

1 Samuel R. Maizel (CA Bar No. 189301)  
samuel.maizel@dentons.com  
2 Tania M. Moyron (CA Bar No. 235736)  
tania.moyron@dentons.com  
3 Rebecca M. Wicks (CA Bar No. 313608)  
rebecca.wicks@dentons.com  
4 DENTONS US LLP  
601 South Figueroa Street, Suite 2500  
5 Los Angeles, California 90017-5704  
Telephone: 213 623 9300  
6 Facsimile: 213 623 9924

7 Attorneys for Chapter 11 Debtor  
and Debtor in Possession

8 Jeffrey N. Pomerantz (CA Bar No. 143717)  
9 Steven W. Golden (Admitted *Pro Hac Vice*)  
PACHULSKI STANG ZIEHL & JONES LLP  
10 10100 Santa Monica Blvd., 13th Floor  
Los Angeles, CA 90067  
11 Telephone: 310/277-6910  
Facsimile: 310/201-0760  
12 Email: jpomerantz@pszjlaw.com  
sgolden@pszjlaw.com

13 Attorneys for the Official Committee of  
14 Unsecured Creditors

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

17  
18 In re  
19 BORREGO COMMUNITY HEALTH  
20 FOUNDATION,  
21 Reorganized Debtor.

Case No. 22-02384-LT11

Chapter 11

**JOINT MOTION FOR  
ENHANCEMENT OF ESTATE  
PROFESSIONAL FEES;  
MEMORANDUM OF POINTS AND  
AUTHORITIES; DECLARATIONS  
IN SUPPORT THEREOF**

Date: June 12, 2024  
Time: 10:00 a.m.  
Dept.: 3

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



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

DENTONS US LLP  
 601 SOUTH FIGUEROA STREET, SUITE 2500  
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 213 623 9300

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

1 Each of Dentons US LLP (“Dentons”), counsel to the above-captioned  
2 chapter 11 debtor and debtor in possession (the “Debtor”); Ankura Consulting  
3 Group, LLC (“Ankura”), the Debtor’s Chief Restructuring Officer; Pachulski  
4 Stang Ziehl & Jones LLP (“PSZJ”), counsel to the Official Committee of  
5 Unsecured Creditors (the “Committee”); and FTI Consulting, Inc., financial  
6 advisor to the Committee (“FTI” and, together with Dentons, Ankura, and PSZJ,  
7 the “Estate Professionals”), by this *Joint Motion for Enhancement of Estate*  
8 *Professional Fees* (this “Motion”), respectfully request the approval and  
9 allowance of a fee augmentation (the “Fee Enhancement”) in an amount calculated  
10 to compensate each Estate Professional at their regular, non-reduced hourly rate  
11 and respectfully set forth as follows:

12 **I.**

13 **INTRODUCTION**

14 1. Each of the Estate Professionals—Dentons and Ankura representing the  
15 Debtor and PSZJ and FTI representing the Committee—were retained by their  
16 respective clients at rates representing a substantial discount to their regular hourly  
17 rates in light of the Debtor’s nonprofit status and the uncertain financial situation it  
18 faced at the outset of the above-captioned case (the “Chapter 11 Case”). At the time  
19 of filing the Chapter 11 Case and the engagement of the Estate Professionals, there  
20 was substantial risk that the Debtor would be forced to cease operations and that the  
21 Estate Professionals—as well as unsecured creditors—would not be paid. As the  
22 Court is aware, despite such risk, the Debtor and the Committee obtained  
23 extraordinary results, including the going-concern sale of the Debtor’s clinics and  
24 100% payment to holders of Allowed General Unsecured Claims. Based on such  
25 results, the Estate Professionals respectfully request that the Court award a Fee  
26 Enhancement to each Estate Professional in an amount calculated to compensate each  
27 Estate Professional at their regular, non-discounted hourly rate.

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



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

1 health, prenatal care, veteran’s health, chiropractic services, tele-health, and  
2 pharmacy.<sup>4</sup>

3 5. As set forth in significant detail in the First Day Decl., the Debtor had  
4 significant and long-standing prepetition issues with the California Department of  
5 Healthcare Services (“DHCS”).<sup>5</sup>

6 6. On August 26, 2022, the Debtor, who was reliant on Medi-Cal funding  
7 to provide medical services, received a letter from DHCS stating its intention to  
8 suspend all Medi-Cal funding as of September 29, 2022.<sup>6</sup> Had DHCS suspended the  
9 Debtor from participating in the Medi-Cal Program, the Debtor would have had to  
10 cease operations and services to the Debtor’s patients and begin liquidation  
11 proceedings.<sup>7</sup> Moreover, there was insufficient time to safely transition the more than  
12 90,000 patients treated annually by the Debtor to alternative care, and, in any event,  
13 there were few, if any, alternative care providers within a reasonable distance for  
14 many of the Debtor’s patients.<sup>8</sup>

15 7. In addition, health plans started moving patients to alternative care  
16 providers to ensure continuity of care in case the shutdown of the Debtor occurred.<sup>9</sup>  
17 Accordingly, the Debtor, with the support of their advisors at Dentons and Ankura,  
18 determined to file this Chapter 11 Case in an effort to halt the suspension of its critical  
19 Medi-Cal funding to ensure that the Debtor could continue to provide high-quality,  
20 culturally competent healthcare services to the community.<sup>10</sup>

21  
22  
23 <sup>4</sup> *Id.* at ¶ 14.

24 <sup>5</sup> *Id.* at ¶ 21.

25 <sup>6</sup> *Id.* ¶ 30

26 <sup>7</sup> *Declaration of Rose MacIsaac* [Adv. Docket No. 3] at ¶ 41.

27 <sup>8</sup> *Id.*

28 <sup>9</sup> *First Day Decl.* at ¶ 30.

<sup>10</sup> *Declaration of Samuel R. Maizel* (the “Maizel Decl.”) at ¶ 6; *Declaration of Isaac Lee* (the “Lee Decl.”) at ¶ 5.

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

**B. Filing of the Chapter 11 Case and Adversary Proceeding**

8. In light of the foregoing, on September 12, 2022 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Dentons, with Ankura’s support, filed numerous “first day motions.”<sup>11</sup>

9. Given DHCS’s assertions that the police and regulatory exception to the automatic stay under § 362(b)(4) applied to its proposed suspension, on September 26, 2022, the Debtor filed the *Complaint by Borrego Community Health Foundation, a California Nonprofit Public Benefit Corporation, Against California Department of Health Care Services, by and Through its Director Michelle Baass* [Adv. Docket No. 1], commencing the adversary proceeding against DHCS, Adv. Pro. No. 22-90056 (the “Adversary Proceeding”), and the *Emergency Motion (I) to Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively (II) for Temporary Restraining Order* [Adv. Docket No. 2] (the “Stay Motion”). On the same day, the Office of the United States Trustee appointed the Committee.<sup>12</sup>

10. At this point in time, the Debtor, with the support of Dentons and Ankura, had to seamlessly transition into Chapter 11 and satisfy requirements related thereto while maintaining high-quality, culturally competent care, but also had to expend time and resources toward the Adversary Proceeding and Stay Motion to avoid having to cease operations.<sup>13</sup>

11. In the Adversary Proceeding, after extensive substantive briefing and oral argument, the Debtor and Dentons, with the support of Ankura, PSZJ, FTI,<sup>14</sup> and the Patient Care Ombudsman, successfully obtained orders stopping DHCS’s Medi-Cal suspension and compelling DHCS to direct health plans to return the Debtor’s

<sup>11</sup> Docket Nos. 1, 2, 3, 4, 5, 6, 11.

<sup>12</sup> See Docket No. 49.

<sup>13</sup> Maizel Decl. at ¶ 7; Lee Decl. at ¶ 8.

<sup>14</sup> See, e.g., *Statement of the Official Committee of Unsecured Creditors in Support of Emergency Motion: (I) To Enforce the Automatic Stay Pursuant to 11 U.S.C. § 362; or, Alternatively (II) For Temporary Restraining Order* [Adv. Docket No. 37].

1 patients to the Debtor’s care.<sup>15</sup> DHCS subsequently appealed such orders [Docket  
2 No. 75] (the “Appeal”).

3 **C. Sale Process and Post-Close Efforts**

4 12. After successfully enjoining DHCS’s suspension, the Debtor and the  
5 Estate Professionals pivoted to a sale process under section 363 of the Bankruptcy  
6 Code to sell substantially all of the Debtor’s assets (the “Sale”). Dentons, with the  
7 support of the Committee and input from PSZJ and FTI, filed the *Motion for the*  
8 *Entry of (I) an Order Approving the Form of Asset Purchase Agreement;*  
9 *(2) Approving Auction Sale Format and Bidding Procedures; (3) Approving Process*  
10 *for Discretionary Selection of Stalking Horse Bidder and Bid Protections;*  
11 *(4) Approving Form Notice to be Provided to Interested Parties; (5) Scheduling a*  
12 *Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder; and*  
13 *(6) Approving Procedures Related to the Assumption of Certain Executory Contracts*  
14 *and Unexpired Leases; and (II) an Order Authorizing the Sale of Property Free and*  
15 *Clear of All Claims, Liens, and Encumbrances* [Docket No. 161] (the “Bidding  
16 Procedures Motion”).

17 13. In a 29-page objection [Docket No. 187] (the “DHCS Bidding  
18 Procedures Objection”), DHCS opposed the Bidding Procedures Motion and the Sale  
19 contemplated thereunder arguing, among other things, that (i) the Debtor’s Medi-Cal  
20 Provider Agreements could not be “sold as property of its estate, free and clear of  
21 any debt,”<sup>16</sup> and (ii) any purchaser had to assume successor liability thereunder.<sup>17</sup>  
22 Had DHCS been successful in prosecuting the DHCS Bidding Procedures  
23 Objection—either with respect to the entry of the Bidding Procedures or the proposed  
24 Sale itself—the prospects of a robust, value-maximizing sale would have diminished  
25 considerably; because of the Debtor’s reliance on the Medi-Cal program as an FQHC,

26 \_\_\_\_\_  
<sup>15</sup> See Adv. Docket Nos. 65, 66.

27 <sup>16</sup> *DHCS Bidding Procedures Objection* at 20:26-27.

28 <sup>17</sup> *Id.* at II.F.

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213 623 9300

1 the DHCS Bidding Procedures Objection was tantamount to an objection to the “free  
2 and clear” sale of the Debtor’s means of generating revenue.<sup>18</sup> Noting that the heart  
3 of the DHCS Bidding Procedures Objection was “premature,”<sup>19</sup> the Court approved  
4 the Bidding Procedures Motion [Docket No. 321] (the “Bidding Procedures Order”).

5 14. Although the Bidding Procedures Order allowed the Debtor and the  
6 Committee to work toward the consummation of a Sale, the heart of DHCS’s  
7 objections remained extant and, if not resolved prior to a hearing thereon, would have  
8 mired this Chapter 11 Case in litigation over the Sale and, in all likelihood, severely  
9 diminished the prospects of the successful result that eventually did ensue. Through  
10 the Debtor’s and the Committee’s efforts—including through the Mediation (as  
11 defined below)—the Sale process was not litigious, allowing for prospective  
12 purchasers to participate with a higher degree of confidence that the Sale would not  
13 be derailed by a fulsome objection from DHCS, which, in turn, increased the  
14 competitive tension among bidders and thus the ultimate consideration realized by  
15 the Sale.<sup>20</sup>

16 15. In connection with the Sale, and in accordance with the Bidding  
17 Procedures Order, Ankura created a data room to be made available to potential  
18 purchasers, prepared marketing materials, and conducted due diligence.<sup>21</sup> The Debtor  
19 did not retain a separate investment banker to conduct the Sale, as is customary in  
20  
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24 <sup>18</sup> See, e.g., Tentative Ruling [Docket No. 272] (the “Bidding Procedures Tentative”  
25 at p. 2 (“Consequently, according to DHCS, the sale of assets would not fulfill any  
26 of the prongs under 363(f), and the approximately \$60 million in overpayments  
Borrego owes DHCS must be paid by Borrego prior to the sale or be assumed by the  
buyer under § 365(b).”).

27 <sup>19</sup> Bidding Procedures Tentative at p. 6.

28 <sup>20</sup> Lee Decl. at ¶ 12.

<sup>21</sup> *Id.* at ¶ 13.

