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7 Attorneys for the Chapter 11  
Debtor and Debtor in Possession

8  
9 **UNITED STATES BANKRUPTCY COURT**  
10 **SOUTHERN DISTRICT OF CALIFORNIA**

11  
12 In re

13 **BORREGO COMMUNITY**  
14 **HEALTH FOUNDATION,**

15 Debtor and Debtor in  
Possession.

Case No. 22-02384-11

Chapter 11 Case  
Honorable Laura S. Taylor

**DEBTOR’S NOTICE OF MOTION  
AND FOURTH MOTION FOR ENTRY  
OF AN ORDER PURSUANT TO  
SECTION 1121 OF THE  
BANKRUPTCY CODE EXTENDING  
THE EXCLUSIVE PERIODS TO FILE  
A CHAPTER 11 PLAN AND SOLICIT  
ACCEPTANCES; MEMORANDUM OF  
POINTS AND AUTHORITIES IN  
SUPPORT THEREOF;  
DECLARATION OF ISAAC LEE**

Date: February 14, 2024  
Time: 10:30 a.m. Pacific Time  
Location: Department 3

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1 PLEASE TAKE NOTICE that at the above referenced date, time and  
2 location, Borrego Community Health Foundation, the debtor and debtor in  
3 possession in the above-captioned chapter 11 bankruptcy case (the “Debtor”), will  
4 move (the “Motion”) the Court for entry of an order, pursuant to 11 U.S.C. § 1121,  
5 extending the exclusivity periods to file a chapter 11 plan and solicit acceptances  
6 thereof by 120 days through and including May 3, 2024 (filing a plan) and July 1,  
7 2024 (soliciting acceptances), respectively.

8 PLEASE TAKE FURTHER NOTICE that this Motion is based on this  
9 Notice, the Motion, its Memorandum, the attached Declaration of Isaac Lee, the  
10 *Declaration of Isaac Lee, Chief Restructuring Officer, in Support of Debtor’s*  
11 *Emergency First Day Motions* [Docket No. 7], supporting statements, arguments and  
12 representations of counsel who will appear at the hearing on the Motion, the record  
13 in this case, and any other evidence properly brought before the Court in all other  
14 matters of which this Court may properly take judicial notice.

15 PLEASE TAKE FURTHER NOTICE that any opposition or other response  
16 to the Motion must be served upon the undersigned, and the original and one copy of  
17 such papers with proof of service must be filed with the Clerk of the United States  
18 Bankruptcy Court at 325 West F Street, San Diego, California 92101-6691, not later  
19 than fourteen (14) days from the date of service of this Motion.

20 PLEASE TAKE FURTHER NOTICE that, pursuant to Local Bankruptcy  
21 Rule 9013-7(b)(2), the failure to file and serve a timely objection to the Motion may  
22 be deemed by the Court to be consent to the relief requested herein.

24 Dated: January 5, 2024

DENTONS US LLP  
SAMUEL R. MAIZEL  
TANIA M. MOYRON

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

28 Attorneys for the Chapter 11 Debtor and  
Debtor in Possession

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Borrego Community Health Foundation, the debtor and debtor in possession (the “Debtor”) in the above-captioned chapter 11 bankruptcy case (the “Case”), by and through its undersigned counsel, hereby files this Memorandum of Points and Authorities in support of its motion (the “Motion”) for entry of an order, pursuant to 11 U.S.C. § 1121, extending the exclusivity periods to file a chapter 11 plan and solicit acceptances thereof by 120 days through and including May 3, 2024 (filing a plan) and July 1, 2024 (soliciting acceptances), respectively. Currently, the Debtor’s exclusivity period for filing a chapter 11 plan expires on January 5, 2023.

The hearing on the confirmation of the Debtor’s and the Official Committee of Unsecured Creditors’ (the “Committee”) *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community Health Foundation* [Docket No. 1168] (the “Combined Plan”) is scheduled for January 17, 2024 (the “Confirmation Hearing”). While the Combined Plan is being solicited and the Debtor anticipates confirmation shortly, the Debtor respectfully requests an extension in an abundance of caution because the Confirmation Hearing occurs after the expiration of the exclusivity period. The Committee, as a proponent of the Combined Plan, has no objection to the extended deadlines.

