences for U.S. Holders of Certain Claims.*

1 Generally, a Holder of a Claim should in most, but not all, circumstances
2 recognize gain or loss equal to the difference between the “amount realized” by
3 such Holder in exchange for its Claim and such Holder’s adjusted tax basis in the
4 Claim. The “amount realized” is equal to the sum of the cash and the fair market
5 value of any other consideration received under a plan of reorganization in respect
6 of a Holder’s Claim. The tax basis of a Holder in a Claim will generally be equal to
7 the Holder’s cost therefor. To the extent applicable, the character of any recognized
8 gain or loss (e.g., ordinary income, or short-term or long-term capital gain or loss)
9 will depend upon the status of the Holder, the nature of the Claim in the Holder’s
10 hands, the purpose and circumstances of its acquisition, the Holder’s holding
11 period of the Claim, and the extent to which the Holder previously claimed a
12 deduction for the worthlessness of all or a portion of the Claim. Generally, if the
13 Claim is a capital asset in the Holder’s hands, any gain or loss realized will
14 generally be characterized as capital gain or loss, and will constitute long-term
15 capital gain or loss if the Holder has held such Claim for more than one year.

16 A creditor who receives Cash in satisfaction of its Claims may recognize
17 ordinary income or loss to the extent that any portion of such consideration is
18 characterized as accrued interest. A creditor who did not previously include in
19 income accrued but unpaid interest attributable to its Claim, and who receives a
20 distribution on account of its Claim pursuant to the Plan, will be treated as having
21 received interest income to the extent that any consideration received is
22 characterized for U.S. federal income tax purposes as interest, regardless of
23 whether such creditor realizes an overall gain or loss as a result of surrendering its
24 Claim. A creditor who previously included in its income accrued but unpaid
25 interest attributable to its Claim should recognize an ordinary loss to the extent that
26 such accrued but unpaid interest is not satisfied, regardless of whether such creditor
27 realizes an overall gain or loss as a result of the distribution it may receive under
28 the Plan on account of its Claim.

Under the Plan, the Holders of certain Claims, including General Unsecured
Claims in Class 3, will likely receive only a partial distribution of their Allowed
Claims. Whether the applicable Holder of such Claims will recognize a loss or any
other tax treatment will depend upon facts and circumstances that are specific to
the nature of the Holder and its Claims. Creditors should consult their own tax
advisors.

(b) Tax Consequences in Relation to Liquidating Trust.

As of the Effective Date, the Liquidating Trust will be established for the
benefit of the holders of certain Allowed Claims. The tax consequences of the Plan
in relation to the Liquidating Trust and the Beneficiaries thereof are subject to

1 uncertainties due to the complexity of the Plan and the lack of interpretative
2 authority regarding certain changes in the tax law.

3 Allocations of taxable income of the Liquidating Trust (other than taxable
4 income allocable to the Liquidating Trust's claims reserves) among Holders of
5 Claims will be determined by reference to the manner in which an amount of cash
6 equal to such taxable income would be distributed (were such cash permitted to be
7 distributed at such time) if, immediately prior to such deemed distribution, the
8 Liquidating Trust had distributed all of its assets (valued at their tax book value) to
9 the holders of the beneficial interests in the Liquidating Trust, adjusted for prior
10 taxable income and loss and taking into account all prior and concurrent
11 distributions from the Liquidating Trust. Similarly, taxable loss of the Liquidating
12 Trust will be allocated by reference to the manner in which an economic loss would
13 be borne immediately after a liquidating distribution of the remaining trust assets.

14 The tax book value of the trust assets for this purpose will equal their fair
15 market value on the Effective Date, adjusted in accordance with tax accounting
16 principles prescribed by the Tax Code, applicable Treasury Regulations, and other
17 applicable administrative and judicial authorities and pronouncements.
18 Uncertainties with regard to federal income tax consequences of the Plan may arise
19 due to the inherent nature of estimates of value that will impact tax liability
20 determinations.

21 Subject to definitive guidance from the IRS or a court of competent
22 jurisdiction to the contrary (including the receipt of an IRS private letter ruling if
23 the Liquidating Trustee so requests one, or the receipt of an adverse determination
24 by the IRS upon audit if not contested by the Liquidating Trustee), the Liquidating
25 Trustee may (a) elect to treat any trust assets allocable to, or retained on account of,
26 Disputed Claims (the "Trust Claims Reserve") as a "disputed ownership fund"
27 governed by Treasury Regulation section 1.468B-9, and (b) to the extent permitted
28 by applicable law, report consistently with the foregoing for state and local income
tax purposes. Accordingly, any Trust Claims Reserve will be subject to tax
annually on a separate entity basis on any net income earned with respect to the
trust assets in such reserves, and all distributions from such reserves will be treated
as received by holders in respect of their Claims as if distributed by the Debtor. All
parties (including, without limitation, the Liquidating Trustee and the holders of
beneficial interests in the Liquidating Trust) will be required to report for tax
purposes consistently with the foregoing.

The Liquidating Trust is intended to qualify as a liquidating trust for federal
income tax purposes. In general, a liquidating trust is not a separate taxable entity
but rather is treated for federal income tax purposes as a "grantor" trust (i.e., a

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1 pass-through entity). The IRS, in Revenue Procedure 94-45, 1994.28 I.R.B. 124,
2 set forth the general criteria for obtaining an IRS ruling as to the grantor trust status
3 of a liquidating trust under a chapter 11 plan. The Liquidating Trust has been
4 structured with the intention of complying with such general criteria. Pursuant to
5 the Plan and Liquidating Trust Agreement, and in conformity with Revenue
6 Procedure 94-45, *supra*, all parties (including the Liquidating Trustee and the
7 holders of beneficial interests in the Liquidating Trust) are required to treat for
8 federal income tax purposes, the Liquidating Trust as a grantor trust of which the
9 holders of the applicable Allowed Claims are the owners and grantors. While the
10 following discussion assumes that the Liquidating Trust would be so treated for
11 federal income tax purposes, no ruling has been requested from the IRS concerning
12 the tax status of the Liquidating Trust as a grantor trust. Accordingly, there can be
13 no assurance that the IRS would not take a contrary position to the classification of
14 the Liquidating Trust as a grantor trust. If the IRS were to challenge successfully
15 such classification, the federal income tax consequences to the Liquidating Trust
16 and the Beneficiaries thereof could materially vary from those discussed herein.

17 In general, each creditor who is a Liquidating Trust Beneficiary will
18 recognize gain or loss in an amount equal to the difference between (i) the “amount
19 realized” by such Liquidating Trust Beneficiary in satisfaction of its applicable
20 Allowed Claim, and (ii) such Liquidating Trust Beneficiary’s adjusted tax basis in
21 such Claim. The “amount realized” by a Liquidating Trust Beneficiary will equal
22 the sum of cash and the aggregate fair market value of the property received by
23 such party pursuant to the Plan (such as a Liquidating Trust Beneficiary’s
24 undivided beneficial interest in the assets transferred to the Liquidating Trust).
25 Where gain or loss is recognized by a Liquidating Trust Beneficiary in respect of
26 its Allowed Claim, the character of such gain or loss (*i.e.*, long-term or short-term
27 capital, or ordinary income) will be determined by a number of factors including
28 the tax status of the party, whether the Claim constituted a capital asset in the hands
of the party and how long it had been held, whether the Claim was originally issued
at a discount or acquired at a market discount and whether and to what extent the
party had previously claimed a bad debt deduction in respect of the Claim.

After the Effective Date, any amount that a creditor receives as a Distribution
from the Liquidating Trust in respect of its beneficial interest in the Liquidating
Trust should not be included, for federal income tax purposes, in the party’s
amount realized in respect of its Allowed Claim, but should be separately treated as
a distribution received in respect of such party’s beneficial interest in the
Liquidating Trust.

In general, a Liquidating Trust Beneficiary’s aggregate tax basis in its
undivided beneficial interest in the assets transferred to the Liquidating Trust will

1 equal the fair market value of such undivided beneficial interest as of the Effective
2 Date and the Liquidating Trust Beneficiary's holding period in such assets will
3 begin the day following the Effective Date. Distributions to any Liquidating Trust
4 Beneficiary will be allocated first to the original principal portion of the
5 Liquidating Trust Beneficiary's Allowed Claim as determined for federal tax
6 purposes, and then, to the extent the consideration exceeds such amount, to the
7 remainder of such Claim. However, there is no assurance that the IRS will respect
8 such allocation for federal income tax purposes.

9 For all federal income tax purposes, all parties (including the Liquidating
10 Trustee and the holders of beneficial interests in the Liquidating Trust) will treat
11 the transfer of assets to the Liquidating Trust, in accordance with the terms of the
12 Plan and Liquidating Trust Agreement, as a transfer of those assets directly to the
13 holders of the applicable Allowed Claims followed by the transfer of such assets by
14 such Holders to the Liquidating Trust. Consistent therewith, all parties will treat the
15 Liquidating Trust as a grantor trust of which such holders are to be owners and
16 grantors. Thus, such holders (and any subsequent holders of interests in the
17 Liquidating Trust) will be treated as the direct owners of an undivided beneficial
18 interest in the assets of the Liquidating Trust for all federal income tax purposes.
19 Accordingly, each holder of a beneficial interest in the Liquidating Trust will be
20 required to report on its federal income tax return(s) the holder's allocable share of
21 all income, gain, loss, deduction, or credit recognized or incurred by the
22 Liquidating Trust.

23 The Liquidating Trust's taxable income will be allocated to the holders of
24 beneficial interests in the Liquidating Trust in accordance with each such holder's
25 pro rata share. The character of items of income, deduction and credit to any holder
26 and the ability of such holder to benefit from any deductions or losses may depend
27 on the particular situation of such holder.

28 The federal income tax reporting obligation of a holder of a beneficial
interest in the Liquidating Trust is not dependent upon the Liquidating Trust
distributing any cash or other proceeds. Therefore, a holder of a beneficial interest
in the Liquidating Trust may incur a federal income tax liability regardless of the
fact that the Liquidating Trust has not made, or will not make, any concurrent or
subsequent distributions to the holder. If a holder incurs a federal tax liability but
does not receive distributions commensurate with the taxable income allocated to it
in respect of its beneficial interests in the Liquidating Trust it holds, the holder may
be allowed a subsequent or offsetting loss.

The Liquidating Trustee will file with the IRS returns for the Liquidating
Trust as a grantor trust pursuant to Treasury Regulations section 1.671-4(a). The

1 Liquidating Trust will also send to each holder of a beneficial interest in the
2 Liquidating Trust a separate statement setting forth the holder's share of items of
3 income, gain, loss, deduction, or credit and will instruct the holder to report such
4 items on its federal income tax return.

5 Events subsequent to the date of this Disclosure Statement, such as the
6 enactment of additional tax legislation, could also change the federal income tax
7 consequences of the Plan and the transactions contemplated thereunder.

8 (c) Information Reporting and Withholding.

9 In connection with the Combined Plan and Disclosure Statement, the Debtor
10 will comply with all applicable withholding and information reporting
11 requirements imposed by U.S. federal, state, local, and foreign taxing authorities,
12 and all Distributions under the Combined Plan and Disclosure Statement will be
13 subject to those withholding and information reporting requirements. Holders of
14 Claims may be required to provide certain tax information as a condition to
15 receiving Distributions pursuant to the Combined Plan and Disclosure Statement.

16 In general, information reporting requirements may apply to Distributions
17 pursuant to the Combined Plan and Disclosure Statement. Additionally, under the
18 backup withholding rules, a holder may be subject to backup withholding with
19 respect to Distributions made pursuant to the Combined Plan and Disclosure
20 Statement, unless a U.S. holder provides the applicable withholding agent with a
21 taxpayer identification number, certified under penalties of perjury, as well as
22 certain other information, or otherwise establish an exemption from backup
23 withholding. Backup withholding is not an additional tax. Any amounts withheld
24 under the backup withholding rules will be allowed as a credit against a U.S.
25 holder's U.S. federal income tax liability, if any, and may entitle a U.S. holder to a
26 refund, provided the required information is timely furnished to the IRS.

27 In addition, from an information reporting perspective, Treasury Regulations
28 generally require disclosure by a taxpayer on its U.S. federal income tax return of
certain types of transactions in which the taxpayer participated, including, among
other types of transactions, certain transactions that result in the taxpayer's
claiming a loss in excess of specified thresholds. Holders of Claims are urged to
consult their tax advisors regarding these regulations and whether the transactions
contemplated by the Combined Plan and Disclosure Statement would be subject to
these regulations and require disclosure on the holder's tax returns.

**THE U.S. FEDERAL INCOME TAX CONSEQUENCES OF THE
COMBINED PLAN AND DISCLOSURE STATEMENT ARE COMPLEX.
THE FOREGOING SUMMARY DOES NOT DISCUSS ALL ASPECTS OF**

1 **U.S. FEDERAL INCOME TAXATION THAT MAY BE RELEVANT TO A**
2 **PARTICULAR HOLDER OF A CLAIM IN LIGHT OF SUCH HOLDER’S**
3 **CIRCUMSTANCES. EACH HOLDER OF A CLAIM IS URGED TO**
4 **CONSULT WITH SUCH HOLDER’S TAX ADVISORS CONCERNING THE**
5 **U.S. FEDERAL, STATE, LOCAL, FOREIGN, AND OTHER TAX**
6 **CONSEQUENCES OF THE COMBINED PLAN AND DISCLOSURE**
7 **STATEMENT.**

8 **7.3 *Releases, Exculpations, and Injunctions.***

9 This Combined Plan and Disclosure Statement contains certain releases,
10 exculpations, and injunction language. Parties are urged to read these provisions
11 carefully to understand how Confirmation and consummation of the Plan will affect
12 any Claim, interest, right, or action with regard to the Debtor and certain third
13 parties.

14 **THE COMBINED PLAN AND DISCLOSURE STATEMENT SHALL**
15 **BIND ALL HOLDERS OF CLAIMS AGAINST THE DEBTOR TO THE**
16 **FULLEST EXTENT AUTHORIZED OR PROVIDED UNDER THE**
17 **APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE AND ALL**
18 **OTHER APPLICABLE LAW.**

19 **7.4 *Alternatives to the Combined Plan and Disclosure Statement.***

20 If the requisite acceptances are not received or the Combined Plan and
21 Disclosure Statement is not confirmed and consummated, the theoretical
22 alternatives to the Combined Plan and Disclosure Statement would be (a)
23 formulation of an alternative chapter 11 plan, (b) conversion of the Chapter 11
24 Case to a case under chapter 7 of the Bankruptcy Code, or (c) dismissal of the
25 Chapter 11 Case. As discussed below, the Plan Proponents do not believe that any
26 of these alternatives, even if viable, would afford holders of Claims a greater
27 recovery than what is provided by the Combined Plan and Disclosure Statement.

28 If the Combined Plan and Disclosure Statement is not confirmed, then the
Debtor or any other party in interest could attempt to formulate a different plan.
The additional costs, including, among other amounts, additional professional fees,
all of which would constitute Administrative Claims (subject to allowance thereof),
however, may be so significant that one or more parties in interest could request
that the Chapter 11 Case be converted to chapter 7. At this time, the Plan
Proponents do not believe that there are viable alternative plans available to the
Debtor.

1 If the Combined Plan and Disclosure Statement is not confirmed, the Chapter
2 11 Case may be converted to a case under chapter 7 of the Bankruptcy Code,
3 pursuant to which a trustee would be elected or appointed to liquidate and
4 distribute the Debtor's remaining assets in accordance with the priorities
5 established by the Bankruptcy Code. As discussed above and indicated in the
6 Liquidation Analysis, the Plan Proponents believe that the Combined Plan and
7 Disclosure Statement provides a better outcome for holders of Claims than a
8 chapter 7 liquidation would provide.

9 If the Combined Plan and Disclosure Statement is not confirmed, the Chapter
10 11 Case also could be dismissed. Among other effects, dismissal would result in
11 the termination of the automatic stay, thus permitting creditors to assert state-law
12 rights and remedies against the Debtor and its assets, likely to the detriment of
13 other creditors. While it is impossible to predict precisely what would happen in
14 the event the Chapter 11 Case is dismissed, it is unlikely that dismissal would result
15 in a ratable distribution of the Debtor's assets among creditors as provided in the
16 Combined Plan and Disclosure Statement. Thus, the vast majority of creditors
17 could expect to receive less in the dismissal scenario than they would receive under
18 the Combined Plan and Disclosure Statement.

19 **SECTION 8.**
20 **UNCLASSIFIED CLAIMS**

21 In accordance with § 1123(a)(1), the following Claims are not classified and
22 are excluded from the Classes set forth in Section 9 hereof and shall receive the
23 treatment discussed below:

24 8.1 *Administrative Claims.*

25 Except to the extent that the Debtor (or the Liquidating Trust) and the Holder
26 of an Allowed Administrative Claim agree to less favorable treatment, a Holder of
27 an Allowed Administrative Claim (other than a Professional Claim, which shall be
28 subject to Section 8.2 or Statutory Fees, which shall be subject to Section 8.3) shall
receive, in full satisfaction, settlement, release, and discharge of, and in exchange
for, such Administrative Claim, Cash equal to the unpaid portion of such Allowed
Administrative Claim either (a) on the Effective Date, (b) if the Allowed
Administrative Claim is based on liabilities incurred by the Debtor in the ordinary
course of their businesses after the Petition Date, in the ordinary course of business
in accordance with the terms and conditions of the particular transaction giving rise
to such Allowed Administrative Claim, without any further action by the Holder of
such Allowed Administrative Claim, (c) on such other date as agreed between the
Debtor (or the Post-Effective Date Debtor) and such Holder of an Allowed
Administrative Claim, or (d) to the extent the Allowed Administrative Claim had

1 not yet been Allowed on the Effective Date, from the Administrative Claims
2 Reserve pursuant to Section 20.2 hereof.