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1 chapter 11 cases.<sup>22</sup> Rather, Ankura (with the support of FTI investment bankers)  
2 stepped into that role.<sup>23</sup>

3 16. Pursuant to the Bidding Procedures Order, on February 6, 2023,  
4 Dentons and Ankura, with the support and active participation of PSZJ and FTI,  
5 conducted a robust auction with multiple interested bidders.<sup>24</sup> In consultation among  
6 the Board, Dentons, and Ankura, the Debtor, after consultation with the Committee,  
7 selected DAP Health Inc. (“DAP Health”) as the winning bidder.<sup>25</sup> Dentons and  
8 Ankura negotiated the asset purchase agreement (the “APA”) with DAP Health, with  
9 input from PSZJ and FTI, resulting in a purchase price of over \$50 million,  
10 guarantees that all facilities would remain open, and job offers to all of the Debtor’s  
11 employees.<sup>26</sup> Additionally, DAP Health agreed to fund up to \$10 million of operating  
12 cash losses between the time of the entry of a sale order and the close of the Sale. *Id.*

13 17. On March 13, 2023, the Court entered the *Order (A) Authorizing the*  
14 *Sale of Property to Desert AIDS Project d/b/a DAP Health Free and Clear of Liens,*  
15 *Claims, Encumbrances, and Other Interests* [Docket No. 559] (the “Sale Order”).  
16 The Sale closed on July 31, 2023.<sup>27</sup>

17 18. Given the structure of the APA and the regulatory approvals required  
18 therein, the Debtor and the Estate Professionals have continued to expend time and  
19 effort with respect to the Sale since it closed.<sup>28</sup> Among other things, Dentons and the  
20 Estate Professionals have worked with DAP Health and other third parties to address  
21 matters related to the CHOW process and other regulatory issues.<sup>29</sup>

22 \_\_\_\_\_  
23 <sup>22</sup> *Id.*

24 <sup>23</sup> *Id.*

25 <sup>24</sup> *Id.* at ¶ 14.

26 <sup>25</sup> *See* Docket No. 465.

27 <sup>26</sup> *See* Docket No. 465 at Ex. 1.

28 <sup>27</sup> *See* Docket No. 823.

29 <sup>28</sup> Lee Decl. at ¶ 16.

<sup>29</sup> *Id.*

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

1 **D. The Mediation and DHCS Settlement**

2 19. Simultaneously with the Sale, the Debtor, the Committee, and DHCS  
3 agreed to a mediation (the “Mediation”) of all the disputes among the parties before  
4 the Court’s appointed mediator, the Honorable Dennis Montali, United States  
5 Bankruptcy Judge (the “Mediator”).<sup>30</sup> The Debtor and the Committee, through the  
6 Estate Professionals, worked diligently with DHCS and the Mediator to arrive at a  
7 comprehensive global settlement (the “DHCS Settlement”) [Docket No. 510] that  
8 addressed the issues raised by DHCS that, if unresolved, would have greatly reduced  
9 the prospects of a successful Chapter 11 Case. On February 27, 2023, Dentons filed  
10 the *Motion for Settlement and to Approve Compromise Among the Debtor, the*  
11 *Official Committee of Unsecured Creditors and California Department of*  
12 *Healthcare Services Pursuant to Federal Rule of Bankruptcy Procedure 9019*  
13 [Docket No. 510], which sought an approval of an executed term sheet setting forth  
14 the terms of the DHCS Settlement [Docket No. 510, Exhibit A] (the “Term Sheet”)   
15 and was approved by this Court (the “9019 Order”) [Docket No. 544].

16 20. Perhaps most critically, the DHCS Settlement among the Debtor, the  
17 Committee, and DHCS set forth a paradigm for the agreed going concern Sale,  
18 resolving the complex issues raised in the DHCS Bidding Procedures Objection, and  
19 paved a consensual path towards confirmation of a plan.<sup>31</sup> In addition, the DHCS  
20 Settlement provided, among other things, that DHCS shall have an Allowed General  
21 Unsecured Claim of approximately \$112 million (the “DHCS Allowed Claim”) that  
22 would be largely subordinated—other than payments of certain specified amounts—  
23 to the payment in full of all other Allowed General Unsecured Claims.<sup>32</sup> Pursuant to  
24 a confirmed plan, DHCS would be allowed to apply the \$20.6 million that was being  
25 held by DHCS, certain third-party litigation recoveries, and 40% of the net cash

26 <sup>30</sup> See Adv. Docket Nos. 73, 74, 83.

27 <sup>31</sup> Term Sheet at §§ IV, V.

28 <sup>32</sup> *Id.* at § III.

1 proceeds of the Sale toward the DHCS Allowed Claim.<sup>33</sup> The DHCS Settlement also  
2 provided for the vacatur of the Court’s orders in the Adversary Proceeding, dismissal  
3 of the Appeal, and resolution of all other major disputes among the parties.<sup>34</sup> The  
4 Term Sheet and 9019 Order contemplated that the Debtor, the Committee, and  
5 DHCS, through the Estate Professionals, would prepare and execute a formal  
6 settlement agreement,<sup>35</sup> which was filed on September 26, 2023.<sup>36</sup>

7 **E. The Plan**

8 21. The Estate Professionals focused their efforts on confirming a chapter  
9 11 plan of liquidation after the success of the Sale and the DHCS Settlement. On  
10 September 25, 2023, Dentons, with approval and input of PSZJ, filed the *Notice of*  
11 *Motion and Motion for Entry of an Order (I) Authorizing the Debtor to File the*  
12 *Combined Disclosure Statement and Plan; (II) Scheduling a Combined Confirmation*  
13 *Hearing and Setting Deadlines Related Thereto; and (III) Granting Related Relief*  
14 [Docket No. 920] (the “Motion to Combine”), which sought (i) authority to file a  
15 joint disclosure statement and liquidating plan and (ii) an expedited schedule for final  
16 approval of the Disclosures and confirmation of the Plan. The Court approved the  
17 Motion to Combine, and Dentons and PSZJ, with the support of Ankura and FTI,  
18 prepared and filed the *Joint Combined Disclosure Statement and Chapter 11 Plan of*  
19 *Liquidation of Borrego Community Health Foundation* [Docket No. 1141], which  
20 was subsequently amended by the *First Amended Joint Combined Disclosure*  
21 *Statement and Chapter 11 Plan of Liquidation of Borrego Community Health*  
22 *Foundation* [Docket No. 1168] (the “Plan”). The Plan provided, among other things,  
23 for payment in full to holders of Allowed General Unsecured Claims (which was  
24

25 \_\_\_\_\_  
26 <sup>33</sup> *Id.*

27 <sup>34</sup> *Id.* at § V.

28 <sup>35</sup> See 9019 Order at ¶ 2.

<sup>36</sup> See Docket No. 923.

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LOS ANGELES, CALIFORNIA 90017-5704  
213 623 9300

1 only possible through the subordination provisions of the DHCS Settlement) and  
2 payment of the DHCS Allowed Claim in accordance with the DHCS Settlement.

3 22. On December 7, 2023, the Court entered its *Order on Joint Motion of*  
4 *the Debtor and the Official Committee of Unsecured Creditors for Entry of an Order*  
5 *(I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Joint*  
6 *Disclosure Statement and Plan; (II) Approving Solicitation Packages and*  
7 *Procedures; (III) Approving the Forms of Ballots; (IV) Setting Related Deadlines*  
8 *and Granting Related Relief* [Docket No. 1179], approving the Motion to Combine.  
9 After solicitation, over 90% of holders of General Unsecured Claims voted in favor  
10 of the Plan, and DHCS, in accordance with the DHCS Settlement, voted in favor of  
11 the Plan [Docket No. 1243]. On January 25, 2024, the Court entered the *Order on*  
12 *First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of*  
13 *Liquidation of Borrego Community Health Foundation* [Docket No. 1273] (the  
14 “Confirmation Order”).

15 23. Both prior to confirmation and the Effective Date, the Estate  
16 Professionals worked to reconcile the approximately 490 filed general unsecured  
17 claims, which, in the aggregate, asserted \$76,000,000 against the Debtor.<sup>37</sup> On  
18 February 14, 2024, the Effective Date of the Plan occurred [Docket No. 1310].  
19 Through objections, stipulations, withdrawals and agreements, (a) holders of  
20 approximately 220 claims (totaling approximately \$3,000,000 in the aggregate)  
21 received payment in full on account of their Allowed General Unsecured Claims as  
22 soon as practicable after the Effective Date, and (b) only 59 general unsecured claims  
23 remain to be reconciled.<sup>38</sup>

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27 <sup>37</sup> Lee Decl. at ¶ 21.

28 <sup>38</sup> Lee Decl. at ¶ 21.

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213 623 9300

1 III.

2 **RETENTION AND ROLES OF THE FIRMS**

3 24. On October 12, 2022, the Debtor filed the *Debtor's Application to*  
4 *Employ Dentons US LLP as Debtor's Chapter 11 Bankruptcy Counsel* [Docket  
5 No. 86] (the "Dentons Retention Application"), seeking to retain and employ  
6 Dentons as its bankruptcy counsel pursuant to section 327 of the Bankruptcy Code.  
7 The Dentons Retention Application, which the Court granted on December 13, 2022  
8 [Docket No. 292] (the "Dentons Retention Order"), provided that "in light of the  
9 Debtor's nonprofit status and charitable mission, Dentons has agreed to cap its hourly  
10 fees at \$800 per hour and reduce the hourly rate of professionals billing under \$800  
11 per hour by 10%."<sup>39</sup>

12 25. Also on October 12, 2022, the Debtor filed the *Debtor's Application to*  
13 *Employ Ankura Consulting Group, LLC to (I) Provide the Debtor a Chief*  
14 *Restructuring Officer and Certain Other Personnel; and (II) Designating Isaac Lee*  
15 *as Chief Restructuring Officer for the Debtor* [Docket No. 87] (the "Ankura  
16 Retention Application"), seeking authorization for the Debtor to employ Ankura to  
17 provide the Debtor with a Chief Restructuring Officer and other personnel pursuant  
18 to sections 105(a) and 363(b) of the Bankruptcy Code. Pursuant to the Ankura  
19 Retention Application, which the Court granted on November 16, 2022 [Docket No.  
20 176] (the "Ankura Retention Order"), Ankura agreed to reduce its fees by 10%.<sup>40</sup>

21 26. On October 24, 2022, the Committee filed its *Application for an Order*  
22 *Authorizing and Approving the Employment of Pachulski Stang Ziehl & Jones LLP*  
23 *as Counsel to the Official Committee of Unsecured Creditors, Effective as of*  
24 *September 30, 2022* [Docket No. 113] (the "PSZJ Retention Application"), seeking  
25 authorization for the Committee to employ PSZJ as its counsel pursuant to sections  
26

27 <sup>39</sup> Dentons Retention Application at ¶ 10.

28 <sup>40</sup> Ankura Retention Application at ¶ 18.

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1 327 and 1103(a) of the Bankruptcy Code. As set forth in the PSZJ Retention  
2 Application, which the Court granted on December 9, 2022 [Docket No. 287] (the  
3 “PSZJ Retention Order”), PSZJ agreed to seek professional compensation at a  
4 blended hourly rate of \$900.<sup>41</sup>

5 27. On October 27, 2022, the Committee filed its *Application for an Order*  
6 *Authorizing the Retention and Employment of FTI Consulting, Inc. as Financial*  
7 *Advisor to the Official Committee of Unsecured Creditors Effective as of October 7,*  
8 *2022* [Docket No. 120] (the “FTI Retention Application” and, together with the  
9 Dentons Retention Application, the Ankura Retention Application, and the PSZJ  
10 Retention Application, the “Retention Applications”), seeking authorization for the  
11 Committee to employ FTI as financial advisor pursuant to sections 327, 328(a), and  
12 1103 of the Bankruptcy Code. As set forth in the FTI Retention Application, which  
13 the Court granted on November 29, 2022 [Docket No. 242] (the “FTI Retention  
14 Order” and, together with the Dentons Retention Order, the Ankura Retention Order,  
15 and the PSZJ Retention Order, the “Retention Orders”), FTI agreed to provide  
16 services to the Committee at a blended hourly rate of \$750.<sup>42</sup>

17 28. More detailed descriptions of the services provided by Dentons, PSZJ,  
18 and FTI are set forth in each such Estate Professionals’ final fee applications and  
19 declarations in support thereof (the “Final Fee Applications”), filed substantially  
20 contemporaneously with this Motion. In addition, more detailed descriptions of the  
21 services provided by Ankura are set forth in Ankura’s monthly compensation and  
22 staffing reports (the “Ankura Staffing Reports”).<sup>43</sup>

23  
24 <sup>41</sup> PSZJ Retention Application at ¶ 17.