**II. JURISDICTION AND VENUE**

The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The venue of this Case is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

**III. STATEMENT OF FACTS**

**A. General Background**

1. On September 12, 2022 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code

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1 (the “Bankruptcy Code”).<sup>1</sup> Since the commencement of its Case, the Debtor has been  
2 operating its business as a debtor in possession pursuant to §§ 1107 and 1108.

3 2. As of the Petition Date, the Debtor was a nonprofit Federally Qualified  
4 Health Center (“FQHC”) that provides health care services to low income and rural  
5 patients in San Diego and Riverside Counties through a system of eighteen clinics,  
6 two pharmacies, and six mobile units. In 2021, the Debtor provided approximately  
7 386,000 patient care visits to over 94,000 patients. The Debtor’s services include  
8 comprehensive primary care, urgent care, behavioral health, dental services, specialty  
9 care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic  
10 services, tele-health and pharmacy.

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

17 4. On September 26, 2022, the Office of the United States Trustee (the  
18 “UST”) appointed the Committee in this Case [Docket No. 49].

19 **B. Facts Relevant to this Motion**

20 5. On March 7, 2023, the Court entered its *Order on Debtor’s Motion to*  
21 *Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,*  
22 *and California Department of Health Care Services* [Docket No. 544], which  
23 approved the settlement with the California Department of Health Care Services (the  
24 “DHCS Settlement”). As set forth therein, the proceeds of the sale of substantially  
25 all of the Debtor’s assets (the “Sale”) will be distributed in accordance with the terms  
26 of the DHCS Settlement and the confirmed plan.

27 \_\_\_\_\_  
28 <sup>1</sup> All references to section or chapter herein are to the Bankruptcy Code, 11 U.S.C. §§ 101, *et seq.*,  
as amended. All references to “Rules” are to the Federal Rules of Bankruptcy Procedure.

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

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

8           8.     On September 25, 2023, the Debtor filed the *Notice of Motion and*  
9 *Motion for Entry of an Order (I) Authorizing the Debtor to File the Combined*  
10 *Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing*  
11 *and Setting Deadlines Related Thereto; and (III) Granting Related Relief* [Docket  
12 No. 920], which requested authority to file a combined disclosure statement and  
13 liquidating plan and an expedited confirmation process.

14           9.     On October 30, 2023, the Court entered the *Order on Debtor’s Motion*  
15 *for Entry of an Order (I) Authorizing the Debtor to File the Combined Disclosure*  
16 *Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting*  
17 *Deadlines Related Thereto; and (III) Granting Related Relief* [Docket No. 1041],  
18 which was modified by the Court on November 21, 2023 [Docket No. 1138].

19           10.    On November 17, 2023, the Debtor and the Committee filed the *Joint*  
20 *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego*  
21 *Community Health Foundation* [Docket No. 1091], which was amended by the  
22 Combined Plan [Docket No. 1168].

23           11.    On November 17, 2023, the Debtor and the Committee filed their *Joint*  
24 *Notice of Motion and Motion of the Debtor and the Official Committee of Unsecured*  
25 *Creditors for Entry of an Order (I) Granting Interim Approval of the Adequacy of*  
26 *Disclosures in the Combined Joint Disclosure Statement and Plan; (II) Approving*  
27 *Solicitation Packages and Procedures; (III) Approving the Forms of Ballots;*  
28 *(IV) Setting Related Deadlines and (V) Granting Related Relief* [Docket No. 1093],

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1 which was granted by the *Order on Joint Motion of the Debtor and the Official*  
2 *Committee of Unsecured Creditors for an Order Granting Interim Approval of the*  
3 *Adequacy of Disclosures in the Combined Joint Disclosure Statement and Plan;*  
4 *(II) Approving Solicitation Packages and Procedures; (III) Approving the Forms of*  
5 *Ballots; (IV) Setting Related Deadlines and (V) Granting Related Relief* [Docket  
6 No. 1179] (the “Solicitation Procedures Order”).

7 12. Pursuant to the Solicitation Procedures Order, solicitation of the  
8 Combined Plan began on December 11, 2023.

9 13. The Solicitation Procedures Order established January 8, 2024, as the  
10 deadline to vote on the Combined Plan and to file and serve any objections to  
11 confirmation. The Solicitation Procedures Order scheduled the Confirmation Hearing  
12 for January 17, 2024, at 10:00 a.m.

13 14. On December 11, 2023, the Debtor filed a *Notice of Plan Supplement to*  
14 *the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of*  
15 *Liquidation of Borrego Community Health Foundation* [Docket No. 1182].