3 Holders of Administrative Claims (including, without limitation,
4 Professionals requesting compensation or reimbursement of such expenses
5 pursuant to §§ 327, 328, 330, 331, 503(b), or 1103) that do not file such requests
6 by the applicable deadline provided for herein may be subject to objection for
7 untimeliness and may be prohibited by order of the Bankruptcy Court from
8 asserting such claims against the Debtor, the Post-Effective Date Debtor, the
9 Estate, the Liquidating Trust, or their successors or assigns, or their property. Any
10 objection to Professional Fee Claims shall be filed on or before the objection
11 deadline specified in the application for final compensation or order of the
12 Bankruptcy Court.

13 8.2 *Professional Claims.*

14 All Professionals seeking an award by the Bankruptcy Court of a
15 Professional Claim (other than the Ordinary Course Professionals) shall file their
16 respective final applications for allowance of compensation for services rendered
17 and reimbursement of expenses incurred by the date that is forty-five (45) days
18 after the Effective Date, and shall receive, in full satisfaction of such Claim, Cash
19 in an amount equal to 100% of such Allowed Professional Claim promptly after
20 entry of an order of the Bankruptcy Court allowing such Claim or upon such other
21 terms as may be mutually agreed-upon between the Holder of such Professional
22 Claim and the Debtor, which Cash shall be paid out of the Effective Date
23 Professional Claim Reserve. Objections to any final applications covering
24 Professional Claims must be filed and served on the Post-Effective Date Debtor,
25 the Liquidating Trustee, and the requesting Professional no later than ninety (90)
26 days after the Effective Date (unless otherwise agreed by the requesting
27 Professional).

28 On the Effective Date, or as soon as practicable thereafter, the Liquidating
Trustee shall establish the Effective Date Professional Claim Reserves based upon
estimates of anticipated fees provided by Professionals for services rendered and
expenses incurred prior to the Effective Date, including estimated fees for services
rendered, and actual and necessary costs incurred, in connection with the filing,
service and prosecution of any applications for allowance of Professional Fees
pending on the Effective Date or filed and/or served after the Effective Date. The
Liquidating Trustee shall supplement the Effective Date Professional Claim
Reserves if the amount originally established is insufficient to pay Allowed
Professional Fee Claims.

1 Upon approval of the fee applications by the Bankruptcy Court, the
2 Liquidating Trustee shall pay Professionals from the Effective Date Professional
3 Claim Reserves all of their respective Allowed Professional Fee Claims.

3 8.3 *Statutory Fees.*

4 ~~U.S. Trustee~~Statutory Fees shall be paid by the Liquidating Trustee in the
5 ordinary course of business until the closing, dismissal or conversion of the
6 Chapter 11 Case to another chapter of the Bankruptcy Code. Any unpaid ~~U.S.~~
7 ~~Trustee~~Statutory Fees that accrued before the Effective Date shall be paid no later
8 than thirty (30) days after the Effective Date. For the avoidance of doubt, if the
9 Chapter 11 Case is reopened, the Liquidating Trustee shall pay any Statutory Fees
10 in the ordinary course of business until the closing, dismissal, or conversion of the
11 Chapter 11 Case to another chapter of the Bankruptcy Code.

10 8.4 *Priority Tax Claims.*

11 Except to the extent that a Holder of an Allowed Priority Tax Claim agrees to
12 less favorable treatment, each Holder of an Allowed Priority Tax Claim shall
13 receive, in full and final satisfaction of such Allowed Priority Tax Claim, at the
14 option of the Liquidating Trustee: (a) Cash in an amount equal to such Allowed
15 Priority Tax Claim on, or as soon thereafter as is reasonably practicable, the later of
16 (i) the Effective Date, to the extent such Claim is an Allowed Priority Tax Claim on
17 the Effective Date, and (ii) the first Business Day after the date that is thirty (30)
18 days after the date such Priority Tax Claim becomes an Allowed Priority Tax
19 Claim; or (b) equal annual Cash payments in an aggregate amount equal to the
20 amount of such Allowed Priority Tax Claim, together with interest at the applicable
21 rate pursuant to § 511, over a period not exceeding five (5) years from and after the
22 Petition Date; *provided, however*, the Post-Effective Date Debtor and Liquidating
23 Trustee, as applicable, reserve the right to prepay all or a portion of any such
24 amounts at any time under this option at the discretion of the Post-Effective Date
25 Debtor and the Liquidating Trustee.

22 **SECTION 9.** 23 **CLASSIFICATION OF CLAIMS AND VOTING**

24 9.1 *Classification in General.*

25 A Claim is placed in a particular Class for all purposes, including voting,
26 confirmation, and distribution under the Plan and under §§ 1122 and 1123(a)(1);
27 *provided, that* a Claim is placed in a particular Class for the purpose of receiving
28 Distributions pursuant to the Plan only to the extent that such Claim is an Allowed

1 Claim in that Class and such Allowed Claim has not been satisfied, released, or
2 otherwise settled prior to the Effective Date.

3 **9.2 Summary of Classification.**

4 The following table designates the Classes of Claims against the Debtor and
5 specifies which of those Classes are (a) not Impaired by the Plan, (b) Impaired by
6 the Plan, and (c) entitled to vote to accept or reject the Plan in accordance with §
7 1126. In accordance with § 1123(a)(1), Administrative Claims, Professional
8 Claims, Statutory Fees, and Priority Tax Claims, have not been classified. All of
9 the potential Classes for the Debtor are set forth herein. If, ultimately, the Debtor
10 does not have Holders of Claims in a particular Class or Classes, such Classes shall

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

14 be treated as set forth in Section 9.4.

16 **9.3 Special Provision Governing Unimpaired Claims.**

17 Except as otherwise provided in the Plan, nothing under the Plan shall affect
18 the rights of the Debtor or the Liquidating Trust with respect to Unimpaired
19 Claims, including all legal and equitable defenses to, or setoffs or recoupments
20 against, any such Unimpaired Claims.

21 **9.4 Elimination of Vacant Classes.**

22 Any Class of Claims, as of the commencement of the Confirmation Hearing,
23 that does not have at least one (1) Holder of a Claim in an amount greater than zero
24 for voting purposes shall be considered vacant, deemed eliminated from the Plan
25 for purposes of voting to accept or reject the Plan, and disregarded for purposes of
26 determining whether the Plan satisfies § 1129(a)(8) with respect to that Class.

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1 9.5 *Voting; Presumptions; Solicitation in Good Faith.*

2 Only Holders of Allowed Claims in Class 3 and Class 4 are entitled to vote
3 to accept or reject this Plan. Holders of Claims in a Voting Class will receive
4 Ballots containing detailed voting instructions.

5 The Plan Proponents will solicit votes on the Plan from the Voting Classes in
6 good faith and in compliance with the applicable provisions of the Bankruptcy
7 Code. Accordingly, the Plan Proponents and each of their Related Persons shall be
8 entitled to, and upon the Confirmation Date, will be granted the protections of §
9 1125(e).

10 9.6 *Cramdown.*

11 If any Class of Claims is deemed and/or presumed to reject this Plan or is
12 entitled to vote on this Plan and does not vote to accept this Plan, the Plan
13 Proponents intend to (i) seek confirmation of this Plan under § 1129(b), or (ii)
14 amend or modify this Plan in accordance with the terms hereof and the Bankruptcy
15 Code. If a controversy arises as to whether any Claims, or any Class of Claims, are
16 Impaired, the Bankruptcy Court shall, after notice and a hearing, determine such
17 controversy on or before the Confirmation Date.

18 **SECTION 10.**
19 **TREATMENT OF CLAIMS**

20 In full and final satisfaction of all of the Claims against the Debtor (except
21 with respect to Unclassified Claims that are satisfied in accordance with Section 8
22 above), the Claims shall receive the treatment described below. Except to the extent
23 expressly provided in this Section 10, the timing of Distributions is addressed in
24 Section 11 hereof.

25 10.1 *Class 1: Priority Non-Tax Claims.*

26 a) Classification. Class 1 consists of Priority Non-Tax Claims.

27 b) Treatment. Except to the extent that a Holder of an Priority
28 Non-Tax Claim agrees to a less favorable treatment of such Claim,
each such Holder shall receive payment in Cash in an amount equal
to the amount of such Allowed Claim, payable on the later of (i) the
Effective Date; and (ii) after 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 in
accordance with the priority scheme set forth in the Bankruptcy

Code.

c) **Voting.** Class 1 is Unimpaired. Holders of Priority Non-Tax Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

10.2 ***Class 2: Secured Claims.***

a) **Classification.** Class 2 consists of Secured Claims.

b) **Treatment.** The legal, equitable, and contractual rights of Holders of Allowed Secured Claims are unaltered by the Plan, except as altered pursuant to the Sale Order, and the Liens of the Holders of the Secured Claims will continue to attach to their respective collateral, provided, that, all such Claims shall remain subject to any and all defenses, challenges, counterclaims, and setoff or recoupment rights with respect thereto. Except to the extent that a Holder of an Allowed Secured Claim agrees to a less favorable treatment of such Claim, each such Holder shall, at the option of the Post-Effective Date Debtor and Liquidating Trustee, as applicable, receive one of the following treatments: (i) the Holder of such Secured Claim shall retain its Lien on its collateral until such collateral is sold, and the proceeds of such sale, less costs and expenses of disposing of such collateral, shall be paid to such Holder in full satisfaction of such Secured Claim; (ii) on or as soon as practicable after the later of (A) the Effective Date; or (B) the date upon which the Bankruptcy Court enters a Final Order determining or allowing such Secured Claim, the Holder of such Secured Claim will receive a Cash payment equal to the amount of its Secured Claim in full and final satisfaction of such Secured Claim; or (iii) the collateral securing the Secured Claim shall be abandoned to such Holder, in full and final satisfaction of such Secured Claim. receive payment in Cash in an amount equal to the amount of such Allowed Claim.

The Bankruptcy Court shall retain jurisdiction and power to determine the amount necessary to satisfy any Allowed Secured Claim. Upon receipt of Cash in an amount equal to the amount of such Allowed Secured Claim, the Holder of such Allowed Secured Claim shall release (by the Confirmation Order shall be deemed to release) all Liens against any Liquidating Trust Assets.

c) **Voting.** Class 2 is Unimpaired. Holders of Secured Claims are deemed to have accepted the Plan, pursuant to § 1126(f), and are not entitled to vote to accept or reject the Plan.

1 necessary to perform their duties under the Plan; (b) make all Distributions
2 contemplated hereby; (c) employ transfer agents and registrars to represent them
3 with respect to their responsibilities; and (d) exercise such other powers as may be
4 vested in the Liquidating Trustee or Co-Liquidating Trustee by order of the
5 Bankruptcy Court, pursuant to the Plan, the Liquidating Trust Agreement, or as
deemed by the Liquidating Trustee or the Co-Liquidating Trustee, applicable, to be
necessary and proper to implement the provisions hereof.

6 11.2 *Appointment of Disbursing Agent.* A Disbursing Agent may be
7 appointed either pursuant to the Confirmation Order or by the Liquidating Trustee.

8 11.3 *Timing of Distributions.*

9 a) Distributions on Account of All Claims Other Than the DHCS
10 Claim. Subject to Section 11.1 of this Plan, on the Effective Date (or if a Claim is
11 not an Allowed Claim on the Effective Date, on the date that such Claim becomes
12 an Allowed Claim), or as soon as reasonably practicable thereafter, each Holder of
13 an Allowed Claim (except for the Allowed DHCS Claim) against the Debtor shall
14 receive full amount of the Distributions that the Plan provides for Allowed Claims
15 in the applicable Class and in the manner provided herein. If and to the extent there
16 are Disputed Claims, Distributions on account of any such Disputed Claims shall
be made pursuant to the provisions provided in the Plan. Except as otherwise
provided in the Plan, Holders of Claims shall not be entitled to interest, dividends,
or accruals on the Distributions provided for therein, regardless of whether
Distributions are delivered on or at any time after the Effective Date.

17 Upon the Effective Date, all debts of the Debtor shall be deemed fixed and
18 adjusted pursuant to the Plan and the Debtor and the Liquidating Trust shall have
19 no liability on account of any Claims except as set forth in the Plan and in the
20 Confirmation Order. All payments and all Distributions made by the Liquidating
21 Trustee, the Co-Liquidating Trustee, or the Disbursing Agent under the Plan shall
be in full and final satisfaction, settlement, and release of all Claims against the
Debtor.

22 b) Distributions on Account of the Allowed DHCS Claim.
23 Distributions on account of the Allowed DHCS Claim shall be made in accordance
24 with Section 10.4 hereof, provided, however, that Distributions on account of the
25 Allowed DHCS Balance Claim (i.e., to the Holder of Class B Trust Beneficial
26 Interests) need not be made to the extent there is no Cash in the Trust Assets
Accounts to distribute.

1 11.4 *Manner of Cash Payments Under the Plan and Liquidating Trust*
2 *Agreement.*

3 Cash payments made pursuant to the Plan and Liquidating Trust Agreement,
4 shall be in United States dollars by checks drawn on a domestic bank selected by
5 the Liquidating Trustee, Co-Liquidating Trustee, or Disbursing Agent, as
6 applicable, or by wire or ACH transfer from a domestic bank, at the option of the
7 Liquidating Trustee, Co-Liquidating Trustee, or Disbursing Agent, as applicable.

8 11.5 *Distribution Procedures.*

9 a) **Distribution Dates.** The Liquidating Trustee and
10 Co-Liquidating Trustee, as applicable, shall make Distributions to Holders of
11 Claims as provided in Section 11 of the Plan.

12 b) **Subsequent Distributions.** Any Distribution not made on the
13 Initial Distribution Date or a Subsequent Distribution Date because the Claim
14 relating to such Distribution had not been Allowed on that Distribution Date shall
15 be held by the Liquidating Trust for Distribution on any Subsequent Distribution
16 Date after such Claim is Allowed. No interest shall accrue or be paid on the unpaid
17 amount of any Distribution.

18 c) **Distribution Record Date.** Except as otherwise provided in a
19 Final Order of the Bankruptcy Court, the transferees of Claims that are transferred
20 pursuant to Bankruptcy Rule 3001 on or prior to the Distribution Record Date will
21 be treated as the Holders of those Claims for all purposes, notwithstanding that any
22 period provided by Bankruptcy Rule 3001 for objecting to the transfer may not
23 have expired by the Distribution Record Date. Neither the Liquidating Trustee nor
24 the Co-Liquidating Trustee shall have any obligation to recognize any transfer of
25 any Claim occurring after the Distribution Record Date. In making any Distribution
26 with respect to any Claim, the Liquidating Trustee and Co-Liquidating Trustee
27 shall be entitled instead to recognize and deal with, for all purposes hereunder, only
28 the Entity that is listed on the proof of claim filed with respect thereto or on the
29 Schedules as the Holder thereof as of the close of business on the Distribution
30 Record Date and upon such other evidence or record of transfer or assignment that
31 is known to the Liquidating Trustee or Co-Liquidating Trustee as of the
32 Distribution Record Date.

33 d) **Time Bar to Cash Payments by Check.** Checks issued by the
34 Liquidating Trustee or Co-Liquidating Trustee, as applicable, on account of
35 Allowed Claims shall be null and void if not negotiated within ninety (90) days
36 after the date of issuance thereof. Requests for the reissuance of any check that
37 becomes null and void pursuant to this Article shall be made directly to the
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1 Liquidating Trustee or Co-Liquidating Trustee, as applicable, by the Holder of the
2 Allowed Claim to which the check was originally issued. Any Claim in respect of
3 such voided check shall be made in writing on or before the later of six months
4 from the Effective Date or 30 days after the date on which such check is voided.
5 After that date, all Claims in respect of voided checks shall be disallowed and
6 forever barred and the proceeds of those checks shall revert in and become the
7 property of the Liquidating Trust as unclaimed property in accordance with §
8 347(b).
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1 11.6 *Withholding of Distributions.* In connection with making
2 Distributions under this Plan, to the extent applicable, the Liquidating Trustee and
3 Co-Liquidating Trustee shall comply with all tax withholding and reporting
4 requirements imposed on them by any Governmental Unit, and all Distributions
5 pursuant to this Plan shall be subject to such withholding and all related
6 agreements shall be subject to any applicable withholding and reporting
7 requirements. The Liquidating Trustee or Co-Liquidating Trustee, as applicable,
8 may withhold the entire Distribution to any Holder of an Allowed Claim until such
9 time as such Holder provides the necessary information to comply with any
10 withholding requirements of any Governmental Unit. Any property so withheld
11 will then be paid by the Liquidating Trustee or the Co-Liquidating Trustee, as
12 applicable, to the appropriate authority. If the Holder of an Allowed Claim fails to
13 provide the information to comply with any withholding requirements of any
14 Governmental Unit within three months after the date of first notification to the
15 Holder of the need for such information for the Cash necessary to comply with any
16 applicable withholding requirements, then such Holders' Distribution shall be
17 treated in accordance with Section 11.6 of the Plan.