25 <sup>42</sup> FTI Retention Application at ¶ 13.

26 <sup>43</sup> [Docket Nos. 309, 310, 329, 547, 596, 668, 728, 752, 781, 861, 862, 1010, 1169,  
27 1192, 1201, 1313, 1325, 1344]. As set forth in the Ankura Staffing Reports, Ankura  
28 provided numerous services, including: (i) supporting the first day filings; (ii)  
preparing court required financial reporting, including the statement of financial  
affairs, the schedules, and monthly operating reports; (iii) implementing turnaround  
initiatives, such as a provider incentive program, clinic staffing, and management;

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1 IV.

2 **REQUESTED FEE ENHANCEMENT**

3 29. As set forth in detail in the Final Fee Applications, using the rates set  
4 forth in the Retention Applications and approved in the Retention Orders, the Estate  
5 Professionals are seeking final allowance of fees and expenses pursuant to section  
6 330 of the Bankruptcy Code.

7 30. Additionally, as set forth in the Ankura Staffing Reports and  
8 summarized in the Lee Declaration, pursuant to the Ankura Retention Order, the  
9 Debtor has paid Ankura a total of \$4,725,252.23 in fees for services rendered at the  
10 rates set forth in the Ankura Retention Application and reimbursed \$52,126.49 in  
11 expenses.

12 31. By this Motion, the Estate Professionals respectfully request that the  
13 Court enhance the fees awarded to each Estate Professional pursuant to the separately  
14 filed Final Fee Applications (and, with respect to Ankura, as detailed in the Ankura  
15 Staffing Reports) by allowing the Estate Professionals' compensation at their regular  
16 hourly rates (the "Fee Enhancement"). Specifically, and as detailed in the  
17 accompanying Declarations, the Estate Professionals seek the following Fee  
18 Enhancement:

19  
20  
21  
22 (iv) preparing liquidity forecasts and tracking schedules; (v) preparing key employee  
23 incentive and retention programs; (vi) supporting other filings in this Chapter 11  
24 Case, including motions relating to the Sale, assumption and rejection of contracts,  
25 and the Plan; (vii) liaising with BRG, the state-mandated monitor; (viii) assisting in  
26 the DHCS Settlement by preparing support materials, such as the creditor recovery  
27 analyses; (ix) preparing claims reconciliation and analyses. Lee Decl. at ¶ 24. Ankura  
28 also assisted Debtor's management with (i) liquidity enhancements and providing an  
adequate liquidity runway to execute the Sale and implement the Plan; (ii) managing  
vendor claims and relationships; (iii) preparing financial statements, budgets, and  
forecasts; (iv) regulatory reporting; (v) managing billing and collections; (vi) the  
close of the Sale transaction and the operational transition to DAP Health; (vii)  
litigation matters and settlement; and (viii) the transition of operations to the  
liquidating trust. *Id.* at ¶ 25.

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	<b>Reduced Hourly Fees</b>	<b>Regular Hourly Fees</b>	<b>Fee Enhancement</b>
<b>Dentons</b>	\$3,365,813.50	\$3,930,645.57	\$564,832.07
<b>Ankura</b>	\$4,725,252.23	\$5,252,914.00	\$527,661.78
<b>PSZJ</b>	\$903,082.00	\$1,117,849.50	\$214,767.50
<b>FTI</b>	\$1,076,100.00 <sup>44</sup>	\$1,175,091.00	\$98,991.00

32. Payment of the Fee Enhancement will not yield a lesser recovery to holders of Allowed General Unsecured Claims and DHCS than originally forecasted in the first quarter of 2023.<sup>45</sup>

**V.**

**THE FEE ENHANCEMENT IS APPROPRIATE**

**UNDER APPLICABLE LAW**

33. In the Ninth Circuit, the lodestar approach is the primary basis for determining fee awards under section 330 of the Bankruptcy Code.<sup>46</sup> Under the lodestar approach, a court multiplies “the number of hours reasonably expended” by a professional “by a reasonable hourly rate.”<sup>47</sup>

34. Although a compensation award under section 330 of the Bankruptcy Code calculated under the lodestar approach “is presumptively a reasonable fee,”<sup>48</sup> the Ninth Circuit (like many of its sibling circuits) has recognized that in

<sup>44</sup> FTI’s fees at its regular hourly rates excludes the additional \$25,000.00 requested for fees incurred and expected to be incurred after the Effective Date in connection with the preparation of FTI’s final fee application.

<sup>45</sup> Lee Decl. at ¶ 32.

<sup>46</sup> See, e.g., *In re Buckridge*, 367 B.R. 191, 201 (Bankr. C.D. Cal. 2007) (citing *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 598 (9th Cir. 2006)).

<sup>47</sup> *Id.* (citing cases).

<sup>48</sup> *In re Manoa Finance Co., Inc.*, 853 F.2d 687, 691 (9th Cir. 1988).

1 extraordinary circumstances, the lodestar approach may not fairly compensate an  
2 estate professional for the work done.<sup>49</sup>

3 35. A court may grant a request for a fee enhancement based on the criteria  
4 listed in section 330 of the Bankruptcy Code and its consideration of the *Kerr*  
5 factors,<sup>50</sup> taking care not to double-count a *Kerr* factor already considered in the  
6 calculation of the lodestar.<sup>51</sup> As set forth in further detail below, several of the *Kerr*  
7 factors that are generally considered to be incorporated in the calculation of the  
8 lodestar were not fully reflected in any of the Estate Professionals' lodestar  
9 calculation in this Chapter 11 Case because of the substantial discount each of the  
10 Estate Professionals took to their regular hourly rates.<sup>52</sup> Other factors frequently cited  
11 by courts in granting a fee enhancement include the payment of creditors in full,<sup>53</sup>

12 \_\_\_\_\_  
13 <sup>49</sup> *Manoa Finance*, 853 F.2d at 688.

14 <sup>50</sup> The twelve factors enumerated in *Kerr v. Screen Extras Guild, Inc.*, 526 F.2d 67,  
15 70 (9th Cir. 1975) are: (1) the time and labor required, (2) the novelty and difficulty  
16 of the questions involved, (3) the skill requisite to perform the legal service properly,  
17 (4) the preclusion of other employment by the attorney due to acceptance of the case,  
18 (5) the customary fee, (6) whether the fee is fixed or contingent, (7) time limitations  
19 imposed by the client or the circumstances, (8) the amount involved and the results  
20 obtained, (9) the experience, reputation, and ability of the attorneys, (10) the  
21 "undesirability" of the case, (11) the nature and length of the professional relationship  
22 with the client, and (12) awards in similar cases.

18 <sup>51</sup> *Buckridge*, 367 B.R. at 202 (citing cases).

19 <sup>52</sup> The four *Kerr* factors generally considered to be incorporated in the lodestar  
20 calculation are "(1) the novelty and complexity of the issues, (2) the special skill and  
21 experience of counsel, (3) the quality of representation, and (4) the results obtained."  
22 *Buckridge*, 367 B.R. at 202 (cleaned up). However, these factors may support an  
23 upward adjustment "when it is shown by specific evidence that they are not fully  
24 reflected in the lodestar." *Manoa Finance*, 853 F.2d at 691.

22 <sup>53</sup> See, e.g., *CRG Partners Grp., L.L.C. v. Neary (In re Pilgrim's Pride Corp.)*, 690  
23 F.3d 650, 653, 666 (5th Cir. 2012); *In re Mirant Corp.*, 354 B.R. 113, 142 (Bankr.  
24 N.D. Tex. 2006); *In re Nucentrix Broadband Networks, Inc.*, 314 B.R. 574, 579  
25 (Bankr. N.D. Tex. 2004); *In re Gencor Indus., Inc.*, 286 B.R. 170, 180 (Bankr. M.D.  
26 Fla. 2002); *In re Farah*, 141 B.R. 920, 925 (Bankr. W.D. Tex. 1992); *In re The*  
27 *Morris Plan Co. of Iowa*, 100 B.R. 451, 454 (Bankr. N.D. Iowa 1989); see also *In re*  
28 *D.W.G.K. Restaurants*, 106 B.R. 194, 197 (Bankr. S.D. Cal. 1989) (stating that the  
court "shall authorize a fee enhancement only upon the payment to general unsecured  
creditors of 100% of their allowed claims"); but see *In re New Eng. Compounding*  
*Pharm., Inc.*, 544 B.R. 724, 738 (Bankr. D. Mass. 2016) ("But the outcome of some  
cases, particularly those which initially appear administratively insolvent, can be  
characterized as exceptional and surpassing expectations even where creditors  
receive less than full payment.").

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1 results that surpass parties' reasonable expectations at the start of the case,<sup>54</sup> the  
2 efficient resolution of complex legal issues,<sup>55</sup> risk of non-payment,<sup>56</sup> and the skill and  
3 experience of counsel.<sup>57</sup>

4 36. Here, the Estate Professionals respectfully submit that numerous factors  
5 taken together support the requested Fee Enhancement.

6 **A. Payment of Creditors in Full**

7 37. Although courts consider numerous factors in evaluating requests for  
8 fee enhancements, "one overarching theme *can* be gleaned from the case law. In the  
9 majority of cases, courts rely heavily on the outcome of a case (generally measured  
10 by the funds available for creditors) in deciding whether an enhancement is  
11 warranted."<sup>58</sup> Dentons, supported by Ankura, jointly negotiated the Plan with PSZJ  
12 and FTI, which was confirmed in January 2024 after an overwhelming vote in support  
13 of confirmation less than eighteen months after the Chapter 11 Case commenced.  
14 Under the Plan, holders of Allowed General Unsecured Claims will receive a full  
15 recovery on account of their claims,<sup>59</sup> a direct result of the Sale and the DHCS  
16 Settlement, as discussed in further detail below.

17 38. Leading up to the Effective Date, the Estate Professionals worked to  
18 reconcile the approximately 490 filed general unsecured claims, which, in the

19 \_\_\_\_\_  
20 <sup>54</sup> See, e.g., *New Eng. Compounding*, 544 B.R. at 739-40; *Farah*, 141 B.R. at 925;  
*Baldwin-United*, 79 B.R. at 352; *Elmendorf*, 57 B.R. at 585-86.

21 <sup>55</sup> See, e.g., *New Eng. Compounding*, 544 B.R. at 739; *Gencor*, 286 B.R. at 175, 180;  
22 *In re Baldwin-United Corp.*, 79 B.R. 321, 346-47 (Bankr. S.D. Ohio); *Elmendorf*, 57  
B.R. at 586.

23 <sup>56</sup> See, e.g., *Globe Distributions, Inc. v. Adolph Coors Co. (In re Globe Distributions, Inc.)*,  
145 B.R. 728, 736 (Bankr. D.N.H. 1992); *In re Southern Merch. Distributions, Inc.*, 117  
24 B.R. 725, 729 (Bankr. S.D. Fla. 1990); *In re Elmendorf Bd. Corp.*, 57 B.R. 580, 587  
(Bankr. D.N.H. 1986).

25 <sup>57</sup> See *Manoa Finance*, 853 F.2d at 691.

26 <sup>58</sup> *New Eng. Compounding*, 544 B.R. at 737 (emphasis in original).

27 <sup>59</sup> See, e.g., Plan at § 6.8; *Joint Memorandum of Law in Support of Confirmation of*  
28 *the First Amended Joint Combined Disclosure Statement and Chapter 11 Plan of*  
*Liquidation of Borrego Community Health Foundation* [Docket No. 1242] (the "Joint  
Memorandum") at p. 1.

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1 aggregate, asserted \$76,000,000 against the Debtor. As a result of the Estate  
2 Professionals' efforts to date, through objections, stipulations, withdrawals and  
3 agreements, (a) holders of approximately 220 claims (totaling approximately  
4 \$3,000,000 in the aggregate) have received payment in full on account of their  
5 Allowed General Unsecured Claims, and (b) only 59 general unsecured claims  
6 remain to be reconciled.