16 **C. Exclusivity**

17 15. The Debtor currently has the exclusive right to file a plan and solicit  
18 acceptances pursuant to § 1121(d). The Debtor’s initial exclusivity period to file a  
19 plan (the “Exclusivity Period”) was scheduled to end on January 10, 2023. The  
20 Debtor moved to extend the Exclusivity Period to May 10, 2023, which was approved  
21 by this Court’s *Order on Debtor’s Motion for Entry of an Order Pursuant to Section*  
22 *1121 of the Bankruptcy Code Extending the Exclusive Period to File a Chapter 11*  
23 *Plan and Solicit Acceptances* [Docket No. 542]. The Debtor again moved to extend  
24 the Exclusivity Period to September 7, 2023, which was approved by this Court’s  
25 *Order on Debtor’s Notice of Motion and Second Motion for Entry of an Order*  
26 *Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Period to*  
27 *File a Chapter 11 Plan and Solicit Acceptances* [Docket No. 749]. The Debtor again  
28 moved to extend the Exclusivity Period to January 5, 2024, which was approved by

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1 this Court’s *Order on Debtor’s Notice of Motion and Third Motion for Entry of an*  
2 *Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive*  
3 *Period to File a Chapter 11 Plan and Solicit Acceptances* [Docket No. 1008].

4 **IV. ARGUMENT**

5 Section 1121(d) grants this Court authority to extend the exclusivity periods  
6 “for cause” after notice and hearing. Although the term “cause” is not defined by the  
7 Bankruptcy Code, the legislative history indicates that it is to be viewed flexibly “in  
8 order to allow the debtor to reach an agreement.” H.R. Rep. No. 95, 95th Cong., 1st  
9 Sess. 232 (1997); *see also In re McLean Industries, Inc.*, 87 B.R. 830, 833 (Bankr.  
10 S.D.N.Y. 1987) (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 231 (1978),  
11 *reprinted in* 1978 U.S.C.C.A.N. 5963, 6190); *In re Public Serv. Co. of New*  
12 *Hampshire*, 88 B.R. 521, 534 (Bankr. D.N.H. 1988) (“[T]he legislative intent... [is]  
13 to promote maximum flexibility.”).

14 To facilitate this legislative intent, a debtor should be given a reasonable  
15 opportunity to negotiate an acceptable plan with creditors and to prepare adequate  
16 financial and non-financial information concerning the ramifications of any proposed  
17 plan for disclosure to creditors. *See, e.g., McLean Industries*, 87 B.R. at 833-34; *In*  
18 *re Texaco Inc.*, 76 B.R. 322, 327 (Bankr. S.D.N.Y. 1987).

19 “A decision whether to extend or terminate exclusivity for cause is within the  
20 discretion of the bankruptcy court and is fact-specific.” *In re New Meatco Provisions,*  
21 *LLC*, No. 2:13-BK-22155-PC, 2014 WL 917335, at \*3 (Bankr. C.D. Cal. Mar. 10,  
22 2014) (quoting *In re Adelpia Communications Corp.*, 352 B.R. 578, 586 (Bankr.  
23 S.D.N.Y. 2006)). Courts examine several factors to determine whether “cause” exists  
24 to extend an exclusivity period. These factors include:

- 25 a. the size and complexity of the case;
- 26 b. the existence of good faith progress;
- 27 c. the necessity of sufficient time to negotiate and prepare adequate
- 28 information;

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- 1 d. whether the debtor is paying its debts as they become due;
- 2 e. whether the debtor has demonstrated reasonable prospects for filing a
- 3 viable plan;
- 4 f. whether the debtor has made progress negotiating with creditors;
- 5 g. the length of time a case had been pending;
- 6 h. whether the debtor is seeking an extension to pressure creditors; and
- 7 i. whether or not unresolved contingencies exist.

8 *See In re New Meatco Provisions, LLC*, 2014 WL 917335, at \*3 (citing *In re Dow*  
9 *Corning Corp.*, 208 B.R. 661, 664-665 (Bankr. E.D. Mich. 1997)). A “transcendent  
10 consideration” in deciding whether to extend exclusivity is “whether adjustment of  
11 exclusivity will facilitate moving the case forward toward a fair and equitable  
12 resolution.” *In re Henry Mayo Newhall Mem’l Hosp.*, 282 B.R. 444, 453 (B.A.P. 9th  
13 Cir. 2002) (affirming extension of exclusivity in chapter 11 case of non-profit  
14 hospital) (citing *In re Dow Corning Corp.*, 208 B.R.at 670).

