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8 of Health and Human Services

9 UNITED STATES DISTRICT COURT  
10 NORTHERN DISTRICT OF CALIFORNIA  
11 SANTA ROSA DIVISION

12 MENDOCINO COAST HEALTH CARE  
13 DISTRICT, a political subdivision of the  
14 State of California,

15 Debtor.

No. 12-12753

Chapter 9

**CONDITIONAL WITHDRAWAL OF  
UNITED STATES' OBJECTION TO  
DEBTOR'S PLAN OF ADJUSTMENT**

Date: March 20, 2015

Time: 10:00 a.m.

18 Place: U.S. Bankruptcy Court  
19 99 South E Street  
Santa Rosa, CA 95404

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21 The United States of America, on behalf of its agency, the United States Department of  
22 Health and Human Services, previously filed its *Objection to Debtor's Plan of Adjustment* on  
23 January 27, 2015 (Docket No. 172) and its *Supplemental Objection to Debtor's Plan of*  
24 *Adjustment* on March 9, 2015 (Docket No. 182) (collectively, "CMS Objection").  
25 The United States has subsequently resolved its objections with the Debtor based upon the  
26 following two paragraphs (Paragraphs 6 and 12) that have been agreed to by the United States  
27 and Debtor. Therefore, the United States hereby withdraws its CMS Objection on the condition  
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1 that the following two paragraphs are included in their entirety in the Court's order confirming  
2 the Debtor's Plan of Adjustment and are otherwise incorporated into the Debtor's Plan of  
3 Adjustment:

4 6. Assumption of Medicare Provider Agreement.

5 Section 6.4.1 of the Plan is amended and restated in its entirety as follows: "On  
6 the Effective Date, pursuant to Section 1123(b)(2) of the Bankruptcy Code, the Debtor  
7 will assume the Medicare Provider Agreement. The CMS Claim will be deemed  
8 Allowed as an Assumption Obligation in the reduced amount of \$400,000 ("CMS  
9 Assumption Obligation"). The Reorganized Debtor will pay the CMS Assumption  
10 Obligation, in full and final satisfaction, settlement and release of any Claims for the cure  
11 of any defaults or compensation for any actual pecuniary loss arising under the Medicare  
12 Provider Agreement prior to the Effective Date (subject to the provisions of paragraph 12  
13 of this Order), as follows: (a) \$190,000 on or before the 5th Business Day following the  
14 Effective Date, and (b) the remaining balance of the CMS Assumption Obligation in the  
15 principal amount of \$210,000 will (i) bear interest commencing on the Effective Date at a  
16 rate of five percent (5%) per annum until paid in full, and (ii) be paid in equal monthly  
17 installments of principal and interest amortized over a term of three (3) years  
18 commencing on the Effective Date (provided that, such remaining balance may be  
19 prepaid by the Reorganized Debtor at any time without penalty). If the Reorganized  
20 Debtor defaults in the timely payment of the CMS Assumption Obligation pursuant to the  
21 Plan, then (A) the entire unpaid CMS Assumption Obligation balance will become  
22 immediately due and payable, and (B) in addition to any other rights and remedies it may  
23 have as a result of the Reorganized Debtor's default, CMS will be entitled to recoup or  
24 set off the entire unpaid CMS Assumption Obligation balance from and against (x) net  
25 underpayments that may be due to the Reorganized Debtor from its future cost reports,  
26 and (y) reimbursements that may be due to the Reorganized Debtor from its future  
27 Medicare claims."

28 12. Exception to Discharge for CMS.

Notwithstanding anything to the contrary in the Plan, confirmation of the Plan shall not discharge the Debtor from any debts to CMS that may arise under the Debtor's costs reports for the 2013 and 2014 fiscal periods (if any, the "CMS 2013-14 Overpayments"), each of which reports shall be processed by CMS following the Effective Date in the ordinary course at the times and in the manner contemplated by the Social Security Act and applicable regulations, with each of CMS and the Reorganized Debtor retaining all applicable rights, including CMS's recoupment and setoff rights, as well as the Reorganized Debtor's administrative appeal rights. Section 6.4.1(a) of the Plan is amended and restated in its entirety as follows: "With the exception of (i) the CMS Assumption Obligation, (ii) any CMS 2013-14 Overpayments, and (iii) liabilities arising in the current 2015 fiscal period, upon and following the Effective Date, no further or additional amounts are or shall become due or payable, whether by

1 recoupment, offset, reimbursement or otherwise, by the Debtor or the Reorganized  
2 Debtor to CMS on account of any transaction, occurrence, act or omission arising prior to  
3 the Effective Date under the Medicare Provider Agreement. Following the Effective  
4 Date, CMS shall continue to remit any underpayments or other outstanding  
5 reimbursements due from CMS to the District for any cost reporting periods prior to the  
6 Effective Date without offset or recoupment against the CMS Assumption Obligation,  
7 which obligation consists of the amounts owing to CMS for Debtor's self-disclosed  
8 violations of the physician self-referral law (Stark law), except to the extent any  
9 recoupment or offset in satisfaction of the CMS Assumption Obligation is permitted  
10 following a default by the Reorganized Debtor in the payment of such obligation under  
11 paragraph 6 of this Order).”

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13 Respectfully submitted,

14 MELINDA HAAG  
15 United States Attorney

16 Dated: March 19, 2015

17 By: /s/ Douglas K. Chang  
18 DOUGLAS K. CHANG  
19 Assistant United States Attorney  
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