7 **B. Results that Surpassed the Parties' Reasonable Expectations**

8 39. When this Chapter 11 Case was filed, the Debtor was facing an  
9 imminent suspension of Medi-Cal payments from DHCS, which would have  
10 permanently imperiled the Debtor's operations.<sup>60</sup> As a result, the lives of nearly  
11 100,000 patients—many of whom lived in remote areas and lacked the financial,  
12 social, or logistical ability to obtain medical care from providers other than the  
13 Debtor—would have been immediately and deleteriously impacted.<sup>61</sup> And, in  
14 addition to the catastrophic impact on the Debtor's patients and communities, an  
15 immediate shutdown would have left thousands of creditors—many of whom  
16 continued to support the Debtor even during uncertain times—holding the bag. In  
17 short, at the outset of this Chapter 11 Case, the Estate Professionals were faced with  
18 a real possibility of immediate administrative insolvency and a value-destructive  
19 liquidation of the Debtor's assets that would have imperiled all of the Debtor's  
20 constituencies.

21 40. Dentons assessed the risks and expediently devised a strategy  
22 employing a chapter 11 filing and opposing the threatened suspension as a violation  
23 of the automatic stay, based on its expertise and successful track record in prevailing  
24 in disputes with the Medi-Cal program and challenging DHCS and the California  
25 Department of Justice on behalf of healthcare providers. The strategy was innovative,

26  
27 <sup>60</sup> See, e.g., *First Day Decl.* at ¶ 30.

28 <sup>61</sup> See, e.g., *Declaration of Doctor Jacob Nathan Rubin* [Adv. Docket No. 4] at ¶¶ 10, 19-42.

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1 as most bankruptcy counsel are reluctant to challenge the pervasive regulatory  
2 powers of DHCS, and faced significant risk because DHCS could have (and  
3 eventually did) claimed that its conduct was exempt from the automatic stay pursuant  
4 to section 362(b)(4) of the Bankruptcy Code.

5 41. Dentons expediently drafted a complaint and the Stay Motion and  
6 commenced the Adversary Proceeding to stop DHCS's suspension. Additionally,  
7 Dentons knew that it had to address the health plans moving patients, or else any  
8 success against DHCS would be a pyrrhic victory. Supported by Ankura, PSZJ, FTI,  
9 and the Patient Care Ombudsman, Dentons successfully obtained court orders  
10 stopping DHCS's suspension and compelling it to direct health plans to return the  
11 Debtor's patients to the Debtor's care. These efforts allowed the Debtor, the  
12 Committee, and the Estate Professionals to focus on successfully navigating the  
13 Debtor through this Chapter 11 Case, ensuring continuity of high-quality, culturally  
14 competent care for the Debtor's patients, and maximizing recovery.

15 42. Having successfully stopped DHCS's threatened suspension of the  
16 Debtor's participation in the Medi-Cal program (although still faced with the  
17 Appeal), the Debtor's Board, in consultation with Dentons and Ankura, and with the  
18 support of PSZJ, FTI, and the Committee, focused on long term strategy and  
19 concluded that the best mechanism for ensuring the continued viability of the  
20 Debtor's clinics was to transition them to a new, financially stable operator. The need  
21 for such a transition was clear because, among other things, the Debtor operated "at  
22 a monthly cash deficit of approximately \$1.5 million."<sup>62</sup> Dentons, along with Ankura,  
23 and with the support of PSZJ, FTI, and the Committee, pivoted to a sale process under  
24 section 363 of the Bankruptcy Code, and obtained court approval of sale procedures  
25 aimed at maximizing value for creditors and ensuring the continuity of culturally  
26 competent care for the Debtor's patients. Unlike some similarly-situated official  
27

28 <sup>62</sup> See *First Day Decl.* at ¶ 18.

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1 committees, the Committee, advised by PSZJ and FTI, focused not only on value  
2 maximization for unsecured creditors, but the importance of culturally competent  
3 care and job preservation; indeed, as the Court recognized, the Committee, “had to  
4 sit there and look and make some decisions about how to drive this and drive it a  
5 little bit differently so that we did preserve jobs.”<sup>63</sup>

6 43. The Debtor and the Estate Professionals then conducted a successful  
7 auction of the Debtor’s assets, which resulted in the (i) sale for more than \$50 million  
8 (far above prepetition estimates on the value of the assets), (ii) transfer of the clinics  
9 to a like-minded FQHC operator, (iii) continued employment for all the Debtor’s  
10 employees, and, most importantly, (iv) continuity of high-quality, culturally  
11 competent care for the Debtor’s patients. The Sale closed on July 31, 2023. Despite  
12 the dire financial situation as of the Petition Date, by the close of the Sale, the Debtor  
13 was operating at an operating cash flow breakeven.<sup>64</sup>

14 44. Simultaneously, Dentons and PSZJ, with the support of the Mediator,  
15 negotiated a beneficial DHCS Settlement, pursuant to the terms set forth above.  
16 Moreover, it was the success of the Sale and the DHCS Settlement, through the Estate  
17 Professionals’ extraordinary efforts, that that allowed for confirmation of the Plan,  
18 which will result in payment in full to holders of Allowed General Unsecured  
19 Claims.<sup>65</sup>

20 **C. Efficient Resolution of Complex Legal Issues**

21 45. This Chapter 11 Case could have been mired in complex, multi-faceted  
22 litigation. However, despite the initial litigation, the Estate Professionals’ efforts  
23  
24

25 <sup>63</sup> Transcript of January 17, 2024 Hearing at 28:14-16.

26 <sup>64</sup> Lee Decl. at ¶ 27

27 <sup>65</sup> See, e.g., *In re Chary*, 201 B.R. 783, 788 (Bankr. W.D. Tenn. 1996) (granting a fee  
28 enhancement in “[a] case that was at first believed to be either a no asset case or one  
with very few assets [that] has been transformed into a case that will pay  
approximately forty (40%) percent to creditors.”).

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1 resulted in the Effective Date of the Plan occurring less than eighteen months after  
2 the Petition Date.

3 46. At the outset of this Chapter 11 Case, it appeared that litigation with  
4 DHCS would be all-consuming. DHCS vehemently opposed the Adversary  
5 Proceeding and the Stay Motion,<sup>66</sup> and, in fact, DHCS filed the Appeal that  
6 threatened to potentially reinstate DHCS’s suspension. Likewise, DHCS initially  
7 opposed the Sale.<sup>67</sup> However, the Debtor and the Committee, through their Estate  
8 Professionals, diligently negotiated and mediated with DHCS<sup>68</sup> to obtain the DHCS  
9 Settlement.<sup>69</sup> Without the DHCS Settlement, the Sale process and the Plan process  
10 would have been vigorously litigated and required resolution of complex issues (that  
11 have little precedent to guide the Court) of whether the Medi-Cal agreements were  
12 executory contracts, which—at the least—would have reduced the robust interest the  
13 Debtor received in the Sale process and likely led to a decreased Sale price. Further,  
14 the Debtor and the Committee would have been forced to engage in a substantial  
15 claim objection process with DHCS over a claim that dwarfed the claims of all other  
16 creditors. As discussed herein, such litigation may have forced the Debtor to cease  
17 operations and face recoupment on all monies owed to the Debtor by DHCS, resulting  
18 in administrative insolvency.<sup>70</sup>

19 **D. Risk of Non-Payment**

20 47. If DHCS had succeeded in its multi-front litigation, the Debtor would  
21 have been forced to cease operations, transfer patients, and face recoupment on all  
22 monies owed to the Debtor by DHCS, leaving virtually no funds to pay even  
23

24 <sup>66</sup> See Adv. Docket Nos. 30, 47, 67.

25 <sup>67</sup> See Docket Nos. 187, 189 – 191, 270, 489.

26 <sup>68</sup> Docket Nos. 74, 243

27 <sup>69</sup> Docket No. 510, 544, 923

28 <sup>70</sup> Cf. *New Eng. Compounding*, 544 B.R. at 739 (stating that the trustee “managed to deftly maneuver this case to a successful outcome ‘with little contested litigation but with much finesse and negotiation.’”) (quoting *Gencor*, 286 B.R. at 175).

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1 administrative expenses. Thus, the case would likely have converted to a Chapter 7  
2 liquidation, leaving the Estate Professionals unpaid.

3 48. However, as set forth herein, the Debtor and the Committee, with the  
4 support of the Estate Professionals, were able to achieve extraordinary results,  
5 including the going-concern sale of the Debtor's clinics, the DHCS Settlement, and  
6 100% payment to holders of Allowed General Unsecured Claims.

7 49. While Dentons implemented a unique strategy to file the Chapter 11  
8 Case and utilize the automatic stay to protect the Debtor and its patients, Dentons  
9 necessarily assumed financial risk.<sup>71</sup> It compromised its fees to ensure the survival of  
10 a vital healthcare entity, and the continuity of high-quality, culturally competent care  
11 to nearly 100,000 low income and rural patients across Southern California.<sup>72</sup>

12 50. Similarly, Ankura took substantial risk on collecting its accrued fees  
13 beyond the retainer, and provided a discount on all its hourly fees.<sup>73</sup> Additionally,  
14 Ankura took on an investment banking role in conducting the Sale and only charged  
15 hourly rates for such a service while foregoing the standard transaction fee.<sup>74</sup>  
16 Typically, a debtor would retain an investment banker and such banker would charge  
17 a monthly fee and a transaction fee ranging between 2%-3% for a transaction of this  
18 size.<sup>75</sup> Ankura estimates that the Debtor's estate was saved between \$1 million and  
19 \$1.5 million by foregoing the transaction fee during the Sale process.<sup>76</sup>

20 51. Likewise, both PSZJ and FTI took on substantial risk by accepting their  
21 advisory roles for the Committee and further provided a considerable discount on  
22 their regular hourly fees. Unlike Dentons and Ankura, however, neither PSZJ nor FTI  
23

24 <sup>71</sup> Maizel Decl. at ¶ 5.

25 <sup>72</sup> *Id.*

26 <sup>73</sup> Lee Decl. at ¶ 29.

27 <sup>74</sup> *Id.* at ¶ 26.

28 <sup>75</sup> *Id.*

<sup>76</sup> *Id.*

1 had any retainer, leaving them completely exposed in the event of administrative  
2 insolvency. In addition, FTI's investment banking professionals that advised the  
3 Committee agreed to accept compensation at their reduced hourly rate, as opposed to  
4 their customary compensation that includes a flat monthly fee and a success fee  
5 measured as a percentage of sale proceeds.

6 **E. Skill and Experience of Estate Professionals**

7 52. Each of the Estate Professionals are well-regarded professional firms  
8 that each have considerable experience representing major constituencies in complex  
9 healthcare restructuring bankruptcies, notably including chapter 9 and chapter 11  
10 proceedings of healthcare providers, including those that operate in the complex  
11 California regulatory landscape.<sup>77</sup> Though each of the Estate Professionals' regular  
12 hourly rates take into account such unique skills and experience, all of the Estate  
13 Professionals agreed to substantially reduce such hourly rates in connection with this  
14 Chapter 11 Case.<sup>78</sup>

15 53. The Estate Professionals respectfully submit that they have exhibited  
16 "unique skills" and achieved extraordinary results in guiding the Debtor and its

17  
18 <sup>77</sup> Without limitation, (a) Dentons has represented *In re Verity Health System of*  
19 *California, Inc.*, Case No. 18-20151 (C.D. Cal.); *In re Astria Health System*, Case  
20 No. 19-01189 (E.D. Wash.); *In re Gardens Regional Hospital and Medical Center,*  
21 *Inc.*, Case No. 16-17643 (C.D. Cal.); *In re Air Force Village West, Inc.*, Case No. 19-  
22 11920 (C.D. Cal.); *In re West Contra Costa Healthcare District*, Case No. 16-42917  
23 (N.D. Cal.); and *In re American Hospice Management Holdings, LLC*, Case No. 16-  
24 10670 (D. Del.); (b) Ankura has represented *In re Pipeline Health System, LLC*, Case  
25 No. 22-90291 (S.D. Tex); *In re Gulf Coast Health Care, LLC*, Case No. 21-11336  
26 (D. Del.); *In re Randolph Hospital, Inc. d/b/a Randolph Health*, Case No. 20-10247  
27 (M.D.N.C.); (c) PSZJ has represented the debtors in *In re Watsonville Hospital*  
28 *Corporation*, Case No. 21-51477 (N.D. Cal.); *In re Verity Health System of*  
*California, Inc.*, Case No. 18-20151 (C.D. Cal.); and *In re Victor Valley Community*  
*Hospital*, Case No. 10-39537 (C.D. Cal.); and the committee in *In re Palm Drive*  
*Health Care District*, 14-10510 (N.D. Cal.) and *In re San Diego Hospice and*  
*Palliative Care Corp.*, Case No. 13-01179 (S.D. Cal.); and (d) FTI has represented  
the committee in *In re Madera Community Hospital*, 23-10457 (N.D. Cal.) and *In re*  
*Verity Health System of California, Inc.*, Case No. 18-20151 (C.D. Cal.) and the  
chapter 11 trustee in *Beverly Community Hospital Association*, 23-12359 (C.D. Cal.).