15 Here, the Debtor submits that sufficient “cause” exists pursuant to § 1121(d)  
16 to extend the exclusivity periods by 120 days.

17 Size and Complexity of the Case. This is a large chapter 11 Case. The Debtor  
18 consisted of a system of eighteen clinics, two pharmacies, and six mobile units, which  
19 were recently sold to DAP Health. Moreover, this Case is complex, particularly given  
20 that it is a health care case and the Debtor is an FQHC. Among other things, operating  
21 and selling an FQHC raises issues of health care regulatory law, labor law, mergers  
22 and acquisitions law and bankruptcy law, among other fields. Although the Sale has  
23 closed, the Debtor continues to exist pending the approval of DAP Health’s change  
24 of ownership application (the “CHOW”) and to wind-down other matters.

25 Good Faith Progress. Here, the Debtor has made significant progress—the  
26 Combined Plan is on file and is being solicited in accordance with the Solicitation  
27 Procedures Order. Moreover, the Sale has closed and the Debtor previously  
28 negotiated the DHCS Settlement and finalized a settlement with U.S. Department of



1 Health and Human Services through its agency, the Center for Medicare and  
2 Medicaid Services.

3 Necessity of Sufficient Time to Negotiate and Prepare Adequate Information.

4 The Court has already approved that the Combined Plan has adequate information  
5 and the Combined Plan is currently being solicited. However, the deadline for  
6 creditors to vote and to object to the Combined Plan expires three days after the  
7 current end of the Exclusivity Period. Similarly, the Confirmation Hearing occurs  
8 shortly after the expiration of the Exclusivity Period. Thus, in an abundance of  
9 caution, the Debtor seeks an extension of the Exclusivity Period.

10 Paying Its Debts as They Become Due. The Debtor is paying its ordinary  
11 course administrative expenses as they come due. Creditors are, thus, not prejudiced  
12 by the requested extension because the Sale has closed and the Debtor has sufficient  
13 capital to maintain any payments through the interim period as DAP Health awaits  
14 CHOW approval and the Combined Plan is confirmed.

15 Prospects for Filing a Viable Plan. The Debtor and the Committee already filed  
16 the Combined Plan, which is a viable plan that results in payment in full to allowed  
17 unsecured claims.

18 Progress Negotiating with Creditors. The Debtor has been working in concert  
19 with the Committee throughout this Case, including on the closed Sale, the DHCS  
20 Settlement and formulating the Combined Plan. As a proponent, the Committee  
21 supports the Combined Plan and an extension of the Exclusivity Period.

22 Length of Time the Case Has Been Pending. This Case has been pending since  
23 September 12, 2022.

24 Whether the Extension Is Sought to Pressure Creditors. There is no evidence  
25 to suggest that the Debtor seeks this extension for anything other than good faith  
26 purposes and to allow this Case to move forward to a successful conclusion through  
27 the currently pending confirmation process.

28



**DECLARATION OF ISAAC LEE**

1  
2 I, Isaac Lee, hereby state and declare that if called as a witness, I would and  
3 could testify of my own personal knowledge as follows:

4 1. I am the Chief Restructuring Officer (“CRO”) of Borrego Community  
5 Health Foundation (“Debtor”).

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

8 3. I make this declaration in support of the *Motion for Entry of an Order*  
9 *Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive Periods*  
10 *to File a Chapter 11 Plan and Solicit Acceptances* (the “Motion”) (unless otherwise  
11 defined herein, capitalized terms shall have the same meaning as in the Motion).

12 4. On March 7, 2023, the Court entered its *Order on Debtor’s Motion to*  
13 *Approve Compromise Among Debtor, Official Committee of Unsecured Creditors,*  
14 *and California Department of Health Care Services* [Docket No. 544], which  
15 approved the settlement with the California Department of Health Care Services (the  
16 “DHCS Settlement”). As set forth therein, the proceeds of the Sale will be distributed  
17 in accordance with the terms of the DHCS Settlement and the confirmed plan.