18 11.7 *Delivery of Distributions and Undeliverable Distributions.* Subject to
19 Bankruptcy Rule 9010 and except as otherwise provided herein, Distributions to
20 the Holders of Allowed Claims shall be made by the Liquidating Trustee or
21 Co-Liquidating Trustee, as applicable, at (a) the address of each Claimant as set
22 forth in the Schedules, unless superseded by the address set forth on proof(s) of
23 claim filed by such Claimant, or (b) the last known address of such Claimant if no
24 proof of claim is filed or the Debtor, Post-Effective Date Debtor, Liquidating
25 Trustee, or Co-Liquidating Trustee has been notified in writing of a change of
26 address. If any Distribution is returned as undeliverable, the Liquidating Trustee or
27 Co-Liquidating Trustee may, in its discretion, make reasonable efforts to determine
28 the current address of the Holder of the Claim with respect to which the
Distribution was made as the Liquidating Trustee or Co-Liquidating Trustee deems
appropriate, but no Distribution to any such Holder shall be made unless and until
the Liquidating Trustee or Co-Liquidating Trustee has determined the then-current
address of such Holder, at which time the Distribution to such Holder shall be
made without interest. Amounts in respect of any undeliverable Distributions shall
be returned to, and held in trust by, the Liquidating Trustee or Co-Liquidating
Trustee until the Distributions are claimed or are deemed to be unclaimed property
under § 347(b), as set forth in Section 11.7 of the Plan. The Liquidating Trustee or
Co-Liquidating Trustee shall have the discretion to determine how to make
Distributions in the most efficient and cost-effective manner possible; provided,
however, that its discretion may not be exercised in a manner inconsistent with any
express requirements of the Plan or Liquidating Trust Agreement.

1 Except with respect to property not distributed because it is being held in the
2 Disputed Claim Reserve, Distributions that are not claimed by the later of ninety
3 (90) days from the Effective Date or ninety (90) days after the date of a
4 Distribution shall be deemed to be unclaimed property under § 347(b) and shall
5 vest or revert in the Liquidating Trust, and the Claims with respect to which those
6 Distributions are made shall be automatically cancelled. Nothing contained in the
7 Plan shall require the Debtor or the Liquidating Trust to attempt to locate any
8 Holder of an Allowed Claim. All funds or other property that vest or revert in the
9 Liquidating Trust pursuant to this Section shall be distributed to the other Holders
10 of Allowed Claims in accordance with the provisions of the Plan and the
11 Liquidating Trust Agreement.
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1 11.8 ***Setoffs and Recoupments.*** The Liquidating Trustee or Co-Liquidating
2 Trustee may, to the extent permitted under applicable law, setoff or recoup against
3 any Allowed Claim and any distributions to be made pursuant to the Plan on
4 account of such Allowed Claim, the claims, rights, and Causes of Action of any
5 nature that the Debtor or the Liquidating Trust may hold against the Holder of such
6 Allowed Claim that are not otherwise waived, released, or compromised in
7 accordance with the Plan; *provided, however,* that neither such a setoff,
8 recoupment, nor the allowance of any Claim hereunder shall constitute a waiver or
9 release by the Liquidating Trustee or Co-Liquidating Trustee of any such claims,
10 rights, and Causes of Action that the Debtor or the Liquidating Trust possesses
11 against such Holder; *provided, further,* that neither the failure to effect such a
12 setoff or recoupment nor the allowance of any Claim hereunder shall constitute a
13 waiver or release by the Liquidating Trustee or the Co-Liquidating Trustee of any
14 such Claims, rights, or Causes of Action that the Debtor, the Estate, or the
15 Liquidating Trust possess against such Holder. Any Holder of an Allowed Claim
16 subject to such setoff or recoupment reserves the right to challenge any such setoff
17 or recoupment in the Bankruptcy Court or any other court with jurisdiction with
18 respect to such challenge.

19 11.9 ***De Minimis Distributions.*** No Distribution is required to be made to a
20 Holder of an Allowed Claim if the amount of Cash to be distributed on any
21 Distribution Date under the Plan on account of such Claim is \$50 or less. Any
22 Holder of an Allowed Claim on account of which the amount of Cash to be
23 distributed is \$50 or less will have its Claim for such Distribution discharged and
24 will be forever barred from asserting any such Claim against each Released Party,
25 the Post-Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating
26 Trustee, and the Liquidating Trust. Any Cash not distributed pursuant to this
27 Section will, in the Liquidating Trustee’s discretion, be included in the Trust Assets
28 Accounts, free of any restrictions thereon, and will be distributed in accordance
with the Plan.

 11.10 ***Allocation of Plan Distribution Between Principal and Interest.*** All
Distributions by the Liquidating Trustee with respect to any Allowed Claim shall
be allocated first to the principal amount of such Allowed Claim, as determined for
federal income tax purposes, and thereafter, to the remaining portion of such
Allowed Claim (including the interest portion of the Allowed Claim), if any.

1 11.11 **Entry of Final Decree in Chapter 11 Case.** After all the Disputed
2 Claims have become Allowed Claims or have been disallowed by Final Order, and
3 all Distributions in respect of Allowed Claims have been made in accordance with
4 this Plan, or at such earlier time as the Liquidating Trustee deems appropriate, the
5 Liquidating Trustee (i) shall seek authority from the Bankruptcy Court for entry of
6 the Final Decree closing the Chapter 11 Case in accordance with the Bankruptcy
7 Code and the Bankruptcy Rules and (ii) shall be authorized under the Plan to take
8 any necessary corporate action with respect to the Debtor's continued existence
9 without the necessity for approvals or notices under any applicable state or other
10 law, including under the Nonprofit Laws. Notwithstanding the foregoing, actions
11 with respect to the Post-Effective Date Debtor shall be taken by the Liquidating
12 Trustee. The entry of Final Decree closing this Chapter 11 Case shall not affect the
13 Nonprofit Status of the Post-Effective Date Debtor to the extent it has not dissolved
14 in accordance with the Plan.

11.12 **Distribution Cap.** In no event shall any Holder of an Allowed Claim
12 receive Distribution(s) of an aggregate value exceeding one hundred percent
13 (100%) of the amount of such Holder's Allowed Claim.

11.13 **Distributions Free and Clear.** Except as otherwise provided herein,
14 any Distributions under the Plan shall be free and clear of any Liens, Claims, and
15 encumbrances, and no Entity, including the Debtor, shall have any interest (legal,
16 beneficial, or otherwise) in any property of the Estate distributed pursuant to the
17 Plan.

17 **SECTION 12.**
18 **PROCEDURES FOR RESOLVING CONTINGENT,**
19 **UNLIQUIDATED, AND DISPUTED CLAIMS**

20 12.1 ***No Distributions Pending Allowance.***

21 Notwithstanding any other provision of the Plan, the Debtor, the Liquidating
22 Trustee or the Co-Liquidating Trustee, as applicable, shall not distribute any Cash
23 or other property on account of any Disputed Claim unless and until such Claim
24 becomes Allowed. Nothing contained herein, however, shall be construed to
25 prohibit or require payment or Distribution on account of any undisputed portion of
26 a Claim.

25 12.2 ***Resolution of Disputed Claims.***

26 a) **General Unsecured Claims.** From and after the Confirmation Date, all
27 objections with respect to Disputed General Unsecured Claims shall be litigated to
28 a Final Order by the Co-Liquidating Trustee, (i) except to the extent that the

1 Co-Liquidating Trustee elects to withdraw any such objection or the
2 Co-Liquidating Trustee and the Claimant elects to compromise, settle, or otherwise
3 resolve any such objection, in which event they may settle, compromise or
4 otherwise resolve any Disputed General Unsecured Claim without approval of the
5 Bankruptcy Court; or (ii) as otherwise provided in the Liquidating Trust
6 Agreement. The costs of pursuing objections to General Unsecured Claims shall be
7 borne by the Liquidating Trust.

8 **b) Other Claims.** From and after the Confirmation Date, all objections with
9 respect to Disputed Claims (other than Disputed General Unsecured Claims) shall
10 be litigated to a Final Order by the Liquidating Trustee, except to the extent the
11 Liquidating Trustee elects to withdraw any such objection or the Liquidating
12 Trustee and the Claimant elect to compromise, settle, or otherwise resolve any such
13 objection, in which event they may settle, compromise, or otherwise resolve any
14 Disputed Claim (other than Disputed General Unsecured Claims) without approval
15 of the Bankruptcy Court. The costs of pursuing the objections to Claims (other than
16 General Unsecured Claims) shall be borne by the Liquidating Trust.

17 **12.3 Objection Deadline.** All objections to Claims shall be filed and served
18 upon the Claimant not later than the Claims Objection Deadline, as such may be
19 extended by order of the Bankruptcy Court.

20 **12.4 Allowance and Estimation of Claims.** Following the date on which a
21 Disputed Claim becomes an Allowed Claim after the Distribution Date, the
22 Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall pay directly to
23 the Holder of such Allowed Claim, as soon as reasonably practicable, the amount
24 provided for under the Plan, as applicable, and in accordance therewith.

25 **a) Allowance of Claims.** Notwithstanding anything to the contrary
26 herein, after the Effective Date and subject to the other provisions of the Plan, the
27 Liquidating Trustee or Co-Liquidating Trustee, as applicable, will have and will
28 retain any and all rights and defenses under bankruptcy or nonbankruptcy law that
the Debtor or its Estate had with respect to any Claim immediately before the
Effective Date, except with respect to any Claim deemed Allowed under the Plan or
by orders of the Bankruptcy Court. Except as expressly provided in the Plan or in
any order entered in the Chapter 11 Case prior to the Effective Date (including the
Confirmation Order), no Claim will become an Allowed Claim unless and until
such Claim is deemed Allowed under the Plan or the Bankruptcy Code, or the
Bankruptcy Court has entered a Final Order, including the Confirmation Order, in
the Chapter 11 Case allowing such Claim.

b) Prosecution of Objections to Claims. From and after the
Effective Date, unless otherwise provided in the Plan, the Confirmation Order, or

1 the Liquidating Trust Agreement, (i) the Liquidating Trustee will have the sole
2 authority to file objections to Claims (other than General Unsecured Claims) and
3 settle, compromise, withdraw, or litigate to judgment objections to any and all
4 Claims (other than General Unsecured Claims), regardless of whether such Claims
5 are in an Unimpaired Class or otherwise; and (ii) the Co-Liquidating Trustee will
6 have the sole authority to file objections to general Unsecured Claims and settle,
7 compromise, withdraw, or litigate to judgment objections to any and all General
8 Unsecured Claims. From and after the Effective Date, the Liquidating Trustee may
9 settle or compromise any Disputed Claim without any further notice to or action,
10 order, or approval of the Bankruptcy Court. The Liquidating Trustee will have the
11 sole authority to administer and adjust the Claims Register to reflect any such
12 settlements or compromises without any further notice to or action, order, or
13 approval of the Bankruptcy Court; provided, however, that with respect to General
14 Unsecured Claims, the Co-Liquidating Trustee shall have the sole authority to
15 administer and adjust the Claims Register to reflect any compromises or settlements
16 of General Unsecured Claims without any further notice to or action, order, or
17 approval of the Bankruptcy Court.

18 c) **Estimation of Claims.** At any time, (a) prior to the Effective
19 Date, the Debtor, and (b) after the Effective Date, the Liquidating Trustee or, solely
20 with respect to General Unsecured Claims, the Co-Liquidating Trustee may request
21 that the Bankruptcy Court estimate any contingent or unliquidated Claim to the
22 extent permitted by § 502(c) regardless of whether the Debtor or the Liquidating
23 Trust has previously objected to such Claim or whether the Bankruptcy Court has
24 ruled on any such objection, and the Bankruptcy Court shall have jurisdiction to
25 estimate any Claim at any time to any such objection. If the Bankruptcy Court
26 estimates any contingent or unliquidated Claim, that estimated amount shall
27 constitute either the Allowed amount of such Claim or a maximum limitation on
28 the Claim, as determined by the Bankruptcy Court. If the estimated amount
constitutes a maximum limitation on the Claim, the Liquidating Trustee or
Co-Liquidating Trustee, as applicable, may elect to pursue supplemental
proceedings to object to the ultimate allowance of the Claim.

12.5 *Disallowance of Claims.*

a) Except as otherwise agreed, any and all proofs of claim filed
after the Bar Date are Disputed, and Holders of such Claims will not receive any
Distributions thereon unless and until such Claim is Allowed.

b) Subject to and in accordance with this Plan, any Claims held by
Entities from which property is recoverable under §§ 542, 543, 550, or 553 or
Entities that are transferees of transfers avoidable under §§ 522(f), 522(h), 544,

1 545, 547, 548, 549, or 724(a), provided, that, such Cause of Action is retained by
2 the Liquidating Trust, shall be deemed disallowed pursuant to § 502(d), and
3 Holders of such Claims may not receive any Distributions on account of such
4 Claims until such time as such Causes of Action the Debtor holds or may hold
5 against any Entity have been resolved or a Bankruptcy Court order with respect
6 thereto has been entered and all sums due, if any, to the Estate by that Entity have
7 been turned over or paid to the Debtor or Liquidating Trust.

8 **12.6 Adjustment Without Objection.** Any Claim that has been paid or
9 satisfied, or any Claim that has been amended or superseded, may be adjusted or
10 expunged from the claims register at the direction of the Debtor, the Liquidating
11 Trustee, or the Co-Liquidating Trustee, as applicable, without an objection filed
12 and without further notice to or action, order, or approval of the Bankruptcy Court.

13 **12.7 Reserve Provisions for Disputed Claims.**

14 a) **Establishment of Disputed Reserves.** On or prior to each
15 Distribution Date, the Liquidating Trustee shall each reserve Cash required for
16 Distribution on Disputed Claims as if such Claims were Allowed as filed with any
17 Disputed Claims that are unliquidated or contingent being reserved in an amount
18 reasonably determined by the Liquidating Trustee, as applicable (the “Disputed
19 Claim Reserve”). On each Distribution Date after the Effective Date in which the
20 Liquidating Trustee or Co-Liquidating Trustee makes Distributions to Holders of
21 Allowed Claims, the Liquidating Trustee shall retain on account of Disputed
22 Claims an amount the Liquidating Trustee estimates would be necessary to fund the
23 Pro Rata Share of such Distributions to Holders of Disputed Claims is such Claims
24 were Allowed, with any Disputed Claims that are unliquidated or contingent being
25 reserved in an amount reasonably determined by the Liquidating Trustee or
26 Co-Liquidating Trustee, as applicable.

27 b) **Maintenance of Disputed Reserves.** The Liquidating Trustee
28 shall hold property in the Disputed Claim Reserve in trust for the benefit of the
29 Holders of the applicable Disputed Claims that are ultimately determined to be
30 Allowed. The Disputed Claim Reserve shall be closed (or deemed closed) by the
31 Liquidating Trust when all Distributions and other dispositions of Cash of other
32 property required to be made hereunder will have been made in accordance with
33 the terms of the Plan. Upon closure of the Disputed Claim Reserve, all Cash or
34 other property held in that Disputed Claim Reserve shall revert in and become
35 unrestricted property of the Liquidating Trust to be distributed in accordance with
36 the Plan and the Liquidating Trust Agreement.

37 c) **Limitation on Funding Disputed Claim Reserves.** Except as
38 expressly set forth in the Plan, neither the Debtor nor the Liquidating Trustee shall

1 have any duty to fund the Disputed Claim Reserve except from the Liquidating
2 Trust Assets.

3 12.8 **Rounding.** Whenever any payment of a fraction of a cent would
4 otherwise be called for, the actual Distribution shall reflect a rounding of such
5 fraction down to the nearest cent.

6 12.9 **Cumulative Effect.** All the objection, estimation, and resolution
7 procedures set forth in this Section are intended to be cumulative (where possible)
8 and not exclusive of one another.
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1 13.4 **Conflicting Claims.** Except as otherwise provided in the Liquidating
2 Trust Agreement, if any conflicting claims or demands are made or asserted with
3 respect to a Trust Beneficial Interest, the Liquidating Trustee shall be entitled, at its
4 sole election, to refuse to comply with any such conflicting claims or demands. In
5 so refusing, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, may
6 elect to make no payment or Distribution with respect to the beneficial interest
7 represented by the claims or demands involved, or any part thereof, and the
8 Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall refer such
9 conflicting claims or demands to the Bankruptcy Court, which shall have exclusive
10 jurisdiction over resolution of such conflicting claims or demands and file a motion
11 with the Bankruptcy Court to adjudicate any such conflicting claims or demands. In
12 so doing, the Liquidating Trustee or Co-Liquidating Trustee, as applicable, shall
13 not be or become liable to any party for his/her refusal to comply with any of such
14 conflicting claims or demands. The Liquidating Trustee or Co-Liquidating Trustee,
15 as applicable, shall be entitled to refuse to act until either (a) the rights of the
16 adverse claimants have been adjudicated by a Final Order or (b) all differences
17 have been resolved by a written agreement among all of such parties and the
18 Liquidating Trustee or Co-Liquidating Trustee, as applicable, which agreement
19 shall include a complete release of the Liquidating Trust and the Liquidating
20 Trustee (the occurrence of either (a) or (b) being referred to as a “Dispute
Resolution” in this Section). Until a Dispute Resolution is reached with respect to
21 such conflicting claims or demands, the Liquidating Trustee or Co-Liquidating
22 Trustee, as applicable, shall hold in a segregated interest-bearing account with a
23 United States financial institution any payments or Distributions from the
24 Liquidating Trust as applicable, to be made with respect to the Beneficial Interest at
25 issue. Promptly after a Dispute Resolution is reached, the Liquidating Trustee shall
26 Transfer the payments and Distributions, if any, held in the segregated account,
27 together with any interest and income generated thereon, in accordance with the
28 terms of such Dispute Resolution.