<sup>78</sup> See, e.g., *Nucentrix*, 314 B.R. at 579 (granting a fee enhancement to a law firm,  
whose agreed rates were reduced at the outset of the cases, of the law firm's normal  
hourly rates plus an additional 10%)

1 creditors through this Chapter 11 Case, as set forth above in detail. Based on the  
2 foregoing, the Estate Professionals each request a fee enhancement. As the Plan  
3 provides for payment of the unsecured claims in full, a fee enhancement will not  
4 impact creditor recoveries.

5 **VI.**

6 **CONCLUSION**

7 54. For all of the foregoing reasons, PSZJ, Dentons, Ankura, and FTI  
8 respectfully request that this Court award them a lodestar adjustment to the reduced  
9 hourly rate for their fees as requested in the Firms' Final Fee Applications, such that  
10 each Firm would receive the following additional amounts: (i) Dentons in the amount  
11 of \$564,832.07; (ii) Ankura in the amount of \$527,661.68; (iii) PSZJ in the amount  
12 of \$214,767.50; (iv) and FTI in the amount of \$98,991.00.

13  
14 Dated: March 29, 2024

PACHULSKI STANG ZIEHL & JONES LLP

15 Bv /s/ Steven W. Golden

16 Jeffrey N. Pomerantz  
Steven W. Golden

17 Attorneys for Official Committee of  
18 Unsecured Creditors

19 Dated: March 29, 2024

DENTONS US LLP

20 Bv /s/ Tania M. Moyron

21 Samuel R. Maizel  
Tania M. Moyron

22 Attorneys for Chapter 11 Debtor and  
23 Debtor in Possession  
24  
25  
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28

1 **Declaration of Samuel R. Maizel**

2 I, Samuel R. Maizel, hereby state and declare as follows:

3 1. I am a partner in the law firm of Dentons US LLP (“Dentons”), located  
4 at 601 South Figueroa Street, Suite 2500, Los Angeles, California 90017-5704, and  
5 have been duly admitted to practice law in the Commonwealth of Pennsylvania, the  
6 State of California and the United States District Court for the Southern District of  
7 California.

8 2. Dentons is counsel to Borrego Community Health Foundation, the  
9 debtor and debtor-in-possession in the above-captioned chapter 11 case (the  
10 “Debtor”). [Docket No. 292]. I am one of the attorneys representing Debtor.

11 3. I make this declaration in support of the *Joint Motion for Enhancement*  
12 *of Estate Professional Fees* (the “Motion”).<sup>1</sup> I am familiar with the work performed  
13 on behalf of the Debtor by Dentons, and, if called upon as a witness, I could and  
14 would testify of my own personal knowledge of the facts stated herein.

15 **Dentons Retention Application and Dentons Retention Order**

16 4. On October 12, 2022, the Debtor filed the *Debtor’s Application to*  
17 *Employ Dentons US LLP as Debtor’s Chapter 11 Bankruptcy Counsel* [Docket  
18 No. 86] (the “Dentons Retention Application”), seeking to retain and employ  
19 Dentons as its bankruptcy counsel pursuant to section 327 of the Bankruptcy Code.  
20 The Dentons Retention Application, which the Court granted on December 13, 2022  
21 [Docket No. 292] (the “Dentons Retention Order”), provided that “in light of the  
22 Debtor’s nonprofit status and charitable mission, Dentons has agreed to cap its hourly  
23 fees at \$800 per hour and reduce the hourly rate of professionals billing under \$800  
24 per hour by 10%.”

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27 \_\_\_\_\_  
28 <sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meaning  
ascribed to them in the Motion.

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1           5.     Dentons necessarily assumed financial risk and compromised its fees to  
2 ensure the survival of a vital healthcare entity, and the continuity of high-quality,  
3 culturally competent care to nearly 100,000 low income and rural patients across  
4 Southern California.

5     **Filing the Chapter 11 Case and the Adversary Proceeding**

6           6.     As the Debtor’s counsel, Dentons, with Ankura’s support, determined  
7 to file this Chapter 11 Case in an effort to halt the suspension of its critical Medi-Cal  
8 funding to ensure that the Debtor could continue to provide high-quality, culturally  
9 competent healthcare services to the community. Given DHCS’s assertions that the  
10 police and regulatory exception to the automatic stay under § 362(b)(4) applied to its  
11 proposed suspension, the Debtor commenced the Adversary Proceeding and filed the  
12 Stay Motion.

13           7.     At this point in time, the Debtor, with the support of Dentons and  
14 Ankura, had to seamlessly transition into Chapter 11 and satisfy requirements related  
15 thereto while maintaining high-quality, culturally competent care, but also had to  
16 expend time and resources toward the Adversary Proceeding and Stay Motion to  
17 avoid having to cease operations

18           8.     In the Adversary Proceeding, after extensive, substantive briefing and  
19 oral argument, the Debtor and Dentons, with the support of Ankura, PSZJ, FTI, and  
20 the Patient Care Ombudsman, successfully obtained orders stopping DHCS’s Medi-  
21 Cal suspension and compelling DHCS to direct health plans to return the Debtor’s  
22 patients to the Debtor’s care.

23     **The Fee Enhancement**

24           9.     On March 29, 2024, the Debtor filed the *Final Application of Dentons*  
25 *US LLP for Allowance and Payment of Compensation and Reimbursement of*  
26 *Expenses, Including for the Period August 1, 2023, through February 14, 2024* (the  
27 “Final Application”), filed substantially contemporaneously herewith, seeking final  
28

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1 fees in the amount of \$3,365,813.50<sup>2</sup> for reasonable and necessary legal services  
2 rendered to the Debtor during the period of September 12, 2022, through  
3 February 14, 2024 (the “Final Period”) and \$52,777.92 for reimbursement of actual  
4 and necessary expenses incurred during the Final Period, for a total of \$3,418,591.42.

5 10. Dentons’ fees at its regular hourly rates (the “Regular Rates”) totaled  
6 \$3,962,054.50 for the Final Period. To account for the Voluntary Fee Reduction,  
7 Dentons’ fees at its Regular Rates for the Final Period were reduced by \$31,407.93,  
8 to \$3,390,645.57. However, Dentons’ application of the Discounted Rates and the  
9 Voluntary Fee Reduction resulted in a total fee request of \$3,365,813.50 for the Final  
10 Period. A summary of the breakdown of the Regular Rates versus the Discounted  
11 Rates during the Final Period is attached hereto as **Exhibit 1**.

12 11. In light of the results reached in this case described above and in the  
13 Motion, Dentons seeks approval and allowance of the Fee Enhancement in the  
14 amount of \$564,832.07, in order for Dentons to be compensated at its Regular Rates.

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

17 Executed this 29th day of March, 2024, at Los Angeles, California.

18   
19 \_\_\_\_\_  
20 Samuel R. Maizel

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26 <sup>2</sup> As set forth in the Final Application and Dentons US LLP’s Second Interim Fee  
27 Application for Allowance and Payment of Interim Compensation and  
28 Reimbursement of Expenses for the Period December 1, 2022, Through July 31, 2022  
[Docket No. 910], Dentons voluntarily reduced its fees by \$27,758.40 (the  
“Voluntary Fee Reduction”).

**Exhibit 1**

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Invoices billed 09/12/2022 through 02/14/2024 (date range is set on timecard work date)