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

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

26 7. On September 25, 2023, the Debtor filed the *Notice of Motion and*  
27 *Motion for Entry of an Order (I) Authorizing the Debtor to File the Combined*  
28 *Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation Hearing*

1 *and Setting Deadlines Related Thereto; and (III) Granting Related Relief* [Docket  
2 No. 920], which requested authority to file a combined disclosure statement and  
3 liquidating plan and an expedited confirmation process.

4 8. On October 30, 2023, the Court entered the *Order on Debtor’s Motion*  
5 *for Entry of an Order (I) Authorizing the Debtor to File the Combined Disclosure*  
6 *Statement and Plan; (II) Scheduling a Combined Confirmation Hearing and Setting*  
7 *Deadlines Related Thereto; and (III) Granting Related Relief* [Docket No. 1041],  
8 which was modified by the Court on November 21, 2023 [Docket No. 1138].

9 9. On November 17, 2023, the Debtor and the Committee filed the *Joint*  
10 *Combined Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego*  
11 *Community Health Foundation* [Docket No. 1091], which was amended by the  
12 Combined Plan [Docket No. 1168].

13 10. On November 17, 2023, the Debtor and the Committee filed their *Joint*  
14 *Notice of Motion and Motion of the Debtor and the Official Committee of Unsecured*  
15 *Creditors for Entry of an Order (I) Granting Interim Approval of the Adequacy of*  
16 *Disclosures in the Combined Joint Disclosure Statement and Plan; (II) Approving*  
17 *Solicitation Packages and Procedures; (III) Approving the Forms of Ballots;*  
18 *(IV) Setting Related Deadlines and (V) Granting Related Relief* [Docket No. 1093],  
19 which was granted by the Solicitation Procedures Order [Docket No. 1179].

20 11. Pursuant to the Solicitation Procedures Order, solicitation of the  
21 Combined Plan began on December 11, 2023.

22 12. The Solicitation Procedures Order established the deadline to vote on  
23 the Combined Plan and to file and serve any objections to confirmation as January 8,  
24 2024. The Solicitation Procedures Order scheduled the confirmation hearing on the  
25 Combined Plan for January 17, 2024, at 10:00 a.m. (the “Confirmation Hearing”).

26 13. The Debtor currently has the exclusive right to file a plan and solicit  
27 acceptances under § 1121(d). The Debtor’s original exclusivity period to file a plan  
28 (the “Exclusivity Period”) was scheduled to end on January 10, 2023. The Debtor

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1 previously moved to extend the Exclusivity Period to May 10, 2023, which was  
2 approved by this Court's *Order on Debtor's Motion for Entry of an Order Pursuant*  
3 *to Section 1121 of the Bankruptcy Code Extending the Exclusive Period to File a*  
4 *Chapter 11 Plan and Solicit Acceptances* [Docket No. 542]. The Debtor again moved  
5 to extend the Exclusivity Period to September 7, 2023, which was approved by this  
6 Court's *Order on Debtor's Notice of Motion and Second Motion for Entry of an*  
7 *Order Pursuant to Section 1121 of the Bankruptcy Code Extending the Exclusive*  
8 *Period to File a Chapter 11 Plan and Solicit Acceptances* [Docket No. 749]. The  
9 Debtor again moved to extend the Exclusivity Period to January 5, 2024, which was  
10 approved by this Court's *Order on Debtor's Notice of Motion and Third Motion for*  
11 *Entry of an Order Pursuant to Section 1121 of the Bankruptcy Code Extending the*  
12 *Exclusive Period to File a Chapter 11 Plan and Solicit Acceptances* [Docket  
13 No. 1008].

14 14. The Committee and the Debtor are soliciting approval of the Combined  
15 Plan in accordance with the expedited schedule set forth in the Solicitation  
16 Procedures Order. The Debtor seeks an extension of the Exclusivity Period in an  
17 abundance of caution due to the objection deadline and Confirmation Hearing  
18 occurring after the expiration of the Exclusivity Period.

19 15. I understand that the Committee does not object to the relief sought in  
20 the Motion.

21 16. The Debtor is paying its ordinary course administrative expenses as they  
22 come due. The Debtor has sufficient capital to maintain any payments through the  
23 interim period as DAP Health awaits approval of its change of ownership application  
24 and the Combined Plan is confirmed.

25 I declare under penalty of perjury that, to the best of my knowledge and after  
26 reasonable inquiry, the foregoing is true and correct. Executed this 5th day of January  
27 2024, at Los Angeles, California.

28   
Isaac Lee  
Chief Restructuring Officer