13.5 **Limitation on Transferability.** As set forth in more detail in the
Liquidating Trust Agreement, the Trust Beneficial Interests may not be transferred,
sold, assigned, hypothecated, or pledged, except as they may be assigned or
transferred by will, intestate succession, or operation of law.

SECTION 14.
EXECUTORY AGREEMENTS

1 14.1 **General Treatment.** On the Effective Date, all Executory Agreements
2 to which the Debtor is a party shall be deemed rejected as of the Effective Date,
3 except for those Executory Agreements that (a) have been assumed or rejected
4 pursuant to a Final Order of the Bankruptcy Court (including pursuant to any Sale
5 Order), (b) are the subject of a separate motion to assume, assume and assign, or
6 reject filed under § 365 on or before the Effective Date, (c) are specifically
7 designated as a contract or lease to be assumed pursuant to the DAP Sale and no
8 timely objection to the proposed assumption was filed; or (d) are specifically
9 designated as a contract or lease to be assumed on the Schedule of Assumed
10 Contracts and no timely objection to the proposed assumption has been filed. If the
11 party to an Executory Agreement listed to be assumed in the Schedule of Assumed
12 Contracts wishes to object to the proposed assumption (including with respect to
13 the cure amounts), it shall do so within thirty (30) days from the service of the
14 Schedule of Assumed Contracts. However, nothing in this Section shall cause the
15 rejection, breach, or termination of any contract of insurance benefiting the Debtor
16 and the Estate, the Debtor’s officers, managers and directors and/or the Liquidating
17 Trust. The Confirmation Order shall constitute an order of the Bankruptcy Court
18 approving such assumptions and rejections, as applicable, pursuant to § 365, as of
19 the Effective Date. Nothing in this Section shall be construed as an
20 acknowledgement that a particular contract or agreement is executory or is properly
21 characterized as a lease.

22 The non-Debtor parties to any rejected personal property leases shall be
23 responsible for taking all steps necessary to retrieve the personal property that is
24 the subject of such executory contracts and leases, and neither the Debtor nor the
25 Liquidating Trust shall bear any liability for costs associated with such matters.
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1 14.2 **Rejection Bar Date.** Claims arising out of the rejection of an
2 Executory Agreement pursuant to the Plan must be filed with the Bankruptcy Court
3 (or as otherwise provided for in the Debtor’s notice of rejection) no later than thirty
4 (30) days after the Effective Date. Any Claims not filed within such time period
5 will be forever barred from assertion against the Debtor, the Liquidating Trustee,
6 and the Liquidating Trust Assets. All such Claims for which Proofs of Claim are
7 timely and properly filed and ultimately Allowed will be treated as General
8 Unsecured Claims.

9 14.3 **Insurance Policies.** For the avoidance of doubt, the Debtor’s rights
10 with respect to all Insurance Policies under which the Debtor may be an insured
11 beneficiary or assignee (including all Insurance Policies that may have expired
12 prior to the Petition Date, all Insurance Policies in existence on the Petition Date,
13 all Insurance Policies entered into by the Debtor after the Petition Date, and all
14 Insurance Policies under which the Debtor holds rights to make, amend, prosecute,
15 and benefit from claims) shall be Transferred to the Liquidating Trust (including,
16 without limitation, for the Liquidating Trustee to pursue and prosecute any Causes
17 of Action) on the Effective Date, unless any such Insurance Policy is otherwise
18 cancelled by the Liquidating Trustee in its discretion. Notwithstanding any
19 provision providing for the rejection of Executory Agreements, any Insurance
20 Policy that is deemed to be an Executory Agreement shall neither be rejected nor
21 assumed by operation of this Plan and shall be the subject of a specific motion by
22 the Liquidating Trust, which shall retain the right to assume or reject any such
23 Executory Agreements pursuant to and subject to the provisions of § 365 following
24 the Effective Date, with all rights of the Insurers to object or otherwise contest such
25 assumption or rejection being expressly reserved provided, that, the Liquidating
26 Trustee may not reject (a) any extended reporting period (tail) coverage purchased
27 by the Debtor and (b) any Insurance Policies assumed by the Debtor pursuant to an
28 order of the Bankruptcy Court.

 The Confirmation Order shall constitute a determination that no default by
the Debtor exists with respect to any of the Insurance Policies requiring a cure
payment and that nothing in the Sale Order, any underlying agreements or this Plan
shall be construed or applied to modify, impair, or otherwise affect the
enforceability of the Insurance Policies or any coverage thereunder with regard to
any Claims or Causes of Action.

 Notwithstanding anything to the contrary in the Confirmation Order or the
Plan (including any other provision that purports to be preemptory or supervening),
nothing shall in any way operate to impair, or have the effect of impairing the
Insurers’ legal, equitable or contractual rights, if any, in respect of any Claims (as
defined by § 101(5)), and the rights of Insurers shall be determined under the

1 Insurance Policies and under applicable nonbankruptcy law; *provided, that*, any
2 Claim by an Insurer against the Debtor or the Liquidating Trust shall also be
3 determined under applicable bankruptcy law, and Plan and Confirmation Order
provisions.

4 Nothing in the Plan or in the Confirmation Order shall preclude any Person
5 from asserting in any proceeding any and all Claims, defenses, rights or causes of
6 action that it has or may have under or in connection with any Insurance Policy,
7 and nothing in the Plan or the Confirmation Order shall be deemed to waive any
8 claims, defenses, rights or causes of action that any Person (including any Insurer)
9 has or may have under the provisions, terms, conditions, defenses and/or
10 exclusions contained in the subject Insurance Policies; *provided, that*, any Claims
11 by an Insurer against the Debtor or the Liquidating Trust shall also be determined
12 under applicable bankruptcy law, and Plan and Confirmation Order provisions.
13 Nothing in this Plan shall diminish, impair or otherwise affect payments from the
14 proceeds or the enforceability of any Insurance Policies that may cover (a) Claims
15 by the Debtor, or (b) Claims against the Debtor or covered Persons.

12 **SECTION 15.**
13 **MEANS FOR IMPLEMENTATION OF THE PLAN**

14 15.1 ***General Settlement of Claims.*** The Liquidating Trustee and
15 Co-Liquidating Trustee are authorized and directed to make Distributions of the
16 distributable Assets pursuant to and in accordance with the Plan. All Plan
17 Distributions made to Holders of Allowed Claims in any Class are intended to be
18 and shall be final. For the avoidance of doubt, the Plan itself shall not be deemed to
be a settlement.

19 15.2 ***Sale Transaction.*** On March 13, 2023, the Bankruptcy Court entered
20 the Sale Order authorizing and approving the DAP Sale, pursuant to § 363.
21 Pursuant to the DAP Sale, the Debtor sold the Purchased Assets to DAP Health
pursuant to the terms in the Asset Purchase Agreement.

22 a) ***Cooperation During Transition Period.*** Between the entry of
23 the Sale Order and the Closing of the DAP Sale, the Debtor and DAP Health
24 cooperated pursuant to the Management Services Support Agreement. On July 31,
25 2023, the DAP Sale Closed and the Management Services Support Agreement
26 terminated on its terms and that to the extent the Debtor or DAP Health may have
27 claims, rights, or ongoing obligations to each other under the Management Services
28 Support Agreement that survive the termination, such claims, rights, or ongoing
obligations shall cease to exist on the Effective Date, and that the Post-Effective
Date Debtor shall not inherit any claims, rights, benefits, or Causes of Action
arising under, relating to, or in connection with the Asset Purchase Agreement, the

1 Management Services Support Agreement, or any other agreement relating to the
2 foregoing.

3 b) **No Effect on Sale Order.** Nothing in the Plan is intended to,
4 nor shall be construed to, alter any of the terms and conditions upon which the
5 DAP Sale was approved as set forth in the Asset Purchase Agreement. Neither the
6 Plan nor the Confirmation Order shall limit or otherwise affect any of the
7 Bankruptcy Court's findings, conclusions, orders, and judgments as set forth in the
8 Sale Order, and insofar as any of the protections afforded DAP Health by the Sale
9 Order conflict with or contradict certain terms and conditions in the Plan or any
10 findings, conclusions, orders, or judgments in the Confirmation Order, the Sale
11 Order shall govern and control with respect to DAP Health.

12 c) **No Claims against DAP Health.** Notwithstanding anything that
13 may suggest otherwise in the Plan, the Plan Supplement, or any Schedule or
14 Exhibit to either of the foregoing, or any other document executed in connection
15 with Confirmation or this Chapter 11 Case, neither the Post-Effective Date Debtor
16 nor any Holder of any Claim shall have any claim, cause of action, right, or
17 recourse against DAP Health or the Purchased Assets on account of or in
18 connection with the DAP Sale, the Asset Purchase Agreement, the Master Services
19 Support Agreement, or any other agreement or document executed in connection
20 with the consummation of the DAP Sale.

21 15.3 **DHCS Settlement Agreement.** On March 7, 2023, the Bankruptcy
22 Court entered the DHCS 9019 Order authorizing and approving the DHCS
23 Settlement among the Debtor, the Committee, and DHCS, which resolved the
24 various disputes between the Debtor, the Committee, and DHCS. The DHCS
25 Settlement Agreement sets forth the treatment of the DHCS Claim and provides for
26 the allocation of the DAP Sale proceeds among DHCS and Holders of other
27 Allowed Claims. DHCS will apply the DHCS Offset Amount to the DHCS Claim
28 as set forth in the DHCS Settlement Agreement. Pursuant to the DHCS Settlement
29 Agreement, the DHCS Claim will be reduced dollar for dollar by the DHCS'
30 receipt of Specified Litigation Recoveries, which will be allocated as set forth
31 therein. Finally, the DHCS Settlement Agreement provides for the Extended DHCS
32 Bar Date in order for DHCS to file an additional Proof of Claim for Medi-Cal
33 overpayments not included within the DHCS Claim as a General Unsecured Claim.

34 Nothing in the Plan is intended to, nor shall be construed to, alter any of the
35 terms and conditions upon which the DHCS Settlement Agreement was approved
36 as set forth therein. Neither the Plan nor the Confirmation Order shall limit or
37 otherwise affect any of the Bankruptcy Court's findings, conclusions, orders, and
38 judgments as set forth in the DHCS 9019 Order, and insofar as any of the

1 protections afforded DHCS by the DHCS 9019 Order conflict with or contradict
2 certain terms and conditions in the Plan or any findings, conclusions, orders, or
3 judgments in the Confirmation Order, the DHCS 9019 Order shall govern and
control with respect to DHCS

4 15.4 **Plan Funding.** This Plan will be funded from the following sources:
5 (i) the Remaining Estate Funds; (ii) the Remaining Cash; (iii) Net Cash Proceeds;
6 (iv) any refunds, deposits, or other monies owing to the Debtor which were not
7 sold to DAP Health; (v) the Litigation Recoveries; (vi) any other monetary
8 recoveries obtained by the Debtor prior to the Effective Date; and (vii) any other
monetary recoveries obtained by the Liquidating Trustee after the Effective Date
that do not constitute Purchased Assets.

9 15.5 **Post-Effective Date Governance**.

10 a) **Post-Effective Date Debtor.**

11 i. **Continued Limited Existence.** On and after the Effective Date,
12 the Post-Effective Date Debtor shall continue in existence for
13 the purposes set forth herein, and retain its Nonprofit Status to
14 the same extent as such status existed immediately prior to the
15 Petition Date. No party shall take any action to interfere with,
16 alter, terminate, or otherwise adversely affect the Nonprofit
17 Status of the Post-Effective Date Debtor. Specifically, the
18 Post-Effective Date Debtor shall continue in existence (i) to
19 maintain the Provider Agreements for Medi-Cal and Medicare,
20 and participate in the Medi-Cal and Medicare programs, until
21 the CHOW is approved, and (ii) to collect or otherwise
liquidate all amounts owing under the Provider Agreements
until all payments due under such agreements have been
received by the Post-Effective Date Debtor and, if appropriate,
Transferred to the Liquidating Trust.

22 ii. **No Further Approvals Required.** In performance of its duties
23 hereunder, the Post-Effective Date Debtor shall have the rights
24 and powers of a debtor in possession under § 1107, and such
25 other rights, powers, and duties necessary, appropriate,
26 advisable or convenient to effectuate the provisions of the
27 Plan. Except to the extent provided in this Plan or the
28 Confirmation Order, on and after the Effective Date, the
Post-Effective Date Debtor shall not be required to obtain any
approvals from the Bankruptcy Court, any court or

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Governmental Unit and/or provide any notices under the Nonprofit Laws to implement the terms of the Plan.

iii. **The Post-Effective Date Debtor's Books and Records.** The Debtor shall Transfer dominion and control over all of its books and records, in whatever form, manner or media, to the Liquidating Trustee on or as soon as reasonably practicable after the Effective Date.

iv. **Dissolution.** The Liquidating Trustee will cause the Post-Effective Date Debtor to be dissolved for all purposes under applicable non-bankruptcy law after (i) the CHOW is approved and (ii) the receipt of all payments related to Medi-Cal and Medicare. The Liquidating Trustee may dissolve the Post-Effective Date Debtor, earlier than as set forth herein, if it determines that the continued existence of the Post-Effective Date Debtor is not necessary to satisfy the foregoing conditions. Such dissolution shall occur without the necessity for any other or further actions to be taken by or on behalf of the Post-Effective Debtor, or payment of any fees, charges, penalties or other amounts required by applicable non-bankruptcy law; provided, however, that the Liquidating Trustee may in its discretion file any certificates of cancellation as may be appropriate in connection with dissolution of the Post-Effective Date Debtor.

b) Post-Effective Date Board of Directors.

i. **Duties and Obligations.** The Post-Effective Date Board of Directors shall (i) fulfill its duties and obligations under the Post-Effective Date Debtor's bylaws and state and federal law, and (ii) oversee the Liquidating Trustee solely in his/her capacity as president of the Post-Effective Date Debtor consistent with the terms of this Plan.

ii. **Resignation.** Any member of the Post-Effective Date Board of Directors may resign at any time upon not less than thirty (30) days' written notice to the Liquidating Trustee; provided, that, the Liquidating Trustee may waive such notice period.

iii. **Replacement.** Notwithstanding anything in the bylaws to the contrary, in the event that a director serving on the Post-Effective Date Board of Directors resigns or is duly

1 removed for cause, or in the event of the death of any such
2 director or other occurrence rendering such director
3 incapacitated or unavailable for a period of thirty (30)
4 consecutive days, a replacement director shall be designated
5 by the remaining members of the Post-Effective Date Board of
6 Directors in consultation with the Liquidating Trustee. If a
7 replacement director cannot be designated pursuant to this
8 Plan, the Liquidating Trustee may file a motion with the
9 Bankruptcy Court seeking appointment of a replacement
10 director.

11 iv. **Termination.** The terms of the Post-Effective Date Board of
12 Directors shall expire upon the date they are no longer
13 required under state law as to the Debtor, as applicable.

14 v. **Limitation of Liability of the Post-Effective Date Board of**
15 **Directors.** The liability of the Post-Effective Date Board of
16 Directors shall be limited to the maximum extent permitted by
17 law, including any exculpations under the articles of
18 incorporation or bylaws of the Post-Effective Date Debtor.

19 vi. **Operating Accounts for the Post-Effective Date Debtor.** On
20 the Effective Date, or as soon thereafter as is practical and
21 subject to the prior payment of the amounts required to be paid
22 or reserved by the Post-Effective Date Debtor in cash on the
23 Effective Date on account of Claims pursuant to this Plan, the
24 Post-Effective Date Debtor shall establish and fund deposit
25 accounts to serve as Operating Accounts for the Post-Effective
26 Date Debtor for use in accordance with the Wind-down
27 Budget, provided, however, the Post-Effective Date Debtor
28 may, with the written consent of the Liquidating Trustee,
utilize previously established deposit accounts for such
purpose. The Liquidating Trustee shall be authorized to use
the funds in the Operating Accounts as needed to preserve,
administer, and continue the Operations for the Post-Effective
Date Debtor, including paying all related costs and expenses
associated, and collection of any amounts due to the
Post-Effective Date Debtor under the Transition Services
Agreement, each in accordance with the Wind-down Budget.
After the Effective Date, all Cash or other proceeds generated
by the Purchased Assets solely to the extent required to fund
the Operating Accounts in accordance with the Wind-down

Budget during the Transition Period shall be excluded from the definition of the Remaining Cash.

15.6 *Liquidating Trust.*

a) **Formation of the Liquidating Trust.** On the Effective Date, the Liquidating Trust shall be established pursuant to the Liquidating Trust Agreement for the purpose of, inter alia, (a) administering the Liquidating Trust Assets including the Distributions and payments contemplated under the Plan, (b) prosecuting and/or resolving all Disputed Claims, (c) investigating and pursuing any Causes of Action the Debtor holds or may hold against any Entity, and (d) making all Distributions to the Beneficiaries provided for under the Plan. The Liquidating Trust is intended to qualify as a liquidating trust pursuant to Treas. Reg. § 301.7701-4(d), with no objective to continue or engage in the conduct of the trade or business, except to the extent reasonably necessary to, and consistent with, the liquidating purpose of the Liquidating Trust. Accordingly, the Liquidating Trustee shall, in an expeditious but orderly manner, make distribution to Holders of Allowed Claims subject to the terms of this Plan, liquidate and convert to Cash the remaining Liquidating Trust Assets, and make timely Distributions to the Beneficiaries of the proceeds thereof, and not unduly prolong the duration of the Liquidating Trust. Neither the Liquidating Trust nor the Liquidating Trustee or Co-Liquidating Trustee shall be or shall be deemed a successor-in-interest of the Debtor for any purpose other than as specifically set forth herein or in the Liquidating Trust Agreement.

b) **Funding of the Liquidating Trust.** On the Effective Date, the Liquidating Trust Assets shall vest automatically in the Liquidating Trust. The Plan shall be considered a motion pursuant to §§ 105, 363, and 365 for such relief. The transfer of the Liquidating Trust Assets to the Liquidating Trust shall be made for the benefit and on behalf of the Liquidating Trust Beneficiaries. The assets comprising the Liquidating Trust Assets will be treated for tax purposes as being transferred by the Debtor to the Liquidating Trust Beneficiaries pursuant to the Plan in exchange for their Allowed Claims and then by the Liquidating Trust Beneficiaries to the Liquidating Trust in exchange for the beneficial interests in the Liquidating Trust. The Liquidating Trust Beneficiaries shall be treated as the grantors and owners of the Liquidating Trust. Upon the transfer of the Liquidating Trust Assets, the Liquidating Trust shall succeed to all of the Debtor's rights, title and interest in the Liquidating Trust Assets, and the Debtor will have no further interest in or with respect to the Liquidating Trust Assets.