Working Attorney	Title	Year	Sum of Billed Hours	Average of Discounted Rate	Sum of Fees Billed Amount	Average of Regular Rate	Sum of Value of Billed time at Preferred	Sum of Difference
Alberts, Sam J.	Partner - FIP	2022	58.90	\$800.00	\$47,120.00	\$990.00	\$58,311.00	\$11,191.00
Alberts, Sam J.	Partner - FIP	2023	124.50	\$800.00	\$99,600.00	\$1,030.00	\$128,235.00	\$28,635.00
Babich, Katharina E.	Partner - PIP	2023	1.00	\$661.50	\$661.50	\$735.00	\$735.00	\$73.50
Chew, Elysa	Mng Associate	2023	1.10	\$660.00	\$726.00	\$625.00	\$687.50	-\$38.50
Cobarrubias, Elizabeth S.	Specialist	2022	1.20	\$333.00	\$399.60	\$350.00	\$420.00	\$20.40
Cobarrubias, Elizabeth S.	Specialist	2023	0.20	\$333.00	\$66.60	\$375.00	\$75.00	\$8.40
Cook, David F.	SrMng Associate	2022	153.20	\$589.50	\$90,311.40	\$620.00	\$94,984.00	\$4,672.60
Cook, David F.	SrMng Associate	2023	19.20	\$772.06	\$14,823.60	\$740.00	\$14,208.00	-\$615.60
Doherty, Jr., Casey W.	Counsel	2022	118.60	\$657.00	\$77,920.20	\$695.00	\$82,427.00	\$4,506.80
Doherty, Jr., Casey W.	Counsel	2023	30.30	\$798.11	\$24,182.80	\$825.00	\$24,997.50	\$814.70
Doherty, Jr., Casey W.	Counsel	2024	0.20	\$657.00	\$131.40	\$985.00	\$197.00	\$65.60
Garms, R. Matthew	Partner - PIP	2022	49.20	\$594.00	\$29,224.80	\$625.00	\$30,750.00	\$1,525.20
Garms, R. Matthew	Partner - PIP	2023	233.00	\$594.00	\$138,402.00	\$660.00	\$153,780.00	\$15,378.00
Harrington, John L.	Partner - FIP	2023	1.30	\$800.00	\$1,040.00	\$1,260.00	\$1,638.00	\$598.00
Harrison, Lynn	Partner - PIP	2023	3.10	\$800.00	\$2,480.00	\$1,235.00	\$3,828.50	\$1,348.50
Heidenreich, Roger K.	Partner - SCP	2022	0.20	\$882.00	\$176.40	\$930.00	\$186.00	\$9.60
Howard, Kathryn M.	Paralegal	2022	60.80	\$324.00	\$19,699.20	\$340.00	\$20,672.00	\$972.80
Howard, Kathryn M.	Paralegal	2023	28.80	\$324.00	\$9,331.20	\$370.00	\$10,656.00	\$1,324.80
Howard, Kathryn M.	Paralegal	2024	1.90	\$324.00	\$615.60	\$435.00	\$826.50	\$210.90
Kerry, Kimberly A.	Partner - PIP	2023	0.10	\$785.00	\$78.50	\$895.00	\$89.50	\$11.00
Labuda, Jr., Thomas A.	Partner - FIP	2023	14.20	\$800.00	\$11,360.00	\$1,350.00	\$19,170.00	\$7,810.00
Luband, Charles A.	Partner - FIP	2022	0.40	\$895.50	\$358.20	\$945.00	\$378.00	\$19.80
Macksoud, Lauren	Partner - PIP	2023	60.20	\$729.00	\$43,885.80	\$895.00	\$53,879.00	\$9,993.20
Macksoud, Lauren	Partner - PIP	2024	3.60	\$729.00	\$2,624.40	\$1,030.00	\$3,708.00	\$1,083.60
Maizel, Samuel R.	Partner - FIP	2022	412.80	\$800.00	\$330,240.00	\$970.00	\$400,416.00	\$70,176.00
Maizel, Samuel R.	Partner - FIP	2023	494.10	\$800.00	\$395,280.00	\$1,050.00	\$518,805.00	\$123,525.00
Maizel, Samuel R.	Partner - FIP	2024	28.60	\$800.00	\$22,880.00	\$1,250.00	\$35,750.00	\$12,870.00
Maryn, Michael R.	Partner - PIP	2023	1.30	\$800.00	\$1,040.00	\$1,135.00	\$1,475.50	\$435.50
McCandless, Sandra R.	Partner - PIP	2023	46.50	\$800.00	\$37,200.00	\$1,000.51	\$46,523.50	\$9,323.50
McCandless, Sandra R.	Partner - PIP	2024	3.30	\$800.00	\$2,640.00	\$1,155.00	\$3,811.50	\$1,171.50
Medina, George L.	Paralegal	2022	138.50	\$342.00	\$47,367.00	\$360.00	\$49,860.00	\$2,493.00
Medina, George L.	Paralegal	2023	148.80	\$342.00	\$50,889.60	\$395.00	\$58,776.00	\$7,886.40
Medina, George L.	Paralegal	2024	3.50	\$342.00	\$1,197.00	\$465.00	\$1,627.50	\$430.50
Miller, Geoffrey M.	Partner - PIP	2022	156.50	\$729.00	\$114,088.50	\$770.00	\$120,505.00	\$6,416.50
Miller, Geoffrey M.	Partner - PIP	2023	217.30	\$768.60	\$167,016.90	\$865.00	\$187,964.50	\$20,947.60
Miller, Geoffrey M.	Partner - PIP	2024	2.50	\$729.00	\$1,822.50	\$990.00	\$2,475.00	\$652.50
Moe, II, John A.	Partner - SCP	2022	0.50	\$720.00	\$360.00	\$760.00	\$380.00	\$20.00
Moe, II, John A.	Partner - SCP	2023	11.60	\$720.00	\$8,352.00	\$840.00	\$9,744.00	\$1,392.00
Montgomery, Claude D.	Senior Counsel	2023	9.20	\$800.00	\$7,360.00	\$1,295.00	\$11,914.00	\$4,554.00
Mouawad, Samir A.	Mng Associate	2023	10.40	\$667.21	\$6,939.00	\$645.00	\$6,708.00	-\$231.00
Moyron, Tania M.	Partner - FIP	2022	251.50	\$800.00	\$201,200.00	\$790.00	\$198,685.00	-\$2,515.00
Moyron, Tania M.	Partner - FIP	2023	611.60	\$800.00	\$489,280.00	\$895.00	\$547,382.00	\$58,102.00
Moyron, Tania M.	Partner - FIP	2024	29.10	\$800.00	\$23,280.00	\$1,095.00	\$31,864.50	\$8,584.50
Ray, Debra J.	Administrative	2023	2.80	\$307.93	\$862.20	\$300.00	\$840.00	-\$22.20
Richards, Robert E.	Partner - PIP	2022	0.30	\$800.00	\$240.00	\$940.00	\$282.00	\$42.00
Richards, Robert E.	Partner - PIP	2023	5.80	\$800.00	\$4,640.00	\$970.00	\$5,626.00	\$986.00
Richards, Robert E.	Partner - PIP	2024	1.30	\$800.00	\$1,040.00	\$1,079.23	\$1,403.00	\$363.00
Roberts, Gary M.	Partner - FIP	2023	1.20	\$800.00	\$960.00	\$1,235.00	\$1,482.00	\$522.00
Ruben, Samantha	Mng Associate	2022	28.50	\$499.50	\$14,235.75	\$525.00	\$14,962.50	\$726.75
Ruben, Samantha	Mng Associate	2023	47.00	\$612.86	\$28,804.50	\$625.00	\$29,375.00	\$570.50
Ruben, Samantha	Mng Associate	2024	0.90	\$499.50	\$449.55	\$835.00	\$751.50	\$301.95
Schrag, Sarah M.	SrMng Associate	2022	60.50	\$616.50	\$37,298.25	\$650.00	\$39,325.00	\$2,026.75
Schrag, Sarah M.	SrMng Associate	2023	32.10	\$670.24	\$21,514.55	\$800.00	\$25,680.00	\$4,165.45
Shah, Pooja	Mng Associate	2022	2.10	\$544.50	\$1,143.45	\$575.00	\$1,207.50	\$64.05
Thatcher, Madeline	Associate	2023	3.30	\$409.50	\$1,351.35	\$505.00	\$1,666.50	\$315.15
Welch, Margaret M.	Paralegal	2023	3.30	\$342.00	\$1,128.60	\$390.00	\$1,287.00	\$158.40
Wicks, Rebecca M.	SrMng Associate	2022	174.00	\$630.00	\$109,620.00	\$665.00	\$115,710.00	\$6,090.00
Wicks, Rebecca M.	SrMng Associate	2023	943.30	\$630.00	\$594,279.00	\$745.00	\$702,758.50	\$108,479.50
Wicks, Rebecca M.	SrMng Associate	2024	83.10	\$630.00	\$52,353.00	\$965.00	\$80,191.50	\$27,838.50
<b>Sub Total</b>			<b>4,932.30</b>	<b>\$688.03</b>	<b>\$3,393,571.90</b>	<b>\$803.29</b>	<b>\$3,962,053.50</b>	<b>\$568,481.60</b>
Less Reductions					<b>-\$27,758.40</b>		<b>-\$31,407.93</b>	<b>-\$4,649.53</b>
<b>Total</b>					<b>\$3,365,813.50</b>		<b>\$3,390,645.57</b>	<b>\$564,832.07</b>

**Declaration of Isaac Lee**

I, Isaac Lee, hereby state and declare as follows:

1. I am a Managing Director at Ankura Consulting Group, LLC (“Ankura”), with more than 20 years of operational and financial restructuring experience. I also am Chief Restructuring Officer of Borrego Community Health Foundation, the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”).

2. I make this declaration in support of the *Joint Motion for Enhancement of Estate Professional Fees* (the “Motion”).<sup>1</sup> I am familiar with the work performed on behalf of the Debtor by Ankura, and, if called upon as a witness, I could and would testify of my own personal knowledge of the facts stated herein.

**Circumstances Leading to the Filing of the Chapter 11 Case**

3. The Debtor was a nonprofit FQHC that provided health care services to low income and rural patients in San Diego and Riverside Counties through a system of eighteen clinics, two pharmacies, and six mobile units. The Debtor’s services included comprehensive primary care, urgent care, behavioral health, dental services, specialty care, transgender health, women’s health, prenatal care, veteran’s health, chiropractic services, tele-health, and pharmacy.

4. The Debtor had significant and long-standing prepetition issues with the DHCS. On August 26, 2022, the Debtor, who was reliant on Medi-Cal funding to provide medical services, received a letter from DHCS stating its intention to suspend all Medi-Cal funding as of September 29, 2022. Had DHCS suspended the Debtor from participating in the Medi-Cal Program, the Debtor would have had to cease operations and cease services to the Debtor’s patients and begin liquidation proceedings. Moreover, there was insufficient time to safely transition the more than 90,000 patients treated annually by the Debtor to alternative care, and, in any event,

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

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1 there were few, if any, alternative care providers within a reasonable distance for  
2 many of the Debtor’s patients.

3 5. In addition, health plans started moving patients to alternative care  
4 providers to ensure continuity of care in case the shutdown of the Debtor occurred.  
5 Accordingly, the Debtor, with the support of their advisors at Dentons and Ankura,  
6 determined to file this Chapter 11 Case in an effort to halt the suspension of its critical  
7 Medi-Cal funding to ensure that the Debtor could continue to provide high-quality,  
8 culturally competent healthcare services to the community.

9 **Filing of the Chapter 11 Case and the Adversary Proceeding**

10 6. In light of the foregoing, on September 12, 2022 (the “Petition Date”),  
11 the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy  
12 Code. Dentons, with Ankura’s support, filed numerous “first day motions.” [Docket  
13 Nos. 1, 2, 3, 4, 5, 6, 11]

14 7. Given DHCS’s assertions that the police and regulatory exception to the  
15 automatic stay under § 362(b)(4) applied to its proposed suspension, on  
16 September 26, 2022, the Debtor commenced the Adversary Proceeding and filed the  
17 Stay Motion.

18 8. At this point in time, the Debtor, with the support of Dentons and  
19 Ankura, had to seamlessly transition into Chapter 11 and satisfy requirements related  
20 thereto while maintaining high-quality, culturally competent care, but also had to  
21 expend time and resources toward the Adversary Proceeding and Stay Motion to  
22 avoid having to cease operations.

23 9. In the Adversary Proceeding, after extensive substantive briefing and  
24 oral argument, the Debtor and Dentons, with the support of Ankura, PSZJ, FTI, and  
25 the Patient Care Ombudsman, successfully obtained orders stopping DHCS’s Medi-  
26 Cal suspension and compelling DHCS to direct health plans to return the Debtor’s  
27 patients to the Debtor’s care. DHCS subsequently appealed such orders [Docket  
28 No. 75] (the “Appeal”).

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1 **Sale Process and Post-Close Efforts**

2 10. After successfully enjoining DHCS’s suspension, the Debtor and the  
3 Estate Professionals pivoted to a sale process under section 363 of the Bankruptcy  
4 Code to sell substantially all of the Debtor’s assets (the “Sale”). Dentons, with the  
5 support of the Committee and input from PSZJ and FTI, filed the Bidding Procedures  
6 Motion.

7 11. As set forth in the DHCS Bidding Procedures Objection, DHCS opposed  
8 the Bidding Procedures Motion and the Sale contemplated thereunder arguing, among  
9 other things, that (i) the Debtor’s Medi-Cal Provider Agreements could not be “sold  
10 as property of its estate, free and clear of any debt,” and (ii) any purchaser had to  
11 assume successor liability thereunder. Had DHCS been successful in prosecuting the  
12 DHCS Bidding Procedures Objection—either with respect to the entry of the Bidding  
13 Procedures or the proposed Sale itself—the prospects of a robust, value-maximizing  
14 sale would have diminished considerably; because of the Debtor’s reliance on the  
15 Medi-Cal program as an FQHC, the DHCS Bidding Procedures Objection was  
16 tantamount to an objection to the “free and clear” sale of the Debtor’s means of  
17 generating revenue. Noting that the heart of the DHCS Bidding Procedures Objection  
18 was “premature,” the Court approved the Bidding Procedures Motion [Docket  
19 No. 321] (the “Bidding Procedures Order”).

20 12. Although the Bidding Procedures Order allowed the Debtor and the  
21 Committee to work toward the consummation of a Sale, the heart of DHCS’s  
22 objections remained extant and, if not resolved prior to a hearing thereon, would have  
23 mired this Chapter 11 Case in litigation over the Sale and, in all likelihood, severely  
24 diminished the prospects of the successful result that eventually did ensue. Through  
25 the Debtor’s and the Committee’s efforts—including through the Mediation—the  
26 Sale process was not litigious, allowing for prospective purchasers to participate with  
27 a higher degree of confidence that the Sale would not be derailed by a fulsome  
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1 objection from DHCS, which, in turn, increased the competitive tension among  
2 bidders and thus the ultimate consideration realized by the Sale.

3 13. In connection with the Sale, and in accordance with the Bidding  
4 Procedures Order, Ankura created a data room to be made available to potential  
5 purchasers, prepared marketing materials, and conducted due diligence. The Debtor  
6 did not retain a separate investment banker to conduct the Sale, as is customary in  
7 chapter 11 cases. Rather, Ankura (with the support of FTI investment bankers)  
8 stepped into that role.

9 14. Pursuant to the Bidding Procedures Order, on February 6, 2023, Dentons  
10 and Ankura, with the support and active participation of PSZJ and FTI, conducted a  
11 robust auction with multiple interested bidders. In consultation among the Board,  
12 Dentons, and Ankura, the Debtor, after consultation with the Committee, selected  
13 DAP Health as the winning bidder [Docket No. 465]. Dentons and Ankura negotiated  
14 the APA with DAP Health, with input from PSZJ and FTI, resulting in a purchase  
15 price of over \$50 million, guarantees that all facilities would remain open, and job  
16 offers to all of the Debtor's employees. *Id.* Additionally, DAP Health agreed to fund  
17 up to \$10 million of operating cash losses between the time of the entry of a sale order  
18 and the close of the Sale. *Id.* at Ex. 1.

19 15. On March 13, 2023, the Court entered the Sale Order. The Sale closed  
20 on July 31, 2023.

21 16. Given the structure of the APA and the regulatory approvals required  
22 therein, the Debtor and the Estate Professionals have continued to expend time and  
23 effort with respect to the Sale since it closed. Among other things, Dentons and the  
24 Estate Professionals have worked with DAP Health and other third parties to address  
25 matters related to the CHOW process and other regulatory issues.

26 **The Mediation and DHCS Settlement**

27 17. Simultaneously with the Sale, the Debtor, the Committee, and DHCS  
28 agreed to the Mediation of all the disputes among the parties before the Mediator. The

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1 Debtor and the Committee, through the Estate Professionals, worked diligently with  
2 DHCS and the Mediator to arrive at the DHCS Settlement that addressed the issues  
3 raised by DHCS that, if unresolved, would have greatly reduced the prospects of a  
4 successful Chapter 11 Case. On February 27, 2023, Dentons filed the *Motion for*  
5 *Settlement and to Approve Compromise Among the Debtor, the Official Committee of*  
6 *Unsecured Creditors and California Department of Healthcare Services Pursuant to*  
7 *Federal Rule of Bankruptcy Procedure 9019* [Docket No. 510], which sought an  
8 approval of the Term Sheet and was approved by this Court [Docket No. 544].

9 18. Perhaps most critically, the DHCS Settlement among the Debtor, the  
10 Committee, and DHCS set forth a paradigm for the agreed going concern Sale,  
11 resolving the complex issues raised in the DHCS Bidding Procedures Objection, and  
12 paved a consensual path towards confirmation of a plan. In addition, the DHCS  
13 Settlement provided, among other things, that DHCS shall have an Allowed General  
14 Unsecured Claim of approximately \$112 million (the “DHCS Allowed Claim”) that  
15 would be largely subordinated—other than payments of certain specified amounts—  
16 to the payment in full of all other Allowed General Unsecured Claims. Pursuant to a  
17 confirmed plan, DHCS would be allowed to apply the \$20.6 million that was being  
18 held by DHCS, certain third-party litigation recoveries, and 40% of the net cash  
19 proceeds of the Sale toward the DHCS Allowed Claim. The DHCS Settlement also  
20 provided for the vacatur of the Court’s orders in the Adversary Proceeding, dismissal  
21 of the Appeal, and resolution of all other major disputes among the parties. The Term  
22 Sheet and 9019 Order contemplated that the Debtor, the Committee, and DHCS,  
23 through the Estate Professionals, would prepare and execute a formal settlement  
24 agreement, which was filed on September 26, 2023.

25 **The Plan**

26 19. The Estate Professionals focused their efforts on confirming a chapter 11  
27 plan of liquidation after the success of the Sale and the DHCS Settlement. On  
28 September 25, 2023, Dentons, with approval and input of PSZJ, filed the Motion to

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1 Combine, which sought (i) authority to file a joint disclosure statement and liquidating  
2 plan and (ii) an expedited schedule for final approval of the Disclosures and  
3 confirmation of the Plan. The Court approved the Motion to Combine, and Dentons  
4 and PSZJ, with the support of Ankura and FTI, prepared and filed the *Joint Combined*  
5 *Disclosure Statement and Chapter 11 Plan of Liquidation of Borrego Community*  
6 *Health Foundation* [Docket No. 1141], which was subsequently amended by the *First*  
7 *Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation*  
8 *of Borrego Community Health Foundation* [Docket No. 1168] (the “Plan”). The Plan  
9 provided, among other things, for payment in full to holders of Allowed General  
10 Unsecured Claims (which was only possible through the subordination provisions of  
11 the DHCS Settlement) and payment of the DHCS Allowed Claim in accordance with  
12 the DHCS Settlement.

13         20. On December 7, 2023, the Court entered its *Order on Joint Motion of the*  
14 *Debtor and the Official Committee of Unsecured Creditors for Entry of an Order*  
15 *(I) Granting Interim Approval of the Adequacy of Disclosures in the Combined Joint*  
16 *Disclosure Statement and Plan; (II) Approving Solicitation Packages and*  
17 *Procedures; (III) Approving the Forms of Ballots; (IV) Setting Related Deadlines and*  
18 *Granting Related Relief* [Docket No. 1179], approving the Motion to Combine. After  
19 solicitation, over 90% of holders of General Unsecured Claims voted in favor of the  
20 Plan, and DHCS, in accordance with the DHCS Settlement, voted in favor of the Plan  
21 [Docket No. 1243]. On January 25, 2024, the Court entered the *Order on First*  
22 *Amended Joint Combined Disclosure Statement and Chapter 11 Plan of Liquidation*  
23 *of Borrego Community Health Foundation* [Docket No. 1273] (the “Confirmation  
24 Order”).

25         21. Both prior to confirmation and the Effective Date, the Estate  
26 Professionals worked to reconcile the approximately 490 filed general unsecured  
27 claims, which, in the aggregate, asserted \$76,000,000 against the Debtor. On  
28 February 14, 2024, the Effective Date of the Plan occurred [Docket No. 1310].

1 Through objections, stipulations, withdrawals and agreements, (a) holders of  
2 approximately 220 claims (totaling approximately \$3,000,000 in the aggregate)  
3 received payment in full on account of their Allowed General Unsecured Claims as  
4 soon as practicable after the Effective Date, and (b) only 59 general unsecured claims  
5 remain to be reconciled.

6 **Ankura’s Retention and Fee Enhancement Request**

7 22. On October 12, 2022, the Debtor filed the *Debtor’s Application to*  
8 *Employ Ankura Consulting Group, LLC to (I) Provide the Debtor a Chief*  
9 *Restructuring Officer and Certain Other Personnel; and (II) Designating Isaac Lee*  
10 *as Chief Restructuring Officer for the Debtor* [Docket No. 87] (the “Ankura Retention  
11 Application”), seeking authorization for the Debtor to employ Ankura to provide the  
12 Debtor with a Chief Restructuring Officer and other personnel pursuant to sections  
13 105(a) and 363(b) of the Bankruptcy Code. Pursuant to the Ankura Retention  
14 Application, which the Court granted on November 16, 2022 [Docket No. 176] (the  
15 “Ankura Retention Order”), Ankura agreed to reduce its fees by 10%.

16 23. In accordance with the Ankura Retention Order, Ankura has filed  
17 monthly Compensation and Staffing Reports (the “Ankura Staffing Reports”) for the  
18 period of September 12, 2022, through February 14, 2024 (the “Final Period”)  
19 [Docket Nos. 309, 310, 329, 547, 596, 668, 728, 752, 781, 861, 862, 1010, 1169,  
20 1192, 1201, 1313, 1325, 1344]. Each of the Ankura Staffing Reports contains detailed  
21 descriptions of the services provided by Ankura on behalf of the Debtor. The Ankura  
22 Retention Order does not require Ankura to file fee applications.

23 24. As set forth in the Ankura Staffing Reports, Ankura provided numerous  
24 services, including: (i) supporting the first day filings; (ii) preparing court required  
25 financial reporting, including the statement of financial affairs, the schedules, and  
26 monthly operating reports; (iii) implementing turnaround initiatives, such as a  
27 provider incentive program, clinic staffing, and management; (iv) preparing liquidity  
28 forecasts and tracking schedules; (v) preparing key employee incentive and retention

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1 programs; (vi) supporting other filings in this Chapter 11 Case, including motions  
2 relating to the Sale, assumption and rejection of contracts, and the Plan; (vii) liaising  
3 with BRG the state-mandated monitor; (viii) assisting in the DHCS Settlement by  
4 preparing support materials, such as the creditor recovery analyses; (ix) preparing  
5 claims reconciliation and analyses.

6 25. Ankura also assisted Debtor's management with (i) liquidity  
7 enhancements and providing an adequate liquidity runway to execute the Sale and  
8 implement the Plan; (ii) managing vendor claims and relationships; (iii) preparing  
9 financial statements, budgets, and forecasts; (iv) regulatory reporting; (v) managing  
10 billing and collections; (vi) the close of the Sale transaction and the operational  
11 transition to DAP Health; (vii) litigation matters and settlement; and (viii) the  
12 transition of operations to the liquidating trust.

13 26. In connection with the Sale, and in accordance with the Bidding  
14 Procedures Order, Ankura created a data room to be made available to potential  
15 purchasers, prepared marketing materials, and conducted due diligence. The Debtor  
16 did not retain a separate investment banker to conduct the Sale, as is customary in  
17 chapter 11 cases. Rather, Ankura (with the support of FTI investment bankers)  
18 stepped into that role. Typically, in a transaction of this size, an investment banker  
19 would be retained and would charge a monthly fee and a transaction fee ranging  
20 between 2%-3%. I estimate that Ankura saved the Debtor's estate between \$1 million  
21 and \$1.5 million by foregoing the transaction fee.

22 27. Based on Ankura's efforts, by the close of the Sale, the Debtor was at an  
23 operating cash flow breakeven.

24 28. Both prior to confirmation and the Effective Date, the Estate  
25 Professionals worked to reconcile the approximately 490 filed general unsecured  
26 claims, which, in the aggregate, asserted \$76,000,000 against the Debtor. Through  
27 objections, stipulations, withdrawals and agreements, (a) holders of approximately  
28 220 claims (totaling approximately \$3,000,000 in the aggregate) received payment in

1 full on account of their Allowed General Unsecured Claims as soon as practicable  
2 after the Effective Date, and (b) only 59 general unsecured claims remain to be  
3 reconciled.

4 29. It is my belief that Ankura took substantial risk on collecting its accrued  
5 fees beyond the retainer, and provided a discount on all its hourly fees.

6 30. As set forth in the Monthly Reports, Ankura’s fees at its regular hourly  
7 rates (the “Regular Rates”) totaled \$5,252,914.00 for the Final Period. However,  
8 Ankura’s application of the Discounted Rates resulted in a total fee request of  
9 \$4,725,252.23 for the Final Period. A summary of the breakdown of the Regular Rates  
10 versus the Discounted Rates during the Final Period is attached hereto as Exhibit 1.

11 31. In light of the extraordinary results reached in this case, by way of the  
12 Motion, Ankura seeks approval and allowance of a fee enhancement (in the amount  
13 of \$527,661.78, in order for Ankura to be compensated at its Regular Rates.

14 32. It is my belief that payment of the Fee Enhancement will not yield a  
15 lesser recovery to holders of Allowed General Unsecured Claims and DHCS than  
16 originally forecasted in the first quarter of 2023.

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

19 Executed this 29th day of March 2024, at Los Angeles, California.

20   
21 \_\_\_\_\_  
22 Isaac Lee

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**Exhibit 1**

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**Borrego Community Health Foundation**  
**Total Ankura Fees and Discounts Applied**

<b>Staffing Report Filed</b>	<b>Reduced Hourly Fees</b>	<b>Regular Hourly Fees</b>	<b>Difference (Discounted Fees)</b>	<b>Expenses</b>
September 2022 [Dkt. No. 309]	\$ 244,474.65	\$ 271,638.50	\$ 27,163.85	\$ 915.95
October 2022 [Dkt. No. 310]	331,162.65	367,958.50	36,795.85	2,960.13
November 2022 [Dkt. No. 329]	383,111.55	425,679.50	42,567.95	5,793.40
December 2022 [Dkt. No. 547]	295,716.15	328,573.50	32,857.35	5,609.06
January 2023 [Dkt. No. 596]	475,241.85	528,046.50	52,804.65	3,162.28
February 2023 [Dkt. No. 668]	424,188.45	471,320.50	47,132.05	7,242.70
March 2023 [Dkt. No. 728]	303,331.05	337,034.50	33,703.45	8,215.13
April 2023 [Dkt. No. 752]	313,170.75	347,967.50	34,796.75	2,237.10
May 2023 [Dkt. No. 781]	314,182.35	349,091.50	34,909.15	1,981.39
June 2023 [Dkt. No. 861]	278,209.80	309,122.00	30,912.20	-
July 2023 [Dkt. No. 862]	305,605.13	341,740.00	36,134.88	1,696.42
August 2023 [Dkt. No. 1010]	238,125.15	265,038.50	26,913.35	5,891.60
September 2023 [Dkt. No. 1169]	196,794.00	218,660.00	21,866.00	-
October 2023 [Dkt. No. 1192]	140,012.10	155,569.00	15,556.90	-
November 2023 [Dkt. No. 1201]	147,300.75	163,667.50	16,366.75	5,652.64
December 2023 [Dkt. No. 1313]	117,585.00	130,650.00	13,065.00	-
January 2024 [Dkt. No. 1325]	133,895.25	148,772.50	14,877.25	232.54
February 2024 [Dkt. No. 1344]	83,145.60	92,384.00	9,238.40	536.15
<b>Total</b>	<b>\$ 4,725,252.23</b>	<b>\$ 5,252,914.00</b>	<b>\$ 527,661.78</b>	<b>\$ 52,126.49</b>

**Declaration of Jeffrey N. Pomerantz**

I, Jeffrey N. Pomerantz, declare and state as follows:

I am a partner with the law firm Pachulski Stang Ziehl & Jones LLP (“PSZJ” or the “Firm”) and am admitted to appear before this court.