Except to the extent definitive guidance from the IRS or a court of competent jurisdiction (including the issuance of applicable Treasury Regulations or the

1 receipt by the Liquidating Trustee of a private letter ruling if the Liquidating
2 Trustee so requests one) indicates that such valuation is not necessary to maintain
3 the treatment of the Liquidating Trust as a liquidating trust for purposes of the
4 Internal Revenue Code and applicable Treasury Regulations, as soon as possible
5 after the Effective Date, the Liquidating Trustee shall make a good-faith valuation
6 of the Liquidation Trust Assets. The valuation shall be used consistently by all
7 parties (including, without limitation, the Debtor, the Liquidating Trust, and the
8 Liquidating Trust Beneficiaries) for all federal income tax purposes.

6
7 **15.7 *Appointment of the Liquidating Trustee and Co-Liquidating Trustee.***

7 The Liquidating Trustee shall be selected by the Debtor with the consent of the
8 Committee, such consent not to be unreasonably withheld. The initial Liquidating
9 Trustee shall be a representative from Ankura Consulting Group, LLC. The
10 Co-Liquidating Trustee shall be selected by the Committee with the consent of the
11 Debtor, such consent not to be unreasonably withheld. The initial Co-Liquidating
12 Trustee shall be a representative from FTI Consulting, Inc. The Liquidating Trustee
13 and Co-Liquidating Trustee shall be deemed appointed on the Effective Date,
14 without application, notice, hearing or other order of the Bankruptcy Court. The
15 appointment, duties, rights, and powers of the Liquidating Trustee and the
16 Co-Liquidating Trustee are as set forth in the Liquidating Trust Agreement.

14 **15.8 *Rights and Powers of Liquidating Trustee and Co-Liquidating***
15 ***Trustee.***

16 a) **Liquidating Trustee.** The Liquidating Trustee shall be deemed
17 the Estate's representative in accordance with § 1123 and shall have all the rights
18 and powers set forth in the Liquidating Trust Agreement, including, without
19 limitation, the powers of a trustee under §§ 704 and 1106 and Bankruptcy Rule
20 2004 to act on behalf of the Liquidating Trust. Without limiting the foregoing, and
21 except as provided for below with respect to the Co-Liquidating Trustee, the
22 Liquidating Trustee will have the right to, among other things, (1) effect all actions
23 and execute all agreements, instruments and other documents necessary to
24 implement the provisions of the Plan and the Liquidating Trust Agreement; (2)
25 liquidate the Liquidating Trust Assets; (3) investigate, prosecute, settle, abandon or
26 compromise any Causes of Action the Debtor holds or may hold against any Entity;
27 (4) make Distributions as contemplated hereby, (5) establish and administer any
28 necessary reserves for Disputed Claims that may be required; (6) object to the
Disputed Claims and prosecute, settle, compromise, withdraw or resolve in any
manner approved by the Bankruptcy Court such objections; (7) assert or waive any
attorney-client privilege on behalf of the Debtor and Estate with regard to acts or
events during time periods prior to the Petition Date; and (8) employ and
compensate professionals and other agents, including, without limitation, existing

1 Professionals employed by the Debtor in accordance with the Liquidating Trust
2 Agreement or the Plan, provided, however, that any such compensation shall be
3 made only out of the Liquidating Trust Assets, to the extent not inconsistent with
4 the status of the Liquidating Trust as a liquidating trust within the meaning of
5 Treas. Reg. § 301.7701-4(d) for federal income tax purposes.

6 **b) Co-Liquidating Trustee.** The Co-Liquidating Trustee shall ~~be~~
7 ~~deemed the Estate's representative in accordance with § 1123 and shall~~ have all the
8 rights and powers set forth in the Liquidating Trust Agreement, ~~including, without~~
9 ~~limitation, the powers of a trustee under §§ 704 and 1106 and Bankruptcy Rule~~
10 ~~2004 to act on behalf of the Liquidating Trust. The.~~ To ensure expeditious
11 resolution of any Disputed General Unsecured Claims and distributions to Holders
12 of Allowed General Unsecured Claims, the Co-Liquidating Trustee will have the
13 right to, ~~among other things~~ in consultation with the Liquidating Trustee, to: (1)
14 make Distributions to Holders of Allowed General Unsecured Claims; (2) object to
15 the Disputed General Unsecured Claims and prosecute (or continue the prosecution
16 of), settle, compromise, withdraw or resolve in any manner approved by the
17 Bankruptcy Court such objections; and (3) employ and compensate professionals
18 and other agents, including, without limitation, existing Professionals employed by
19 the Debtor or Committee in accordance with the Liquidating Trust Agreement or
20 the Plan, provided, however, that any such compensation shall be made only out of
21 the Liquidating Trust Assets. The Co-Liquidating Trustee will resign (by written
22 submission, email being sufficient to the Liquidating Trustee) upon (i) fully
23 adjudicating all Disputed General Unsecured Claims except any Disputed General
24 Unsecured Claims against Specified Litigation Defendants, and (ii) making the
25 Final Distribution to the Holders of General Unsecured Claims except Specified
26 Litigation Defendants.

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1 15.9 **Fees and Expenses.** Subject to payment in full of all Allowed
2 Administrative Claims, and except as otherwise ordered by the Bankruptcy Court,
3 expenses incurred by the Liquidating Trust on or after the Effective Date shall be
4 paid in accordance with the Liquidating Trust Agreement without further order of
5 the Bankruptcy Court.

6 15.10 **Transfer of Beneficial Interests in the Liquidating Trust.** Liquidating
7 Trust Interests shall not be transferable except upon death of the interest holder or
8 by operation of law. The Liquidating Trust shall not have any obligation to
9 recognize any transfer of Claims occurring after the Distribution Record Date.

10 15.11 **Litigation of Debtor's Causes of Action.** Except as otherwise
11 provided in this Plan, all Causes of Action are retained, vested in the Liquidating
12 Trust, and preserved pursuant to § 1123(b). From and after the Effective Date, all
13 Causes of Action will be prosecuted or settled by the Liquidating Trustee. Except
14 as otherwise provided in this Plan, to the extent any Causes of Action are already
15 pending on the Effective Date, the Liquidating Trustee, as successor to the Debtor
16 (in any derivative capacity or as an intervening party), will continue the
17 prosecution of such Causes of Action and shall be substituted as plaintiff,
18 defendant, or in any other capacity for the Debtor pursuant to this Plan and the
19 Confirmation Order on the Effective Date without need for any further motion
20 practice or notice in any case, action, or matter.

21 15.12 **Full and Final Satisfaction.** Commencing upon the Effective Date,
22 subject to the terms of this Plan and the Liquidating Trust Agreement, the
23 Liquidating Trustee and Co-Liquidating Trustee, as applicable, shall be authorized
24 and directed to distribute the amounts required under the Plan to the Holders of
25 Allowed Claims according to the provisions of the Plan. Upon the Effective Date,
26 all Debts of the Debtor shall be deemed fixed and adjusted pursuant to this Plan,
27 and the Liquidating Trust shall have no liability on account of any Claims except as
28 set forth in this Plan and in the Liquidating Trust Agreement. All payments and all
distributions made by the Liquidating Trustee or Co-Liquidating Trustee under the
Plan shall be in full and final satisfaction of all Claims against the Liquidating
Trust; provided, however, that nothing contained in this Article 9 of the Plan, or in
any other provision of this Plan, shall be deemed to constitute or result in a
discharge of the Debtor under § 1141(d).

1 15.13 **Employment and Compensation of Professionals.** In accordance with
2 the Liquidating Trust Agreement, the Liquidating Trust may employ such counsel,
3 advisors, and other professionals selected by the Liquidating Trustee or
4 Co-Liquidating Trustee (which may be the same professionals employed by the
5 Post-Effective Date Debtor or the Committee) that the Liquidating Trustee and
6 Co-Liquidating Trustee reasonably require to perform its responsibilities under the
7 Plan without further order from the Bankruptcy Court.

8 15.14 **No Further Court Authorization.** Except as provided herein or the
9 Confirmation Order, the Liquidating Trustee and Co-Liquidating Trustee will
10 continue the orderly administration of the Liquidating Trust Assets and otherwise
11 implement the provisions of this Plan without necessity of any further order of the
12 Bankruptcy Court or approval or consent of any Governmental Unit, including
13 under the Nonprofit Laws. Further, except as provided herein or the Confirmation
14 Order, the Liquidating Trustee and Co-Liquidating Trustee will continue their
15 oversight and related responsibilities pursuant to the Plan and Liquidating Trust
16 Agreement without necessity of any further order of the Bankruptcy Court or other
17 Governmental Unit, including under the Nonprofit Laws.

18 15.15 **Dissolution of the Committee.** On the Effective Date, the Committee
19 will dissolve, and the members of the Committee and the Committee's
20 Professionals will cease to have any role arising from or relating to the Chapter 11
21 Case, except in connection with final fee applications of Professionals for services
22 rendered prior to the Effective Date (including the right to object thereto). The
23 Professionals retained by the Committee and the members thereof will not be
24 entitled to assert any fee claims for any services rendered to the Committee or
25 expenses incurred in the service of the Committee after the Effective Date, except
26 for reasonable fees for services rendered, and actual and necessary costs incurred,
27 in connection with any applications for allowance of Professional Fees pending on
28 the Effective Date or filed and served after the Effective Date. Nothing in the Plan
shall prohibit or limit the ability of the Debtor's or Committee's Professionals to
represent the Liquidating Trustee or to be compensated or reimbursed per the Plan
and the Liquidating Trust Agreement in connection with such representation.

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1 15.16 **Coordination Between Post-Effective Date Debtor and the**
2 **Liquidating Trust.** Notwithstanding anything herein to the contrary, in furtherance
3 of the purposes of the Liquidating Trust, at the request of the Liquidating Trustee
4 or Co-Liquidating Trustee, as applicable, the Post-Effective Date Debtor
5 (including, without limitation, the Post-Effective Date Debtor’s employees, agents
6 and/or professionals) shall be authorized to provide assistance and services to, or
7 otherwise act on behalf of, the Liquidating Trustee or Co-Liquidating Trustee, as
8 applicable, in the performance of the Liquidating Trustee’s or Co-Liquidating
9 Trustee’s duties, as applicable, under the Plan and the Liquidating Trust. Without
10 limitation on the foregoing, the Post-Effective Date Debtor shall be authorized to
11 assist in the reconciliation and administration of Claims, and assist in the
12 liquidation and/or collection of Liquidating Trust Assets (including, without
13 limitation, litigation claims). The Liquidating Trustee shall oversee all such
14 services provided on behalf of the Liquidating Trust.

15 15.17 **Destruction and Abandonment of Books and Records.** Except as
16 otherwise provided in this subsection or the Liquidating Trust Agreement, on or
17 after the Effective Date, pursuant to § 554(a), the Liquidating Trustee is authorized,
18 from time to time, without further application to the Bankruptcy Court or notice to
19 any party, to abandon or otherwise destroy documents and records (whether in
20 electronic or paper format) that he or she determines, in his/her reasonable business
21 judgment, are no longer necessary to the administration of either the Chapter 11
22 Case or the Plan, notwithstanding any federal, state, or local law or requirement
23 requiring the retention of the applicable documents or records; provided, that, sixty
24 (60) days prior to any abandonment or destruction, the Liquidating Trustee will
25 give notice to any Insurer requesting notice prior to the Confirmation Date and a
26 general description of the documents to be abandoned or destroyed, and the Insurer
27 shall have thirty (30) days thereafter to request, at its sole expense, copies of the
28 documents relevant to the defense or indemnity claims covered by that Insurer. The
Insurer and the Liquidating Trustee shall cooperate in limiting the request to
documents relevant to defense or indemnity of claims covered by that Insurer.

15.18 **Mutuality Preserved.** Unless specifically agreed in writing by the
Debtor, the Liquidating Trustee, or Co-Liquidating Trustee, as applicable, nothing
in the Plan constitutes a waiver of the requirements for setoff under § 553.

SECTION 16.
EFFECT OF CONFIRMATION

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1 16.1 **Binding Effect of the Plan.** The provisions of the confirmed Plan shall
2 bind the Debtor, the Liquidating Trust, the Liquidating Trustee, the Co-Liquidating
3 Trustee, any Entity acquiring property under the Plan, any Beneficiary, and any
4 Creditor, whether or not such Creditor has filed a Proof of Claim in the Chapter 11
5 Case, whether or not the Claim of such Creditor is impaired under the Plan, and
6 whether or not such Creditor has accepted or rejected the Plan. All Claims and
7 Debts shall be fixed and adjusted pursuant to the Plan. The Plan shall also bind any
8 taxing authority, recorder of deeds, or similar official for any county, state, or
9 Governmental Unit or parish in which any instrument related to under the Plan or
10 related to any transaction contemplated under the Plan is to be recorded with
11 respect to any taxes of the kind specified in § 1146(a).

12 16.2 **Vesting of Assets.** Upon the Effective Date, title to all property of the
13 Estate of the Debtor in the Chapter 11 Case shall vest in the Liquidating Trust and
14 shall be retained by the Liquidating Trust for the purposes contemplated under this
15 Plan pursuant to the Liquidating Trust Agreement. Without limiting the generality
16 of the foregoing, all Causes of Action the Debtor holds or may hold against any
17 Entity, recoveries from any Causes of Action, and all resulting Liquidating Trust
18 Assets shall vest in the Liquidating Trust upon the Effective Date and shall no
19 longer constitute property of the Estate.

20 16.3 **No Discharge.** 16.4 **Pursuant to § 1141(d), the Debtor will not**
21 **receive a discharge under this Plan.**

22 16.5 **Property Free and Clear.** Except as otherwise provided in the Plan or
23 the Confirmation Order, all property that shall vest in the Liquidating Trust shall be
24 free and clear of all Claims, Liens, charges, or other encumbrances of Creditors,
25 and in relevant documents, agreements, and instruments contained in the Plan
26 Supplement. Following the Effective Date, the Liquidating Trustee may Transfer
27 and dispose of any such property free of any restrictions imposed by the
28 Bankruptcy Code or the Bankruptcy Rules and without further approval of the
Bankruptcy Court or notice to Creditors, except as may otherwise be required
under the Plan or the Confirmation Order.

SECTION 17.
EXCULPATIONS, INJUNCTIONS, AND RELEASES

1 17.1 **Extension of Existing Injunctions and Stays.** Unless otherwise
2 provided herein, all injunctions or stays arising under §§ 105 or 362, any order
3 entered during the Chapter 11 Case under §§ 105 or 362 or otherwise, and in
4 existence on the Effective Date, shall remain in full force and effect until the
5 closing of the Chapter 11 Case.

1 17.2 *Releases.*

2 a) **Debtor Release.** Pursuant to § 1123(b), and except as otherwise
3 specifically provided in the Plan, for good and valuable consideration, on and after
4 and subject to the occurrence of the Effective Date, the Debtor and its estate shall
5 release each Released Party, and each Released Party is deemed released by the
6 Debtor and the estate from any and all claims, obligations, rights, suits, damages,
7 Causes of Action, remedies, and liabilities whatsoever, including any derivative
8 claims, asserted or assertable on behalf of any of the Debtor or its estate, as
9 applicable, whether known or unknown, foreseen or unforeseen, asserted or
10 unasserted, accrued or unaccrued, matured or unmatured, determined or
11 indeterminable, disputed or undisputed, liquidated or unliquidated, or due or to
12 become due, existing or hereinafter arising, in law, equity, or otherwise, that the
13 Debtor or the estate would have been legally entitled to assert in its own right, or
14 on behalf of the Holder of any Claim or other entity, based on or relating to, or in
15 any manner arising from, in whole or in part, the Debtor, the Debtor's liquidation,
16 the Chapter 11 Case, the purchase, sale, transfer of any security, asset, right, or
17 interest of the Debtor, the DAP Sale, the subject matter of, or the transactions or
18 events giving rise to, any Claim that is treated in the Plan, the business or
19 contractual arrangements between any Debtor and any Released Party, the
20 treatment of Claims prior to or in the Chapter 11 Case, the negotiation, formulation,
21 or preparation of the Plan or related agreements, instruments, or other documents,
22 any other act or omission, transaction, agreement, event, or other occurrence taking
23 place on and before the Petition Date, other than claims or liabilities arising out of
24 or relating to any act or omission of a Released Party that constitutes fraud, willful
25 misconduct, or gross negligence; provided, that, the foregoing Debtor Release shall
26 not operate to waive or release any obligations of any party under the Plan or any
27 other document, instrument, or agreement executed to implement the Plan. For
28 avoidance of doubt, the foregoing Debtor Release does not release any of the
Debtor's claims, obligations, rights, suits, damages, Causes of Action, remedies,
and liabilities with respect thereto.

Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained herein, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (a) in exchange for the good and valuable consideration provided by the Released Parties; (b) a good faith settlement and compromise of the Claims released by the Debtor Release; (c) in the best interests of the Debtor and all Holders of Claims; (d) fair, equitable and reasonable; (e) given and made after due notice and opportunity

1 for hearing; and (f) a bar to the Debtor or its estate asserting any Claim or Cause of
2 Action released pursuant to the Debtor Release.

3 **b) Third Party Release.** On, and as of, the Effective Date and for
4 good and valuable consideration, the receipt and sufficiency of which are
5 acknowledged, the Released Parties shall be forever released (the “Third Party
6 Release”) from any and all claims, obligations, actions, suits, rights, debts,
7 accounts, causes of action, remedies, avoidance actions, agreements, promises,
8 damages, judgments, demands, defenses, and liabilities throughout the world under
9 any law or court ruling through the Effective Date (including all claims based on or
10 arising out of factors or circumstances that existed as of or prior to the Effective
11 Date, including claims based on negligence or strict liability, and further including
12 any derivative claims asserted on behalf of the Debtor, whether known or
13 unknown, foreseen or unforeseen, existing or hereinafter arising, in law, equity, or
14 otherwise) which the Debtor, its estate, Creditors, or other persons receiving or
15 who are entitled to receive distributions under the Plan may have against any of
16 them in any way related to this Chapter 11 Case, the negotiation, formulation, or
17 preparation of the Plan or related agreements, instruments, or other documents, any
18 other act or omission, transaction, agreement, event, or other occurrence taking
19 place on and before the Petition Date, and related to the Debtor (or its
20 predecessors), its business and/or its assets; provided, however, that the foregoing
21 releases are granted only by (a) Creditors who returned a Ballot; and (b) Creditors
22 who were sent a Solicitation Package or a Release Opt-Out Election Form, but
23 either (i) did not vote; or (ii) did not return a Release Opt-Out Election Form;
24 provided, however, that the release provided in this section shall not apply to (A)
25 any Creditor whose Claim is not Allowed either in whole or in part; or (B) any
26 Creditor in category (b) above if the Solicitation Package or Release Opt-Out
27 Election Form was returned to the Debtor as undelivered and that such Creditor did
28 not otherwise submit a Ballot; and provided further, however, that the release
provided in this Section shall not extend to any claims by any Governmental Unit
with respect to criminal liability under applicable law, willful misconduct or bad
faith under applicable law, ultra vires acts under applicable law.

c) Limitation of Claims Against the Liquidating Trust. As of
the Effective Date, except as provided in this Plan or the Confirmation Order, all
Persons shall be precluded from asserting against the Liquidating Trust any other
or further Claims, obligations, suits, judgments, damages, demands, debts, rights,
causes of action, and liabilities whatsoever, relating to the Debtor based upon any
acts, omissions, liabilities, transactions, occurrences, or other activity of any nature
that occurred prior to the Effective Date.

1 d) **WAIVER OF LIMITATIONS ON RELEASES.** THE LAWS
2 OF SOME STATES (FOR EXAMPLE, CALIFORNIA CIVIL CODE § 1542)
3 PROVIDE, IN WORDS OR SUBSTANCE, THAT A GENERAL RELEASE
4 DOES NOT EXTEND TO CLAIMS WHICH THE RELEASING PARTY DOES
5 NOT KNOW OR SUSPECT TO EXIST IN HIS/HER/ITS FAVOR AT THE TIME
6 OF EXECUTING THE RELEASE, WHICH IF KNOWN BY THE RELEASING
7 PARTY MUST HAVE MATERIALLY AFFECTED THE RELEASING PARTY'S
8 DECISION TO RELEASE. THE RELEASING PARTIES IN SECTIONS
9 17.2(a)-(c) OF THE PLAN ARE DEEMED TO HAVE WAIVED ANY RIGHTS
10 THEY MAY HAVE UNDER SUCH STATE LAWS AS WELL AS UNDER ANY
11 OTHER STATUTES OR COMMON LAW PRINCIPLES OF SIMILAR EFFECT.

12 **17.3 Injunctions.**

13 a) **General Injunction.** Except as otherwise expressly provided
14 herein, all Persons who have held, currently hold or may hold a Claim against the
15 Debtor are permanently enjoined on and after the Effective Date from taking any
16 action in furtherance of such Claim or any other Cause of Action released and
17 discharged under the Plan, including, without limitation, the following actions
18 against any Released Party: (a) commencing, conducting or continuing in any
19 manner, directly or indirectly, any action or other proceeding with respect to a
20 Claim; (b) enforcing, levying, attaching, collecting or otherwise recovering in any
21 manner or by any means, whether directly or indirectly, any judgment, award,
22 decree or order with respect to a Claim; (c) creating, perfecting or enforcing in any
23 manner, directly or indirectly, any lien or encumbrance of any kind with respect to
24 a Claim; (d) asserting any setoff, right of subrogation or recoupment of any kind,
25 directly or indirectly, against any debt, liability or obligation due to the Debtor, the
26 Post-Effective Date Debtor or the Liquidating Trust with respect to a Claim; or (e)
27 commencing, conducting or continuing any proceeding that does not conform to or
28 comply with or is contradictory to the provisions of this Plan; provided, however,
that nothing in this injunction shall preclude the Holders of Claims against the
Debtor from enforcing any obligations of the Debtor, the Post-Effective Date
Debtor, the Liquidating Trust, the Liquidating Trustee, or Co-Liquidating Trustee
under this Plan and the contracts, instruments, releases and other agreements
delivered in connection herewith, including, without limitation, the Confirmation
Order, or any other order of the Bankruptcy Court in the Chapter 11 Case. By
accepting a Distribution made pursuant to this Plan, each Holder of an Allowed
Claim shall be deemed to have specifically consented to the injunctions set forth in
this Section.

b) **Other Injunctions.** The Post-Effective Date Debtor, the
Liquidating Trustee, the Co-Liquidating Trustee, the Post-Effective Date Board of

1 Directors, or the Liquidating Trust and their respective members, directors,
2 officers, agents, attorneys, advisors or employees shall not be liable for actions
3 taken or omitted in its or their capacity as, or on behalf of, the Post-Effective Date
4 Debtor, the Post-Effective Date Board of Directors, the Liquidating Trustee, the
5 Co-Liquidating Trustee, or the Liquidating Trust (as applicable), except those acts
6 found by Final Order to arise out of its or their willful misconduct, gross
7 negligence, fraud, and/or criminal conduct, and each shall be entitled to
8 indemnification and reimbursement for fees and expenses in defending any and all
9 of its or their actions or inactions in its or their capacity as, or on behalf of the
10 Post-Effective Date Board of Directors, the Post-Effective Date Debtor, the
11 Liquidating Trustee, the Co-Liquidating Trustee, or the Liquidating Trust (as
12 applicable), except for any actions or inactions found by Final Order to involve
13 willful misconduct, gross negligence, fraud, and/or criminal conduct. Any
14 indemnification claim of the Post-Effective Date Debtor, the Post-Effective Date
15 Board of Directors, the Liquidating Trustee, the Co-Liquidating Trustee, and the
16 other parties entitled to indemnification under this subsection shall be satisfied
17 from the Liquidating Trust Assets. The parties subject to this Section shall be
18 entitled to rely, in good faith, on the advice of retained professionals, if any.
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1 17.4 **Exculpation.** To the maximum extent permitted by applicable law,
2 each Exculpated Party shall not have or incur any liability for any act or omission
3 in connection with, related to, or arising out of the Chapter 11 Case (including,
4 without limitation, the filing of the Chapter 11 Case), the marketing and the DAP
5 Sale, the Plan and any related documents (including, without limitation, the
6 negotiation and consummation of the Plan, the pursuit of the Effective Date, the
7 administration of the Plan, or the property to be distributed under the Plan), or each
8 Exculpated Party's exercise or discharge of any powers and duties set forth in the
9 Plan, except with respect to the actions found by Final Order to constitute willful
10 misconduct, gross negligence, fraud, or criminal conduct, and, in all respects, each
11 Exculpated Party shall be entitled to rely upon the advice of counsel with respect to
12 their duties and responsibilities under the Plan. Without limitation of the foregoing,
13 each such Exculpated Party shall be released and exculpated from any and all
14 Causes of Action that any Person is entitled to assert in his/her/their own right or
15 on behalf of any other Person, based in whole or in part upon any act or omission,
16 transaction, agreement, event or other occurrence in any way relating to the subject
17 matter of this Section.

18 17.5 **No Recourse.** If a Claim is Allowed in an amount for which after
19 application of the payment priorities established by this Plan (including, without
20 limitation, in Sections 8 and 10 hereof) there is insufficient value to provide a
21 recovery equal to that received by other Holders of Allowed Claims in the
22 respective Class, no Claim Holder shall have recourse for any such deficiency
23 against any of the Released Parties, the Post-Effective Date Debtor, the
24 Post-Effective Date Board of Directors, the Liquidating Trustee, the
25 Co-Liquidating Trustee, or the Liquidating Trust. However, except as specifically
26 stated otherwise in this Plan, nothing in this Plan shall modify any right of a Holder
27 of a Claim under § 502(j). The obligations under this Plan of the Debtor's Estate
28 shall (i) be contractual only and shall not create any fiduciary relationship and
(ii) be obligations of the Debtor's Estate only and no individual acting on behalf of
the Debtor, the Committee, the Post-Effective Date Debtor, the Post-Effective Date
Board of Directors, the Liquidating Trustee, the Co-Liquidating Trustee, the
Oversight Committee, or otherwise, shall have any personal or direct liability for
these obligations. Approval of the Plan by the Confirmation Order shall not in any
way limit the foregoing.

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1 17.6 **Post-Confirmation Liability of Liquidating Trustee and the**
2 **Co-Liquidating Trustee.** The Liquidating Trustee and the Co-Liquidating Trustee,
3 together with their respective consultants, agents, advisors, attorneys, accountants,
4 financial advisors, other representatives and the professionals engaged by the
5 foregoing (collectively, the “**Indemnified Parties**”) shall not be liable for any and
6 all liabilities, losses, damages, claims, causes of action, costs and expenses,
7 including but not limited to attorneys’ fees arising out of or due to their actions or
8 omissions, or consequences of such actions or omissions, to the Holders of Claims
9 for any action or inaction taken in good faith in connection with the performance or
10 discharge of their duties under this Plan, except the Indemnified Parties will be
11 liable for actions or inactions that are grossly negligent, fraudulent, or which
12 constitute willful misconduct (in each case, liability shall be subject to
13 determination by final order of a court of competent jurisdiction). However, any act
14 or omission taken with the approval of the Bankruptcy Court, and not inconsistent
15 therewith, will be conclusively deemed not to constitute gross negligence, fraud or
16 willful misconduct. In addition, the Liquidating Trust and the Estate shall, to the
17 fullest extent permitted by the laws of the State of California, indemnify and hold
18 harmless the Indemnified Parties from and against and with respect to any and all
19 liabilities, losses, damages, claims, costs and expenses, including but not limited to
20 attorneys’ fees arising out of or due to their actions or omissions, or consequences
21 of such actions or omissions, with respect to the Liquidating Trust and the Estate or
22 the implementation or administration of the Plan if the Indemnified Party acted in
23 good faith and in a manner reasonably believed to be in or not opposed to the best
24 interest of the Liquidating Trust and the Estate. To the extent the Liquidating Trust
25 indemnifies and holds harmless the Indemnified Parties as provided above, the
26 legal fees and related costs incurred by counsel to the Liquidating Trustee or the
27 Co-Liquidating Trustee in monitoring and participating in the defense of such
28 claims giving rise to the right of indemnification shall be paid as expenses of the
Liquidating Trust. All rights of the Persons exculpated and indemnified pursuant
hereto shall survive confirmation of the Plan.

21 17.7 **Preservation of Rights of Action.**

22 a) **Vesting of Causes of Action.** Except as otherwise provided in
23 the Plan or Confirmation Order, including any Cause of Action that is expressly
24 waived, relinquished, exculpated, released, settled, or compromised under the Plan
25 or Confirmation Order (including, without limitation, pursuant to the Debtor/Estate
26 Release), (i) in accordance with § 1123(b)(3), any Causes of Action that the Debtor
27 holds or may hold against any Entity shall vest upon the Effective Date in the
28 Liquidating Trust; (ii) after the Effective Date, the Liquidating Trustee shall have
the exclusive right to institute, prosecute, abandon, settle, or compromise any
Causes of Action the Estate holds or may hold against any Entity constituting

1 Liquidating Trust Assets, in accordance with the terms of the Plan and the
2 Liquidating Trust Agreement, as applicable, and without further order of the
3 Bankruptcy Court, in any court or other tribunal, including, without limitation, in
4 an adversary proceeding filed in the Chapter 11 Case; and (iii) Causes of Action
5 and recoveries therefrom shall remain the sole property of the Liquidating Trust,
6 and Holders of Claims shall have no direct right or interest in to any such Causes of
7 Action or recoveries.

8 **b) Preservation of All Causes of Action Not Expressly Settled**
9 **or Released.** Unless a Cause of Action against a Holder of a Claim or other Entity
10 is expressly waived, relinquished, released, compromised, or settled in the Plan
11 (including, without limitation, pursuant to the Debtor/Estate Release) and/or or any
12 Final Order (including the Confirmation Order), the Debtor and the Liquidating
13 Trustee expressly reserve such retained Cause of Action (collectively, the
14 “Retained Causes of Action”) for later adjudication by the Liquidating Trustee
15 (including, without limitation, Causes of Action not specifically identified or
16 described in the Plan Supplement or elsewhere, or of which the Debtor may be
17 presently unaware, or which may arise or exist by reason of additional facts or
18 circumstances unknown to the Debtor at this time, or facts or circumstances that
19 may change or be different from those the Debtor now believe to exist) and,
20 therefore, no preclusion doctrine, including, without limitation, the doctrines of res
21 judicata, collateral estoppel, issue preclusion, claim preclusion, waiver, estoppel
22 (judicial, equitable, or otherwise) or laches shall apply to such Retained Causes of
23 Action upon or after the entry of the Confirmation Order or Effective Date based
24 on the Plan or Confirmation Order, except where such Causes of Action have been
25 released or otherwise resolved by a Final Order (including the Confirmation
26 Order). In addition, the Debtor and Liquidating Trustee expressly reserve the right
27 to pursue or adopt claims alleged in any lawsuit in which a Debtor is a defendant or
28 interested party against any Entity, including, without limitation, the plaintiffs or
co-defendants in such lawsuits.

- 21 i. The Retained Causes of Action preserved hereunder include,
22 without limitation, the following claims, rights, or other
23 causes of action:
- 24 ii. Against the Excluded Parties and/or any other party not
25 expressly released pursuant to this Plan;
- 26 iii. that constitute Avoidance Actions;
- 27 iv. relating to pending litigation, including, without limitation,
28 the suits, administrative proceedings, executions,

1 garnishments, and attachments listed in the Debtor's
2 Schedules;

3 v. against vendors, suppliers of goods or services (including
4 attorneys, accountants, consultants, or other professional
5 service providers), utilities, contract counterparties, and other
6 parties for, including but not limited to: (A) services
7 rendered; (B) over- and under-payments, back charges,
8 duplicate payments, improper holdbacks, deposits,
9 warranties, guarantees, indemnities, setoff, or recoupment;
10 (C) failure to fully perform or to condition performance on
11 additional requirements under contracts with any one or more
12 of the Debtors; (D) wrongful or improper termination,
13 suspension of services, or supply of goods, or failure to meet
14 other contractual or regulatory obligations; (E)
15 indemnification and/or warranty claims; or (F) turnover
16 Causes of Action arising under §§ 542 or 543;

17 vi. against health plans, payors, and other related providers;

18 vii. against landlords or lessors, including, without limitation,
19 for erroneous charges, overpayments, returns of security
20 deposits, indemnification, or for environmental claims;

21 viii. arising against current or former tenants or lessees,
22 including, without limitation, for non-payment of rent,
23 damages, and holdover proceedings;

24 ix. arising from damage to any of the Debtor's property;

25 x. relating to claims, rights, or other Causes of Action the
26 Debtor may have to interplead third parties in actions
27 commenced against the Debtor;

28 xi. for collection of a debt or other amount owed to the Debtor;

xii. against insurance carriers, reinsurance carriers,
underwriters, surety bond issuers or other related or similar
parties relating to coverage, indemnity, contribution,
reimbursement, or other matters; and

xiii. arising under or relating to the Asset Purchase Agreement
and related documents including, but not limited to,
enforcement of such agreements by the Debtor's Estate

1 and/or breaches of any and/or all of such agreements by the
2 applicable non-Debtor parties.

3 c) **Transactions Subject to Review by Liquidating Trustee or**
4 **Co-Liquidating Trustee.** Subject to the immediately preceding paragraph, any
5 Entity to which the Debtor has incurred an obligation (whether on account of
6 services, the purchase or sale of goods, or otherwise), or that has received services
7 from the Debtor or a Transfer of money or property of the Debtor, or that has
8 received services from the Debtor or a Transfer of money or property of the Debtor,
9 or that has transacted business with the Debtor, or that has leased property from the
10 Debtor, should assume and is hereby advised that any such obligation, Transfer, or
11 transaction may be reviewed by the Liquidating Trustee or Co-Liquidating Trustee,
12 as applicable, subsequent to the Effective Date and may be the subject of an action
13 after the Effective Date, regardless of whether (i) such Entity has filed a Proof of
14 Claim against the Debtor in the Chapter 11 Case; (ii) the Debtor, the Committee,
15 the Liquidating Trustee, or Co-Liquidating Trustee have objected to any such
16 Entity's Proof of Claim; (iii) any such Entity's Claim was included in the
17 Schedules; (iv) the Debtor, the Committee, the Liquidating Trustee, or
18 Co-Liquidating Trustee have objected to any such Entity's Scheduled Claim; (v)
19 any such Entity's Scheduled Claim has been identified by the Debtor, the
20 Committee, the Liquidating Trustee, or Co-Liquidating Trustee as disputed,
21 contingent, or unliquidated; or (vi) the Debtor, the Liquidating Trustee, or
22 Co-Liquidating Trustee have identified any potential claim or Cause of Action
23 against such Entity herein.

17 17.8 ***Termination of Responsibilities of the Patient Care Ombudsman.*** On
18 the Closing Date, the duties and responsibilities of the Patient Care Ombudsman
19 were terminated and the Patient Care Ombudsman was discharged from his duties
20 as Patient Care Ombudsman and is not required to file any further reports or
21 perform any additional duties as Patient Care Ombudsman. No person or entity may
22 seek discovery in any form, including but not limited to by motion, subpoena,
23 notice of deposition or request or demand for production of documents, from the
24 Patient Care Ombudsman or his agents, professionals, employees, other
25 representatives, designees or assigns (collectively, with the Patient Care
26 Ombudsman, the "***Ombudsman Parties***") with respect to any matters arising from
27 or relating in any way to the performance of the duties of the Patient Care
28 Ombudsman in this Chapter 11 Case, including, but not limited to, pleadings,
reports or other writings filed by the Patient Care Ombudsman in connection with
this Chapter 11 Case. Nothing herein shall in any way limit or otherwise affect the
obligations of the Patient Care Ombudsman under confidentiality agreements, if
any, between the Patient Care Ombudsman and any other person or entity or shall
in any way limit or otherwise affect the Patient Care Ombudsman's obligation,

1 under § 333(c)(1) or other applicable law or Bankruptcy Court Orders, to maintain
2 patient information, including patient records, as confidential, and no such
3 information shall be released by the Patient Care Ombudsman without further order
4 of the Bankruptcy Court.

4 **SECTION 18.**
5 **CONDITIONS PRECEDENT TO EFFECTIVE DATE**

6 18.1 ***Conditions Precedent to Confirmation of Plan.*** The confirmation of
7 the Plan shall be conditioned upon the Bankruptcy Court entering the Confirmation
8 Order in form and substance satisfactory to the Plan Proponents.

9 18.2 ***Conditions to Effective Date.*** The following are conditions precedent
10 to the Effective Date:

- 11 a) ***The Confirmation Order shall have been entered by this Court***
12 ***in form and substance acceptable to the Plan Proponents,***
13 ***which Confirmation Order shall not have been terminated,***
14 ***suspended, vacated or stayed, and shall not have been***
15 ***amended or modified after entry without the consent of the***
16 ***Plan Proponents;***
- 17 b) ***The Liquidating Trustee shall have accepted the terms of the***
18 ***Liquidating Trustee’s service and compensation, and such***
19 ***terms and compensation shall have been approved by the***
20 ***Court in the Confirmation Order;***
- 21 c) ***The Co-Liquidating Trustee shall have accepted the terms of***
22 ***the Co-Liquidating Trustee’s service and compensation, and***
23 ***such terms and compensation shall have been approved by the***
24 ***Court in the Confirmation Order;***
- 25 d) ***With respect to all other documents and agreements necessary***
26 ***to implement the Plan: (1) all conditions precedent to such***
27 ***documents and agreements (other than any conditions***
28 ***precedent related to the occurrence of the Effective Date) shall***
have been satisfied or waived pursuant to the terms of such
documents or agreements; (2) such documents and
agreements shall have been tendered for delivery to the
required parties and have been approved by any required
parties and, to the extent required, filed with and approved by
the applicable authorities in the relevant jurisdiction; and (3)

1 *such documents and agreements shall have been effected or*
2 *executed; and*

- 3 e) *All other actions, authorizations, consents, and regulatory*
4 *approvals required (if any) and necessary to implement the*
5 *provisions of the Plan shall have been obtained, effected, or*
6 *executed in a manner acceptable to the Plan Proponents or, if*
7 *waivable, waived by the Person or Persons (or Entity or*
8 *Entities) entitled to the benefit thereof.*

9 18.3 **Waiver of Condition.** The Plan Proponents may waive the conditions
10 to effectiveness of this Plan, set forth in Section 18.2 hereof, without leave of the
11 Bankruptcy Court and without any formal action, other than proceeding with
12 confirmation of this Plan and filing a notice of confirmation with the Bankruptcy
13 Court. To the extent that the Debtor believes that it is unable to comply with the
14 conditions to the effectiveness of this Plan, set forth in Section 18.2 hereof, the
15 Plan Proponents reserve the right to amend the Plan at such time (in accordance
16 with the terms hereof) to address such inability.

17 **SECTION 19.**
18 **RETENTION OF JURISDICTION**

19 19.1 **Bankruptcy Court Jurisdiction.** Unless otherwise provided herein or
20 in the Confirmation Order, on and after the Effective Date, the Bankruptcy Court
21 shall retain jurisdiction over all matters arising in, arising under, or related to the
22 Chapter 11 Case. Without limiting the foregoing, the Bankruptcy Court shall retain
23 jurisdiction to:

- 24 (a) allow, disallow determine, liquidate, classify, estimate, or
25 establish the priority or secured or unsecured status of any
26 Claim, including the resolution of any request for payment of
27 any Administrative Claim or Professional Claim and the
28 resolution of any objections to the allowance or priority of
 Claims, and the resolution of any claim objections brought by
 the Debtor and/or the Committee, by the Liquidating Trustee
 and Co-Liquidating Trustee on behalf of the Liquidating Trust;
- (b) resolve any matters related to the assumption, assumption and
 assignment, or rejection of any Executory Agreement to which
 the Debtor is a party and to hear, determine and, if necessary,
 liquidate, any Claims arising from, or cure amounts related to,
 such assumption or rejection;

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- (c) determine any motion, adversary proceeding, application, contested matter, and other litigated matter pending on or commenced after the Effective Date, including, without limitation, any and all Causes of Action preserved under the Plan commenced prior to, on, or after the Effective Date;
- (d) ensure that Distributions to Holders of Allowed Claims are accomplished in accordance with the Plan;
- (e) hear and determine matters relating to claims with respect to the Debtor’s director and officer insurance;
- (f) enter, implement or enforce such orders as may be appropriate in the event that the Confirmation Order is for any reason stayed, reversed, revoked, modified, or vacated;
- (g) issue injunctions, enter and implement other orders, and take such other actions as may be necessary or appropriate to restrain interference by any Person with the consummation, implementation or enforcement of this Plan, the Confirmation Order or any other order of the Bankruptcy Court, including, without limitation, any actions relating to the Nonprofit Status of the Post-Effective Date Debtor;
- (h) resolve a dispute with respect to and/or otherwise appoint a replacement of the Liquidating Trustee or Co-Liquidating Trustee;
- (i) hear and determine any application to modify this Plan in accordance with § 1127, to remedy any defect or omission or reconcile any inconsistency in this Plan, the Disclosure Statement, any contract, instrument, release, or other agreement or document created in connection therewith, or any order of the Bankruptcy Court, including the Confirmation Order, in such a manner as may be necessary to carry out the purposes and effects thereof;
- (j) hear and determine all applications under §§ 330, 331, and 503(b) for awards of compensation for services rendered and reimbursement of expenses incurred prior to the Effective Date;
- (k) hear and determine disputes arising in connection with the interpretation, implementation, obligation or enforcement of this

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Plan, the Confirmation Order, any transactions or payments contemplated in the Plan, or any agreement, instrument, or other document governing or relating to any of the foregoing;

- (l) take any action and issue such orders as may be necessary to construe, enforce, implement, execute and consummate this Plan, including all contracts, instruments, releases, and other agreements or documents created in connection therewith, or to maintain the integrity of this Plan following consummation;
- (m) determine such other matters and for such other purposes as may be provided in the Plan and/or the Confirmation Order;
- (n) hear and determine matters concerning state, local, and federal taxes in accordance with §§ 346, 505, and 1146, including without limitation, (i) any requests for expedited determinations under § 505(b) filed, or to be filed, with respect to tax returns for any and all taxable periods ending after the Petition Date through, and including, the date of Final Distribution under the Plan, and (ii) any other matters relating to the Nonprofit Status of the Post-Effective Date Debtor;
- (o) hear and determine any other matters related hereto and not inconsistent with the Bankruptcy Code and Title 28 of the United States Code;
- (p) authorize recovery of all assets of any of the Debtor and property of the Debtor’s Estate, wherever located;
- (q) consider any and all claims against each Released Party involving or relating to the administration of the Chapter 11 Case, any rulings, orders, or decisions in the Chapter 11 Case, or any aspects of the Debtor’s Chapter 11 Case and the events leading up to the commencement of the Chapter 11 Case, including the decision to commence the Chapter 11 Case, the development and implementation of the Plan, the decisions and actions taken prior to or during the Chapter 11 Case and any asserted claims based upon or related to prepetition obligations of the Debtor for the purpose of determining whether such claims belong to the Estate or third parties. In the event it is determined that any such claims belong to third parties, then, subject to any applicable subject matter jurisdiction limitations, the Bankruptcy Court shall have exclusive jurisdiction with

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respect to any such litigation, subject to any determination by the Bankruptcy Court to abstain and consider whether such litigation should more appropriately proceed in another forum;

- (r) hear and resolve any disputes regarding the reserves required hereunder, including without limitation, disputes regarding the amounts of such reserves or the amount, allocation and timing of any releases of such reserved funds; and
- (s) enter the Final Decree closing the Chapter 11 Case.

SECTION 20.
MISCELLANEOUS PROVISIONS

20.1 ***Termination of All Employee, Retiree and Workers’ Compensation Benefits.*** All existing employee benefits (including, without limitation, workers’ compensation benefits, health care plans, disability plans, severance benefit plans, incentive plans, and life insurance plans) and retiree benefits (as such term is defined under § 1114(a)) not previously terminated by the Debtor, or assumed by the Debtor in the Schedule of Assumed Contracts, shall be terminated on or before the Effective Date.

20.2 ***Administrative Claims Bar Date.*** All Requests for Payment of an Administrative Claim must be filed with the Bankruptcy Court and served on the Debtor no later than the Administrative Claims Bar Date. Such Requests for Payment may include estimates of amounts through the Effective Date. The Administrative Claims Reserve shall be established on the Effective Date in an amount determined by the Bankruptcy Court in order to satisfy all Administrative Claims that have not been Allowed as of the Effective Date and all Allowed Administrative Claims that will be paid after the Effective Date. In the event that the Debtor, the Liquidating Trustee objects to an Administrative Claim, the Bankruptcy Court shall determine the Allowed amount of such Administrative Claim. Notwithstanding the foregoing: (a) no Request for Payment need be filed with respect to an undisputed postpetition obligation which was paid or is payable by the Debtor in the ordinary course of business; provided, however, that in no event shall a postpetition obligation that is contingent or disputed and subject to liquidation through pending or prospective litigation, including, but not limited to, alleged obligations arising from personal injury, property damage, products liability, consumer complaints, employment law (excluding claims arising under workers’ compensation law), secondary payor liability, or any other disputed legal or equitable claim based on tort, statute, contract, equity, or common law, be considered to be an obligation which is payable in the ordinary course of business; and (b) no Request for Payment need be filed with respect to fees payable pursuant to 28 U.S.C. § 1930. All Administrative Claims that become Allowed after the Effective Date shall be paid solely from the Administrative Claims Reserve, and shall not constitute a claim against the Liquidating Trust, the Liquidating Trustee, or any of the Liquidating Trust Assets. No Holder of an Administrative Claim shall have recourse for any deficiency in the payment of its Administrative Claim against any of the Released Parties, the Post-Effective Date Debtor, the Post-Effective Date Board of Directors, the Liquidating Trustee, or the Liquidating Trust.

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1 20.3 *Exemption from Transfer Taxes.* Pursuant to § 1146(c), the
2 assignment or surrender of any lease or sublease, or the delivery of any deed or
3 other instrument of transfer under, in furtherance of, or in connection with, this
4 Plan, including any deeds, bills of sale or assignments executed in connection with
5 any disposition of assets contemplated by this Plan, whether real or personal
6 property, shall not be subject to any stamp, real estate transfer, mortgage recording,
7 sales, use or other similar tax.

8 20.4 *Amendments.* The Plan Proponents reserve the right, in accordance
9 with the Bankruptcy Code and the Bankruptcy Rules, to amend or modify this Plan
10 at any time prior to the entry of the Confirmation Order. After the entry of the
11 Confirmation Order, the Plan Proponents may, upon order of the Bankruptcy Court,
12 amend or modify this Plan, in accordance with § 1127(b), or remedy any defect or
13 omission or reconcile any inconsistency in this Plan in such manner as may be
14 necessary to carry out the purpose and intent of this Plan. A Holder of an Allowed
15 Claim that is deemed to have accepted this Plan shall be deemed to have accepted
16 this Plan as modified if the proposed modification does not materially and
17 adversely change the treatment of the Claim of such Holder.

18 20.5 *Revocation or Withdrawal of Plan.* The Plan Proponents may
19 withdraw or revoke this Plan at any time prior to the Effective Date. If the Plan
20 Proponents revoke or withdraw this Plan prior to the Effective Date, or if the
21 Effective Date does not occur, then this Plan shall be deemed null and void. In such
22 event, nothing contained herein shall be deemed to constitute a waiver or release of
23 any Claim by or against the Debtor or any other Person or to prejudice in any
24 manner the rights of the Debtor or any other Person in any further proceedings
25 involving the Debtor.
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1 20.6 **Severability.** In the event that the Bankruptcy Court determines, prior
2 to the Effective Date, that any provision of this Plan is invalid, void or
3 unenforceable, the Bankruptcy Court shall, with the consent of the Plan
4 Proponents, have the power to alter and interpret such term or provision to make it
5 valid or enforceable to the maximum extent practicable, consistently with the
6 original purpose of the term or provision held to be invalid, void or unenforceable,
7 and such term or provision shall then be applicable as altered or interpreted.
8 Notwithstanding any such holding, alteration or interpretation, the remainder of the
9 terms and provisions of this Plan shall remain in full force and effect and shall in
10 no way be affected, impaired or invalidated by such holding, alteration or
11 interpretation. The Confirmation Order shall constitute a judicial determination and
12 shall provide that each term and provision of this Plan, as it may have been altered
13 or interpreted in accordance with the foregoing, is valid and enforceable pursuant
14 to its terms.

15 20.7 **Request for Expedited Determination of Taxes.** The Plan Proponents
16 or the Liquidating Trustee, as applicable, shall have the right to request an
17 expedited determination under § 505(b) with respect to tax returns filed, or to be
18 filed, for any and all taxable periods ending after the Petition Date through and
19 including the date of Final Distribution under the Plan.

20 20.8 **Securities Exemption.** To the extent the Trust Beneficial Interests are
21 deemed or asserted to constitute securities, the Trust Beneficial Interests and the
22 issuance and distribution thereof shall be exempt from Section 5 of the Securities
23 Act, if applicable, and from any state or federal securities laws requiring
24 registration for offer or sale of a security or registration or licensing of an issuer of,
25 underwriter of, or broker or dealer in, a security, and shall otherwise enjoy all
26 exemptions available for distributions of securities under a plan of reorganization
27 in accordance with all applicable law, including without limitation, § 1145.
28

20.9 *U.S. Trustee Quarterly Fees and Post-Confirmation Status Reports.*

1 All fees payable under 28 U.S.C. § 1930(a)(6) shall be paid by the Debtor in the
2 amounts and at the times such fees may become due up to and including the
3 Effective Date. The Liquidating Trust shall pay all fees payable by the Debtor
4 under 28 U.S.C. § 1930(a)(6) until the Chapter 11 Case is closed, dismissed or
5 converted. ~~Upon~~After the Effective Date, ~~the Liquidating Trust and the~~
6 ~~Post-Effective Date Debtor shall be relieved from the duty to make the reports and~~
7 ~~summaries required under Bankruptcy Rule 2015(a). Notwithstanding the~~
8 ~~foregoing, the Liquidating Trust and Post-Effective Date Debtor shall file and serve~~
9 ~~the quarterly status reports required by Local § 1106(a)(7), Bankruptcy Rule~~
10 ~~3020-12015(ba) at such times and for such period as may be set forth in the~~
11 ~~Confirmation Order(5), and 28 C.F.R. § 58.8.~~

20.10 *Courts of Competent Jurisdiction.*

10 If the Bankruptcy Court abstains
11 from exercising, or declines to exercise, jurisdiction or is otherwise without
12 jurisdiction over any matter arising out of this Plan, such abstention, refusal or
13 failure of jurisdiction shall have no effect upon and shall not control, prohibit or
14 limit the exercise of jurisdiction by any other court having competent jurisdiction
15 with respect to such matter.

20.11 *Governing Law.*

14 Except to the extent that the Bankruptcy Code or
15 Bankruptcy Rules are applicable, the rights, duties and obligations arising under
16 this Plan shall be governed by, and construed and enforced in accordance with, the
17 laws of the State of California, without giving effect to the principles of conflict of
18 laws thereof.