I make this declaration in support of the *Joint Motion for Enhancement of Estate Professional Fees* (the “Motion”),<sup>1</sup> filed concurrently herewith. I am familiar with the work performed on behalf of the Committee by the Firm, and, if called upon as a witness, I could and would testify of my own personal knowledge of the facts stated herein.

On October 24, 2022, the Committee filed an *Application for an Order Authorizing and Approving the Employment of Pachulski Stang Ziehl & Jones LLP as Counsel to the Official Committee of Unsecured Creditors, Effective as of September 30, 2022* [Docket No. 113] (the “Employment Application”). On December 12, 2022, the Court approved the Employment Application, effective as of September 30, 2022 [Docket No. 287] (the “Retention Order”). The Retention Order authorizes PSZJ to be compensated at the blended rate of \$900 per hour for all attorneys working on the case (the “Discounted Rate”)<sup>2</sup> and to be reimbursed for actual and necessary out-of-pocket expenses. As a Southern California-founded and based law firm, PSZJ agreed to represent the Committee at the Discounted Rate because of the importance of the Debtor’s Chapter 11 Case not only to unsecured creditors, but the community at large; PSZJ believed in the necessity of accessible, culturally-competent healthcare to underserved communities and believed that its experience as a national restructuring law firm with considerable experience in the

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

<sup>2</sup> In light of the non-profit status of the Debtor and the Debtor’s limited liquidity at the outset of the chapter 11 case, PSZJ was engaged by the Committee (with such engagements approved by this Court pursuant to section 330 of the Bankruptcy Code) at a substantial reduction to its regular hourly rates.

1 healthcare industry would benefit the Committee and the Chapter 11 Case as a whole.  
2 PSZJ did not request or receive a retainer in connection with its engagement by the  
3 Committee and, accordingly, bore the risk of non-payment of all of its fees and  
4 expenses incurred in such representation.

5 On March 29, 2024, PSZJ filed its *Third and Final Application for Allowance*  
6 *and Payment of Compensation and Reimbursement of Expenses as Counsel to the*  
7 *Official Committee of Unsecured Creditors for the Period September 30, 2022*  
8 *through February 14, 2024* (the “Final Application”) [Docket No. 1349], seeking  
9 final fees in the amount of \$903,082.00 for reasonable and necessary legal services  
10 rendered to the Committee during the period September 30, 2022 through February  
11 14, 2024 (the “Final Period”) and \$8,732.25 for reimbursement of actual and  
12 necessary expenses incurred during the Final Period, for a total of \$911,814.25.

13 PSZJ’s fees at its regular hourly rates (the “Regular Rates”)<sup>3</sup> totaled  
14 \$1,117,849.50, however, PSZJ’s application of the Discounted Rate resulted in a total  
15 fee request of \$903,082.00 for the Final Period. A summary of the breakdown of the  
16 Regular Rates versus the Discounted Rate during the Final Period is attached hereto  
17 as Appendix 1.

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26 <sup>3</sup> As noted in the summary attached hereto as Appendix 1, the hourly rate of one  
27 paraprofessional (Beth Dassa) was inadvertently billed at her 2022 hourly rate of \$495  
28 from January through July 2023, as opposed to her 2023 hourly rate of \$545, resulting  
in a \$3,800 difference between her billed rate and Regular Rate. By the Motion, PSZJ  
respectfully requests this amount be included in the Fee Enhancement as well.

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1 In light of the extraordinary results reached in this case, by way of the Motion,  
2 PSZJ seeks approval and allowance of a fee augmentation (the “Fee Enhancement”)  
3 in the amount of \$214,767.50, in order for PSZJ to be compensated at its Regular  
4 Rates.

5 I declare under penalty of perjury that the foregoing is true and correct.  
6 Executed this 29th day of March 2024, at Los Angeles, California.

7 /s/ Jeffrey N. Pomerantz  
8 Jeffrey N. Pomerantz

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**Appendix 1**

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Timekeeper	Position	Year	Hours Billed	Discounted Rate	Fees at Discounted Rate	Regular Rate	Fees at Regular Rate	Difference
Jeffrey N. Pomerantz	Partner	2022	41.60		\$37,440.00	\$1,445.00	\$60,112.00	
		2023	71.90	\$900.00	\$64,710.00	\$1,595.00	\$114,680.50	
		2024	13.80		\$12,420.00	\$1,725.00	\$23,805.00	\$84,027.50
Debra I. Grassgreen	Partner	2022	5.70	\$900.00	\$5,130.00	\$1,425.00	\$8,122.50	\$2,992.50
Henry C. Kevane	Partner	2023	53.60	\$900.00	\$48,240.00	\$1,550.00	\$83,080.00	\$34,840.00
Teddy M. Kapur	Partner	2022	17.10	\$900.00	\$15,390.00	\$975.00	\$16,672.50	\$1,282.50
Jason S. Pomerantz	Partner	2023	227.00		\$204,300.00	\$1,150.00	\$261,050.00	
		2024	86.30	\$900.00	\$77,670.00	\$1,250.00	\$107,875.00	\$86,955.00
Joshua M. Fried	Partner	2023	36.20	\$900.00	\$32,580.00	\$1,275.00	\$46,155.00	\$13,575.00
Steven W. Golden	Associate	2022	111.00		\$99,900.00	\$775.00	\$86,025.00	
		2023	152.50	\$900.00	\$137,250.00	\$895.00	\$136,487.50	
	2023*	33.40		\$15,030.00	\$447.50	\$14,946.50		
	2024	6.40		\$5,760.00	\$995.00	\$6,368.00	(\$14,113.00)	
Victoria A. Newmark	Counsel	2023	4.80	\$900.00	\$4,320.00	\$1,175.00	\$5,640.00	\$1,320.00
Gina F. Brandt	Counsel	2022	0.90	\$900.00	\$810.00	\$995.00	\$895.50	\$85.50
Gillian N. Brown	Counsel	2022	0.10	\$900.00	\$90.00	\$925.00	\$92.50	\$2.50
Beth D. Dassa	Paralegal	2022	73.80	\$495.00	\$36,531.00	\$495.00	\$36,531.00	
		2023†	57.50	\$495.00	\$28,462.50	\$545.00	\$31,337.50	
		2023	115.20	\$545.00	\$62,784.00	\$545.00	\$62,784.00	
		2024	18.50	\$545.00	\$10,082.50	\$595.00	\$11,007.50	\$3,800.00
Yves P. Derac	Paralegal	2023	0.10	\$545.00	\$54.50	\$545.00	\$54.50	\$0.00
Leslie A. Forrester	Law Librarian	2022	6.70	\$495.00	\$3,316.50	\$495.00	\$3,316.50	
		2023	0.50	\$595.00	\$297.50	\$595.00	\$297.50	\$0.00
Chuck M. Curts	Other	2023	1.30	\$395.00	\$513.50	\$395.00	\$513.50	\$0.00
					\$903,082.00		\$1,117,849.50	\$214,767.50

\* Indicates non-working travel billed at 50%

† Indicates paraprofessional time inadvertently billed at 2022 rates from January through July 2023.

**Declaration of Cynthia Nelson**

I, Cynthia Nelson, declare and state as follows:

I am a Senior Managing Director with FTI Consulting, Inc. (together with its wholly owned subsidiaries, “FTI”), an international consulting firm, and I am admitted to appear before this court.

I make this declaration in support of the *Joint Motion for Enhancement of Estate Professional Fees* (the “Motion”)<sup>1</sup>, filed concurrently herewith. I am familiar with the work performed on behalf of the Committee by the Firm, and, if called upon as a witness, I could and would testify of my own personal knowledge of the facts stated herein.

The retention of FTI, as financial advisor for the Committee, was approved effective as of October 7, 2022 by this Court’s Order on Application Authorizing the Retention and Employment of FTI Consulting, Inc., as Financial Advisor to the Official Committee of Unsecured Creditors Effective as of October 7, 2022, signed on or about November 29, 2022) [Docket No. 242] (the “Retention Order”). The Retention Order authorizes FTI to be compensated at the blended rate of \$750 per hour for all professionals working on the case (the “Discounted Rate”)<sup>2</sup> and to be reimbursed for actual and necessary out-of-pocket expenses.

On March 29, 2024, FTI filed its *Third Interim and Final Application of FTI Consulting, Inc. for Approval of Compensation and Reimbursement of Expenses; Declaration of Cynthia Nelson in Support Thereof* (the “Final Application”) [Docket No. 1350], seeking final fees in the amount of \$1,101,100.00 for reasonable and necessary financial services rendered to the Committee during the period October 7,

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<sup>1</sup> Capitalized terms not otherwise defined herein shall have the same meaning ascribed to them in the Motion.

<sup>2</sup> In light of the non-profit status of the Debtor and the Debtor’s limited liquidity at the outset of the chapter 11 case, FTI was engaged by the Committee (with such engagements approved by this Court pursuant to section 330 of the Bankruptcy Code) at a substantial reduction to its regular hourly rates.

1 2022 through February 14, 2024 (the “Final Fee Period”) and additional fees expected  
2 to be incurred after the Final Fee Period in connection with the preparation of the  
3 Final Application, and \$1,848.34 for reimbursement of actual and necessary expenses  
4 incurred during the Final Period, for a total of \$1,102,948.34.

5 FTI’s fees at its regular hourly rates (the “Regular Rates”) totaled  
6 \$1,175,091.00, however, FTI’s application of the Discounted Rate resulted in a total  
7 fee request of \$1,076,100.00 for the Final Period. A summary of the breakdown of  
8 the Regular Rates versus the Discounted Rate during the Final Period is attached  
9 hereto as Appendix 1.

10 In light of the extraordinary results reached in this case, by way of the Motion,  
11 FTI seeks approval and allowance of a fee augmentation (the “Fee Enhancement”) in  
12 the amount of \$98,991.00, in order for FTI to be compensated at its Regular Rates.

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

14 Executed this 29th day of March 2024, at Los Angeles, California.

15  
16 /s/ Cynthia Nelson  
17 Cynthia Nelson

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**Appendix 1**

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FTI CONSULTING, INC.

BORREGO COMMUNITY HEALTH FOUNDATION, ET AL. - CASE NO. 22-02384-11

Fee Summary

10/7/2022 - 2/14/2024

Professional	Position	Hours Billed	Discounted Rate	Fees at Discounted Rate	Regular Rate (through 9/30/23)	Regular Rate (from 10/1/23)	Fees at Regular Rate	Variance
Adeyanju, Michael	Senior Director	59.0	\$ 750.00	\$ 44,250.00	\$ 750.00	n/a	\$ 44,250.00	\$ -
Bilbao, Marc	Senior Managing Director	47.9	750.00	35,925.00	1,250.00	n/a	59,875.00	23,950.00
Cho, Clare	Consultant	283.7	750.00	212,775.00	435.00	\$ 500.00	124,105.00	(88,670.00)
Delaney, Meaghan	Director	22.0	750.00	16,500.00	650.00	n/a	14,300.00	(2,200.00)
Ganti, Narendra	Managing Director	141.9	750.00	106,425.00	985.00	1,035.00	141,041.50	34,616.50
Gray, Michael	Senior Consultant	418.1	750.00	313,575.00	695.00	790.00	300,640.00	(12,935.00)
Hardey, Samantha	Consultant	56.9	750.00	42,675.00	400.00	n/a	22,760.00	(19,915.00)
Hellmund-Mora, Marili	Manager	15.5	750.00	11,625.00	325.00	325.00	5,037.50	(6,587.50)
Labkoff, Nicole	Senior Consultant	35.2	750.00	26,400.00	525.00	n/a	18,480.00	(7,920.00)
Larson, Kristian	Consultant	0.5	750.00	375.00	400.00	n/a	200.00	(175.00)
Nelson, Cynthia	Senior Managing Director	75.8	750.00	56,850.00	1,250.00	1,315.00	95,042.50	38,192.50
Thalassinis, Angelo	Managing Director	55.2	750.00	41,400.00	875.00	n/a	48,300.00	6,900.00
Zucker, Clifford	Senior Managing Director	229.1	750.00	167,325.00	1,325.00	1,390.00	301,059.50	133,734.50
<b>Total</b>		<b>1,440.8</b>		<b>\$ 1,076,100.00</b>			<b>\$ 1,175,091.00</b>	<b>\$ 98,991.00</b>