20.12 *Continuing Effect of the Bankruptcy Court Orders and Settlement*

18 *Stipulations.* Unless otherwise set forth in the Plan or the Confirmation Order or
19 otherwise ordered by the Bankruptcy Court, the orders of the Bankruptcy Court and
20 any other settlement stipulations entered into by the Debtor (including without
21 limitation, the DHCS 9019 Order, the DHCS Settlement Agreement, agreements to
22 lift the automatic stay, resolve litigation claims and limit recoveries to available
23 insurance proceeds) shall not be modified, limited or amended by the Plan and shall
24 remain in full force and effect. To the extent of any direct conflict between the
25 terms of this Plan and any settlement agreements, the conflicting provisions of such
26 settlement agreements shall govern with respect to the treatment of Allowed Claims
27 as provided for therein.

20.13 *Substantial Consummation.*

26 On the Effective Date, the Plan shall be
27 deemed substantially consummated under §§ 1101 and 1127(b).

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1 20.14 **Waiver of Fourteen-Day Stay.** The Plan Proponents request as part of
2 the Confirmation Order a waiver from the Bankruptcy Court of the 14-day stay of
3 Bankruptcy Rule 3020(e) and, to the extent applicable, a waiver of the 14-day stay
4 of Bankruptcy Rule 6004(g).

5 20.15 **Reservation of Rights.** Neither the filing of the Plan nor any statement
6 or provision contained in the Plan, nor the taking by any party in interest of any
7 action with respect to the Plan, shall: (a) be or be deemed to be an admission
8 against interest and (b) until the Effective Date, be or be deemed to be a waiver of
9 any rights any party in interest may have (i) against any other party in interest, or
10 (ii) in or to any of the assets of any other party in interest, and, until the Effective
11 Date, all such rights are specifically reserved. In the event that the Plan is not
12 confirmed or fails to become effective, neither the Plan nor any statement contained
13 in the Plan may be used or relied upon in any manner in any suit, action,
14 proceeding, or controversy within or without the Chapter 11 Case involving the
15 Debtor, except with respect to Confirmation of the Plan.

16 20.16 **Successors and Assigns.** The rights, benefits, and obligations of any
17 Entity named or referred to in the Plan shall be binding on, and shall inure to the
18 benefit of, the heirs, executors, administrators, successors, and/or assigns of such
19 Entity.

20 20.17 **Time.** In computing any period of time prescribed or allowed by this
21 Plan, unless otherwise set forth herein or determined by the Bankruptcy Court, the
22 provisions of Bankruptcy Rule 9006 shall apply. Any reference to “day” or “days”
23 shall mean calendar days, unless otherwise specified herein.

24 20.18 **Business Day Transactions.** In the event that any payment or act
25 under this Plan is required to be made or performed on a date that is not a Business
26 Day, then the making of such payment or the performance of such act may be
27 completed on or as soon as reasonably practicable on the next succeeding Business
28 Day, but shall be deemed to have been completed as of the initial due date.

 20.19 **Headings.** Headings are used in this Plan for convenience and
reference only and shall not constitute a part of this Plan for any other purpose.

 20.20 **Exhibits.** ~~All Exhibits and~~ Exhibit A, any schedules to this Plan, and
the Plan Supplement are incorporated into and are a part of this Plan as if set forth
in full herein.

1 20.21 *Notices.* Any notices to or requests by parties in interest under or in
2 connection with this Plan shall be in writing and served either by (i) certified mail,
3 return receipt requested, postage prepaid, (ii) hand delivery or (iii) reputable
4 overnight delivery service, all charges prepaid, and shall be deemed to have been
5 given when received by the following parties:

6 If to the Debtor:

7 Borrego Community Health Foundation
8 587 Palm Canyon Dr.
9 Suite 208
10 Borrego Springs, California 92004
11 Attn: Doug Habig

12 with copies to:

13 Dentons US LLP
14 Attorneys for the Debtor and Debtor-In-Possession
15 601 South Figueroa Street, Suite 2500
16 Los Angeles, California 90017
17 1 213 623 9300
18 Attn: Samuel R. Maizel
19 Tania M. Moyron
20 Rebecca M. Wicks

21 If to the Committee:

22 Pachulski Stang Ziehl & Jones LLP
23 10100 Santa Monica Blvd., 13th Floor
24 Los Angeles, California 90067
25 1 310 227 6910
26 Attn: Jeffrey N. Pomerantz
27 Steven W. Golden

28 If to the Liquidating Trustee:

[Redacted]

[Ankura Consulting Group, LLC](#)
[2000 K Street NW, 12th Floor](#)
[Washington, DC 20006](#)
[1 202 507 5499](#)

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Attn: Isaac Lee

If to the Co-Liquidating Trustee:

[Redacted]

FTI Consulting, Inc.
8251 Greensboro Drive, Suite 400
McLean, VA 22101
1 202 262 4778
Attn: Narendra Ganti

20.22 **Post-Effective Date Notices.** Following the Effective Date, except as otherwise provided herein, notices shall only be served on the Post-Effective Date Debtor, the Liquidating Trustee, the Co-Liquidating Trustee, the U.S. Trustee, and those Persons who file with the Court and serve upon the Liquidating Trust a request, which includes such Person’s name, contact person, address, telephone number, facsimile number, and email, that such Person receive notice of post-Effective Date matters. Persons who had previously filed with the Court requests for special notice of the proceedings and other filings in the Chapter 11 Case shall not receive notice of post-Effective Date matters unless such Persons File a new request in accordance with this Section.

20.23 **Conflict of Terms.** In the event of a conflict between the terms of this Plan and the Disclosure Statement, the terms of this Plan shall control.

20.24 **Entire Agreement.** On the Effective Date, the Plan and the Confirmation Order shall supersede all previous and contemporaneous negotiations, promises, covenants, agreements, understandings, and representations on such subjects, all of which have become merged and integrated into the Plan.

Dated: San Diego, California
As of ~~November 17~~December 4, 2023

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Exhibit A

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Exhibit A²
Liquidation Analysis

Background

Section 1129(a)(7) of the Bankruptcy Code, which is often referred to as the “best interests of creditors” test, requires that as a condition to confirmation of the Plan, each holder of a Claim in each Impaired Class must either (i) accept the Plan, or (ii) receive or retain under the Plan property of value that is not less than the amount the Holder of an Impaired Class Claim would receive or retain in a hypothetical liquidation under chapter 7 of the Bankruptcy Code (the “*Liquidation Analysis*”).

The Debtor prepared this Liquidation Analysis to include: (i) estimated cash proceeds that a chapter 7 trustee would generate if the Debtor’s Chapter 11 Case were converted to a chapter 7 case and the assets of the Debtor’s Estate were liquidated; (ii) estimated distribution that each Holder of a Claim would receive from the liquidation proceeds; and (iii) compared each Holder’s estimated distribution and recovery under a chapter 7 liquidation to the projected distribution and recovery under the Plan.

The Liquidation Analysis is based upon certain assumptions, and, as such, certain aspects may be different from those represented in the Plan. The Liquidation Analysis should be read in conjunction with the *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1091].

THE PLAN PROPONENTS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE ACCURACY OF THESE ESTIMATES AND ASSUMPTIONS CONTAINED HEREIN, OR A CHAPTER 7 TRUSTEE’S ABILITY TO ACHIEVE THE PROJECTED RESULTS. IN THE EVENT THAT THE CHAPTER 11 CASE IS CONVERTED TO A CHAPTER 7 LIQUIDATION, ACTUAL RESULTS MAY VARY MATERIALLY FROM THE ESTIMATES AND PROJECTIONS SET FORTH IN THIS LIQUIDATION ANALYSIS.

Presentation

² Capitalized terms not otherwise defined herein shall have the meanings described to them in the *Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1091].

1 The Liquidation Analysis has been prepared assuming the Debtor converted its
2 Chapter 11 Case to chapter 7 of the Bankruptcy Code on or about January 19, 2024
(the “*Liquidation Date*”).³

3 On the Liquidation Date, it is assumed the Bankruptcy Court would appoint a
4 chapter 7 trustee to liquidate the Debtor’s remaining assets, wind down the Debtor
5 and the Estate, and provide distributions to creditors considering the DHCS
6 Settlement Agreement. The distributable value is assumed to be applied in the
7 following order: (i) payment of the Allowed Secured Claims and the DHCS Sales
8 Proceeds Recovery; (ii) chapter 7 administrative costs, including trustee fees,
9 professional fees, and wind-down expenses; (iii) Allowed Chapter 11
10 Administrative Claims and Priority Claims; (iv) Allowed General Unsecured
Claims; and (v) the Allowed DHCS Claim. The treatment of creditors in the context
of a chapter 7 liquidation would be the same as they are under the Plan, but the
distribution to those creditors would be significantly less.

11 The Liquidation Analysis assumes the Liquidating Trust under the Plan would
12 employ existing Debtor and/or Committee professionals. Under the chapter 7
13 scenario, a chapter 7 trustee would be appointed to administer the Debtor’s assets.
14 A chapter 7 trustee would be completely unfamiliar with the complexities of this
Chapter 11 Case. Following the appointment of a chapter 7 trustee, the chapter 7
15 trustee would presumably hire new professionals who are equally unfamiliar with
the complexities of this Chapter 11 Case. For example, there is significant litigation
16 pending where the Debtor is a plaintiff, and those cases could eventually represent
17 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
18 trustee’s employment of a substantial number of professionals unfamiliar with this
19 complex Chapter 11 Case would be the incurrence of an extraordinary amount of

20 ³ The “Best Interest Test” requires a liquidation analysis that demonstrates that, if a claimant or
21 interest holder is in an impaired class and that claimant or interest holder does not vote to accept
22 the Plan, than that claimant or interest holder must receive or retain under the plan property of a
23 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 in
the bankruptcy of a nonprofit company. Unlike in the bankruptcy of a for-profit entity, the
24 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
25 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
26 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,
27 8510-8519, 9680.

1 additional professional fees. By contrast, the Debtor’s and the Committee’s
2 professionals are skilled and already intimately familiar with the Chapter 11 Case.

3 Additionally, a chapter 7 trustee(s) would be under a statutory duty to liquidate the
4 Debtor’s assets as expeditiously as possible. *See* 11 U.S.C. § 704(a)(1). However,
5 the Debtor must remain extant, with operating management and a board of directors
6 until DAP Health obtains its own Medicare and Medi-Cal provider agreements,
7 among other things. Since the Bankruptcy Code does not automatically authorize
8 the chapter 7 trustee to operate the Debtor’s businesses following a conversion to
9 chapter 7, the chapter 7 trustee would be required to seek authority to continue
10 operating the Debtor after obtaining approval from the U.S. Trustee to make such
11 request. *See, e.g.*, 11 U.S.C. § 721 (“The court may authorize the trustee to operate
12 the business of the debtor for a limited period, if such operation is in the best
13 interest of the estate and consistent with the orderly liquidation of the estate.”);
14 Executive Office for the United States Trustee, U.S. Dept. of Justice *Handbook for*
15 *Chapter 7 Trustees* (Oct. 1, 2012), at 4-31 (“The trustee must consult with the
16 United States Trustee prior to seeking authority to operate the business[.]”). The
17 chapter 7 trustee’s discretion to move for an operating order under § 721, and the
18 willingness of the U.S. Trustee and Court to grant such request, presents significant
19 potential risks to creditor recoveries in chapter 7 for several important reasons. The
20 Debtor must be in a position to monitor DAP Health’s operations for as long as
21 DAP Health does not have its own provider agreements. Failure to allow DAP
22 Health continued access to Medi-Cal receivables would imperil the continued
23 viability of the Debtor’s former clinics and breach the agreement between the
24 Debtor and DAP Health. Thus, the risk that the Debtor would not continue to
25 operate in a hypothetical chapter 7 case represents a substantial risk to creditor
26 recoveries in comparison with the Plan. Additionally, the chapter 7 trustee and/or
27 their professionals would have to have health care industry operational experience
28 and experience collecting health care receivables, in general, and FQHC
operational experience specifically, to provide the necessary oversight and ensure
sufficient liquidation of Estate assets. Retaining this expertise will result in greatly
increasing the cost to the chapter 7 trustee and the Estate.

23 The advantages of finishing a liquidation in chapter 11 are not just “common
24 knowledge” among professionals. Experts have also concluded that conversion to
25 chapter 7 offers few advantages over liquidation in chapter 11: cases converted
26 from chapter 11 to chapter 7 take significantly longer to resolve than a “pure”
27 chapter 11 liquidation, and such cases require similar, if not greater, fees, and in the
28 end provide creditors with statistically lower recovery rates than a comparable
chapter 11 procedure. *See* Arturo Bris, Ivo Welch and Ning Zhu, *The Costs of*

1 *Bankruptcy: Chapter 7 Liquidation versus Chapter 11 Reorganization*, J. OF
FINANCE, vol. 61(3), June 2006, at 1253.

2
3 **Conclusion**

4 The Plan demonstrates the Allowed DHCS Claim will receive a substantial
5 recovery under the Plan. However, under a chapter 7 liquidation, the remaining
6 value available for the Allowed DHCS Claim would be materially less compared to
7 the remaining value available under the proposed Plan. Through the significant cost
8 savings of the confirmed Plan as compared to conversion to chapter 7, holders of
allowed claims will receive more under the Plan than they would receive in a
converted chapter 7 bankruptcy (and certainly at least as much as under the Plan).

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Borrego Community Health Foundation			
Liquidation Analysis			
Proposed Chapter 11 Plan vs. Chapter 7 Plan of Liquidation			
<i>\$ in USD 000's</i>			
	Proposed Plan	Chapter 7	FN
Current Cash on Hand	\$ 69,332	\$ 69,332	[A]
Cash Burn to Plan Effective Date (ED)	(1,628)	(1,628)	[B]
Distributable Value at ED	\$ 67,705	\$ 67,705	
Secured Claims	(3)	(3)	
DHCS Sales Proceeds Recovery	(13,600)	(13,600)	[C]
US Trustee Fees	(250)	(250)	
Administrative Claims - Excluding Professional Fees	(1,939)	-	
Administrative Professional Fee Claims	(2,015)	-	
Priority Claims	(1,435)	-	
Claims to be Paid at ED	\$ (19,242)	\$ (13,853)	
Excess Distributable Value at ED	\$ 48,463	\$ 53,851	
Litigation Settlement Proceeds	1,500	1,500	
Jared Settlement Proceeds	105	105	[D]
Estimated Post-ED Net Payments Due to Buyer	(1,425)	(1,425)	[E]
Distributable Value to be Realized Post-ED	\$ 48,643	\$ 54,031	
Post-ED US Trustee Fees	(750)	(750)	
Wind-Down Expenses	(1,523)	(1,523)	[F]
Liquidating Trust Fees	(3,110)	-	
Chapter 7 Trustee Fee (3% of disbursements)	-	(2,372)	
Chapter 7 Trustee Legal Counsel	-	(3,000)	[G]
Chapter 7 Trustee Financial Advisor	-	(1,100)	[G]
Cost of Transition from Chapter 11 Debtor's Professionals	-	(1,000)	[H]
Administrative Claims - Excluding Professional Fees	-	(1,939)	
Administrative Professional Fee Claims	-	(2,015)	
Priority Claims	-	(1,435)	
Administrative & Priority Claims Paid Post-ED	\$ (5,382)	\$ (15,133)	
Remaining Value Available for Unsecured Creditors	\$ 43,260	\$ 38,898	
Estimated General Unsecured Claims	11,668	11,668	[I]
Remaining Value for DHCS Claim	\$ 31,592	\$ 27,230	[C]
Negative Impact of Chapter 7 Scenario		\$ (4,362)	

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Footnotes to the Liquidation Analysis

[A]: This reflects the Debtor’s Cash on hand as of November 3, 2023.

[B]: The projected uses of Cash include estimated payment of Administrative Claims and Chapter 11 administrative costs incurred before the Effective Date, net of estimated accounts receivable collections.

[C]: Pursuant to the DHCS Settlement Agreement, DHCS will be paid the first 40% of Net Cash Proceeds of the DAP Sale. The remaining cash available after disbursements to Allowed General Unsecured Creditors will be distributed to DHCS in accordance with the Plan and DHCS Settlement Agreement.

[D]: This reflects payments pursuant to the compromise among Debtor, George Jared, D.D.S., and George Jared D.D.S., Inc. [Docket Nos. 761], as approved by this Court’s order [Docket No. 824].

[E]: This represents accounts receivable collected on behalf of DAP Health pursuant to the Asset Purchase Agreement after Closing [Docket No. 465], net of any Debtor-related accounts receivable collections.

[F]: This represents the costs of maintaining the Debtor’s Estate until the regulatory change of ownership applications are approved, and costs of the subsequent wind-down of the Estate. Expenses include, but are not limited to, regulatory reporting and audits, tax related filings, business software licenses, document storage, and bank fees.

[G]: Chapter 7 trustee advisor fees are estimated to be materially greater than the Liquidating Trust advisor fees given the need for the chapter 7 trustee’s professionals to familiarize themselves with the Chapter 11 Case and its complexities.

[H]: This represents an estimate of the costs to transition from the Debtor's current professionals in the Chapter 11 Case to incoming chapter 7 professionals including the costs of information and knowledge transfer by the Debtor's professionals related to outstanding causes of action.

[I]: General Unsecured Claims were based on the mid-point of an estimated allowed claims range of \$6.2 million to \$17.1 million. As set forth herein and in

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1 the Plan, General Unsecured Claimants are anticipated to receive 100% recovery
2 on their Allowed Claims.
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Table moves from	0
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Embedded Excel	0
Format changes	0
Total Changes:	93